

ORDINANCE NO. 72 – AS AMENDED

AN ORDINANCE LICENSING AND REGULATING THE SALE AND CONSUMPTION OF INTOXICATING AND 3.2% MALT LIQUORS, REPEALING INCONSISTENT ORDINANCES, AND PROVIDING A PENALTY FOR VIOLATION.

THE CITY COUNCIL OF BROWNTON ORDAINS:

Section 1. Provisions of State Law Adopted.

The provisions of Minnesota Statutes Chapter 340A, relating to the definition of terms, licensing, consumption, sales, financial responsibility of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and non-intoxicating malt liquors are adopted and made a part of this ordinance as if set out in full.

Section 2. License Required.

Subdivision 1. **General requirement.** No person, except a wholesaler or manufacturer to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale in the City any intoxicating liquors without a license to do so as provided in this ordinance. Liquor licenses shall be of six (6) kinds: “ON-SALE”, “ON-SALE WINE”, “OFF-SALE”, TEMPORARY “ON-SALE”, “SUNDAY ON-SALE”, and “3.2% MALT LIQUOR ON-SALE”.

Subdivision 2. **“ON-SALE” Licenses.** “ON-SALE” licenses shall be issued only to hotels, clubs, restaurants and exclusive liquor stores, and shall permit “ON-SALE” of intoxicating liquor, wine and non-intoxicating malt liquor only. The holder of an “ON-SALE” intoxicating liquor license may also be the holder of an “OFF-SALE” liquor license and/or a Sunday ON-SALE liquor license as long as the appropriate fees are paid for same and the appropriate qualifications are met.

Subdivision 3. **“ON-SALE WINE” Licenses.** “ON-SALE WINE” licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statutes Section 340A.101, Subdivision 25, and shall permit only the sale of wine not exceeding 14 percent alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. The term “restaurant” as defined in Minnesota Statutes Section 340A.101, Subdivision 25, is further defined as any establishment under the control of a proprietor or manager having appropriate facilities for serving meals and seating no fewer than 60 guests at any one time, and where, in consideration of payment therefore, meals are regularly served at tables to the general public, and which employs an adequate staff to provide the usual and suitable service to its guests.

Subdivision 4. **“OFF-SALE” Intoxicating Liquor Licenses.** “OFF-SALE” intoxicating liquor licenses shall be issued only to drug stores and exclusive liquor stores and shall permit the “OFF-SALE” of intoxicating liquor, wine and non-intoxicating malt liquor. The holder of this license may also be the holder of an “ON-SALE” intoxicating liquor license as long as appropriate fees and qualifications are met.

Subdivision 5. **Temporary “ON-SALE” Licenses.** Subject to the approval of the Commissioner of Public Safety, the temporary “ON-SALE” licenses shall be issues only to clubs or charitable, religious or other nonprofit organizations in existence for at least three (3) years. A temporary license authorizes the “ON-SALE” of intoxicating liquor in connection with a social event within the City, sponsored by the licensee and subject to the restrictions imposed by the State Liquor Act.

Subdivision 6. **“SUNDAY ON-SALE” Licenses.** “SUNDAY ON-SALE” licenses shall be issued only to a restaurant, club, bowling center, or hotel with a seating capacity for at least 30 persons and which holds an “ON-SALE” intoxicating liquor license, and shall permit the “ON-SALE” of intoxicating liquor for consumption on the licensed premises in conjunction with the sale of food on Sundays. The holder of this license may also be the holder of an “ON-SALE” liquor license as long as the appropriate fees are paid and the appropriate qualifications are met.

Subdivision 7. **“3.2% MALT LIQUOR ON-SALE” Licenses.** 3.2% MALT LIQUOR ON-SALE licenses shall be issued only to a restaurant, hotels, clubs or charitable, religious or other non-profit organizations in existence for at least three (3) years. A 3.2% Malt Liquor On-Sale license authorizes the “on-sale” of 3.2% malt liquor at the establishment of the license holder, on the premises as described on the license or in connection with a social event within the City, sponsored by the licensee and subject to the restrictions imposed by the City and the State Liquor Act.

Section 3. Application for License.

Subdivision 1. **Form.** Every application for a license to sell liquor shall state the full name of the applicant, date of birth, representations as to applicant’s character (with such references as the Council may require), citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is the owner and operator of the business, how long the applicant has been in that business at that place, and such other information as the counsel may require from time to time. Every application shall also include a copy of each summons received by the applicant under the Minnesota Statue Section 340A.802 during the preceding year. In addition to containing such information, the application shall be in the form prescribed by the Bureau of Criminal Apprehension and shall be verified and filed with the City Clerk. No person shall make a false statement in an application.

Subdivision 2. **Financial responsibility.** No liquor license may be issued, maintained, or renewed unless the applicant demonstrates proof of financial responsibility as defined by Minnesota Statutes Section 340A.409 with regard to liability under the statutes, Section 340A.801. Such proof shall be filed with the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minnesota Statutes Section 340A.409.

Subdivision 3. **Liability Insurance.** No retail license may be issued, maintained or renewed unless the applicant demonstrates proof of financial responsibility with regard to liability imposed by Minnesota Statutes 340A.801. Proof of financial responsibility may be given by filing:

(a) A certificate that there is in effect an insurance policy or pool providing the following minimum coverage for each occurrence:

(1) \$500,000.00 of coverage for bodily injury to any one person and \$1,000,000.00 of coverage for injuries to two or more persons, and \$10,000.00 for property damage;

(2) \$500,000.00 for loss of means of support of any one person, \$1,000,000.00 for loss of means of support of two or more persons; or,

(b) A bond of a surety company with the same minimum coverages; or,

(c) A certificate of the State Treasurer that the licensee has deposited with him \$500,000.00 in cash or securities eligible for purchase by savings banks or for trust funds worth that amount. An annual aggregate policy limit for dram shop insurance of at least \$1,000,000.00 for each policy year may be included in the policy provisions.

Subdivision 4. **Approval of Security.** The security offered under Subdivisions 2 and 4 shall be approved as to form by the City Attorney. Operation of a licensed business without having on file at all times with the City and Commissioner of Public Safety effective security as required by Subdivisions 2 and 4 of this Section, or as otherwise required by the law of the State of Minnesota, shall be grounds for immediate revocation of the license.

Section 4. License Fees.

Subdivision 1. **Fees.** The annual fee for any license issued pursuant to this Ordinance shall be established, from time to time, by resolution of the City Council.

Subdivision 2. **Payment.** Each application for a license shall be accompanied by a receipt from the City Clerk for payment in full of the license fee and the fixed investigation fee which will be established by Council resolution from time to time,

pursuant to the Ordinance, as further referred to hereinbelow. All fees shall be paid in the General Fund. If an application for license is rejected, the City Clerk shall refund the amount paid as the license fee, but there shall be no refund of any investigation fee.

Subdivision 3. **Term, Pro Rata Fee.** Each license (except for temporary licenses), shall be issued for a period of one year commencing January 1st and terminating December 31st, except that if the application is made during said twelve month period, a license may be issued for the remainder of said twelve month period for a pro rata fee, with any unexpired fraction of a month being counted as one month. Every license shall expire on the last day of December.

Subdivision 4. **Refunds.** No refund of any fees shall be made except as authorized by statute.

Section 5. Granting of Licenses.

Subdivision 1. **Preliminary Investigation.** On an initial application for an “ON-SALE” intoxicating liquor license and on application for transfer of existing “ON-SALE” license, the applicant shall pay with his application an investigation fee as may be set by Council resolution from time to time. Upon receipt of said fee, the City shall conduct a preliminary background and financial investigation of the applicant. The application in such case shall be made on a form prescribed by the State Bureau of Criminal Apprehension and contain such additional information as the Council may require. If the Council deems it in the public interest to have an investigation made on a particular application for renewal of an “ON-SALE” license, it shall so determine. In any case, if the Council determines that a comprehensive background and financial investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Investigation for the investigation. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the Council that the issuance would not be in the public interest. The investigation fee shall be paid by the applicant whether or not the license is granted.

Subdivision 2. **Hearing and Issuance.** The City Council shall investigate all facts set out in the application and not investigate in the preliminary background and financial investigation conducted pursuant to Subdivision 1 hereof. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall, in its discretion, grant or refuse the application. No “ON-SALE WINE” license or “OFF-SALE” license shall become effective until it, together with the security furnished by the applicant, has been approved by the Commission of Public Safety.

Subdivision 3. **Person and Premises Licensed; Transfer.** Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval.

Any transfer of stock of a corporate licensee is deemed a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license.

Section 6. Persons and Places Ineligible for License.

Subdivision 1. **Persons Ineligible.** No license shall be granted to any person made ineligible for such a license by state law. No more than one intoxicating liquor license shall be directly or indirectly issued within the City to any one person. Without limiting the generality of the foregoing, no license shall be granted to:

- (a) A person not a citizen of the United States or a resident alien;
- (b) A person under nineteen years of age;
- (c) A person who within five years of the license application has been convicted of a willful violation of a federal or state law or local ordinance covering the manufacture, sale, distribution or possession for sale or distribution, or intoxicating or non-intoxicating malt liquor;
- (d) A person who has had an intoxicating liquor or non-intoxicating liquor license revoked within five years of the license application, or to any person who at the time of a violation owns any interest, whether as a holder of more than 5% of the capital stock of a corporation licensee, or as a partner or otherwise, in the premises or in the business connected thereon, or to a corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interest; or,
- (e) A person not of good moral character in repute.

Subdivision 2. **Places Ineligible for License.** No license shall be granted for operation on any premises on which taxes, assessments or other financial claims of the City are delinquent and unpaid, including any unpaid charges for utilities.

Section 7. Conditions of License.

Subdivision 1. **General Conditions.** Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of the Ordinance and of any other applicable ordinance, state law or regulation.

Subdivision 2. **Sales of Intoxicating Liquor.** No licensee, who is not also licensed to sell intoxicating liquor and who does not hold a consumption or display permit, shall sell or permit the consumption and display of intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of such a licensee shall be prima facie evidence of possession of intoxicating liquors for the purpose of sale; and the serving of any liquid for the purpose of mixing with intoxicating liquor shall

be prima facie evidence of intoxicating liquor being permitted to be consumed or displayed contrary to this Ordinance.

Subdivision 3. **Licensee's Responsibility.** Every licensee is responsible for the conduct in the licensed establishment and any sale of an alcoholic beverage by an employee authorized to sell alcoholic beverages in the establishment, is deemed the act of the licensee as provided under M.S. 340A.501. Any bartender/server/seller is also individually liable for serving or selling alcohol to an underage person or to an obviously intoxicated person and the said last person in the chain of service shall be liable for that transaction.

Subdivision 4. **Inspections.** Every licensee shall allow any peace officer, to enter, inspect and search the premises of the licensee during the business hours without a warrant.

Subdivision 5. **Display During Prohibited Hours.** No "ON-SALE" establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

Subdivision 6. **Federal Stamps.** No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

Section 8. Liquor Consumption and Display.

No person shall consume or display any intoxicating liquor on the premises of a licensee who is not also licensed to sell intoxicating liquor or who does not hold a consumption and display permit.

Section 9. Hours and Days of Sale.

Subdivision 1. **Intoxicating Liquor-ON-SALE.** No sale of intoxicating liquor for consumption on the licensed premises may be made:

1. between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday;
2. after 1:00 a.m. on Sunday's, except as provided by subdivision 2;
3. on Christmas Day, December 25.

Subdivision 2. **Intoxicating Liquor-SUNDAY ON-SALE.** The sale of intoxicating liquor for consumption on the premises in conjunction with the sale of food may be made:

1. between the hours of 11:00 a.m. on Sunday and 1:00 a.m. on Mondays;
2. except on Easter Sunday and Christmas Day, December 25 if a Sunday.

Subdivision 3. **Intoxicating Liquor-OFF-SALE.** No sale of intoxicating liquor for consumption off the premises only may be made:

1. On Sundays;
2. before 8:00 a.m. on Monday through Saturday;
3. after 10:00 p.m. on Monday through Saturday;
4. on Thanksgiving Day;
5. on Christmas Day, December 25; or
6. after 8:00 p.m. on Christmas Eve, December 24.

Section 10. **Revocation.**

The City Council may either suspend for not to exceed sixty (60) days or revoke any liquor license upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance related to the sale of liquors. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing except for mandatory revocations provided for by law where no notice and hearing are necessary.

Section 11. **Repeal**

This Ordinance repeals Ordinance 53 and 69, together with all other Ordinances previously repealed and any other Ordinances, and parts of Ordinances, inconsistent herewith.

Section 12. **Penalty**

Any person violating any provision of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine and/or jail term established by the state statute for misdemeanors.

Section 13. **Effect.**

This Ordinance shall take effect and be in force from and after its official publication or the posting of a summary of said Ordinance as provided by law.

Passed by the City Council this 14th day of December, 1995.

Amended by the council: this 6th day of June, 2006, and 4th day of May, 2010.

Amended by the Council this 3rd day of September, 2019.

Norman Schwarze, Mayor

Attest: Lori Cacka
City Clerk