

HUBBARD COUNTY

ORDINANCE NUMBER 42

***AN ORDINANCE RELATING TO LICENSING AND REGULATING THE
SALE OF ALCOHOLIC BEVERAGES, INTOXICATING LIQUOR, MALT
LIQUOR, 3.2 PERCENT MALT LIQUOR, AND WINE IN THE
UNORGANIZED AREAS OF HUBBARD COUNTY, MINNESOTA***

**Adopted by the Hubbard County Board of Commissioners on the 20th
day of January, 2015.**

Effective April 1, 2015

**Amendment No. 1 Adopted by the Hubbard County Board of
Commissioners on the 18th day of April, 2017
effective July 1, 2017**

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HUBBARD COUNTY LIQUOR LICENSE REGULATIONS

AN ORDINANCE RELATING TO LICENSING AND REGULATING THE SALE OF ALCOHOLIC BEVERAGES, INTOXICATING LIQUOR, MALT LIQUOR, 3.2 PERCENT MALT LIQUOR, AND WINE IN THE UNORGANIZED AREAS OF HUBBARD COUNTY, MINNESOTA AND THOSE ESTABLISHMENTS LICENSED BY THE COUNTY BOARD

The Board of Commissioners for the County of Hubbard, State of Minnesota, does hereby ordain and adopt this Ordinance establishing requirements and restrictions regarding the licensing for the sale of alcoholic beverages, beer, intoxicating liquor, malt liquor, 3.2 percent malt liquor, and wine.

SECTION 1 – TITLE

This Ordinance shall be known as, and may be cited and referenced as, the “Hubbard County Liquor License Ordinance;” and, when referenced herein, shall be referenced as “this Ordinance.”

SECTION 2 – INCORPORATION

The provisions of Minnesota Statutes Chapter 340A, as amended, relating to the definition of terms; as well as the licensing, consumption, sales, distribution, and consumption of alcoholic beverages, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine; are adopted, incorporated into, and made a part of this Ordinance as if set out in full herein.

SECTION 3 – INTERPRETATION

The provisions of this Ordinance shall be controlling, unless a provision provided under Minnesota State Statutes, or other ordinance, rule, or regulation imposes more stringent requirements in which case the more stringent requirement shall be controlling. Words and phrases contained within this Ordinance are to be construed according to the rules of grammar and common and ordinary usage. Singular words include the plural, and the plural include the singular.

SECTION 4 - VALIDITY

All sections and provisions of this Ordinance are deemed severable in nature. Should a court of competent jurisdiction declare any section or provision of this Ordinance to be void, invalid, unenforceable or unconstitutional, such finding shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part found to be void, invalid, unenforceable, or unconstitutional.

SECTION 5 – JURISDICTION

This Ordinance shall apply to all unincorporated areas within the County of Hubbard, State of Minnesota.

SECTION 6 - LICENSES

Subsection 1: Requirements

No person, except a wholesaler or manufacturer to the extent authorized under state license, shall directly or indirectly deal in, sell, barter, exchange, give away, or keep for sale any alcoholic beverage, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine without a license to do so as provided in this Ordinance and state law.

Subsection 2: Restrictions

- (1) On-sale licenses for the sale of alcoholic beverages, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine may be granted in such number and to such establishments as qualify under state liquor laws as restaurants, hotels, clubs or bowling centers. Such license shall only permit consumption on the licensed premises.
- (2) Off-sale licenses for the sale of alcoholic beverage, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine may be issued only to exclusive liquor stores, and shall only permit off-sales.
- (3) An on-sale license, if issued, authorizes sales on Sundays in conjunction with the serving of food by any restaurant or club located in a township in which Sunday sales has been approved by voters of the Township, and which has facilities for serving at least thirty (30) guests at one time.
- (4) An on-sale wine license may be issued, as authorized under Minnesota Statutes Section 340A.404, Subd. 5(a), only to restaurants meeting the qualifications of Minnesota Statutes Section 340A.101, Subd. 25, and shall permit only the sale of wine for consumption on the licensed premises only in conjunction with the sale of food.
- (5) Pursuant to Minnesota Statutes Section 340A.404, Subd. 5(b), the Hubbard County Board may authorize the on-sale of malt liquor to a holder of an on-sale wine license issued under Minnesota Statutes Section 340A.404, Subd. 5(a) and Section 6, Subsection 2(4) of this Ordinance who is also licensed for on-sale of 3.2 percent malt liquors pursuant to Minnesota Statutes Section 340A.411, and whose gross receipts are at least 60 percent attributable to the sale of food, without an additional license.

- (6) An on-sale wine license may be issued to a licensed bed and breakfast facility as authorized under Minnesota Statutes Section 340A.404, Subd. 5(c), and shall permit the facility to furnish wine only to registered guests.
- (7) 3.2 percent malt liquor on- and off-sale licenses may be issued as authorized under Minnesota Statutes Section 340A.403.
- (8) A club, or a charitable, religious, or nonprofit organization duly incorporated as a nonprofit or religious corporation under the laws of Minnesota and having its registered office and principal place of activity within the County, may qualify for a temporary on-sale 3.2 percent malt liquor license for a period not to exceed five (5) days. Such temporary license shall comply, in all respects, with all other state laws, County Ordinances, this Ordinance, rules, and regulations governing the sale of 3.2 percent malt liquor within the County.
- (9) A caterer's permit may be issued pursuant to the restrictions and requirements set forth at Minnesota Statutes Section 340A.404, Subdivision 12, as amended, to a restaurant that holds an on-sale intoxicating liquor license. The holder of a caterer's license may sell intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine as an incidental part of food service that serves prepared meals at a location other than the premises for which the on-sale intoxicating liquor license is granted. The caterer's license is auxiliary to the primary on-sale license held by the licensee. Additionally, the holder of a caterer's permit must conduct all on-sales in full compliance with all applicable provisions of this Ordinance and all other state statutes, laws, rule and regulations.

SECTION 7 – LICENSE APPLICATION

Subsection 1: Application requirements

- (1) The Hubbard County Auditor-Treasurer is designated as the License Authority for all licenses applied for, issued, or renewed under this Ordinance.
- (2) The application for either on- or off-sale of alcoholic beverages, intoxicating liquor, malt liquor, wine, and/or 3.2 percent malt liquor shall be obtained from the License Authority, and shall consist of an Application to Sell, License Application Information Form, Minnesota Worker's Compensation Form, and certificate of liability insurance required pursuant to Section 11 of this Ordinance. Failure to provide any required form or information is a basis for automatic denial of the license application.
- (3) At the time of filing an application for either an initial or renewed license the applicant shall submit the completed application, all required forms, a certificate of liability insurance, and shall pay an investigation background fee and all other applicable fees as set by the County Board. All fees are considered the minimum amounts necessary to reimburse the County for costs incurred in

processing the application and investigating the applicant and the proposed premises and are, therefore, non-refundable.

- (4) Every applicant, at the time of filing an application for an initial license, shall also submit a drawing of the property on which the premises is located, showing and identifying all adjacent streets, buildings and residences, parking, road accesses, and entry and exit into the building; as well as a floor plan of the interior of the premise and any outdoor areas in which the applicant intends to serve alcoholic beverages, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine. No outdoor on-sales or service is permitted unless the applicant clearly indicates on an application for a new or renewed license of the intent to conduct outdoor on-sales.
- (5) An application shall not be considered submitted unless completed in full; all required forms, attachments and/or additional information is attached or otherwise provided in a form acceptable to the licensing authority; the certificate or binder for the required liability insurance is provided; and all required fees are paid in full.
- (6) The applicant shall also sign a verification, under oath, attesting that all information set forth on the application is true and correct. No person shall knowingly make a false statement in an application. Any knowing false statement or information shall be grounds for rejection of an initial application, rejection of an application for license renewal, revocation of an existing license, and/or criminal prosecution.
- (7) A completed application for either an initial or a renewed license must be presented at least 60 days prior to the requested effective date or, for license renewal applications, the expiration date of the current license. Late renewals applications for existing licenses shall pay an additional late fee as determined by the County Board, which must accompany the completed application.
- (8) The applicant must obtain the written comments of the County Sheriff, and the County Attorney with regards to the application. This requirement pertains to both original and renewal applications. The County Sheriff's comments should include the applicant's performance with regards to past alcohol sales compliance checks.
- (9) The applicant for either an initial or renewed license in a Town that exercises powers under 368.01 M.S.A. must first obtain the approval from the Town Board in which the proposed license premises is to be located. The License Authority, if requested, will forward the statements of the County Sheriff, and the County Attorney to the Township Board in advance of their consideration of the application.

Subsection 2: Consideration

- (1) All applications for liquor licenses will be considered by the County Board. The County Board shall decide whether to deny or grant an application. The County Board may, as a condition of granting a license application, impose reasonable restrictions on the nature and/or operation of the business. These restrictions include, without limitation, reasonable restrictions on conducting on-sales in outdoor areas adjacent to the licensed premise including parking, lighting, noise abatement, restroom facilities, hours of operation, and whether amplified entertainment is permitted.
- (2) The County Board must consider an application within sixty (60) days after a completed application is considered submitted pursuant to Section 7, Subsection 1(4) of this Ordinance. The License Authority may extend this period by an additional sixty (60) days provided the applicant is notified, in writing, of the reason for the extension. The applicant may also consent to an extension of this period, in writing, for any period as agreed to by the applicant and the License Authority.
- (3) The State of Minnesota may issue the license if the application is approved by the County Board.
- (4) The License Authority shall notify the Minnesota Commissioner of Public Safety when a 3.2 percent malt liquor or intoxicating liquor license application is approved.

Subsection 3: Criterion

In deciding whether to grant a particular license, the County Board shall consider all relevant factors bearing on both the applicant and the premises including but not limited to:

- (1) The applicant's characteristics, including but not limited to financial integrity, including but not limited to the ability to provide the required liability insurance; responsibility; moral character, including but not limited to criminal history; and reputation.
- (2) The written comments of the Town Board if that Board exercises powers under 368.01 M.S.A., the County Sheriff, the County Zoning Administrator, and the County Attorney.
- (3) Past record of compliance, including sale compliance checks, if the application is for a license renewal;

- (4) Compatibility of the premises with surrounding land uses, including but not limited to whether the establishment is a prohibited, conditional, or permitted use under current zoning restrictions.
- (5) Characteristics of the proposed licensed premises, including but not limited to size, setbacks, parking, screening, lighting, security, garbage removal, access, and rest room facilities.
- (6) The County Board may deny a license for a premises in an area where such a land use is prohibited by zoning ordinances or other land use controls, except licenses may be issued to restaurants in areas which were restricted against commercial uses after the establishment of the restaurant.
- (7) The County Board may deny any application on the sole basis the applicant failed to comply with any provision of this Ordinance, State statutes, or other applicable ordinance, law, rule or regulation in the application process.
- (8) No license shall be granted for a building within 1,000 feet of any school or within 1,000 feet of any church.

Subsection 4: Delinquent taxes

No on- or off-sale license shall be granted or renewed for any premises on which federal, state, County, or local taxes, assessments, or other financial claims of any kind are delinquent and unpaid regardless whether the license applicant is the owner or lessee of the premises.

SECTION 8 – LICENSE PERIOD

All licenses are issued for a period not to exceed one (1) year. A license may be issued subject to a shorter expiration date if issued for the purpose of coordinating a common expiration date of multiple licenses, in which case a *pro rata* license fee shall be assessed. The license period for 3.2 percent malt liquor licenses shall be January 1 through December 31 of the same calendar year, and for all alcoholic beverages, intoxicating liquor, malt liquor and wine shall be August 19 through August 18 of the subsequent calendar year.

SECTION 9 - FEES

Subsection 1: Amount

The fees for licenses shall be established by resolution of the County Board pursuant to Minnesota Statutes Section 340A.408.

Subsection 2: Fee refund

A monthly *pro rata* share of the annual license fee for an on-sale intoxicating liquor license, less \$500.00, may be refunded to the licensee or to the licensee's estate, if: (1) the business ceases to operate because of destruction or damage; (2) the licensee dies; (3) the business ceases to be lawful for a reason other than a license revocation; or (4) the licensee ceases to carry on the licensed business under the license.

SECTION 10 - TRANSFERABILITY

Any license issued under this Ordinance is granted solely to the applicant and the business entity named in the application and for the premises named in the license application. No license of any sort granted pursuant to this Ordinance is transferable to any other person or premises. If a change of ownership or control of any licensed premises occurs, whether pursuant to sale, transfer, assignment, or otherwise, the new owner must complete a new application subject to approval pursuant to this Ordinance. A change of ownership or control includes, but is not limited to:

- (1): The sale of all or substantially all of the company assets;
- (2): Sale or acquisition of forty (40) percent or more of the controlling interest (voting) stock if the company stock is publicly traded;
- (3): Sale of fifty-one (51) percent of the voting stock if a non—publicly traded stock or closely held corporation;
- (4): Execution of a management agreement; or
- (5): The change of any officer or majority stockholder if the company is a closely-held corporation.

Applications for licensing when there is a change of ownership of an existing licensed premise shall be assessed a *pro rata* share of the annual license fee.

SECTION 11 – INSURANCE

Subsection 1: Requirement

- (1) Prior to the issuance or renewal of any license for the on- or off-sale sale of alcoholic beverage, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine, the applicant shall file with the County Auditor-Treasurer a certificate for a liability insurance policy that meets all requirements as set forth in Minnesota Statutes Section 340A.409.
- (2) For outdoor on-sale, the license holder's liability insurance shall specifically include the outdoor area where sales will take place.

(3) A certificate of liability insurance is not required for:

- (a). A holder of a temporary license issued pursuant to Section 6, Subsection 2(8) of this Ordinance if total sales during the preceding year were less than \$25,000.00 for on-sale and less than \$50,000.00 for off-sale; or
- (b). A holder of a temporary wine license.

Subsection 2: Lapse

Lapse, cancellation, or the failure to renew a policy of the insurance required pursuant to Subsection 1 of this Section shall result in an immediate suspension of any license issued pursuant to this Ordinance, without further action of the County Board.

SECTION 12 - HOURS

Subsection 1: Hours of sale

Sale of all on-sale alcoholic beverages, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine are prohibited between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, unless the applicant was granted a specific permit or license authorizing sales until 2:00 a.m. on designated days. Sunday on-sale hours of sale shall be between the hours of 10:00 a.m. on Sundays and 1:00 a.m. on Mondays but only in conjunction with the sale of food and if permitted by the Township. Sale of off-sale alcoholic beverages, intoxicating liquor, malt liquor, 3.2 percent malt liquor or wine shall be between the hours of 8:00 a.m. and 10:00 p.m. Monday through Saturday and on Sunday between the hours of 11:00 a.m. and 6:00 p.m. and as provided by Minnesota Statute §340A.

Subsection 2: Presence on premises

It is unlawful for any person to enter or remain on the licensed premises 30 minutes after the time authorized for sale expires. This Subsection does not apply to law enforcement, the licensee, or any employee or contractor of the licensee who is actually working or otherwise preparing to open or close the licensed premises.

Subsection 3: Consumption on premises

It is unlawful for any person, whether patron, employee, owner, contractor, or other, to consume any alcoholic beverage, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine on a licensed premises after the time authorized for sale expires.

SECTION 13 - GENERAL

- (1) No alcoholic beverage, intoxicating liquor, malt liquor, 3.2 percent malt liquor, or wine shall be consumed by any person in the outdoor areas adjacent to any

licensed premises at any time unless outdoor on-sales was included in the permit application.

- (2) Any outdoor area in which the licensee shall conduct on-sales shall be enclosed by a fence or other structure sufficient to control access to and from the area of sale.
- (3) No licensee shall knowingly cause or permit any lewd conduct on the premises including, but not limited to, public nudity, strip tease act, exotic dancing, or any type or form of sexually-orientated activity or entertainment.

SECTION 14 - ENFORCEMENT

Subsection 1: Penalty

Any person, firm, organization, partnership or corporation who violates any provision of this Ordinance, fails to comply with any provision of this Ordinance, or who makes a knowing false statement in any application hereunder, shall be guilty of a misdemeanor and, upon conviction, shall be punished according to law. A separate offense shall be deemed committed upon each day during or on which any violation occurs or continues.

Subsection 2: Enforcement

The Hubbard County Sheriff's Department and/or their designees, and/or any state or federal law enforcement or administrative agency, will conduct inspections as needed to ensure compliance with the terms of this Ordinance, state law, state administrative rules, federal law, other regulations, as well as the terms and conditions of individual licenses.

Subsection 3: Administrative Penalties

The Licensing Authority or their designee may issue the following administrative penalties for violations of this ordinance.

14.3.1 First violation. Any Licensee found to have violated this ordinance shall be charged an administrative penalty of five hundred dollars (\$500.00); the sum of \$250.00 will be waived if all the licensee's employees attend Alcohol Awareness Training within 3 months of the violation.

14.3.2 Second violation. Any Licensee found to have violated this ordinance two (2) times within a twenty-four (24) month period will be subject to a \$750.00 administrative penalty. the sum of \$250.00 will be waived if all the licensee's employees attend Alcohol Awareness Training within 3 months of the violation.

14.3.3 Third violation. Any Licensee found to have violated this ordinance three (3) times within a twenty-four month period will be subject to a one

thousand dollar (\$1000.00) administrative penalty. In addition, a two day, suspension of the liquor license shall be imposed.

14.3.4 Fourth violation. Any Licensee found to have violated this ordinance four (4) times within a twenty-four month period will be subject to a one thousand five hundred dollar (\$1500.00) administrative penalty. In addition, a four day, suspension of the liquor license shall be imposed.

14.3.5 Fifth violation. Any Licensee found to have violated this ordinance five (5) times within a twenty-four (24) month period shall have their liquor license revoked.

14.3.6 A Licensee may appeal the imposition of an administrative penalty under this ordinance to the Hubbard County Board or its authorized representative, pursuant to sections 14.57 to 14.69 of the Minnesota Administrative Procedures Act.

14.3.7 A Licensee may appeal a suspension or revocation of a license to the Hubbard County Board pursuant to sections 14.57 to 14.69 of the Minnesota Administrative Procedures act. No suspension or revocation shall take effect until the time for appeal has expired or, if an appeal is brought, until the County Board has rendered a decision.

An authorized representative under this section may take testimony, make evidentiary findings, and make recommendations to the Board.

SECTION 15 – LICENSE SUSPENSION OR REVOCATION

The County Board may revoke or suspend any license issued hereunder for violation of this Ordinance and the statutes incorporated hereunder. Prior to any revocation or suspension, the license holder shall be given at least 10 days written notice, by mail sent to the license holder at the address provided in the license application, or personal service, of the charges against the license holder, and a hearing shall be conducted before the County Board or the Board's designee. The licensee and the License Authority may be represented by counsel, and both may submit all relevant evidence or arguments. The County Board or the Board's designee shall make written findings within a reasonable time after the close of said hearing. The licensee may appeal the written decision and/or resolution of the County Board or its designee to the District Court within 30 days of the date the written decision is served upon the licensee at the address provided in the license application.

SECTION 16 – LICENSE DENIALS

Any person denied either an original or renewed license may appeal to the County Board or its designee by serving, within 10 days of receiving written notice of such denial, a written notice of appeal upon the License Authority. The Board, or its

designee shall then hear the appeal within 30 days after the license Authority is served with the notice of appeal. The licensee and the License Authority may be represented by counsel, and both may submit all relevant evidence or arguments. The County Board or its authorized representative shall make written findings within a reasonable time after the close of said hearing. The licensee may appeal the written decision and/or resolution of the County Board or its designee to the District Court within 30 days of the date the written decision is served upon the licensee

SECTION 17 – SALE OF KEG BEER

For each and every retail sale of a keg of beer, the licensee selling such keg shall require valid identification of the person to whom the keg is sold, record the date and time of such sale, and record the serial number of each keg. The Licensee shall maintain a log that lists the sale of each and every keg of beer to the public. Such log shall be made available to any law enforcement officer upon request.

SECTION 18 – DATE OF EFFECT

THIS AMENDMENT NO. 1 TO ORDINANCE 42 ORDAINED AND ENACTED by the Board of County Commissioners of the County of Hubbard, State of Minnesota, on this 18th day of April, 2017, shall be in full force and effect from and after its passage, approval and publication, as provided by law. The effective date of the Ordinance shall be the 1st day of July, 2017.

BOARD OF COUNTY
COMMISSIONERS
Hubbard County, Minnesota

Attest: Debbie Thompson
Title: Debbie Thompson, Coordinator
Date: April 18, 2017

By: Vernon Massie
Title: Vernon Massie, Chairman
Date: April 18, 2017