**CHAPTER VII – LIQUOR, BEER & WINE**

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CHAPTER VII – LIQUOR, BEER & WINE

 ORDINANCE 72 LICENSING AND REGULATION OF THE SALE AND CONSUMPTION OF NON INTOXICATING LIQUOR

Section 72.01: PROVISIONS OF STATE LAW ADOPTED. The provisions of Minn. Stat. Ch. 340A, relating to the sale, display, and consumption of 3.2 percent malt liquor, are hereby adopted and made a part of this ordinance as if fully set out herein.

Section 72.02: LICENSE REQUIRED.

Subd. 1: No person, except wholesalers and manufacturers to the extent authorized by law, shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any beer within the City without first having received a license as hereinafter provided. Licenses shall be of three kinds: (1) Retail "on-sale"; (2) Retail "off-sale"; (3) "Special Event".

Subd. 2: On Sale. Licenses shall be granted only to bona fide clubs, beer stores, drug stores, restaurants and hotels where food is prepared and served for consumption on the premises. "On Sale" licenses shall permit the sale of beer for consumption on the premises only. Unless authorized to do so by license, all non intoxicating malt liquor sold "on sale" shall be possessed and consumed inside the building where purchased "on sale". No person shall possess or consume any non intoxicating malt liquor outside the building of an "on sale" business if said non intoxicating malt liquor was purchased "on sale". The licensee shall be responsible for the enforcement of this provision, and permitting a person possessing non intoxicating malt liquor purchased "on sale" to leave the building shall be a violation of this Ordinance by the licensee.

Subd. 3: Off Sale. Licenses shall permit the sale of beer at retail, in the original package for consumption off the premises only.

Subd. 4: Special Event. Licenses shall permit the on-sale sale of 3.2 percent malt liquor for consumption on the premises only, for a specified continual twenty-four hour period expiring at 1:00 a.m. The "special event" license shall be subject to the general terms and conditions of this ordinance, unless clearly inapplicable, with the following additions and/or changes:

a) A "special event" license shall be issued only to organizations or entities which qualify as a non-taxable organization as defined by Sec. 501(c) (3-8) of the Internal Revenue Code.

b) Application for the "special event" license shall be submitted at least thirty days prior to the date of applicability. The City Council may waive the 30 day deadline, but if doing so, shall charge a late fee not to exceed $250.00.
c) Proof of liability insurance as required by this ordinance shall be delivered to the City Clerk/Administrator prior to issuance of the license.

d) The maximum number of "special event" licenses which may be issued to an entity or organization in a single calendar year is three.

e) The permit fee for a "special event" license shall be $10.00 for a twenty-four hour period.

Subd. 5: Any person issued an "on-sale" nonintoxicating liquor license pursuant to Section 7.2.2, Subd. 2, of this Ordinance, may also engage in the sale of intoxicating malt liquor at on-sale without an additional license if the licensee meets the following conditions:

a) The licensee also holds a wine license issued pursuant to Section 73.02, et seq. of this Code.

b) The gross receipts of the licensee's operation are at least 70 percent attributable to the sale of food. The licensee shall provide the City with copies of licensee's financial records upon reasonable request for the purpose of establishing the source of gross receipts.

c) The licensee maintains in effect the liability insurance required under Section 71.03, Subd. 3.

Subd. 6: A restaurant club, bowling alley, or hotel which holds an on-sale or special events license may sell 3.2 percent malt liquor for consumption on the premises in conjunction with the sale of food after the hour of 10:00 a.m. on Sundays. An establishment serving 3.2 percent malt liquor on Sundays must obtain a Sunday license. Any establishment requesting a Sunday license must show that they are in conformance with the Minnesota Clean Air Act. A license may be issued by the governing body of the municipality and a fee as established by resolution of the City Council may be charged, but in no event shall said fee exceed the sum of $5.00 for a special event license or $25.00 for the on-sale license unless otherwise prohibited by State law.

Section 72.03: APPLICATIONS FOR LICENSE

Subd. 1: Every application for a license to sell beer shall be made on a form supplied by the City and shall state the name of the applicant, his age, representations as to his character with such references as may be required, his citizenship, whether the application is for "on-sale", "off-sale", or "special event", the business in connection with which the proposed license will operate and its location, whether applicant is owner and operator of the business, how long he has been in that business at that place, and such other information as the Council may require from time to time. It shall be unlawful to make any false statement in an application. Applications shall be filed with the City Clerk/Administrator.
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Subd. 2: On an initial application for "3.2 percent malt liquor" license and on application for transfer of an existing "3.2 percent malt liquor" license, the applicant shall pay with his application an investigation fee of not to exceed Five Hundred Dollars ($500.00) and the city shall conduct a preliminary background and financial investigation of the applicant. The application is such case shall be made on a form prescribed by the state bureau of criminal apprehension and with such additional information as the council may require. If the council deems it in the public interest to have an investigation made on a particular application for renewal of an "intoxicating liquor" license, it shall so determine. In any case, if the council determines that a comprehensive background and financial investigation of the applicant is necessary, it may conduct the investigation itself or contract with the bureau of criminal investigation for the investigation. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the council that issuance would not be in the public interest. If an investigation outside the state is required, the applicant shall be charged the cost not to exceed Two Thousand Dollars ($2,000.00) and shall be paid by the applicant after deducting any initial investigation fee already paid. The fee shall be payable by the applicant whether or not the license is granted. The City Council may waive the investigation and investigation fee for applicants which are organizations or entities that have been in existence and operation in the City of St. Joseph for the five years preceding the application.

Section 72.04: LICENSE FEES.

Subd. 1: Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the required fee for the license. All fees shall be paid into the general fund of the City. Upon rejection of any application for a license, the Treasurer shall refund the amount paid.

Subd. 2: All licenses shall expire on the last day of December in each year. Each license shall be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.

Subd. 3: The annual fee shall be determined by the City Council from time to time.

Section 72.05: GRANTING OF LICENSE.

Subd. 1: The City Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After such investigation and hearing the City Council shall grant or refuse the application in its discretion.

Subd. 2: Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another place without the approval of the City Council.

Section 72.06: PERSONS AND PLACES INELIGIBLE FOR LICENSE. No license shall be granted to any person who is ineligible for a license under the provisions of Minn. Stat.
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340. No license shall be issued for any place or any business ineligible for said license under Minn. Stat. Ch. 340.

Section 72.07: CONDITIONS OF LICENSE.

Subd. 1: Every license shall be granted subject to the conditions in the following subdivisions and all provisions of this ordinance and any other applicable ordinance of the City of State law.

Subd. 2: Every licensee shall be responsible for the conduct of his place of business and the conditions of sobriety and order in it.

Subd. 3: No sale of non intoxicating malt liquor shall be made to anyone on credit.

Subd. 4: No license shall sell beer while holding or exhibiting in the licensed premises a Federal Retail Liquor Dealer's Special Tax Stamp unless he is licensed under the Laws of Minnesota to sell intoxicating liquors.

Subd. 5: Any peace officer, health officer, or any properly designated officer or employee of the City shall have the unqualified right to enter, inspect, and search the premises of the licensee during business hours, and within one and one half hours after the close of business hours, without a warrant.

Subd. 6: Liability Insurance. Prior to the issuance of an "on sale" or "off sale" non intoxicating malt liquor license, the applicant must demonstrate proof of financial responsibility with regard to liability imposed by Minn. Stat. §340A.409 with the Commissioner of Public Safety and the City Clerk/Administrator of St. Joseph as a condition of the issuance or renewal of his license.

This subdivision does not apply to holders of "on sale" or "off sale" non intoxicating malt liquor licenses with sales of less than Ten Thousand Dollars ($10,000) of non intoxicating malt liquor per year. To qualify for this exception the licensee must provide to the City Clerk/Administrator a written and sworn affidavit that sales for the preceding year were less than Ten Thousand Dollars ($10,000) per year for non intoxicating malt liquor. In addition, the licensee must provide to the City Clerk/Administrator records which clearly show that sales for the preceding year were less than Ten Thousand Dollars ($10,000) for non intoxicating malt liquor. The City Clerk/Administrator may request any additional financial records to verify this information.

Proof of compliance with Minn. Stat. §340A.409 may be given by filing:

a) A certificate that there is in effect an insurance policy or pool providing the following minimum coverages:
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1. Fifty Thousand Dollars ($50,000) because of bodily injury to any one person in any one occurrence, and, subject to the limit for one person, in the amount of One Hundred Thousand Dollars ($100,000) because of bodily injury to two or more persons in any one occurrence, and in the amount of Ten Thousand Dollars ($10,000) because of injury to or destruction of property of others in any one occurrence.

2. Fifty Thousand Dollars ($50,000) for loss of means of support of any one person in any one occurrence, and, subject to the limit for one person, One Hundred Thousand Dollars ($100,000) for loss of means of support of two or more persons in any one occurrence; or

b) A bond of a surety company with minimum coverages as provided in clause a), or
c) A certificate of the State Treasurer that the licensee has deposited with him One Hundred Thousand Dollars ($100,000) in cash or securities which may legally be purchased by savings backs or for trust funds having a market value of One Hundred Thousand Dollars ($100,000).

The liability insurance policy required by this subdivision shall provide that it may not be cancelled for any cause, either by the insured or the insurance company without first giving ten days notice to the City in writing of intention to cancel it, addressed to the City Clerk/Administrator of the City of St. Joseph.

The operation of an "off sale" or "on sale" business without having on file at all times with the City Clerk/Administrator the liability insurance policy herein referred to shall be grounds for immediate revocation of the license. Lapse of insurance or other evidence of financial responsibility will trigger an automatic revocation of the license. Notice of cancellation of a current liquor liability insurance policy shall also serve as notice to the license of the impending revocation and that unless evidence of compliance with the financial responsibility requirement is presented to the City Clerk/Administrator before the termination is effective, the license will be revoked instantly upon the lapse of insurance or other financial responsibility.

Subd. 7: Nudity and Sexual Conduct Prohibited.

a) To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing so as to expose or to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

b) To employ or use services of any host or hostess while such host or hostess is unclothed or in such attire, costume or clothing as described in Subd. 1. above.
c) To employ or use any dancers, musicians, or other performers or entertainers, who are unclothed or in such attire, costume or clothing as described in Subd. 1. above.

d) To directly or indirectly sponsor any contests which may foreseeably cause, result in or lead to the occurrence of the acts or incidents described in Subd. 6. below.

e) To encourage or permit any person on the licensed premises to touch, caress or fondle breasts, buttocks, anus or genitals of any employee of the licensee or any performers or entertainers who are employed or whose services are used by the licensee.

f) To permit any person to perform acts of or acts which simulate:

1. With or upon another person sexual intercourse, sodomy, oral copulation, flagellation or any sexual act which is prohibited by law.

2. Masturbation or bestiality.

3. With or upon another person the touching, caressing or fondling of the buttocks, anus, genitals or female breasts.

4. The displaying of the pubic hair, anus, vulva, genitals or female breasts below the top of the areola.

g) To permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

h) To permit any person to remain in or upon the licensed premises, or any area owned or controlled by the licensee which is viewable from upon the licensed premises, who exposes to public view any portion of his or her genitals or anus.

i) To permit the showing of film, still pictures, electronic reproduction, or other visual reproduction depicting:

1. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual act which is prohibited by law.

2. Any person being touched, caressed or fondled on the breast, buttocks, anus, or genitals.

3. Scenes wherein a person displays the vulva, the anus or the genitals.
4. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described herein.

j) A violation of any portion of this section shall be punishable as a misdemeanor. Both the licensee and the person(s) actually engaging in any of the prohibited acts shall be criminally liable. Any violation of this section shall also constitute grounds for revocation or suspension of the licensee's license, in accordance with the rules and procedures otherwise established by this ordinance and state law.

Section 72.08: CLOSING HOURS.

Subd. 1: No sale of 3.2 percent malt liquor shall be made between 1 a.m. and 8 a.m. on the days of Monday through Saturday, nor between 1 a.m. and noon on Sunday.

Subd. 2: No sale or delivery of non intoxicating malt liquor in a keg or any other container having a capacity greater than one gallon shall be made at any time when the off sale of intoxicating liquor shall be prohibited by State Law or Ordinance 71 of this Code.

Subd. 3: All persons, except the licensee, his bona fide employees, and law enforcing officers, shall be excluded from the premises within 30 minutes after the expiration of the time of any day when non intoxicating malt liquor may be legally sold therein. This provision shall not apply to licensees operating bona fide restaurants under license by the State of Minnesota.

It shall be unlawful to permit the consumption or displaying of non intoxicating malt liquors later than 30 minutes after sales must terminate. It shall be conclusively presumed that any non intoxicating malt liquor remaining on a bar, in a booth, or on a table more than 30 minutes after closing time shall be for the purpose of consuming the same in violation of this Section.

Section 72.09: PUBLIC CHARACTER OF INTOXICATING MALT LIQUOR SALES. The windows in the front of any place licensed for "on sales" shall be of clear glass and the view of the whole interior shall be unobstructed by screens, curtains, or partitions. There shall be no partitions, box, stall, screen, curtain or other devise which shall obstruct a view from any part of the room from the general observation of persons in the room, except that partitions, subdivision, or panel not higher than 60 inches, from the floor may be maintained. Any licensed premises must have at least one window of not less than one and one half foot by two feet in front placed at eye level height of an average sized person. No place licensed for "on sale" shall be equipped with swinging doors.

Section 72.10: RESTRICTIONS ON PURCHASES AND CONSUMPTION.
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Subd. 1: No minor shall misrepresent his age for the purpose of obtaining non intoxicating malt liquor, nor shall he enter any premises licensed under this Ordinance in order to procure such beverages, or to consume or purchase or attempt to purchase or procure or to have another purchase or procure for him, such beverages on licensed premises.

Subd. 2: No person shall induce a minor to purchase or procure non intoxicating malt liquor.

Subd. 3: No person, other than the parent or legal guardian of a minor shall give to, procure, or purchase any non intoxicating malt liquor for any minor or any other person to whom the sale of non intoxicating malt liquor is forbidden by law.

Subd. 4: No minor shall have non intoxicating malt liquor in his possession with intent to consume it, except that possession in the abode of the parent or guardian for consumption in the household of the parents or legal guardian of the minor shall not be prohibited.

Subd. 5: No person shall consume or display any intoxicating liquor on the premises of any licensee who is not also licensed to sell intoxicating liquors.

Subd. 6: Restrictions regarding the public consumption, display and sale of liquor, as provided in Ordinance 71, Section 11, Subd. 2, of the St. Joseph Code of Ordinances shall apply in the same manner to non intoxicating malt liquor, and the penalties provided for a violation of Ordinance 71.11.2 shall be fully applicable for a violation relating to non intoxicating malt liquor.

Subd. 7: No person shall refuse to show proper identification to the bartender or police officer when requested to do so. Refusal to do so shall be a violation of this Ordinance if the person is then in an establishment licensed to sell non intoxicating malt liquor.

Subd. 8: No person under the age of 21 years shall consume any 3.2 percent malt liquor, unless the 3.2 percent malt liquor is consumed in the household of said persons parent or guardian and with the consent of the parent or guardian.

Section 72.11: DANCING. No dancing shall be permitted from 1:00 a.m. until noon of any day in premises licensed to sell non intoxicating malt liquor.

Section 72.12: REVOCATION. The violation of any ordinance or condition of this ordinance by a non intoxicating malt liquor license or his agent, shall be grounds for revocation or suspension of the license or assessment of a civil monetary penalty not to exceed One Thousand Dollars ($1,000). It shall not be necessary that the violations be proven in a Court of Law. The Council may revoke the license even if a conviction is not obtained in a Court of Law. The license of any person who holds a Federal Retail Liquor Dealer's Special tax stamp without a license to sell intoxicating liquors at such places shall be revoked without notice and without hearing. In all other cases, the license granted under this ordinance may be revoked or suspended by the Council after written notice to the licensee and a public hearing. The notice
shall give at least ten day's notice of the time and place of the hearing and shall state the nature of
the charges against the licensee.

Section 72.13: **PENALTY.** Any person violating any provision of this ordinance
including the provisions of Minn. Stat. Ch. 340A, which have been adopted by reference, shall
be guilty of a misdemeanor unless a lesser penalty is specifically provided herein.