

**TOWN OF WHITE BEAR, RAMSEY COUNTY, MINNESOTA
ORDINANCE NO. 32**

**AN ORDINANCE LICENSING AND REGULATING THE SALE AND CONSUMPTION
OF INTOXICATING LIQUOR AND PROVIDING A PENALTY FOR VIOLATION.**

THE TOWN BOARD OF SUPERVISORS OF THE TOWN OF WHITE BEAR ORDAINS:

Section 1.

1-1. Amendment and Repeal of Conflicting Ordinances. Ordinance No. 32 of the Town of White Bear, Ramsey County, Minnesota, adopted May 16, 1994, as amended, is hereby completely amended to be as follows. All other Town Ordinances or parts of Town Ordinances inconsistent herewith are hereby repealed. In all other respects all other Town Ordinances shall remain in full force and effect.

1-2. Provisions of State Law Adopted. The Town of White Bear is authorized to issue all forms of liquor licenses by Laws 2011, Chapter ____, Section 13, which became effective on May ____, 2011. The provisions of Minnesota Statutes, Chapter 340A, with reference to the definition of terms, applications for license, granting of license, conditions of license, restrictions on consumption, provisions on sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor are hereby adopted and made a part of this ordinance as if fully set out herein.

Section 2. License Required.

2-1. No person, except wholesalers or manufacturers to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale any intoxicating liquor without first having received a license to do so as provided in this ordinance.

2-2. "On sale" liquor licenses shall be issued only to restaurants defined in Section 2-2.1 and shall permit "on sale" of intoxicating liquor only, for consumption on the licensed premises only, in conjunction with the sale of food. For the purposes of this Ordinance, the following definition is adopted:

2-2.1. Restaurant – On-Sale Liquor License. Any establishment having appropriate facilities to prepare food on the premises, serve meals, and is equipped with a commercial refrigerator and freezer and outside vented grill, and has seating for not less than 100 guests at 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 for the usual and suitable service to its guests and which complies with the State Fire Code regulations.

2-2.1(a). Any establishment receiving a license pursuant to the terms of this section shall have at least 50% of the gross sales of the establishment attributable to the service of meals.

2-3. On sale wine licenses shall be issued only to restaurants defined in Section 2-3.1 and shall permit the sale of wine up to 24% alcohol by volume for consumption with the sale of food.

2-3.1. Restaurant – On-Sale Wine License. Any establishment having appropriate facilities to prepare food on the premises, serve meals, and is equipped with a commercial refrigerator and freezer and outside vented grill, if required and has seating for not less than 40 guests at 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 for the usual and suitable service to its guests and which complies with the State Fire Code regulations.

2-3.1(a). Any establishment receiving a license pursuant to the terms of this section shall have at least 50% of the gross sales of the establishment attributable to the service of meals.

2-3.2. The holder of an on-sale wine license outlined in Section 2-3 and 2-3.1 above, who is also licensed to sell 3.2 percent malt liquor at on-sale may sell intoxicating malt liquors at on-sale without an additional license.

2-4. Sunday on sale liquor licenses shall be issued only to restaurants which hold a regular on sale liquor license and shall permit the sale of intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 10:00 a.m. on Sundays and 1:00 a.m. on Mondays, provided that the establishment is in compliance with the Minnesota Clean Indoor Air Act as stated in Minnesota Statutes, § 340A.504. A Sunday on-sale license is not needed for Sunday sales by wine licensees.

2-4.1. A Sunday On-Sale Liquor License shall not be required by on-sale wine license holders who also hold a 3.2 percent malt liquor at on-sale license.

2-5. "Off sale" licenses shall be issued only to "off sale" exclusive liquor stores and shall permit the licensee to sell intoxicating liquor in original packages for consumption off the premises only.

2-6. No person, except wholesalers or manufacturers to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale any 3.2% malt liquor without first having received a license to do so as provided in this ordinance. Licenses shall be "On-Sale(s)" and "Off-Sale(s)" and shall be issued as

“3.2% Malt Liquor License” valid for sales any day except Sunday and “Special Sunday 3.2% Malt Liquor License” for “On-Sale(s)” on Sundays only.

2-7. Temporary “on-sale” licenses may be issued to a club or charitable organization, religious, or non-profit organization in existence for at least three (3) years in connection with social events within the Town, for up to three (3) days in accordance with Minnesota Statutes, § 340A.404, Subd. 10.

Section 3. Application for License.

3-1. Every application for a license to sell liquor shall be verified and filed with the Town Clerk. It shall state the name of the applicant, his age, representations as to his character, with such references as may be required, his citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location and type of building, whether the applicant is owner and operator of the business, how long he has been in that business at that place, and such other information as the council may require from time to time. In addition to containing such information, each application for a license shall be in the form prescribed by the State Commissioner of Public Safety. No person shall make a false statement in an application.

3-2. Each application for a license shall be accompanied by proof of financial responsibility specifying coverage for liquor liability and loss of means of support in the amount of one hundred thousand dollars (\$100,000.00) of coverage because of bodily injury to any one person in any one occurrence; two hundred thousand dollars (\$200,000.00) because of bodily injury to two or more persons in any one occurrence; twenty thousand dollars (\$20,000.00) because of injury to or destruction of property of others in any one occurrence; one hundred thousand dollars (\$100,000.00) for loss of means of support in any one person in any one occurrence; and two hundred thousand dollars (\$200,000.00) for loss of means of support for two or more persons in any one occurrence.

3-2.1. In the event such policy provides for a three hundred thousand dollar (\$300,000.00) annual aggregate policy limit as provided in Minnesota Statutes, § 304A.409, said policy shall further require that in the event that the policy limits are reduced in any given year because of the three hundred thousand dollar annual aggregate policy limit, the insurance carrier shall provide the Town of White Bear written notice of said reduction in policy limits within thirty (30) days of said reduction becoming effective.

3-2.2. Thereafter, the Town Board may require the licensee to take further action with regard to liability insurance in order to protect citizens of the Town during the period of the reduced aggregate policy limit.

3-3. The proof of financial responsibility offered under Section 3-2 shall be approved by the Town Board and, in the case of applicants for off sale licenses,

by the State Commissioner of Public Safety. Liability insurance policies shall be approved as to form by the Town Attorney. The operation of such off-sale or on-sale liquor business without having on file at all times with the municipality the proof of financial responsibility required in Section 3-2 shall be grounds for immediate revocation of the license. All insurance policies shall state that the Town will be given ten days' notice, in writing, of cancellation.

Section 4. License Fees.

4-1. The annual license fees for each classification of license is as set out in Ordinance No. 54 (Fees & Charges). All fees shall be paid in full prior to issuance of a 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, except where the rejection is for willful mis-statement on the license application.

4-2. All licenses shall expire on the last day of December of each year. Each license shall be issued for a period of one year except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.

4-3. Following approval, no refund of any fee shall be permitted except as authorized under Minnesota Statutes, Section 340A.408.

Section 5. Granting of Licenses.

5-1. The Town Board shall investigate all facts set out in the application. The Town shall conduct a preliminary background and financial investigation of the applicant in regard to all intoxicating liquor license applications.

5-2. An applicant seeking an "on-sale" intoxicating liquor license shall pay an investigation fee with the required annual license fee. If investigation outside the State of Minnesota is required by the Town Board or the State Commissioner of Public Safety, the applicant shall pay the actual cost of the investigation, up to \$10,000.00, prior to any action to approve or deny the license.

5-3. Opportunity shall be given to any person to be heard for or against the granting of the license. After such investigation and hearing, the Town Board shall grant or refuse the application in its discretion. In addition to the other requirements of state law and this Ordinance in determining whether to issue a license for a particular premises, the Town Board shall consider all relevant factors relating to the health, safety and welfare of the citizens of the Town including, but not limited to, the effect on the market value of neighboring properties, proximity to churches and schools, effect on traffic, and parking.

5-4. No "off sale" intoxicating license shall become effective until it, together with the proof of financial responsibility furnished by the applicant, has been approved by the State Commissioner of Public Safety.

5-5. Each license shall be issued to the applicant only. Each license shall be issued only for the premises described in the application. No license may be transferred to another person or to another place without the approval of the Town Board. Before a transfer is approved, the transferee shall comply with the requirements for a new application. Any transfer of 50% or more of the stock of a corporate licensee is deemed a transfer of the license, and the transfer of stock without prior Town Board approval is ground for the revocation of a license.

Section 6. Persons Ineligible for License. No license shall be granted to or held by any person made ineligible for such a license by state law. A person ineligible to hold an intoxicating liquor license is also ineligible to hold a 3.2% malt liquor license.

Section 7. Places Ineligible for License.

7-1. No license shall be issued for any place or for any business ineligible for such a license under state law.

7-2. No license shall be granted for operation on any premises on which taxes, assessments or other financial claims of the Town are delinquent and unpaid.

Section 8. Conditions of License.

8-1. Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this ordinance and of any other applicable ordinance of the Town or state law.

8-2. Every licensee shall be responsible for the conduct of their place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises authorized to sell or serve intoxicating liquor shall be deemed the act of the licensee as well and the licensee shall be liable to all penalties provided by this ordinance equally with the employee. Every licensee shall appoint a designated "on-site manager" who is responsible for the compliance of such rules and regulations on the premises. The licensee shall notify the Town of the identity of the "on-site manager."

8-2.1. The licensee shall notify the Town within thirty (30) days of any change of the designated "on-site manager." The licensee shall provide the Town with the full name, address and birth date of the proposed replacement "on-site manager" and that person shall sign a waiver, provided by the Town, permitting the Town to access any and all records including, but not limited to, driver's license and criminal record prior to appointment to the position of "on-site manager."

8-3. Any peace officer, health officer, or any properly designated officer or employee of the Town shall have the unqualified right to enter, inspect, and search the premises of the licensee during business hours without a warrant.

Section 9. Restrictions on Purchase and Consumption.

9-1. No minor shall misrepresent his or her age for the purpose of obtaining liquor.

9-2. No person shall induce a minor to purchase or procure liquor.

9-3. No person shall mix or prepare liquor for consumption in any public place or place of business not licensed to sell liquor "on sale" and no person shall consume liquor in any such place.

9-4. No liquor shall be sold or consumed on a public highway or in an automobile.

Section 10. Evacuation of "On Sale" Establishments.

10-1. All patrons of an "on sale" establishment selling intoxicating liquor or 3.2% malt liquor must vacate the premises within thirty (30) minutes of the 1:00 a.m. termination of sales time. Any patron who remains on the licensed premises beyond that limit, or any licensee or employee who allows a patron to remain on the licensed premises beyond that limit, is in violation of this Ordinance.

10-2. If an "on sale" establishment remains open for the sale of food beyond the thirty-minute evacuation limit, all intoxicating liquor and 3.2% malt liquor must be secured within the thirty minute limit in such a manner as to prevent consumption. Any patron who consumes intoxicating liquor or 3.2% malt liquor on the licensed premises, or any licensee or employee who allows such consumption or allows intoxicating liquor or 3.2% malt liquor to remain on the licensed premises beyond the thirty minute limit is in violation of this Ordinance.

Section 11. "On Sale" Hours. No intoxicating or 3.2% malt liquor shall be furnished to anyone, including employees, between the hours of 1:00 A.M. and 8:00 A.M. Monday through Saturday, and before 10:00 A.M. on Sundays.

Section 12. "Off Sale" License Restrictions. In addition to the other requirements of State law and this Ordinance, the following regulations are applicable to "off sale" intoxicating liquor licenses:

12-1. Number of Licenses. The number of licenses which may be issued is three.

12-2. Hours of Operation. An "off sale" establishment may be open for business from 8:00 a.m. to 10:00 p.m. Monday through Saturday.

12-3. Use of License. If the license is not used within one year, the license shall automatically terminate.

12-4. Size of Premises. A licensed premises shall have at least 1,600 square feet of sales floor space including sales coolers, and excluding walk-in storage coolers.

Section 13. Prohibition of Certain Conduct on Licensed Premises. Certain acts or conduct on any premises licensed by this Ordinance or licensed pursuant to Minnesota Statutes, Chapter 340A, is deemed contrary to public welfare and is prohibited, and no license issued pursuant to this Ordinance or licensed pursuant to Minnesota Statutes, Chapter 340A may be held or maintained where such acts or conduct is permitted. The prohibited acts or conduct referred to are:

13-1. The employing or use of any person in the sale or service of beverages in or upon the licensed premises where such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola, or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

13-2. The employing or use of the services of any host or hostess while such host or hostess is unclothed or in such attire, costume or clothing as described in Section 13.1.

13-3. The encouraging or permitting of any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any person.

13-4. The permitting of any employee or person to wear or use any device or covering exposed to view which simulates the breast, genitals, anus, pubic hair or any portion thereof.

13-5. The permitting of any person to perform acts of or acts which simulate:

13-5(a). With or upon another person, sexual intercourse, sodomy, oral copulation, flagellation, or any sexual acts which are prohibited by law;

13-5(b). Masturbation or bestiality;

13-5(c). With or upon another person the touching, caressing or fondling of the buttocks, anus, genitals or female breast; or

13-5(d). The displaying of the pubic hair, anus, vulva, genitals or female breasts below the top of the areola.

13-6. The permitting of any person to use artificial devices or inanimate objects to depict any of the prohibited activities described herein.

13-7. The permitting of any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.

13-8. The permitting or showing of film, still pictures, electronic reproductions, or other reproductions depicting:

13-8.1(a). Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;

13-8.2(b). Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals;

13-8.2(c). Scenes wherein a person displays the vulva, the anus, or the genitals; or

13-8.2(d). Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the activities described in this section.

Section 14. Violations, Administrative Penalty. The Town Board may suspend or revoke any liquor license for violation of any provision or condition of this ordinance or any state law regulating the sale of intoxicating liquor and shall revoke such license if the licensee willfully violates any provision of Minnesota Statutes, Chapter 340A.

14-1. Procedures. The following procedures shall be implemented regarding alleged violations of this Ordinance, should the Town elect to proceed with an administrative violation:

14-1.1. Notification of Violation. Upon discovery of an alleged violation, the alleged violator shall be issued, either personally or by mail, a notice that sets forth the alleged violation and which shall inform the alleged violator of their right to be heard on the accusation.

14-1.2. Hearing. If a Person accused of violating this Ordinance so requests, a hearing shall be scheduled before the Town Board, the time and place of which shall be published and provided to the alleged violator. The Board shall receive evidence of the violation and evidence provided by the alleged violator by testimony, in written form, or both. The hearing shall be tape-recorded.

14-1.3. Findings. If the Town Board finds that a violation of this Ordinance did occur, that decision, along with the Board's reasons for finding a violation and the penalty to be imposed, shall be recorded in writing, a copy of which shall be provided to the accused violator. If the Board finds that no violation has occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

14-1.4. Appeals. Any person aggrieved by the final Findings of the Town Board under this Section may seek judicial review by petition to the Court of Appeals in accordance with Minn. Stat. § 14.63 to § 14.68.

14-1.5. Misdemeanor Prosecution. Nothing in this Ordinance shall prohibit the Town from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance. If the Town elects to seek misdemeanor prosecution, no administrative penalty shall be imposed against the individual charged with a misdemeanor.

14-1.6. Continued Violation. Each violation and every day in which a violation occurs or continues to occur shall constitute a separate violation.

14-2. Civil Penalty. On a finding by the Town Board that a licensee has failed to comply with an applicable statute, rule or ordinance relating to alcoholic beverages, the Town Board may revoke the license, suspend the license for up to 60 days, impose a civil penalty of up to \$2,000.00 for each violation, or impose any combination of these sanctions.

Section 15. Penalty. Any person violating any provision of this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.00 or imprisonment in the county jail for not more than ninety (90) days or both plus the costs of prosecution in either case.

Section 16. Severability. Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part hereof, other than the part held to be invalid.

Section 17. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Town Board of the Town of White Bear, this 1st day of August, 2011.

APPROVED:

BILL MAMPLE, Chair

ATTEST:

WILLIAM F. SHORT, Clerk-Treasurer

Board of Supervisors:
WILLIAM R. MAMPLE, Chair
ROBERT J. KERMES, Supervisor
ED M. PRUDHON, Supervisor

Synopsis published in the White Bear Press August 10, 2011.

Historical Notes:

2016

Sections 2-1, 2-2, 2-2.1, 2-2.1(a), 2-3, 2-3.1, 2-3.1(a), 2-3.2, 2-4, 2-4.1 passed August 3, 2016, and effective August 10, 2016 by Kermes (Chair), Prudhon, Ruzek; Short (Clerk-Treasurer).

2016

Sections 2-2, 2-3, and 2-4 passed May 2, 2016, and effective May 11, 2016 by Kermes (Chair), Prudhon, Ruzek; Short (Clerk-Treasurer)

2011

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,, 13, 14, 15, 16, and 17 passed August 1, 2011, and effective August 10, 2016 by Mample (Chair), Kermes and Prudhon; Short (Clerk-Treasurer)

2002

Section 10 passed April 15, 2002, and effective April 24, 2002 by Weisenburger (Chair), Sand and Mample; Short (Clerk-Treasurer).

2000

Sections 5 & 6 passed February 14, 2000, and effective February 23, 2000 by Weisenburger (Chair), Sand and Ford; Short (Clerk-Treasurer).

1995

Section 9 passed March 6, 1995, and effective March 15, 1995 by Weisenburger (Chair), Sand and Ford; Short (Clerk-Treasurer).

1994

Sections 1, 2, 4, 6, 9, & 10 passed December 19, 1994 and effective January 25, 1995 by Weisenburger (Chair), Sand and Ford; Short (Clerk-Treasurer).

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, & 18 passed May 16, 1994 and effective June 1, 1994 by Weisenburger (Chair); Sand and Ford; Short (Clerk-Treasurer).

1991

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 & 21 passed January 7, 1991 and effective January 23, 1991 by Weisenburger (Chair); Sand and Ford; Short (Clerk-Treasurer).

1970

Ordinance, Title and Section 1, 2, 3, 4, 5 & 6 originally passed December 14, 1970 and effective December 23, 1970 by Rooney (Chairman), Perron and King; Rolph (Clerk-Treasurer).