

## **CHAPTER 5. BEER, LIQUOR, CANNABIS, AND LOWER-POTENCY HEMP EDIBLE LICENSING AND REGULATION**

### **Section 500 – GENERAL REGULATIONS CONCERNING BEER & LIQUOR LICENSING**

#### **500.01 Adoption of State Law by Reference; City May be More Restrictive Than State Law.**

Subd. 1 The provisions of Minnesota Statutes Chapter 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and beer are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the City Council that all future amendments to Minnesota Statutes Chapter 340A are hereby adopted by reference or referenced as if they had been in existence at the time this ordinance is adopted.

Subd. 2 City Ordinances May be More Restrictive Than State Law. The Council is authorized by the provisions of Minnesota Statutes Chapter 340A.509, as it may be amended from time to time, to impose, and has imposed in this ordinance additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in Minnesota Statutes Chapter 340A, as it may be amended from time to time.

#### **500.02 Definitions.** In addition to the definitions contained in Minn. Stat. Section 340A.101 as it may be amended from time to time, the following terms are defined for purposes of this Ordinance:

Subd. 1 Liquor. As used in this Chapter, the term “liquor”, unless modified by the words “intoxicating” or “3.2 percent malt”, includes both intoxicating liquor and 3.2 percent malt liquor.

Subd. 2 Restaurant. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this Section, an establishment shall have a license from the State as required by Minn. Stat. Section 157.16, as it may be amended from time to time, and meet the definition of either a “small establishment”, “medium establishment” or “large establishment” as defined in Minn. Stat. Section 157.16, Subd. 3(d), as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is

heated and served, shall not be considered to be a restaurant for purposes of this Ordinance unless it meets the definitions of a “small establishment”, “medium establishment” or “large establishment”.

**500.03 Nudity on the Premises of Licensed Establishments Prohibited.**

Subd. 1 Purpose. The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the City that nudity is prohibited as provided in this Section on the premises of any establishment licensed under this Section. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this Section, as set forth in this Section, reflects the prevailing community standards of the City.

Subd. 2 Unlawful Acts. It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

Subd. 3 Penalty for Violation. A violation of this Section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this Section or the imposition of a civil penalty under Section 599 of this Chapter.

**500.04 Consumption in Public Places.** No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this Section or where the consumption and display of liquor is lawfully permitted.

**500.05 Raffles, Silent Auctions and Fund Raising Events for Charitable Purposes of Wine, Beer or Intoxicating Liquors.** No person shall conduct a silent auction, raffle or other fund raising event pursuant to Minn. Stat. Section 340A.707 with prizes or awards of wine, beer or intoxicating liquors without notifying the City Administrator of the event at least ten days prior to the occurrence of the event. The event holder shall provide the City with the following information: the person or organization holding the event, the day, time and location of the event, type of fund raising event (silent auction, raffle or otherwise), type and amount of wine, beer, intoxicating liquor to be awarded as prizes, and the charitable purposes to which the event proceeds will be donated.

500.06 Number of Licenses Which May be Issued. State law establishes the number of liquor licenses that a City may issue. The number of licenses which may be granted under this Section is limited to the number of licenses which were issued as of the effective date of this Section, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by Ordinance that a larger number of licenses may be issued up to the number of licenses authorized by Minn. Stat. Section 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of Minn. Stat. Section 340A.413, Subd. 3 as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by Ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

500.07 Term and Expiration of Licenses. Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on June 30 of each year unless another date is provided by Ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying City consent to the permit, shall expire on March 31 of each year.

500.08 Kinds of Liquor Licenses. The Council is authorized to issue the following licenses and permits, up to the number specified in Section 500.06.

Subd. 1 3.2 Percent Malt Liquor On-Sale Licenses. 3.2 percent malt liquor on-sale licenses, which may be issued only to golf courses, restaurants, hotels, clubs, bowling centers, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

Subd. 2 3.2 Percent Malt Liquor Off-Sale Licenses. 3.2 percent malt liquor off-sale licenses.

Subd. 3 Temporary 3.2 Percent Malt Liquor Licenses. Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

Subd. 4 Off-Sale Intoxicating Liquor Licenses. Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an off-sale intoxicating liquor license established by the Council under Section 500.09 shall not exceed \$240.00 or a greater amount which may be permitted by Minn. Stat. Section 340A.408, Subd. 3, as it may be amended from time to time.

Subd. 5 On-Sale Intoxicating Liquor Licenses. On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by Minn. Stat. Section 340A.101, as it may be amended from time to time, and this

Section: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, theaters and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under Section 500.09 of this Section shall not exceed the amounts provided for in Minn. Stat. Section 340A.408, Subd. 2(b) as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the City under the provisions of Minn. Stat. Section 340A.404, Subd. 4(b) as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the City, under the provisions of Minn. Stat. Section 340A.404, Subd. 4(a) as it may be amended from time to time, however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

Subd. 6 Sunday On-Sale Intoxicating Liquor Licenses. Sunday on-sale intoxicating liquor licenses are legal in the City as per voter approval in the special election of August 12, 2003, as provided for in Minn. Stat. Section 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale liquor licenses shall be granted only to those establishments eligible under Minnesota Statutes Sections 340A.404, Subd. 1 and Section 340A.504, Subd. 3.

Subd. 7 Combination Licenses. Combination on-sale/off-sale intoxicating liquor licenses if the City has a population less than 10,000.

Subd. 8 Temporary On-Sale Intoxicating Liquor Licenses. Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the City shall issue no more than 12 days' worth of temporary licenses to any one organization in one calendar year.

Subd. 9 On-Sale Wine Licenses. On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of Minn. Stat. Section 340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in Section 500.02, Subd. 2; to licensed bed and breakfast facilities which meet the criteria of Minn. Stat. Section 340A.401, Subd. 1, as it may be amended from time to time and to theaters that meet the criteria of Minn. Stat. Section 340A.404(b) as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of Section 500.09 of this Section, shall not exceed one-half of the license fee charged for an

on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

Subd. 10 One-Day Consumption and Display Permits. One-day consumption and display permits, with the approval of the Commissioner of Public Safety, may be issued to a nonprofit organization in conjunction with a social activity in the City sponsored by the organization.

Subd. 11 Consumption and Display Permits. Consumption and display permits, with the approval of the Commissioner of Public Safety, may be issued. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of Section 500.09 of this Section shall not exceed \$300.00, or the maximum amount permitted by Minn. Stat. Section 340A.414, Subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

Subd. 12 Culinary Class Limited On-Sale Licenses. Culinary class limited on-sale licenses may be issued to a business establishment not otherwise eligible for an on-sale intoxicating liquor license that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only.

Subd. 13 Temporary Off-Sale Wine Licenses. Temporary off-sale wine licenses, with the approval of the Commissioner of Public Safety, may be issued for the off-sale of wine at an auction. A license issued under this subdivision authorizes the sale of only vintage wine of a brand and vintage that is not commonly being offered for sale by any wholesaler in Minnesota. The license may authorize the off-sale of wine for not more than three consecutive days provided not more than 600 cases of wine are sold at any auction. The licenses are subject to the terms, including license fee, imposed by Section 500.09.

Subd. 14 Brew Pub On-Sale Intoxicating Liquor or On-Sale 3.2 Percent Malt Liquor Licenses. Brew pub on-sale intoxicating liquor or on-sale 3.2 percent malt liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to brewers who operate a restaurant in their place of manufacture and who meet the criteria established at Minn. Stat. Section 340A.301, Subd. 6(d) and 7(b), as it may be amended from time to time. Sales under this license at on-sale may not exceed 3,500 barrels per year. If a brew pub licensed under this Section possesses a license for off-sale under Subd. 15 below, the brew pub's total combined retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

Subd. 15 Brewer Off-Sale Intoxicating Liquor Licenses. Brewer off-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under Subd. 14 above or that produces fewer than 3,500 barrels of malt liquor in a year and otherwise meets the criteria established at Minn. Stat. Section 340A.301, Subd. 6(d) and 7(b), as it may be amended from time to time. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the City. Malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. All malt liquor sold under this license shall be packaged in the manner required by Minn. Stat. Section 340A.301, Subd. 7 as it may be amended from time to time. Sales under this license may not exceed 500 barrels per year. If a brewer licensed under this Section possesses a license under Section Subd. 14 above, the brewer's total retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

Subd. 16 Brewer Temporary On-Sale Intoxicating Liquor Licenses. Brewer temporary on-sale intoxicating liquor licenses may be issued, with the approval of the Commissioner of Public Safety, to brewers who manufacture fewer than 3,500 barrels of malt liquor in a year for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer.

#### 500.09 License Fees; Pro Rata.

Subd. 1 Maximum Fees. No liquor license or other fee established by the City shall exceed any limit established by Minn. Stat. Chapter 340A, as it may be amended from time to time.

Subd. 2 Resolution Setting Fees; Procedure for Increases. The Council may establish from time to time in the Resolution Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this Section. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

Subd. 3 Proration of Fees. The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.

Subd. 4 Payment of Fees. All license fees shall be paid in full at the time the application is filed with the City. If the application is denied, the license fee shall be returned to the applicant.

Subd. 5 Refund of Fees. A refund of a pro rata share of an annual license fee may occur only if authorized by Minn. Stat. Section 340A.408, Subd. 5, as it may be amended from time to time.

Subd. 6 Reduction in Off-Sale Intoxicating Liquor Fees. Off-sale intoxicating liquor licensees may request a reduction in their annual license fee by the amount specified in Minn. Stat. Section 340A.408 if at the time of initial application or renewal they:

- A. Agree to have a private vendor approved by the City train all employees within 60 days of hire and annually thereafter in laws pertaining to the sale of alcohol, the rules for identification checks, and the responsibilities of establishments serving intoxicating liquors;
- B. Post a policy requiring identification checks for all persons appearing to be 30 years old or less;
- C. Establish a written cash award and incentive program to award employees who catch underage drinkers and a written penalty program to punish employees in the event of a failed compliance check;
- D. Failure to abide by the provisions of this paragraph may result in suspension of the license until the conditions of the fee reduction are met and may result in suspension and/or revocation of the license pursuant to Section 500.25 of this Section.

500.10 Council Discretion to Grant or Deny a License. The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this Section.

500.11 Application for License.

Subd. 1 Form. Every application for a license issued under this Section shall be on a form provided by the City. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this Section. The form shall be verified and filed with the City. No person shall make a false statement in an application.

Subd. 2 Financial Responsibility. Prior to the issuance of any license under this Section, the applicant shall demonstrate proof of financial responsibility as defined in Minn. Stat. Section 340A.409, as amended, with regard to liability imposed by Section 340A.801, as amended. This proof will be filed with the City and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this Section shall conform to Minn. Stat. Section 340A.409, as it may be amended from time to time. Operation of a business required to be licensed by this Section, without having on file with the City at all times effective proof of financial responsibility, is cause for revocation of the license.

Subd. 3 Duplicate Licenses. Duplicates of all original licenses under this Chapter may be issued by the City Administrator, without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee as established from time to time by a resolution of the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE.

Subd. 4 Posting. All licensees shall conspicuously post their licenses in their places of business.

500.12 Description of Premises. The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

500.13 Applications for Renewal. At least 60 days before a license issued under this Section is to be renewed, an application for renewal shall be filed with the City. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

500.14 Transfer of License. No license issued under this Section may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this Code applying to applications for a license shall apply.

500.15 Investigation.

Subd. 1 Preliminary Background and Financial Investigation. On an initial application for a license, on an application for transfer of a license, or on an application for renewal of a license if the Council determines it is in the public interest to do so, the City shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500.00 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500.00, the unused balance shall

be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

Subd. 2 Comprehensive Background and Financial Investigation. If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$500.00, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000.00, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

500.16 Hearing and Issuance. The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. 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 grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

500.17 Restrictions on Issuance.

Subd. 1 License Issued Only to Applicant. Each license shall be issued only to the applicant for the premises described in the application.

Subd. 2 Only One License Per Person. Not more than one license shall be directly or indirectly issued within the City to any one person.

Subd. 3 No License if Bills Unpaid. No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the City are delinquent and unpaid.

Subd. 4 No License if Ineligible Under State Law. No license shall be issued for any place or any business ineligible for a license under state law.

Subd. 5 No License to Nonresident of State. No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this Subdivision

shall not apply to any license existing on the effective date of this Section or to the renewal of an existing license.

Subd. 6 No License Within 500 Feet of Any School or Church. No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

Subd. 7 Persons Disqualified. In addition to any other provision of law, no person shall qualify for a license under this Chapter who has been convicted within the past five years of violating any law relating to the manufacture, sale or distribution of beer or liquor, or whose license therefor has been revoked within such period of time. Nor shall any person qualify as a licensee who has not attained the age of twenty-one years or who is not a citizen of the United States.

500.18 Conditions of License. The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license under the condition is met.

Subd. 1 Training Required. Within 90 days after employment, every person selling or serving liquor in an establishment which has an on-sale license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.

Subd. 2 Act of Employee is Act of Licensee. Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Section and the law equally with the employee.

Subd. 3 Compliance Checks. Every licensee shall allow any peace officer, health officer, City employee, or any other person designated by the Council to, without a warrant, conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises.

Subd. 4 Limits on Display of Liquor. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

Subd. 5 Required Compliance with Financial Responsibility. Compliance with financial responsibility requirements of state law and of this Section is a continuing condition of any license.

Subd. 6 Continued Compliance Under Section 500.09, Subd. 6. Failure by an off-sale intoxicating liquor licensee who has received a fee reduction pursuant to

Section 500.09, Subd. 6 of this Section to abide with the provisiosn of Section 500.09, Subd. 6.

500.19 Hours and Days of Sale.

Subd. 1 Hours and Days of Sale. The hours of operation and days of sale shall be those set by Minn. Stat. Section 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows. The hours for Sunday malt liquor growler only off-sale shall be from 8:00 a.m.-10:00 p.m.

Subd. 2 Time Limit on Consumption. No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

Subd. 3 Time Limit on Containers. No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.

Subd. 4 Closing. It is unlawful for any person, other than licensee, or a licensee's bona fide employee actually engaged in the performance of legal work duties, to be on premises licensed under this Chapter during the following timeframe: thirty minutes after the legal time for making licensed sales of beer, wine, or liquor, and 7:00 a.m.

Subd. 5 Impact of Violations. Any violation of any condition of this Section may be grounds for revocation or suspension of the license.

500.20 Conditional Licenses. Notwithstanding any provision of law to the contrary, the Council may place special conditions and restrictions, in addition to those stated in this Chapter, upon any license. These conditions may be placed upon a finding of necessity and as the Council deems reasonable and justified.

500.21 Sale by Employee. Any sale of beer or liquor in or from any premises licensed under this Chapter by any employee authorized to make such sale in or from such place, is the act of the employer as well as of the person actually making the sale. Every employer is liable to all of the penalties provided for by law for such sale, equally with the person actually making the sale.

500.22 Delivery.

Subd. 1 Incorporation by Reference. Minnesota Rule 7515.0580, including all amendments hereafter made to that Rule, are hereby incorporated by reference into the Montgomery City Code.

Subd. 2 Cash Payment. Cash payments for the delivery of off-sale liquor and beer are acceptable subject to the restrictions placed upon those sales under Subd. 1, as well as subject to the following additional restrictions:

- (1) all deliveries of off-sale liquor or beer permitted hereunder shall be made only after an order is placed to the premises licensed for off-sale liquor and beer sales; and,
- (2) orders for delivery can only be made to the licensed premises in person, by telephone, fax, or email; and,
- (3) all deliveries of off-sale liquor and beer are to be made only to a specified mailing address; and,
- (4) the person delivering the off-sale liquor and/or liquor order on behalf of the off-sale licensee shall in each and every case obtain, verify, and document the deliverer's driver's license number or state issued identification card before it is permissible for the delivery to be completed.

Subd. 3 Permit Fee. The off-sale liquor license holder who wishes to deliver liquor or beer off licensed premises must have in effect prior to commencing deliveries an off-sale liquor license delivery permit from the City of Montgomery. The City Council shall from time to time schedule the delivery permit fee by resolution.

Subd. 4 Violation. It is unlawful to violate any provision of this Section.

#### 500.23 Minors on Premises.

Subd. 1 Employees. No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person, host or dishwashing services in places defined as a restaurant, hotel, motel or other multi-purpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.

Subd. 2 Persons Under Age 21. No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

500.24 Unlawful Acts (Liquor). For the purposes of this Section, a person under the age of 18 years shall be a minor and anyone aged 18-20 shall be an underaged person. The following is unlawful:

Subd. 1 Age Misrepresentation. No minor or underaged person shall misrepresent his or her age for the purpose of obtaining liquor.

Subd. 2 Consumption. No minor or underaged person shall consume liquor on a licensed premises.

Subd. 3 Possession. No minor or underaged person shall have liquor in that person's possession on the licensed premises.

Subd. 4 Purchase or Procurement. No minor or underaged person shall enter licensed premises for the purpose of purchasing or procuring liquor.

Subd. 5 Induce to Purchase. No minor or underaged person shall knowingly induce another to make an illegal sale or purchase of liquor.

Subd. 6 Illegal Sale. No licensee shall sell liquor on any day, or during any hour, when sales of liquor are not permitted by law.

Subd. 7 Illegal Purchase. No person shall purchase liquor on any day, or during any hour, when sales of liquor are not permitted by law.

Subd. 8 Entering Licensed Premises. No minor shall be in or upon licensed premises except a restaurant, hotel or motel, and then only if accompanied by a parent or guardian; and it is unlawful for the licensee to permit such person to remain upon the licensed premises.

Subd. 9 Sale to Intoxicated Person. No licensee shall sell or serve liquor to any person who is obviously intoxicated.

Subd. 10 Sale or Service. No licensee shall sell or serve liquor to any minor.

Subd. 11 Proof of Age. No licensee shall fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises. Proof of age for the purposes of consuming, purchasing, or possessing liquor may be established only by a valid driver's license or current Minnesota identification card issued pursuant to Minn. Stat. Section 171.07.

Subd. 12 Purchase for Minor or Underaged Person. No person shall furnish, purchase, or procure liquor for a minor or underaged person.

Subd. 13 Purchase by Minor or Underaged Person. No minor or underaged person shall purchase liquor.

Subd. 14 Gambling Restricted. No gambling or gambling device shall be permitted on any licensed premises, except such as are licensed under the City Code.

500.25 Suspension and Revocation.

Subd. 1 Hearing. The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this Section relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, Minn. Stat. Sections 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

Subd. 2 Minimum Periods of Suspension or Revocation. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this Section or Minn. Stat. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time:

A. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of Section 500.03, the license shall be revoked.

B. The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this Section for at least the minimum periods as follows:

1. For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.
2. For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
3. For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
4. For a fourth violation within any three-year period, the license shall be revoked.

C. The Council shall select the day or days during which the license will be suspended.

Subd. 3 Penalties for Failure to Provide City with Required Proof of Financial Responsibility. Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this Section or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the City Administrator, a hearing before the Council shall be granted within ten days. Any suspension under Subd. 2 above shall continue until the Council determines the financial responsibility requirements of state law and this Section have again been met.

Subd. 4 Administrative Penalties in Addition to Suspension or Revocation. The provisions of Section 599.02 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this Section.

500.26 Number of On-Sale Intoxicating Liquor Licenses Which May be Issued Within the City. The maximum number of on-sale intoxicating liquor licenses which may be issued within the City of Montgomery during any calendar year shall be the total of the following: the maximum number permitted by Minnesota Statutes Section 340A.413, Subd. 1; plus, the two additional on-sale intoxicating liquor licenses created by the August 12, 2003, special election; plus, those on-sale liquor licenses issued under Minnesota Statutes Chapter 340A which do not count against the maximum licenses identified in Section 340A.413, Subd. 1.

## Section 505 – GENERAL REGULATIONS CONCERNING CANNABIS AND LOWER-POTENCY HEMP EDIBLE REGISTRATION

### 505.01 Cannabis and cannabis related products.

Subd. 1 Purpose. The use, possession, and cultivation of cannabis and cannabis related products has become legal in the State of Minnesota for adults over the age of twenty-one (21), and the City believes reasonable controls and regulation is required to ensure use, possession, and consumption of such products is necessary to ensure public health, safety, comfort, conveniences and general welfare of the residence of the City of Montgomery, this ordinance shall be intended to regulate the sale, possession and use of cannabis and cannabis related products, and cannabis related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the use of cannabis and cannabis related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to use cannabis and cannabis related products. This ordinance shall be construed to comply with the requirements of Minnesota Statute §342.

Subd. 2 Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissible. The following terms shall have the definitions given to them:

### 505.02 Definitions.

Subd. 1. Cannabis and Cannabis Related Products – shall have the meaning given under Minnesota Statute §342.01 as may be amended from time to time.

Subd. 2. Lower-Potency Hemp Edible – shall have the meaning given under Minnesota Statute §342.01 as may be amended from time to time.

Subd. 3. Self-Service Merchandising – Shall mean open displays of cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp related product in any manner where any person shall have access to cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp related product without the assistance or intervention of the registered owner or employee. The assistance or intervention shall entail the actual physical exchange of cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp related product between the customer and the licensee or employee. Self-service merchandising shall include vending machines.

Subd. 4. Vending Machine – Shall mean any mechanical, electrical or electronic, or other type of device which dispenses cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp related product or devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp related product or device.

Subd. 5. Minor – Shall mean any natural person who has not yet reached the age of twenty-one (21) years.

Subd. 6. Retail Establishment – Shall mean any place of business where cannabis, cannabis related products, or cannabis related device, or lower-potency hemp edible, or other hemp related product or related devices are available for sale to the general public as an accessory to the primary retail business as permitted in Montgomery City Code, Chapter 11 as may be amended from time to time. Generally, this shall include, but not be limited to, grocery stores, convenience stores, gas stations, liquor stores, licensed drinking establishments, etc.

Subd. 7. Moveable Place of Business – Shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions. This includes farmer's markets, craft fairs/shows, flea markets, and the like.

Subd. 8. Sale – Shall mean any transfer of good for money, trade, barter, or other consideration.

Subd. 9. Compliance Checks – Shall mean the system the City uses to investigate and ensure that those authorized to sell related cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp related products or devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp products or related devices for education, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate laws and regulations relating to cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp products or devices.

### 505.03 Registration.

Subd. 1. No person shall sell or offer to sell any cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related devices without first having obtained a license to do so from the State of Minnesota.

Subd. 2. An application for a registration to sell cannabis, cannabis related products or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the registration is sought, and a valid license issued by the State of Minnesota for the type of business being operated. Upon receipt of a completed application, the City Administrator shall forward the application to the County for action at its next regularly scheduled Council meeting. If the City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 3. The Council shall approve the registration and the City Administrator shall issue the registration to the applicant if all the requirements of the City have been met.

Subd. 4. Term of registration. All registrations shall be issued on the City's fiscal year basis, January 1 to December 31. For registration issued and which are to become effective other than on the first day of the registration year, the fee to be paid with the application may be a pro rata share of the annual registration fee.

Subd. 5. Revocation or Suspensions – Any registration issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties Section of this ordinance.

Subd. 6. Transfers – All registrations issued under this ordinance shall be valid only on the premises for which the registration was issued and only for the person to whom the registration was issued. No transfer of any registration to another location or person shall be permitted.

Subd. 7. Moveable Place of Business – No registration shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be registered under this ordinance.

Subd. 8. Display – All registrations shall be posted and displayed in the plain view of the general public on the licensed premise.

Subd. 9. Renewals – The renewal of a registration issued under this Section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but not more than sixty days before the expiration of the current registration. The issuance of a registration under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the registration.

505.04 Fees. No registration shall be issued under this Section until the appropriate registration fee shall be paid in full. The fee for a registration under this Section shall be established from time to time by resolution of the Council.

505.05 Prohibited Sales. It shall be a violation of this Section for any person to sell or offer to sell any cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device:

- A. To any person under the age of twenty-one (21) years.
- B. By means of any type of vending machine.
- C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the registered premise in order to receive the individually package cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device and whereby there is not a physical exchange of the individually package cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device between the registered person or the registered person's employee, and the customer.
- D. Containing opium, morphine, jimson, bella donna, strychnos, cocaine, fentanyl or other deleterious, toxic, or controlled substances added as part of an otherwise lawful manufacturing process.
- E. By any other means, to any other person, in any other manner or form prohibited by Federal, State or other local law, ordinance provision, or other regulation.
- F. Vending Machines. It shall be unlawful for any person registered under this ordinance to allow the sale of cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device by means of a vending machine.
- G. Self-Service Sales. It shall be unlawful for a business registered under this ordinance to allow the sale of individually packaged cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device by any means whereby the customer

may have access to such items without having to request the item from an employee and whereby there is not a physical exchange of the cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device between an employee and the customer. All cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.

505.06 Responsibility. All registered businesses under this ordinance shall be responsible for the actions of their employees in regard to the sale of cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device on the registered premises, and the sale of such an item by an employee shall be considered a sale by the registration holder. Nothing in this Section shall be construed as prohibiting the City from also subjecting the employee to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

505.07 Compliance Checks and Inspections. All registered premises shall be open to inspection by the City police or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging persons at least seventeen (17) years of age but under twenty-one (21) years of age, with the written consent of their parents or guardians for minors under the age of eighteen, to enter the registered premises to attempt to purchase cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device. Minors used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be quilt of unlawful possession of cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device when such items are obtained as part of the compliance check. No minor used in compliance shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's ago asked by the registrant or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Subdivision shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

505.08 Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Section:

Subd. 1. Illegal Sales – It shall be a violation of this ordinance for any person to sell or otherwise provide any cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device to any minor.

Subd. 2. Illegal Possession – It shall be a violation of this ordinance for any minor to have in his or her possession any cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device. This Subdivision shall not apply to minors lawfully involved in compliance checks.

Subd. 3. Illegal Use – It shall be a violation of this Section for any minor to smoke, vape, chew, sniff, eat or otherwise use any cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device.

Subd. 4. Illegal Procurement – It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce a minor to illegally purchase or otherwise obtain or use any cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device. This Subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5. Use of False Identification – It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Subd. 6. Public Consumption of Cannabis, cannabis related products, and THC infused consumable. The consumption and/or use of cannabis, cannabis related products, and THC infused consumables, including beverages, shall be prohibited in public parks, on any public property including streets, sidewalks, trails, parking areas, and facilities, and any outdoor or indoor area, whether privately or publicly owned to which the public has access by rights of invitation, expressed or implied including but limited to restaurants, bars, food establishments, places licensed to sell intoxication liquor, wine, or malt beverages, retail businesses, gyms, common areas in buildings, public shopping areas, auditoriums, arenas, or other places of public accommodation. This does not include a private residence, private property not generally accessible by the public, the premises of an establishment or event licensed and registered to permit on-site consumption. See also 1050.01, Subd. 5.

505.09 Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of cannabis, cannabis related products, or cannabis related devices, or lower-potency hemp edible, or other hemp product or related device to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

505.10 Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

## Section 599 – PENALTIES

599.01 Criminal Penalties. A person violating any provision of this Chapter or Minnesota Statutes Chapter 340A, as it may be amended from time to time, or any rules promulgated under Minnesota Statutes Chapter 340A, as they may be amended from time to time, shall be guilty of a misdemeanor, punishable by a fine of 90 days in jail, payment of a fine of \$1,000.00, or both. A defendant convicted of a misdemeanor under this Section of the City Code, in addition to the other penalties proscribed by law, shall be made responsible for reimbursing the City its costs of prosecution. This Section is adopted in conformance with Minnesota Statutes Section 412.231, as may be amended from time to time, which the City hereby adopts and incorporates herein.

599.02 Civil Penalty. The Council shall impose a civil penalty of up to \$2,000.00 for each violation of Minn. Stat. Chapter 340A, as it may be amended from time to time, and of this Section. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, Minn. Stat. Sections 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the license is revoked:

1. For the first violation within any three-year period, \$500.00.
2. For the second violation within any three-year period, \$1,000.00.
3. For the third and subsequent violations within any three-year period, \$2,000.00.

599.03 Enhancement. The term “violation” as used in Section 500.25 includes any and all violations of the provisions in this Section, or of Minn. Stat. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.