

ORDINANCE 2008- May
REPEAL OF ORDINANCE 17 AS AMENDED REGARDING THE SALE OF
NON-INTOXICATING BEVERAGES IN THE
CITY OF NEW MUNICH AND ENACTMENT OF ORDINANCE 80
LICENSING AND REGULATION OF THE SALE AND CONSUMPTION
OF NON-INTOXICATING MALT LIQUOR

The City Council for the City of New Munich HEREBY ORDAINS:

That Ordinance 17 (An Ordinance Licensing the Sale of Non-Intoxicating Beverages and Regulating the Business of Vending the Same at Retail) together with Ordinance 18, 20, 24, 26, 29, and 32 are hereby revoked in their entirety and replaced with this Ordinance which reads as follows:

“LICENSING AND REGULATION OF THE SALE AND CONSUMPTION
OF NON- INTOXICATING MALT LIQUOR

SECTION 1: PROVISIONS OF STATE LAW ADOPTED.

The provisions of Minn. Stat. Ch. 340A, as amended, relating to the sale, display, and consumption of 3.2 percent malt liquor, are hereby adopted and made a part of this ordinance as if fully set out herein.

SECTION 2: DEFINITIONS.

2.01. The term “person” shall mean and include a natural person of either sex, persons, co-partnerships, corporations and associations of persons and shall include the plural, and the masculine pronoun shall include the feminine and neuter.

2.02. “3.2 percent malt liquor” or “non-intoxicating malt liquor” shall mean any potable malt beverage with an alcoholic content of more than 1.5 percent by volume and not more than 3.2 percent by weight.

2.03. “Bona fide club” shall mean any organization for social or business purposes or for intellectual, improvement, or athletic purpose where the serving of such 3.2 percent malt liquors is incidental and not the major purpose of the club. Any such club must be incorporated under the laws of the State of Minnesota, with a paid membership of at least thirty (30) members, must have owned or rented a building or space in a building for more than one year, and be directed by a board, committee or similar body chosen by the membership. The sale shall be to members and their guests.

2.04. "Original package" shall mean the sealed container in which the liquor is placed at the place of manufacture.

SECTION 3: LICENSE REQUIRED.

No person, except wholesalers and manufacturers to the extent authorized by law, shall sell, vend, deal in or dispose of by sale, gift or otherwise, or keep or offer for sale, any 3.2 percent malt liquor within the City without first receiving a license as provided in this Ordinance. Licenses shall be of three kinds: (1) Retail "on-sale"; (2) Retail "off-sale"; and (3) "Special Event".

3.01. ON-SALE. On-Sale Licenses shall be granted only to bona fide clubs, bowling alleys, drug stores, restaurants and hotels where food is prepared and served for consumption on the premises. "On Sale" licenses shall permit the sale of 3.2 percent malt liquor for consumption on the premises only. Unless authorized to do so by license, all non-intoxicating malt liquor sold "on sale" shall be possessed and consumed inside the building where purchased "on sale". No person shall possess or consume any non-intoxicating malt liquor outside the building of an "on sale" business if said non intoxicating malt liquor was purchased "on sale". The licensee shall be responsible for the enforcement of this provision, and permitting a person possessing non-intoxicating malt liquor purchased "on sale" to leave the building shall be a violation of this Ordinance by the licensee

3.02. OFF-SALE. Off-Sale Licenses shall be granted to permit the sale at retail and wholesale of such liquor in the original packages for removal for the consumption off the premises only.

3.03. SPECIAL EVENT. Special Event Licenses shall permit the on-sale sale of 3.2 percent malt liquor for consumption, for a specified continual twenty-four hour period expiring at 1:00 a.m. for the premise defined in the license. Special Event Licenses may be granted for public or open air premises provided that the City may impose security provisions on the license. The "special event" license shall be subject to the general terms and conditions of this ordinance, unless clearly inapplicable, with the following additions and/or changes:

- A. A "Special Event" license shall be issued only to organizations or entities which qualify as a non-taxable organization as defined by Sec. 501(c) (3-8) of the Internal Revenue Code.
- B. Application for the "special event" license shall be submitted at least thirty days prior to the date of applicability. The City Council may waive the 30 day deadline, but if doing so, shall charge a late fee not to exceed \$250.00.
- C. Proof of liability insurance as required by this ordinance shall be delivered to the City Clerk/Administrator prior to issuance of the license.

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

SECTION 4: APPLICATION FOR LICENSES.

Every application for a license to sell 3.2 percent malt liquor shall be verified and filed with the City Clerk. The application shall state the applicant's name, the applicant's age, representation as to the applicant's character with such references as may be required, the applicant's citizenship, whether the sale is for "on sale" or "off sale", the business in connection with which the proposed licensee shall operate and its location, whether applicant is an owner of the business, how long he or she has been in that business at that place, and such other information as the City Council may require. It shall be unlawful to make any false statement in an application.

SECTION 5: FEES.

5.01. **APPLICATION.** All applications for licenses shall be accompanied by a receipt from the City Clerk for the required annual fee for the respective license. All fees shall be paid into the general fund of the municipality. Upon rejection of any application for a license, the Treasurer shall refund the amount paid.

5.02. **ON-SALE, OFF-SALE AND SPECIAL EVENT LICENSE FEES.** The fees for on-sale, off-sale, and temporary licenses shall be as follows:

- A. On-Sale: \$75 per year.
- B. Off-Sale: \$75 per year.
- C. Special Event: \$10.00 for a twenty-four hour period.

5.03. **EXPIRATION.** All licenses shall expire on the last day of December in each year. If eight (8) months of any licensing year have elapsed before the application is made, the fee shall be reduced to one-half (2) of the regular amount.

SECTION 6: GRANTING OF LICENSES.

The City Council shall cause an investigation to be made of all facts set forth in the application. Opportunity shall be given to any person to be heard for or against the granting of any license after such application in its discretion. All licensed premises shall post the license in a conspicuous place at all times.

SECTION 7: CONDITIONS OF LICENSES.

All licenses granted under this Ordinance shall be granted subject to the following conditions and all other conditions of this Ordinance and State and Federal law:

7.01. No license shall be granted to any person under twenty-one (21) years of age.

7.02. No license shall be granted to any person who has been convicted of a felony or of a willful violation of a federal or state law, or local ordinance governing the manufacture, sale distribution, or possession for sale or distribution of intoxicating liquors.

7.03. No license shall be granted to any person who has had a license issued under this Ordinance or Ordinance 45 as amended that has been revoked for cause within five (5) years of the date of license application, or to any person who at the time of the violation owned any interest in the premises or business for which the license was revoked.

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

7.05. No sale of non intoxicating malt liquor shall be made to anyone on credit.

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

7.07. LIABILITY INSURANCE. Prior to the issuance of an "on sale" or "off sale" non intoxicating malt liquor license, the applicant must demonstrate proof of financial responsibility with regard to liability imposed by Minn. Stat. §340A.409 with the Commissioner of Public Safety and the City Clerk of New Munich as a condition of the issuance or renewal of the license.

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

7.08. Licenses shall be granted only to persons who are residents of the State of Minnesota, or becomes a resident of the State of Minnesota within ninety (90) days after the license is issued. If the applicant is a corporation, at least one (1) principal officer of the corporation must be a resident of the State of Minnesota or must become a resident of the State of Minnesota within ninety (90) days after the license is issued.

SECTION 8: SALE TO MINORS.

No sale of any 3.2 percent malt liquor shall be made to any minor.

8.01. No minor shall misrepresent his age for the purpose of obtaining non intoxicating malt liquor; nor shall he enter any premises licensed under this Ordinance in order to procure such beverages, or to consume or purchase or attempt to purchase or procure or to have another purchase or procure for him, such beverages on licensed premises.

8.02. No person shall induce a minor to purchase or procure non intoxicating malt liquor.

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

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

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

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

SECTION 9: INSPECTION.

All premises where any license under this Ordinance is granted shall be open to inspection by any police or health officer or other properly designated officer or employee of the City at any time during which the place so licensed is open to the public for business.

SECTION 10: GAMBLING.

No gambling nor any gambling device prohibited by law, shall be permitted in any licensed premises.

SECTION 11: TRANSFER OF LICENSE.

All licenses granted under this Ordinance shall be issued to the applicant only and shall be issued for the premises described in the application. A licensee may not transfer the license to another place without City Council approval.

SECTION 12: HOURS OF OPERATION.

No sales of 3.2 percent malt liquor shall be made between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 12:00 noon on Sunday, except as allowed by M.S.A. 340A.504, Subd. 3. No "on-sale" shall be made between the hours of 1:00 a.m. and 8:00 a.m. on any week day. No "off-sale" shall be made before 8:00 a.m. or after 10:00 p.m. on any day. No "off-sale" shall be made on Thanksgiving Day; or after 8:00 p.m. on December 24; or Christmas Day. On Sunday, license holders in the City of New Munich shall maintain the hours of 12:00 noon to 12:00 p.m. midnight.

SECTION 13: REVOCATION.

The violation of any condition of this ordinance by a non-intoxicating malt liquor licensee or agent, or a material falsehood in the application, shall be grounds for revocation or suspension of the license or assessment of a civil monetary penalty not to exceed One Thousand Dollars (\$1,000). It shall not be necessary that the violations be proven in a Court of Law. The Council may revoke the license even if a conviction is not obtained in a Court of Law. The license of any person who holds a Federal Retail Liquor Dealer's Special tax stamp without a license to sell

intoxicating liquors at such places shall be revoked without notice and without hearing. In all other cases, the license granted under this ordinance may be revoked or suspended by the Council after written notice to the licensee and a public hearing. The notice shall give at least ten day's notice of the time and place of the hearing and shall state the nature of the charges against the licensee.

SECTION 14: PROHIBITED SALE.

Nothing under this Ordinance shall permit the manufacture, sale or transportation or keeping or having in possession for sale or transportation of, or taking or receiving, or soliciting, any order for any liquor of a greater alcoholic content than 3.2 by weight except for medicinal, pharmaceutical or scientific purposes, and any such act shall be unlawful. Any violation of this provision upon any premises licensed shall constitute grounds for revocation of the license and the license shall be automatically revoked upon a conviction of the violation of this provision.

SECTION 15: PENALTY.

Any person violating this Ordinance shall be guilty of a misdemeanor plus the costs of prosecution in any case.

This ordinance is adopted the 20th day of May, 2008 and shall be effective upon publication.

CITY OF NEW MUNICH

By Harold Klaphake
Harold Klaphake
Its Mayor

By Kelly Thielen
Kelly Thielen
Its Clerk

This ordinance was published on May 31, 2008.