

CITY OF DELANO
COUNTY OF WRIGHT
STATE OF MINNESOTA

ORDINANCE NO. O-15-04

AN ORDINANCE AMENDING DELANO CITY CODE CHAPTER 5 REGARDING LICENSING AND REGULATION OF ALCOHOLIC BEVERAGES

THE CITY COUNCIL OF THE CITY OF DELANO ORDAINS:

Section 1. The City Code as adopted contains Chapter 5 entitled "Licensing and Regulation of Alcoholic Beverages." The City hereby adopts the recodification of Chapter 5 of the City Code to read as follows:

CHAPTER 5
LICENSING AND REGULATION OF ALCOHOLIC BEVERAGES

SECTION 501.01. PROVISIONS OF STATE LAW ADOPTED.

The provisions of Minnesota Statute Chapter 340A are adopted and made part of the City Code as if set out in full. Whenever there is an inconsistency between the provisions of Minnesota Statute Chapter 340A and the provisions of the City Code, the more restrictive governs.

SECTION 502.01. DEFINITIONS.

In addition to the definitions set forth in Minnesota Statute Chapter 340A, and unless otherwise stated in specific Sections, the following words and terms shall have the meanings stated:

Subd. 1. "Alcoholic beverage" means any beverage containing more than one-half of one percent alcohol by volume.

Subd. 2. "Applicant" means any person making an application for a license under this Chapter.

Subd. 3. "Application" means a form with blanks or spaces thereon, to be filled in and completed by the Applicant as his or her request for a license, furnished by the City and required as a prerequisite to the consideration of the issuance of a license pursuant to this Chapter.

Subd. 4. "Bed and Breakfast Facility" means a place of lodging that:

- A. Provides not more than eight rooms for rent to no more than 20 guests at a time;
- B. Is located on the same property as the owner's personal residence;
- C. Provides no meals, other than breakfast served to persons who rent rooms; and

- D. Was originally built and occupied as, or was converted to, a single-family residence prior to being used as a place of lodging.

Subd. 5. "Bowling Center" is an establishment which is under the control of the single proprietor or manager where the primary business is bowling, but which, incidental to its primary bowling business, may also include other family recreational activities, sales and services and equipment sales including, but not limited to, arcade games, billiards, and food and beverages.

Subd. 6. "Brewer" is a person who manufacturers malt liquor for sale.

Subd. 7. "Brew pub" is a brewer who also holds one or more retail on-sale licenses and who manufactures fewer than 3,500 barrels of malt liquor in a year, at any one licensed premises, the entire production of which is solely for consumption on tap on any licensed premises owned by the brewer, or for off-sale from those licensed premises as permitted by Minnesota 2015 Session Laws Chapter 9, Article 1, Section 3 to be codified as Minnesota Statutes Section Chapter 340A.24, subdivision 2.

Subd. 8. "Brewer Taproom" is a brewer licensed under section 340A.301, subdivision 6, clause (c), (i), or (j) who also holds a retail license to sell on-sale malt liquor produced by the brewer for consumption on the premises of or adjacent to a brewery location owned by the brewer.

Subd. 9. "Club" is an incorporated organization under the laws of the State for civic, fraternal, social or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veteran's organization. In addition, the organization shall:

- A. Have more than 30 members and have been in existence for at least three years;
- B. Have owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members;
- C. Be governed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.

Subd. 10. "Growler" is malt-liquor sold off-sale by a small brewer or brew pub, which has been produced and packaged by the brewer in 64-ounce containers commonly known as growlers or in 750 milliliter bottles.

Subd. 11. "Guest" means a person not a member of the club licensee but present on the club licensed premises in the company of a host member at all times while on the licensed premises.

Subd. 12. "Host Member" means a member of a club licensee who is entertaining a guest.

Subd. 13. "Hotel" is an establishment where food and lodging are regularly furnished to transients and which has:

- A. A dining room serving the general public at tables and facilities for seating at least 30 guests at one time; and

- B. A minimum of 10 guest rooms.

Subd. 14. "License" means a documented approval issued by the City to an applicant permitting the applicant to carry on and transact the business stated therein.

Subd. 15. "Intoxicating Liquor" means ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent of alcohol by weight.

Subd. 16. "Licensee" means an applicant, including the applicant's agents or employees who, pursuant to an approved application, holds a valid, current, unexpired license, which has neither been revoked nor suspended.

Subd. 17. "Manufacturer" means any person who, by any process of manufacturing, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces alcoholic beverages for sale.

Subd. 18. "Malt Liquor" is any beer, ale, or other beverage made from malt by fermentation and containing not less than one half of one percent alcohol by volume.

Subd. 19. "3.2% Malt Liquor" means malt liquor containing not less than one half of one percent alcohol by volume nor more than 3.2% alcohol by weight.

Subd. 20. "Member" means any person in good standing according to rules and regulations of the licensed club, wherever located, having evidence of current membership upon his person.

Subd. 21. "Off-sale" means the retail sale of alcoholic beverages in original packages for consumption only off the premises where sold.

Subd. 22. "On-sale" means the retail sale of alcoholic beverages for consumption on the premises where sold only.

Subd. 23. "Package" means any sealed or corked container of alcoholic beverages.

Subd. 24. "Restaurant" is an establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises and served at tables to the general public and which meets the following standards:

- A. It shall have a full commercial State licensed kitchen where meals are prepared on site.
- B. It shall have a full service dinner menu with meals served at tables.
- C. It shall have minimum interior seating capacity of not less than fifty (50) people.
- D. It shall be compliant with all Building and Fire Codes and meet all health standards of the Minnesota Food Code.
- E. If it contains facilities for sporting, entertainment, recreation or cultural activities, the seating

capacity may be for a minimum of 30 guests and provisions A-D above do not need to be met.

Subd. 25. "Small Brewer" is a brewer licensed under section 340A.301, subdivision 6, clause (c), (i), or (j) who also holds a retail license to sell off-sale malt liquor at its licensed premises which has been produced and packaged by the brewer.

Subd. 26. "Theater" means a building containing an auditorium in which live, dramatic, musical, dance, or literary performances are regularly presented to holders of tickets for those performances.

Subd. 27. "Wholesaler" means any person who sells alcoholic beverages to retail dealers.

Subd. 28. "Wine" means the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake, in each instance containing not less than one half of one percent nor more than 24% alcohol by volume for nonindustrial use.

SECTION 503.01. LICENSE REQUIRED.

Subd. 1. License Required. It is unlawful for any person to directly or indirectly, on any pretense or by any device, sell, barter, keep for sale, charge for possession, or otherwise dispose of alcoholic beverages as part of a commercial transaction without having obtained the license or permit required by this Chapter and/or Minnesota Statutes Chapter 340A. The licenses permitted under this Chapter are as follows: 3.2% Malt Liquor (Subd. 3); Temporary 3.2% Malt Liquor (Subd. 4); Intoxicating Liquor (Subd. 5), Temporary Intoxicating Liquor (Subd. 6); On-Sale Wine (Subd. 7); Brew Pub On-Sale and Off-Sale (Subd. 8); Brewer Taproom; (Subd. 9); Small Brewer Off-Sale (Subd. 10); Consumption and Display/Bottle Club (Subd. 11); Sunday Sales (Subd. 12); Community Festival (Subd. 13); Caterers (Subd. 14).

This Section shall not apply to (1) to possession or handling for sale or otherwise of sacramental wine or to any representative of any religious order or for use in connection with a legitimate religious ceremony; (2) to such potable liquors as are prescribed by licensed physicians and dentists for therapeutic purposes; (3) to industrial alcohol and its compounds not prepared or used for beverage purposes; (4) to sales by manufacturers to wholesalers duly licensed as such by the State of Minnesota and to sales by wholesalers to persons holding on-sale or off-sale licenses from the City.

Subd. 2. License Not Required. No license under this Chapter is required for a bed and breakfast facility to provide at no additional charge to a person renting a room at the facility not more than two glasses per day each containing not more than four fluid ounces of wine. Wine so furnished may be consumed only on the premises of the bed and breakfast facility. A bed and breakfast facility may furnish wine under this Subsection only if the facility is registered with the commissioner of public safety.

Subd. 3. 3.2% Malt Liquor License. An applicant may apply for an on-sale and/or off-sale 3.2% malt liquor license.

On-sale 3.2% malt liquor licenses shall be issued only to clubs, bowling centers, restaurants, hotels and theaters.

Off sale 3.2% malt liquor licenses shall be issued only to grocery stores and grocery convenience stores.

Subd. 4. Temporary 3.2% Malt Liquor License.

- A. Applicant. A club or a charitable, religious, or non-profit organization, duly incorporated as a non-profit or a religious corporation under the laws of the State of Minnesota and having its registered office and principal place of activity within the City ("organization"), may apply for a temporary on-sale 3.2% malt liquor license.
- B. Conditions.
 - 1. An application for a temporary license shall state the exact dates and place of the proposed temporary sale.
 - 2. Any such license may be conditioned, qualified or restricted as the Council determines appropriate.
 - 3. If the premises to be licensed is owned or under the control of the City, the applicant shall file with the City, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of \$100,000.00 for injury to any one person and \$300,000.00 for injury to more than one person, naming the City as an additional insured during the license period.

Subd. 5. On-Sale Intoxicating Liquor License. An applicant may apply for an on-sale intoxicating liquor license for a hotel, restaurant, bowling center, club, congressionally chartered veteran's organization or theater.

Subd. 6. Temporary On-Sale Intoxicating Liquor License. A club, charitable, religious or other non-profit organization in existence for at least three years, or a political committee registered under Minn. Stat. § 10A.14 (collectively "Organization"), may apply for a temporary license for the on-sale of intoxicating liquor in connection with a social event held within the City and sponsored by the Organization. The license may authorize the on-sale of intoxicating liquor for not more than four consecutive days, and may authorize on-sales on premises other than premises the Organization owns or permanently occupies. No more than three four-day, four three-day, six two-day, or 12 one-day temporary licenses, in any combination not to exceed 12 days per year, temporary on-sale intoxicating liquor licenses may be issued to any one Organization for any one location within any 12 month period. In addition, no more than one temporary intoxicating on-sale liquor license may be issued for the sale of alcoholic beverages to any one Organization, or for any one location, within any 30-day period unless the licenses are issued in connection with an event officially designated a community festival by the City. The license may provide that the Organization may contract for liquor catering services with the holder of a full year intoxicating liquor license issued by any municipality. Temporary intoxicating on-sale liquor licenses are subject to all laws and ordinances governing the sale of intoxicating liquor except those relating to insurance required by Minn. Stat. § 340A.409 or by city code and except for those which in their nature are not applicable. No temporary license issued under this Section shall be valid unless first approved by the Minnesota Commissioner of Public Safety.

Subd. 7. On-Sale Wine License. A theater or a restaurant with facilities for seating at least 25 guests at one time may apply for an on-sale wine license.

Subd. 8. Brew pub On-Sale and Off-Sale (Growler) Malt Liquor License.

- A. A brew pub may apply for an intoxicating liquor and/or 3.2 malt liquor on-sale brew pub license for a restaurant operated in the place of manufacture. On-sale brew pub licenses are subject to all conditions and restrictions contained in Minnesota 2015 Session Laws Chapter 9, Article 1, Section 3 to be codified as Minnesota Statutes Section 340A.24.
- B. A brew pub that holds an on-sale brew pub license may apply for a malt liquor off-sale brew pub license. Off-sale brew pub licenses are subject to all conditions and restrictions contained in Minnesota 2015 Session Laws Chapter 9, Article 1, Sections 3 and 6 to be codified as Minnesota Statutes Sections 340A.24 and 340A.285.

Subd. 9. Brewer Taproom License. A brewer taproom may apply for a malt liquor on-sale brewer taproom license. Brewer taproom licenses are subject to all conditions and restrictions contained in Minnesota 2015 Session Laws Chapter 9, Article 1, Section 4 to be codified as Minnesota Statutes § 340A.26.

Subd. 10. Small Brewer Off-Sale (Growler) License. A small brewer may apply for a malt liquor off-sale small brewer license. Small brewer licenses are subject to all conditions and restrictions contained in Minnesota 2015 Session Laws Chapter 9, Article 1, Sections 5 and 6 to be codified as Minnesota Statutes §§ 340A.28 and 340A.285.

Subd. 11. Consumption and Display/Bottle Club. Consumption and Display permits, otherwise known as bottle club permits, shall be issued only after the applicant has obtained a permit from the Public Safety Commissioner pursuant to Minn. Stat. § 340A.414 and shall be issued only to restaurants, hotels and clubs.

Subd. 12. Sunday Sales License.

- A. Sunday On-Sale. A restaurant, club, bowling center, brew pub, or hotel, which has a seating capacity for at least 30 persons and which holds an on-sale intoxicating liquor license may apply for a Sunday on-sale intoxicating liquor license for the sale of intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 8:00 a.m. on Sundays and 1:00 a.m. on Mondays, all subject to Minnesota Statutes Section 340A.504, Subd. 3.
- B. Brewer Taproom. A brewer taproom may apply for a Sunday on-sale malt liquor license subject to Minnesota 2015 Session Laws Chapter 9, Article 1, Section 4 to be codified as Minnesota Statutes Section 340A.26 for the sale of malt liquor for consumption on the premises between the hours of 8:00 a.m. on Sundays and 1:00 a.m. on Mondays.
- C. Sunday Off-Sale. Brew pubs and small brewers may apply for Sunday off-sale growler licenses subject to Minnesota 2015 Session Laws Chapter 9, Article 2, Sections 2 and 3 to be codified as Minnesota Statutes Sections 340A.24 and 340A.285 for the sale of malt liquor at off-sale between the hours of 8:00 a.m. on Sundays and 1:00 a.m. on Mondays.

Subd. 13. Community Festival. The holder of an on-sale intoxicating liquor license may dispense intoxicating liquor off premises at a community festival held within the City, so long as the licensee obtains a permit from the City, on terms and conditions acceptable to the City, and based upon

acceptable evidence that the licensee has liability insurance, as prescribed by this Chapter, to cover the event.

Subd. 14. Caterers.

- A. Prior to the sale of intoxicating liquor within the City under a caterer's permit issued pursuant to Minn. Stat. 340A.404, Subd. 12, the holder of the caterer's permit shall provide to the City the following: (i) a copy of a valid State issued caterer's permit; (ii) a copy of a valid State issued restaurant license; and (iii) proof of compliance with the financial responsibility and insurance requirements set forth in City Code Section 505.01, Subd. 1 and Subd. 2.
- B. A caterer's permit is auxiliary to the primary on-sale license held by the licensee.
- C. The restrictions and regulations which apply to the sale of intoxicating liquor on the licensed premises also apply to the sale under the authority of a caterer's permit, and any act that is prohibited on the licensed premises is also prohibited when the licensee is operating other than on the licensed premises under a caterer's permit.
- D. Any act, which if done on the licensed premises would be grounds for cancellation or suspension of the on-sale licensee, is grounds for cancellation of both the on-sale license and the caterer's permit if done when the permittee is operating away from the licensed premises under the authority of the caterer's permit.
- E. The permittee shall notify, prior to any catered event, the Wright County Sheriff.
- F. If the primary license ceases to be valid for any reason, the caterer's permit ceases to be valid.
- G. All holders of caterer's permits shall comply with City Code Section 507.01, City Code Section 510.01, and all laws and ordinances governing the sale of intoxicating liquor except those laws and ordinances which by their nature are not applicable.

SECTION 504.01. LICENSE APPLICATIONS.

Subd. 1. Application. All applications shall be made at the office of the City Clerk upon forms if prescribed by the proper Department of State of Minnesota, together with such additional information as the Council may desire. If State forms are not prescribed, then applications shall be made upon forms furnished by the City. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant.

Subd. 2. False Statements. No applicant shall make a false statement or omission upon any application form. Any false statement in such application or any omission of any information called for on such application form shall, upon discovery of such falsehood, result in an automatic refusal of license or, if already issued, shall render any license issued pursuant thereto void.

Subd. 3. Renewal Application. Applications for the renewal of an existing license shall be made at least 60 days prior to the date of the expiration of the license and shall be made in such form as the Council

may approve. If, in the judgment of the Council, good and sufficient cause is shown by an applicant for failure to file for renewal within the time provided, the Council may grant the application. At the earliest practicable time after the application is made for a renewal and prior to the time that the application is approved, the Council may require any applicant which is a restaurant or hotel to file with the Clerk a statement made by a certified public accountant reflecting the total gross sales and the total food sales for the twelve-month period immediately preceding the date for filing renewal applications.

Subd. 4. Corporate Applicants and Licensees. A corporation applicant, at the time of application, shall furnish the City with a list of all persons that have an interest in such corporation and the extent of such interest. The list shall name all shareholders holding more than five percent (5%) of all issued and outstanding stock and shall show the number of shares held by each, either individually or beneficially, for others. Each licensee shall notify the Clerk in writing of any change in the legal ownership or beneficial interest, or in such shares. The notice of such change shall be given within ten (10) days of its occurrence. Any change in the ownership or beneficial interest in the shares entitled to be voted at the meeting of the shareholders of a corporation or partnership licensee which results in the change of voting control by the persons owning the shares therein shall be deemed equivalent to a transfer of the license. The Council or any officer of the City designated by the Council may, at any time, examine the stock transfer records and minute books of any corporation licensee in order to verify and identify the shareholders, and the Council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business.

Subd. 5. Every application for the issuance or renewal of a license shall include a copy of each notice received by the applicant under Minnesota Statutes § 340A.802 during the preceding year.

SECTION 505.01. FINANCIAL RESPONSIBILITY OF APPLICANTS AND LICENSEE.

Subd. 1. No license under this Chapter shall be issued, maintained, or renewed unless and until the applicant has provided proof of financial responsibility by filing with the City:

- A. Proof that there is in effect an insurance policy or pool providing a minimum coverage of (1) \$50,000.00 because of bodily injury to any one person in any one occurrence, and \$100,000.00 because of bodily injury to two or more persons in any one occurrence, and in the amount of \$10,000.00 because of injury to or destruction of property of others in any one occurrence; and (2) \$50,000.00 for loss of means of support of any one person in any one occurrence and \$100,000.00 for loss of means of support of two or more persons in any one occurrence. (An annual aggregate policy limit for dram shop liability of not less than \$300,000.00 per policy may be included in the policy provision); or
- B. A bond of a surety company with minimum coverage as provided in Subparagraph A of this Section; or
- C. A certificate of the State Treasurer that the licensee has deposited \$100,000.00 in cash or securities which may legally be purchased by a savings banks or for trust funds having a market value of \$100,000.00.

Subd. 2. The liability insurance policy, bond or certificate of the State Treasurer required above shall

include coverage for dram shop liability and shall provide that the policy, bond or certificate may not be canceled for any cause by the licensee, the insurance company, bond company or State Treasurer without first giving 30 days' notice to the municipality in writing of intention to cancel it or, if cancellation is due to nonpayment, 10 days' notice to the municipality in writing of the intent to cancel it. Such notice shall be addressed to the Clerk. The policy shall also list the City of Delano, its agents, officials, and assigns as additional insureds.

Subd. 3. Subdivisions 1 and 2 do not apply to licensees who by affidavit establish that they qualify under Minn. Stat. Section 340A.409, Subd. 4. The exceptions to proof of financial responsibility and insurance do not apply where the applicant seeks a license for the serving or consumption of alcoholic beverages on property owned by the City of Delano or other public property.

SECTION 506.01. PROCESSING OF APPLICATION.

Subd. 1. Investigation and Approval. The City shall, on initial application for a license, or an application for a transfer of an existing license, conduct a preliminary background and financial investigation of the applicant. If the City determines that a comprehensive background investigation of the applicant is necessary, the City may conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. In addition, an investigation may be required prior to renewal of an existing license when the Council deems it in the public interest

Subd. 2. Manager or Agent. Before a license is issued under this Chapter to any individual who is a non-resident of the City, to more than one individual whether or not they are residents of the City, or to a corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person who is its manager or agent. Such manager or agent shall, by the terms of his written consent, (1) take full responsibility for the conduct of the licensed premises and (2) serve as agent for service of notices and other process relating to the license. Such manager or agent shall be a person who, by reason or age, character, reputation, and other attributes, could qualify individually as a licensee. The licensee shall provide written notice to the City if the appointed manager or agent ceases to act in such a capacity. If such manager or agent ceases to act in such capacity for the licensee without appointment of a successor, the license issued pursuant to such appointment shall be subject to revocation or suspension.

Subd. 3. Issue. If an application is approved, the Clerk shall issue a license in the form prescribed by the City or the proper department of the State of Minnesota, as the case may be. All license terms shall begin on July 1 and terminate on June 30 of the following year. Licenses shall be valid only at one location and on the premises therein described.

Subd. 4. Conditional Licenses. Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefore, place such special conditions and restrictions, in addition to those stated in this Chapter, upon any license as it, in its discretion, may deem reasonable and justified.

Subd. 5. Unavailable Building. Where a license is granted for a premises where the building is under construction or otherwise not available for occupancy, the Clerk shall not issue the license until notified by the Building Official that a certificate of occupancy has been issued and the building is ready for occupancy.

Subd. 6. Fees.

A. License Fee. Prior to consideration of any new application for a license or an application for renewal of a license, the applicant shall pay the license fee, which is not refundable to applicant except as provided in Minn. Stat. 340A.408, Subd. 5, to cover the costs of the City in administering the license. Licenses issued on a date other than July 1, shall be subject to a pro rata share of the annual license fee.

License fees for renewal applications may be paid in equal monthly installments upon request by the applicant and at the Council's sole discretion. If an applicant requests installments payments the license fee shall be subject to a 15% surcharge. The first installment payment shall be due upon filing of the renewal application and all subsequent installment payments shall be due on the first of the month. If a licensee fails to make an installment payment or makes an installment payment after the first of the month, the licensee shall be charged a late fee of 20% of the installment payment. If a licensee makes an installment payment by check and the check is dishonored, the City may refuse to accept any future payments by check and may require that all future installment payments be made by cash or cashier's check. The City shall inform the licensee of such a decision in writing. In addition, if a licensee fails to make an installment payment, makes an installment payment after the first of the month, fails to pay the late fee, or pays with a check that is dishonored, the license may be revoked pursuant to Section 511.01. In the event the licensee goes out of business during the license term or the license is temporarily suspended or revoked, the full license fee, including any delinquent payments, shall be due to City upon demand, along with any other penalty or fines imposed. The Council, at its sole discretion, may reinstate a license revoked due to late payment of an installment payment upon receipt of the entire license fee, including all delinquent payments, for the current license term.

B. Investigation Fee. At the time of the initial application, or a renewal application if the Council determines an investigation is in the public interest, applicants for a license under this Chapter shall pay a fee to the City which shall be considered an investigation fee, not refundable to the applicant, to cover the costs of the City in processing the application and the investigation thereof.

All license and investigation fees provided for in this Chapter shall not exceed, and shall otherwise comply with, the provisions of Minn. Stat. §340A.408. Such fees shall be fixed and determined by the Council, adopted by resolution and uniformly enforced. No increase in the fees shall be effective, except after notice and hearing on the proposed increase. Notice of the proposed increase shall be mailed to all affected licensees at least 30 days before the date set for the hearing.

Subd. 7. Standards.

A. The Council may in its sole discretion, for any reasonable cause, refuse to grant any application for a license.

B. No license may be issued under this Chapter to:

1. A person under 21 years of age.

2. A person who within the previous five years of the license application has been convicted of a felony, or of a violation of a federal or state law or a local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution of alcoholic beverages or illegal drugs or controlled substances.
3. A person who has had a license for alcoholic beverages revoked within the previous five years of the license application; or to any person who at the time of the revocation owned any interest, whether as a holder of more than five percent of the capital stock of a corporation licensee, as a partner or otherwise, in the premises or in the business conducted thereon; or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested.
4. A person not of good moral character and repute.
5. A person who has a direct or indirect interest in a manufacturer, brewer or wholesaler, except to a brew pub, brewer taproom, or small brewer as permitted under this Chapter.
6. An applicant who has not complied with any provision of this Chapter.
7. An applicant where issuance of a license would not be in the public interest.

C. Except as otherwise provided in this Chapter, no license shall be granted for any building within 300 feet of any elementary or secondary school structure when school is in session or when children are present or within 100 feet of any religious structure, unless approved by Council. This Section shall not apply to a building that houses a licensee with a license for the building that pre-dates the arrival of an elementary or secondary school structure within 300 feet of the building or any religious structure within 100 feet of the building.

D. Except as otherwise provided in this Chapter, no license shall be granted for operation on any premises upon which taxes, assessments, or installments thereof or other financial claims of the City are owed by the applicant and are delinquent and unpaid. A license may be issued if said taxes, assessments, installments, or financial claims are the subject of a pending legal challenge pursuant to Minnesota Statute § 278.01.

E. No person shall be granted a license under this Chapter at more than one location.

F. The Council may issue the number of licenses authorized by Minn. Statute § 340A.413 or restrict such number from time-to-time as it may, in its discretion, deem proper.

SECTION 507.01. LICENSEE RESTRICTIONS AND REQUIREMENTS.

Subd. 1. No licensee shall:

- A. Sell, barter or furnish any alcoholic beverages to anyone under the age of 21 years or permit anyone under the age of 21 years to consume alcoholic beverages on the licensed premises.

- B. Fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises for the purpose of consuming, purchasing or procuring any alcoholic beverage. Such proof of age may be established only as set forth in Minn. Stat. §340A.503, Subd. 6.
- C. Hinder or prevent an officer of the law from making an inspection to determine whether or not the provisions of this Chapter and all laws are being observed.
- D. Permit consumption of any alcoholic beverages on licensed premises more than 20 minutes after the hour when a sale thereof can legally be made.
- E. Permit any glass, bottle or other container, containing an alcoholic beverage in any quantity, to remain upon any table, bar stool or other place where customers are served, more than 20 minutes after the hour when a sale thereof can legally be made.
- F. Permit any gambling or gambling device upon the licensed premises except such as are licensed by the State of Minnesota or permitted by the City.
- G. Sell any alcoholic beverage to any person who is obviously intoxicated.
- H. Sell, offer for sale, or keep for sale, any alcoholic beverage in any original package which has been refilled or partly refilled, except for the off-sale of malt liquor by a brew pub or small brewer as permitted by this Chapter. No licensee shall directly or through any other person dilute or in any manner tamper with the contents of any original package so as to change its composition or alcoholic content while in the original package. Possession on the premises by the licensee of any alcoholic beverage in the original package differing in composition or alcoholic content from the composition or alcoholic content when received from the manufacturer or wholesaler from whom it was purchased, shall be *prima facie* evidence that the contents of the original package have been diluted, changed or tampered with.
- I. Sell, offer for sale, or display any alcoholic beverage during the times when such sale is prohibited by State law or by this Chapter.
- J. Employ anyone under the age of 18 years to serve or sell alcoholic beverages or permit anyone under the age of 18 to serve or sell alcoholic beverages as a volunteer.
- K. Permit any club or any other business establishment to allow the consumption or display of liquor or the serving of any liquid for the purposes of mixing liquor therewith, unless duly licensed under the provisions of this Chapter.

Subd. 2. Nudity and obscenity prohibited.

- A. **Definition.** For the purpose of this Section the following definitions apply unless the context clearly indicates or requires a different meaning.
 - 1. “Nudity.” Uncovered, or less than opaquely covered, human genitals, pubic areas, and the post-pubertal human female breast below a point immediately above the top of the areola or the covered human male genitals in the discernably turgid state. For purposes

of this definition, any female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

2. "Sado-masochistic Abuse." Flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
3. "Sexual Conduct." Human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of female, whether alone or between members of the same or opposite sex or between humans and animals, and an act of apparent sexual stimulation or gratification.

B. **Unlawful Act.** It is unlawful for any person issued a license provided for in this Chapter to permit upon licensed premises any nudity, sado-masochistic abuse, or sexual conduct.

Subd. 3. Posting. All licensees shall conspicuously post their licenses in their places of business.

Subd. 4. Premises Licensed. Unless expressly stated therein, a license issued under the provisions of this Chapter shall be valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under such license shall take place within such building or structure.

Subd. 5. Principal Part of Business. A licensed restaurant, including a brew pub, shall be conducted in such manner that the principal part of the business for a license year is the serving of foods. A hotel shall be conducted in such manner that, of that part of the total business attributable to or derived from the serving of foods and intoxicating liquors, the principal part of the business for a license year is the serving of foods. For purposes of this subdivision "principal part" shall mean fifty percent or more of the gross receipts.

Subd. 6. Premises Subject to Inspection. All premises licensed under this Chapter shall at all times be open to inspection by any officer of the law to determine whether or not this Chapter and all other laws are being observed. All persons, as a condition to being issued such license, consent to such inspection by such officers and consent to, without a warrant, searches and seizures.

Subd. 7. Conduct on Licensed Premises. Except as herein provided, every licensee under this Chapter shall be responsible for the conduct of the licensed place of business and shall maintain conditions of sobriety and order therein.

Subd. 8. Transfer. No license shall be transferable between persons or locations without the consent of the Council.

Subd. 9. Termination. Licenses shall terminate only upon expiration, revocation or as otherwise provided in this Chapter.

Subd. 10. Hours and Days of Sale.

A. The sale of intoxicating liquor and 3.2 malt liquor is prohibited between 1:00 a.m. and 8:00 a.m. Monday through Saturday.

- B. The sale of intoxicating liquor is prohibited after 1:00 a.m. on Sundays, except as provided by Section 503.01, Subd. 12.
- C. The sale of 3.2 malt liquor is prohibited between 1:00 a.m. and 10:00 a.m. on Sundays.
- D. No establishment holding a valid consumption and display/bottle club permit may permit a person to consume or display intoxicating liquor and no person may consume or display intoxicating liquor between 1:00 a.m. and 12:00 noon on Sundays, and between 1:00 a.m. and 8:00 a.m. on Monday through Saturday.

SECTION 508.01. CLUB LICENSEE RESTRICTIONS.

Subd. 1. Any club holding a license under this Chapter shall comply with the following restrictions in addition to all other restrictions contained in this Chapter:

- A. No club licensee shall sell any alcoholic beverage to any non-member of the licensed club unless such non-member is a guest of a member.
- B. No person who is not a member of the licensed club shall purchase any alcoholic beverage from the club, unless such non-member is a guest of a member.
- C. No club licensee shall hinder or prevent an officer of the law from determining compliance with this Section and Chapter and all other laws.
- D. No person shall refuse, upon request of a licensee or officer of the law, to provide information as to whether he or she is a member, guest, or host member or to give false, fraudulent, or misleading information in response to such request.

SECTION 509.01. MUNICIPAL DISPENSARIES.

Subd. 1. Establishment. The City may establish a municipal on-sale facility, a municipal off-sale facility, and any subsidiaries and affiliates thereof within the City for the sale of alcoholic beverages. The facilities shall be at such places as the Council shall determine and may be either leased or owned by the City. The Council shall employ a person known as the Liquor Manager and the Council may employ assistants to the Manager, as it deems necessary.

Subd. 2. Liquor Fund. A Liquor Fund is hereby created into which all revenues received from the operation of the liquor facilities shall be paid and from which all operating expenses shall be paid. Any surplus accumulating in this Fund may, from time to time, be transferred to the general fund by resolution of the Council and expended for any municipal purpose.

SECTION 510.01. GENERAL RESTRICTIONS.

Subd. 1. No person under the age of 21 years shall:

- A. Consume any alcoholic beverage unless in the household of his or her parent or guardian and with the consent of the parent or guardian.
- B. Possess any alcoholic beverage at a place other than the household of his or her parents or guardian.
- C. Purchase or attempt to purchase any alcoholic beverage.
- D. Enter an establishment licensed under this Chapter for the purpose of purchasing or obtaining service or delivery of any alcoholic beverage. Persons who are 18, 19, and 20 years old may enter establishments licensed under this Chapter and may remain upon the premises in order to perform work as employees of the establishment, including the serving of alcoholic beverages. Persons under the age of 18 shall not serve or sell alcoholic beverages as an employee or as a volunteer. Persons under the age of 21 who are not employees of the establishment shall be accompanied by their parent or guardian and, unless consuming meals in a restaurant or hotel, or attending a social function in a portion of the establishment where alcoholic beverages are not sold, may remain on the premises no later than 6:00 p.m.
- E. Represent themselves as 21 years old or older for the purpose of purchasing any alcoholic beverage.

Subd. 2. No person shall:

- A. Induce a person under the age of 21 years to purchase or procure any alcoholic beverage.
- B. Consume any alcoholic beverage on a licensed premises more than 20 minutes after the hour when a sale thereof can legally be made.
- C. Purchase any alcoholic beverage on any day or during any hour when sales are not permitted by State law or this Chapter.
- D. Sell, barter, furnish, or give any alcoholic beverage to a person under 21 years of age except that a parent or guardian of a person under 21 years of age may give or furnish an alcoholic beverage to that person solely for consumption in the household of the parent or guardian.
- E. Consume an alcoholic beverage in public parks or such other public place, except where a license therefor has been granted by the Council. The Council may require, as a condition of such license that the City be provided with adequate safety and liability protection, including but not limited to adequate indemnification and insurance. In no event shall a person consume any alcoholic beverage in public parks while under the influence of alcohol.

Subd. 3. Alcoholic beverages on school grounds restricted. It is unlawful for any person to introduce upon, or have in his or her possession upon or in, any school ground, school house, or school building, any alcoholic beverage, except for those organizations which have been issued temporary licenses to sell 3.2% malt liquor, and/or any person as a result of a purchase from those organizations holding temporary licenses.

SECTION 511.01. REVOCATION, SUSPENSION OR FINE.

Subd. 1. Upon a finding that any licensee has failed to comply with any of the provisions of this Chapter or with any applicable State Law, or other regulation or ordinance relating to an alcoholic beverage, or for other good cause, the Council may either suspend the license for a period not to exceed 60 days, revoke the license, or impose a civil fine on the licensee not to exceed \$2000.00 for each violation, or some combination thereof. The civil penalty and/or suspension and revocation imposed pursuant to this Section shall be based on the licensee's total number of violations at the specific location, at which the violation occurred within the preceding 24-month period for participants in the Best Practices Program and 36-month period for non-participants in the Best Practices Program as follows:

	Best Practices Participants Grid	Best Practices Non-Participants Grid
1 st Violation	\$250.00	\$750.00
2 nd Violation	\$500.00	\$1,500.00, plus a three (3) day suspension of license
3 rd Violation	\$1,500.00, plus a two day suspension	\$2,000.00, plus a ten (10) day suspension of license
4 th Violation	\$2,000.00, plus a suspension of not less than five (5) days but no more than sixty (60) days or revocation as determined by the City Council.	Revocation.
Penalty Calculation Period	...within the preceding 24-month period...	...within the preceding 36-month period...

Notwithstanding the foregoing, the City may impose a fine, suspension or revocation that varies from the above schedule for any violation it determines, through the hearing specified below, was of a seriousness that justifies a departure from the schedule. In addition, the Council may revoke a license for non-payment of a license fee regardless of the licensee's total number of violations or the licensee's participation in the Best Practices Program.

Subd. 2. Notification and Hearing. The following notification and hearing processes will apply to violations of this Section.

- A. **Notice.** Upon discovery of a suspected violation of this Section, the alleged violator shall be issued, either personally or by mail, a notice that sets forth the alleged violations and which shall inform the alleged violator of his or her right to be heard on the accusation. The person responsible for the violation shall either pay the scheduled fine or request a hearing under Subd. 2B of this Section. Payment of the fine constitutes admission of the violation.
- B. **Hearings.** No license suspensions or revocations shall take effect until the license holder has been given an opportunity for a hearing pursuant to Minnesota Statutes § 14.57 through 14.69. If a license holder has been issued a fine pursuant to this Section, the license holder may request a hearing within 15 days after the issuance of the citation. A hearing requested or required in

accordance with this Section shall be scheduled for a date not to exceed 45 days from receipt of the request, or in the case of suspension or revocation, within 45 days from the date of issuance of the notice. Notice of the hearing shall be served in person or by mail on the license holder at least 15 days in advance of the hearing, unless a shorter time is accepted by the parties. Such notice shall contain the time, place and issues involved, but if by reason of the nature of the case, the issues cannot be fully stated in advance of a hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded to the holder of the license to present evidence in argument with respect thereto.

The City Council may designate the entire Council, a committee of the Council, a member thereof, or an employee of the Office of Administrative Hearings to preside over hearings pursuant to this Section.

- C. Decision. If it is determined at a hearing that a violation of this Section occurred, the decision, along with the reasons for finding a violation and the penalty to be imposed under this Section shall be recorded in writing, a copy of which shall be provided to the accused violator and the City Council if it did not preside over the hearing. In the case of a Fourth Violation, if the City Council has designated someone other than the entire Council to preside over the hearing, the decision and recommendation for the penalty to be imposed shall be referred to the City Council. The City Council shall consider the recommendation and impose a penalty within 30 days of the Council's receipt of the decision. If it is determined at a hearing that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and the copy provided to the acquitted.
- D. Appeal. Appeal of any decision shall be filed pursuant to Minn. Stat. 14.63, by filing a petition for a writ of certiorari with the Court of Appeals.

Subd. 3. Continued Violation. Each violation, and each day in which a violation occurs or continues, shall constitute a separate offense.

Subd. 4. Late Payment. A late payment fee of 10% of the penalty shall be assessed for each 30 day period in which the penalty remains unpaid after the due date.

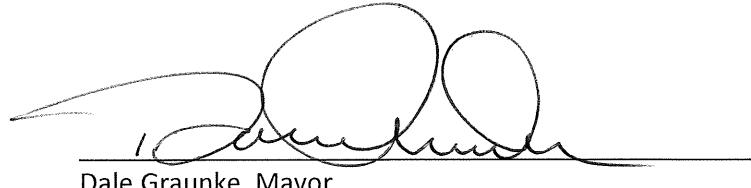
Subd. 5. Suspensions. Suspensions will commence on the same day of the week as the occurrence of the violation. Unless specified, numbers indicate consecutive days' suspension during regular business hours.

Subd. 6. Prosecution. Nothing in this Section shall prohibit the City, County, or other authorized entity from seeking prosecution as a petty misdemeanor, misdemeanor, or gross misdemeanor for any violation of this Section.

Section 2. All prior ordinances and resolutions pertaining to subjects under Chapter 5 shall be deemed repealed from and after the effective date of this Ordinance. All fees established in prior ordinances shall remain in effect unless amended in this Ordinance, or until an ordinance adopting a fee schedule is adopted or amended.

THIS AMENDMENT SHALL BE IN FULL FORCE AND EFFECTIVE IMMEDIATELY FOLLOWING ITS PASSAGE AND PUBLICATION.

Approved by the Delano City Council on August 18, 2015.



A handwritten signature of Dale Graunke in black ink, consisting of stylized loops and curves.

Dale Graunke, Mayor



A handwritten signature of Brian R. Bloch in black ink, featuring a stylized first name and a more formal last name.

Attest: Brian Bloch, Finance Director

Motion By: Holly Schrupp
Seconded By: Jack Russek
Graunke: Aye
Stolfa: Aye
Russek: Aye
Franzen: Aye
Schrupp: Aye