CHAPTER VII – LIQUOR, BEER & WINE

ORDINANCE 73 LICENSING AND REGULATION OF THE SALE AND CONSUMPTION OF WINE

Section 73.01: PROVISIONS OF STATE LAW ADOPTED ..................................................... 73-1
Section 73.02: WINE LICENSES .................................................................................. 73-1
Section 73.03: APPLICATION FOR LICENSE ................................................................. 73-1
Section 73.04: LICENSE FEES ..................................................................................... 73-3
Section 73.05: GRANTING LICENSES .......................................................................... 73-3
Section 73.06: PERSONS INELIGIBLE FOR LICENSE .................................................. 73-4
Section 73.07: PLACES INELIGIBLE FOR LICENSE ..................................................... 73-4
Section 73.08: CONDITIONS OF LICENSE ................................................................. 73-4
Section 73.09: SUSPENSION AND REVOCATION ......................................................... 73-6
Section 73.10: PUBLIC CONSUMPTION ..................................................................... 73-6
Section 73.11: PENALTY ............................................................................................... 73-6
ORDINANCE 73 LICENSING AND REGULATION OF THE SALE AND CONSUMPTION OF WINE

Section 73.01: PROVISIONS OF STATE LAW ADOPTED. The provisions of Minn. Stat. Ch. 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor insofar as they are applicable to wine licenses authorizing the sale of wine not exceeding 14 percent alcohol by volume for consumption on the licensed premises only, in conjunction with the sale of food, are adopted and made a part of this ordinance as if set out in full, except as herein altered or modified under the authority provided to municipalities in Minn. Stat. § 340A.509.

Section 73.02: WINE LICENSES. No person, except a wholesaler or manufacturer to the extent authorized under state license, and licensee authorized under the intoxicating liquor ordinance of the City of St. Joseph, including bona fide clubs, shall directly or indirectly deal in, sell, or keep for sale in the City any wine not exceeding fifteen percent (15%) alcohol by volume without an on sale wine license. An on sale wine license authorizes the sale of wine not exceeding fifteen percent (15%) alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. An on sale wine license may be issued only to a restaurant having facilities for seating not fewer than 25 guests at one time. For the purpose of this ordinance, a restaurant means an establishment under the control of a single proprietor or manager, having appropriate facilities for serving meals, and where, in consideration of payment therefor, meals are regularly served at tables to the general public, and which employees an adequate staff to provide the usual and suitable service to its guests.

Section 73.03: APPLICATION FOR LICENSE.

Subd. 1: Form. Every application for on sale wine license shall state the name of the applicant, his/her age, representations as to his/her character, with such references as the council may require, his/her citizenship, the restaurant in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the restaurant, how long he/she has been in the restaurant business at that place, and such other information as the council may require from time to time. In addition to containing such information, the application shall be in the form prescribed by the liquor control director and shall be verified and filed with the City Clerk/Administrator. No person shall make a false statement in an application.

Subd. 2: Bond. (Repealed in 1991)

Subd. 3: Liability Insurance. Prior to the issuance of a wine license, the applicant must demonstrate proof of financial responsibility with regard to liability imposed by Minn. Stat.
CHAPTER VII – LIQUOR, BEER & WINE

§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/her license.

This subdivision does not apply to holders of "on sale" wine licenses under Minn. Stat. §340.11, Subd. 20, with sales of less than Ten Thousand Dollars ($10,000) of wine 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) for wine and that sales for the current year will be less than Ten Thousand Dollars ($10,000) per year for wine. 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 wine. The City Clerk/Administrator may request any additional financial records to verify this information.

Proof of compliance with §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:

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 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 banks 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
licensee 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 of other financial responsibility.

Subd. 4: Approval of Security. The security offered under Subdivision 3 shall be approved by the City Council and the state liquor control director. Surety bonds and liability insurance policies shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the City at all times effective security as required in Subdivision 3 is a cause for revocation of the license.

Section 73.04: LICENSE FEES.

Subd. 1: Amount. The annual fee for a wine license will be established by the City Council from year to year.

Subd. 2: Payment. Each application for a wine license shall be accompanied by a receipt from the City Treasurer for payment in full of the license fee. All fees shall be paid into the general fund. If an application for a license is rejected, the treasurer shall refund the amount paid.

Subd. 3: Term. Each license shall be issued for a period of one year except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as a full month. Every license shall expire on the last day of June of each year.

Subd. 4: Refunds. No refund of any fee shall be made except as authorized by statute.

Section 73.05: GRANTING LICENSES.

Subd. 1: Investigation and Issuance. 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 the investigation and hearing, the council shall, in its discretion, grant or refuse the application. No wine license shall become effective until it, together with the security furnished by the applicant, has been approved by the state liquor control director.

Subd. 2: Person and Premises Licensed; Transfer. Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval. Any transfer of stock of a corporate licensee is deemed a transfer of the license and a transfer of stock without prior council approval is a ground for revocation of the license.
Chapter VII – Liquor, Beer & Wine

Section 73.06: Persons Ineligible for License. No wine license shall be granted to any person made ineligible for such a license by state law. Section 73.07: Places Ineligible for License.

Subd. 1: General Prohibition. No wine license shall be issued for any restaurant ineligible for such a license under state law.

Subd. 2: Time in Business. No license shall be issued to any restaurant until it has been in operation continuously for at least 2 years.

Subd. 3: Delinquent Taxes and Charges. No license shall be granted for operation on any premises on which taxes, assessment, or other financial claims of the City are delinquent and unpaid.

Section 73.08: Conditions of License.

Subd. 1: In General. Every license is subject to the conditions of the following subdivisions and all other provisions of this ordinance and of any other applicable ordinance, state law or regulation.

Subd. 2: Licensee's Responsibility. Every licensee is responsible for the conduct of his/her place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises authorized to sell wine "on sale" there is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this ordinance and the law equally with the employee.

Subd. 3: Inspections. Every licensee shall allow any peace officers, health officer, or properly designated officer or employee of the City to enter, inspect, and search the premises of the licensee during business hours and for one and one half (1 1/2) hours after closing time as prescribed by law, without a warrant.

Subd. 4: Display during Prohibited Hours. No licensee shall display wine to the public during hours when the sale of wine is prohibited.

Subd. 5: Federal Stamps. No licensee shall possess a federal wholesale liquor dealers special tax stamp or a federal gambling stamp.

Subd. 6: Hours of Operation. No sale of wine shall be made at any time when the sale of intoxicating liquor shall be prohibited by state law or any ordinance by the City of St. Joseph. It shall be unlawful to permit the consumption or displaying of wines later than 30 minutes after sales must terminate. It shall be conclusively presumed that any wine remaining on a table or in a booth shall be for the purpose of consuming the same in violation of this section.

If the licensee is operating any other lawful business in the building for which the license is granted, no wine shall be served or permitted to be consumed on the premises when such other business is conducted during the time when the sale of wine is prohibited as aforesaid.
CHAPTER VII – LIQUOR, BEER & WINE

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 this Subd. 7. 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/her genitals or anus.
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.

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 73.09: SUSPENSION AND REVOCATION. The Council may either revoke or suspend for not to exceed 60 days, any on sale wine license, or assess a monetary penalty not to exceed One Thousand Dollars ($1,000) upon a finding that the licensee has failed to comply with any applicable statute, regulation or ordinance relating to intoxicating liquor or wine. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minn. Stat. § 14.57 to 14.69 of the Administrative Procedure Act. However, this section does not require the City to conduct a hearing before an employee of the Office of Administration Hearings.

Section 73.10: PUBLIC CONSUMPTION. Restrictions regarding the public consumption, display and sale of liquor, as provided in Ordinance 71, Section 11, Subdivision 2, of the St. Joseph Code of Ordinances shall apply in the same manner to wines, and the penalties provided for a violation of Ordinance 71.11.2 shall be fully applicable for a violation relating to wine.

Section 73.11: PENALTY. Any person violating any provision of this ordinance is guilty of a misdemeanor unless a lesser penalty is specifically provided herein.