

ORDINANCE # 137

**LIQUOR ORDINANCE
AN ORDINANCE RELATING TO INTOXICATING LIQUOR AND
3.2% MALT LIQUOR LICENSING**

Eyota City Ordinance #72, Ordinance #93, and Ordinance #119 are hereby repealed.

THE CITY COUNCIL OF EYOTA, MINNESOTA DOES ORDAIN:

PART A. INTOXICATING LIQUOR LICENSING

SECTION 1. Provisions on State Law Adopted

The provisions of Minnesota Statutes, Chapter 340A, otherwise referred to as the “Liquor Act”, relating to the definitions of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor, to the extent not specifically contradicted by provisions herein, are adopted and 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.

SECTION 2. License Required

Subdivision 1. General Requirements 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 liquor without a license to do so as provided in this ordinance. Liquor licenses shall be of six kinds: “on-sale”, “on-sale brewer taproom”, “off-sale”, “off-sale brewer malt liquor”, “club”, and “special Sunday” licenses.

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 liquor only.

Subdivision 3. On-sale Brewer Taproom Licenses “On-sale” brewer taproom licenses shall be issued to sell malt liquor that has been projected for consumption on the premises in accordance with MN Statutes 340A.301, subd. 6(b).

Subdivision 4. Off-sale Licenses “Off-sale” licenses shall be issued only to exclusive liquor stores and holders of “on-sale” licenses, and shall permit “off-sale” of liquor only.

Subdivision 5. Off-sale Brewer Malt Liquor Licenses “Off-sale” brewer malt liquor licenses shall be issued only to sell malt liquor that has been produced and packaged on the licensed premises in accordance with MN Statutes 340A.301, subd. 6(d).

Subdivision 6. Special Club Licenses Special club licenses shall be issued only to incorporated clubs as defined in Minnesota Statute Section 340A.101, subd. 7, as amended, which have been in existence for ten (10) or more years or to congressionally chartered veterans' organizations, which have been in existence for three (3) years.

Subdivision 7. Special Sunday On-sale Licenses Special "on-sale" licenses for the sale of intoxicating liquor on Sunday shall be issued only to bowling centers and to hotels, restaurants, clubs, and brewer taprooms as defined in Minnesota Statutes 340A.101. All sales at such establishments shall be in accordance with Minnesota Statutes 340A.504, subd. 3.

SECTION 3. Application for License

Subdivision 1. Form Every application for a license to sell liquor shall state the name of the applicant, his/her age, representations as to his/her character, with such references as the Council may require, his/her 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 owner and operator of the business, how long he/she has been in that business at that place, the nature of applicant's interest in the place of business, and such other information as the Council may require. In addition to containing such information, the application shall be in the form prescribed by the Liquor Control Director and 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. Liability Insurance No retail license may be issued, maintained or renewed unless the applicant shall file with the City Clerk, which the City must submit to the commissioner of Public Safety, proof of financial responsibility in such form as meets the minimum requirements under Minnesota Statutes in effect for any period covered by the license applied for. Said requirements are presently contained in Minnesota Statutes Section 340A.409.

Subdivision 3. Approval of Security The security offered under Subd. 2 shall be approved by the City Council and in the case of applicants for "off-sale" licenses, by the State Liquor Control Director. Liability insurance policies shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the City at all times effective security as required in Subd. 2 is a cause for revocation of the license and will result in immediate suspension.

SECTION 4. License Fees

Subdivision 1. Fees The annual fee for a liquor license shall be
\$2,000.00 for an "on-sale" license;
\$100.00 for an "off-sale" license;
\$200.00 for a special club license;
\$200.00 for special Sunday "on-sale" license.

The annual fee for a Sunday 3.2% Malt Liquor "off-sale" license shall be \$200.00
\$2,000 brewer taproom "on-sale" license
\$200 brewer taproom special Sunday "on-sale" license
\$100 brewer "off-sale" license

Subdivision 2. Payment Each application for a license shall be accompanied by total payment of fees. A cashier's check or certified check for payment in full of the license fee is required for payment of fees in the event the total fees exceed the amount of \$1,000.00. If an application for a license is rejected, the Treasurer shall refund the amount paid.

Subdivision 3. Term; Prorated Fee Each license shall be issued for a period of one year except that if the application is made during the license year, a license may be issued for the remainder of the year for a prorated 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 fee shall be made except as authorized by statute.

SECTION 5. Granting of Licenses

Subdivision 1. Investigation and Issuance The City Council shall on initial application for an "on-sale" license or for transfer of an existing license conduct a preliminary background and financial investigation of the applicant. If the City of the Bureau of Criminal Apprehension wants a more comprehensive investigation, the City may contract with the Bureau of Criminal Apprehension for it. Opportunity shall be given to any person to be heard for or against the granting of a license. After the investigation and hearing, the Council shall, in its discretion, grant or refuse the application. No "off-sale" license shall become effective until it, together with the security furnished by the applicant, has been approved by the Liquor Control Director. An investigation fee not to exceed \$500.00 shall be charged an applicant if it is conducted within the state, or the actual cost not to exceed \$10,000.00, if required outside of the state.

Subdivision 2. 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 license is deemed a transfer of the license and a transfer of ten percent (10%) or more of stock without ten (10) days prior written notice to the Council is a ground for revocation of the license.

Subdivision 3. Renewals of Licenses Applications for renewal of an existing license shall be made at least sixty (60) days prior to the date of the expiration of the license, and shall be made in the same or abbreviated form as the City Council may require. An investigation may be required prior to approval.

SECTION 6. Hours and Days of Sale

Subdivision 1. On-sale No sale of intoxicating liquor for consumption on the licensed premises shall be made:

- (a) between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday; or
- (b) before 10:00 a.m. on Sunday.

Subdivision 2. Off-sale No sale of intoxicating liquor may be made by an “off-sale” licensee:

- (a) before 8:00 a.m. on Monday through Saturday;
- (b) after 10:00 p.m. Monday through Saturday;
- (c) on Thanksgiving Day;
- (d) on Christmas Day, December 25; or
- (e) after 8:00 p.m. on Christmas Eve, December 24.

SECTION 7. Prohibition of Re-sale

A retail licensee may not sell alcoholic beverages to any person for the purpose of re-sale or to any person whom the licensee has reason to believe intends to re-sell the alcoholic beverage without written approval of the commissioner.

PART B. 3.2% MALT LIQUOR LICENSING

SECTION 1. Definition of Terms

Subdivision 1. 3.2% Malt Liquor As used in this ordinance, “3.2% malt liquor” means any malt beverage with an alcoholic content of more than one-half of one (.5%) percent by volume and not more than three and two-tenths (3.2%) percent by weight.

SECTION 2. License Required

Subdivision 1. Licenses No person, except wholesalers and manufacturers to the extent authorized by law, shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any 3.2% malt liquor within the City of Eyota without having first received a license as hereinafter provided. A holder of an intoxicating liquor license for that type of sale need not also obtain a 3.2% malt liquor license for the same type of sale, either on or off the premises. Licenses shall be of three kinds: 1) Regular “on-sale”, 2) Temporary “on-sale”, and 3) “Off-sale”.

Subdivision 2. Regular “on-sale” Regular “on-sale” licenses shall be granted only to bona fide clubs, restaurants, drug stores, hotels, and bowling centers where food is prepared and served for consumption on the premises. “On-sale” licenses shall permit the sale of 3.2% malt liquor for consumption on the premises only.

Subdivision 3. Temporary “on-sale” Temporary “on-sale” licenses shall be granted only to bona fide clubs and charitable, religious and non-profit community organizations for the sale of 3.2% malt liquor for consumption on the premises only. If an organization is unincorporated, it must also supply proof of financial responsibility required by Minnesota Statutes, Section 340A.409, as it may be amended to apply to period of license.

Subdivision 4. “Off-sale” “Off-sale” licenses shall permit the sale of 3.2% malt liquor at retail, in the original package for consumption off the premises only.

SECTION 3. License Applications

Subdivision 1. Form Every application for a license to sell 3.2% malt liquor shall be made to the City Clerk on a form supplied by the City and containing such information as the Clerk or the City Council may require. It shall be unlawful to make any false statement in an application. Every application for the issuance or renewal of a license shall include a copy of each summons received by the applicant under Minnesota Statutes, Section 340A.802 during the preceding year.

Subdivision 2. Proof of Financial Responsibility Prior to the issuance of a 3.2% malt liquor license, the applicant shall demonstrate proof of minimum financial responsibility as defined in Minnesota Statutes, Section 340A.409, subd. 1, with reference to liability under the Statutes, Section 340A.801. Such proof shall be filed with the Commissioner of Public Safety, except that if a license involves sales of 3.2% malt liquor of a prospective vendor who is not required by law to file such proof with the Commissioner of Public Safety, such proof shall be filed with the City Clerk. Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minnesota Statutes, Section 340A.409.

Subdivision 3. Approval of Security Liability insurance policies required by this ordinance, but not by State law, shall be approved as to form by the City Attorney. Operation of a business licensed by this ordinance without having on file with the State Insurance Commissioner or the City at all times effective security as required in Subd. 2 is a cause for revocation or suspension of the license.

SECTION 4. License Fees

Subdivision 1. Fees The annual fee for a regular “on-sale” license is \$120.00. The annual fee for an “off-sale” license is \$24.00. The fee for a temporary “on-sale” license is \$5.00 per day.

Subdivision 2. Payment Required Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the required fee for the license. All fees shall be paid into the general fund of the City. Upon rejection of any application for a license, the Treasurer shall refund the amount paid.

Subdivision 3. Expiration: Pro rata Fees Every license except a temporary license shall expire on the last day of December in each year. Each license except a temporary license shall be issued for a period of one year, except that if a portion of the license year has elapsed when the license is granted, the license shall 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. A temporary license shall be issued for a specific period in which a special event to which the sale in incident is being held and such period shall be stated on the license.

SECTION 5. Granting of License

Subdivision 1. Investigation and Hearing The City Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of a

license. After such investigation and hearing, the Council shall grant or refuse the application at its discretion.

Subdivision 2. Transfers Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another place without the approval of the City Council.

SECTION 6. Hours and Days of Sale

Subdivision 1. On-sale No sale of 3.2% malt liquor for consumption on the licensed premises shall be made:

- (a) before 10:00 a.m. on Sunday;
- (b) between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday.

Subdivision 2. Off-sale No sale of intoxicating liquor and 3.2% malt liquor may be made by an "off-sale" licensee:

- (a) before 8:00 a.m. on Monday through Sunday;
- (b) after 10:00 p.m. Monday through Sunday;
- (c) on Thanksgiving Day;
- (d) on Christmas Day, December 25; or
- (e) after 8:00 p.m. on Christmas Eve, December 24.

SECTION 7. Prohibition of Re-sale

A retail licensee may not sell alcoholic beverages to any person for the purpose of re-sale or to any person whom the licensee has reason to believe intends to re-sell the alcoholic beverage without written approval of the commissioner.

PART C. GENERAL REQUIREMENTS AND REGULATION

SECTION 1. Persons ineligible for license

Persons ineligible for license. No license shall be granted to or held by any person who:

- (a) is made ineligible for such a license by state law
- (b) is under twenty-one (21) years of age
- (c) has, within five (5) years prior to the application for such license, been convicted of a felony, or of violating any law of this state or local ordinance relating to the manufacture, sale, distribution, or possession for sale or distribution of intoxicating liquors or 3.2% malt liquor and cannot show competent evidence under Minnesota Statutes, Section 346.03, of sufficient rehabilitation and present fitness to perform the duties of such license
- (d) is not the actual proprietor of the establishment for which the license is issued
- (e) is not a citizen or resident alien

- (f) in the case of “off-sale” intoxicating liquor licenses, anyone who already holds or has an interest in such a license in the City as defined in Minnesota Statute, Section 340A.412, Subdivision 3.

SECTION 2. Places ineligible for license

Subdivision 1. General Prohibition No license shall be issued for any place or any business ineligible for such a license under state law, including any premises where a licensee has been convicted of the violation of this ordinance, or of state liquor or 3.2% malt liquor law, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation.

Subdivision 2. Delinquent Taxes and Charges No license shall be granted for operation on any premises on which taxes, assessments, or other liquidated financial claims of the City are delinquent and unpaid.

Subdivision 3. Commercial Uses No license shall be issued to premises where restricted against commercial use by the City’s Zoning Ordinance.

Subdivision 4. “Off-sale” Licenses in 3.2 Malt Liquor Halls Prohibited No “off-sale” intoxicating liquor license may be issued to a place licensed for the sale of 3.2% malt liquor on the premises unless the place also holds an “on-sale” liquor or combination license.

SECTION 3. 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 this ordinance and of any other applicable ordinance of the City or State law.

Subdivision 2. Licensee’s Responsibility Every licensee is responsible for the conduct of his/her place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises authorized to sell intoxicating liquor or 3.2% malt liquor there is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this ordinance and the law equally with the employee.

Subdivision 3. Sales to Intoxicated Persons No person may sell, give, furnish or in any way procure for another alcoholic beverages for the use of an obviously intoxicated person.

Subdivision 4. Persons Under Age twenty-one (21); Illegal Acts

- (a) Consumption It shall be unlawful for any:
- (1) retail intoxicating liquor or 3.2% malt liquor licensee to permit any person under the age of twenty-one (21) years to consume alcoholic beverages on the licensee premises; or

- (2) person under the age twenty-one (21) years to consume any alcoholic beverages unless in the household of the person's parent or guardian and with the consent of the parent or guardian.
- (b) Purchasing It is unlawful for any person:
 - (1) to sell, barter, furnish or give alcoholic beverages to a person under twenty-one (21) years of age, except that a parent or guardian of the person under the age of twenty-one (21) years of age may give or furnish alcoholic beverages solely for consumption in the household of the parent or guardian.
 - (2) under the age of twenty-one (21) years to purchase or attempt to purchase any alcoholic beverages; or
 - (3) to induce a person under the age of twenty-one (21) years to purchase or procure any alcoholic beverages.
- (c) Possession It is unlawful for a person under the age of twenty-one (21) years to possess any alcoholic beverage with the intent to consume it at a place other than the household of the person's parent or guardian. Possession at a place other than the household of the parent or guardian is prima facia evidence of intent to consume it at a place other than the household of the parent or guardian.
- (d) Entering Licensed Premises It is unlawful for a person under the age of twenty-one (21) to enter an establishment licensed for the sale of alcoholic beverages for the purpose of purchasing or having served or delivered any alcoholic beverage. However, persons having attained the age of eighteen (18) may enter an establishment licensed under this ordinance to perform any work for the establishment, including the serving of alcoholic beverages, consume meals, or attend any social functions that are held in the portion of the establishment where liquor is not sold.
- (e) Misrepresentation of Age It shall be unlawful for a person under the age of twenty-one (21) years to claim to be twenty-one (21) years old or older for the purposes of purchasing alcoholic beverages.
- (f) Proof of Age Proof of age for purchasing or consuming alcoholic beverages may be established only by valid driver's license or Minnesota identification card, or in the case of a foreign national by a valid passport.

Subdivision 5. Employment of Minors No person under the age of eighteen (18) shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2% malt liquor are served or consumed or employed for any tasks involving the serving, dispensing, or handling of liquor or 3.2% malt liquor that is consumed on the premises. Persons who have not yet reached the age of eighteen (18) may only be employed in an "off-sale" liquor establishment as stock clerks, carry outs, and janitors, or any other capacity not involving the direct sale of liquor.

Subdivision 6. Inspections Every licensee shall allow any peace officer or any designated official of the City to enter, inspect, and search the premises of the licensee, during business hours, for any reason related to conditions of said license; and after the allowed hours of sale, in the event the officer or official has reasonable and probable

cause to believe that persons other than the owner or management and janitorial personnel are present in the licensed premises during the hours prohibited by the subsequent subdivision.

Subdivision 7. Display During Prohibited Hours Intoxicating liquor or 3.2% malt liquor served to be consumed on the premises may not be on display or consumed in a licensed establishment after 12:15 a.m. on Monday, not after 1:15 a.m., Tuesday through Sunday. This restriction on consumption and display shall be in addition to any other regulations contained herein.

Subdivision 8. Vacation of Premises No person except the licensee or janitorial or management personnel of said licensee shall be permitted on the licensed premises of an establishment licensed for "on-sale"; of intoxicating liquor or 3.2% malt liquor between the hours of 12:30 a.m. and 8:00 a.m. on any Monday, and between the hours of 1:30 a.m. and 8:00 a.m. on any Tuesday through Sunday. As to the employment status of persons on the premises between the aforementioned hours, the burden shall be upon the licensee to establish that persons on the premises are janitorial or management only.

SECTION 4. Suspension and Revocation

The City council shall either suspend for up to sixty (60) days or revoke any liquor or 3.2% malt liquor license, or impose a civil fine not to exceed \$2,000.00, for each violation upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to alcoholic beverages. Except in cases of failure of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minnesota Statutes, Sections 14.57 to 14.69 of the Administrative Procedure Act.

Lapse of required dram shop insurance or bond, or withdrawal of a required deposit of cash or securities, shall effect an immediate suspension of any license issued pursuant to this ordinance without further action of the City Council. Notice of cancellation, lapse of a current liability policy or bond, or withdrawal of deposited cash or securities 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 bond, or withdrawal of a required deposit, or of suspension or revocation of a license, may request a hearing thereon and if such a request is made in writing to the Clerk, a hearing shall be granted within ten (10) days or such longer period as may be requested. Any suspension under this paragraph shall continue until the City Council determines that the financial responsibility requirements of this ordinance have again been met.

SECTION 5. Penalty

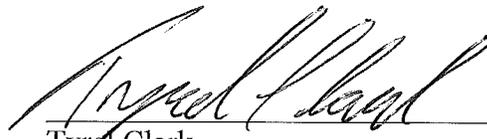
Any person violating any provision of this ordinance is guilty of a misdemeanor.

SECTION 6. Severability

If any provision of this ordinance or the application of any provision to a particular situation is held to be invalid by a court of competent jurisdiction, the remaining portions of this ordinance and the application of the ordinance to any other situation shall not be invalidated.

Effective Date This ordinance shall be effective April 17, 2014; from and after its passage and publication in the Post Bulletin on April 16, 2014 in summary form.

Adopted by the City Council of the City of Eyota this 10th day of April, 2014.



Tyrel Clark
Mayor

ATTEST:



Marlis Knowlton
Clerk/Treasurer