# Bowling Center Exception Staff Report
# Licenses and Consumer Services

Council Member Gary Schiff proposed at Public Safety and Regulatory Services Committee meeting to consider ordinance amendments to Title 14, Chapter 362 of the Minneapolis Code of Ordinances relating to *Liquor and Beer: Liquor Licenses*, requirements of Section 362.395, also to add a definition to Chapter 360: *In General*. These changes would allow for an exception to the 60/40 food requirement for Bowling Alley establishments. The exception would lower the requirement to 50/50.

Minneapolis Licensing, Zoning, Police Licensing, and City Attorney staff have analyzed the request and have developed the following staff report. Included in the staff report is suggested ordinance language if the Council chooses to implement the findings.

## RELATED MINNESOTA STATUTES AND CITY ORDINANCES REQUIREMENTS

**MINNESOTA STATUTE 340A.404 INTOXICATING LIQUOR; ON-SALE LICENSES.**
Subd. 5. **Wine licenses.** (a) A municipality may issue an on-sale wine license with the approval of the commissioner to a restaurant having facilities for seating at least 25 guests at one time. A wine license permits the sale of wine of up to 14 percent alcohol by volume for consumption with the sale of food. A wine license authorizes the sale of wine on all days of the week unless the issuing authority restricts the license's authorization to the sale of wine on all days except Sundays.
(b) The governing body of a municipality may by ordinance authorize a holder of an on-sale wine license issued pursuant to paragraph (a) who is also licensed to sell 3.2 percent malt liquors at on-sale pursuant to section 340A.411, and whose gross receipts are at least 60 percent attributable to the sale of food, to sell intoxicating malt liquors at on-sale without an additional license.
(c) A municipality may issue an on-sale wine license with the approval of the commissioner to a licensed bed and breakfast facility. A license under this paragraph authorizes a bed and breakfast facility to furnish wine only to registered guests of the facility and, if the facility contains a licensed commercial kitchen, also to guests attending private events at the facility.

**Minneapolis Ordinance 360.10. Definitions.**
Whenever used in this title, unless some other meaning is clearly required by the context, the following words and phrases shall mean:
*Banquet facility*. An establishment which is under the control of a single proprietor or manager which has suitable facilities for serving meals on premises where the meal service consists of no less than one entree, complete with vegetable, salad, bread or rolls, and beverage, either catered or prepared on-site; which has facilities for seating not fewer than fifty (50) guests at one time at tables; which is not open to the general public but which is available for rental by individuals or groups for meetings, parties, weddings, or similar occasions; and in which the equipment and premises meet the provisions of all the food and health codes.
*Beer:* Malt liquor containing not more than three and two-tenths (3.2) percent of ethyl alcohol by weight.

*Bona fide club:* An organization for social or business purposes, or for intellectual improvement, or for the promotion of sports, where the serving of beer is incidental to and not the major purpose of the club, which organization has been an established incorporated club authorized to do business in the State of Minnesota for more than one year prior to the granting of any license to sell beer, and which, for said period, has maintained and operated a cafe, dining room or place for serving food or meals for its membership.

*Central Commercial District.* Commencing at a point on the southwesterly bank of the Mississippi River where said riverbank is intersected by the centerline of Third Avenue north, extended; thence southwesterly along the centerline of Third Avenue north to the centerline of Holden Street; thence westerly along the centerline of Holden Street to the centerline of Twelfth Street north; thence southerly and southeasterly along the centerline of Twelfth Street north to the centerline of Hennepin Avenue; thence southwesterly along the centerline of Hennepin Avenue to the centerline of Thirteenth Street south; thence southeasterly along the centerline of Thirteenth Street south to the centerline of Lasalle Avenue; thence southwesterly along the centerline of Lasalle Avenue to the centerline of East Grant Street; thence easterly along the centerline of East Grant Street to the centerline of Portland Avenue; thence northeasterly along the centerline of Portland Avenue to the centerline of Seventh Street south; thence south and southeasterly along the centerline of Seventh Street south to the centerline of Seventh Street south to the centerline of Thirteenth Avenue; thence northeasterly along the centerline of Thirteenth Avenue extended to the southwesterly bank of the Mississippi River; thence northwesterly along said riverbank to the point of beginning; or the East Bank Commercial District described as follows: commencing at a point on the northeasterly bank of the Mississippi River where said riverbank is intersected by the centerline of the Burlington Northern Railway right-of-way where it crosses from Nicollet Island; thence northeasterly along the centerline of the railway right-of-way to the centerline of Fifth Street Northeast; thence southeasterly along Fifth Street Northeast to the centerline of Central Avenue; thence south along the centerline of Central Avenue to the centerline of Second Street southeast; thence easterly along the centerline of Second Street southeast to the centerline of Third Avenue Southeast to the northeasterly bank of the Mississippi River; thence northwesterly along said river bank to the point of beginning.

*Club:* A corporation organized under the laws of the State of Minnesota for civic, fraternal, social or business purposes, or for intellectual improvement or promotion of sports, which has more than fifty (50) members and for more than a year has owned, hired or leased a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, and whose affairs are conducted by a board of directors, executive committee or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents or employees are paid directly or indirectly any compensation by way of profit from the distribution or sale of beverages to the members of the club or to its guests beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the directors or other governing body.

*Exclusive liquor store:* An establishment used exclusively for the sale of liquor, beer, cigars, cigarettes, other forms of tobacco and soft drinks, at retail "off-sale."

*General food store:* Any place of business carrying a stock of food supplies and primarily engaged in selling food and grocery supplies to the public.

*Hotel:* An establishment with resident proprietor or manager, where, for payment, food and lodging are regularly furnished to transients, and which maintains for use of its guests not less than fifty (50) guest rooms, with bedding and other suitable and necessary furnishings in each

room, and which has a main entrance with suitable lobby, desk and office for the registration of guests, on the ground floor, and which employs an adequate staff to provide suitable and usual service, and which maintains under the same management and control as the rest of the establishment and has, as an integral part thereof, a dining room with appropriate facilities for seating not less than thirty (30) guests at one time where the general public is, in consideration of payment, served with meals at tables.
*Intoxicating liquor:* See "liquor."
*Liquor:* Ethyl alcohol, and any distilled, fermented, spirituous, vinous or malt beverage containing in excess of three and two-tenths (3.2) per cent of ethyl alcohol by weight.
*Nonintoxicating malt liquor:* See "beer."
*"Off sale":* Sale of liquor or beer in original packages in drugstores, general food stores and exclusive liquor stores, for consumption off or away from the premises where sold. The package shall contain not less than seven (7) ounces for malt beverages; not less than eight (8) ounces for nonmalt beverages, except that wines with an alcoholic content of less than fourteen (14) percent by volume may also be sold in six and two-fifths (6 2/5) ounce packages; or the metric equivalent of any of the above.
*"On sale":* Sale of liquor or beer by the glass (or by the bottle or can in the case of malt beverages) or by the drink for consumption on the premises where sold, only pursuant to such regulations as the state liquor control commissioner may prescribe.
*Original package:* Any container or receptacle holding liquor or beer which receptacle is sealed shut and has not been opened since being first filled.
*Resident:* A person who maintains his or her principal place of abode in the State of Minnesota and who actually lives therein with the intent that it be permanent.
*Restaurant:* An establishment other than a hotel, under the control of a single proprietor or manager, having appropriate facilities for the serving of meals for not less than fifty (50) guests at one time, and where, in consideration of payment therefor, meals are regularly furnished at tables to the general public, and which employs an adequate staff to provide the usual and suitable service to its guests, and the principal part of which business is the serving of foods.
*Sell:* All barters and manners or means of furnishing liquor or beer, including the selling, exchange, barter, disposition of, or keeping for sale of such liquor or beer. (Code 1960, As Amend., §§ 850.010--850.150; Ord. of 9-12-74, § 1; 77-Or-241, § 1, 11-23-77; 79-Or-206, § 1, 10-26-79; 83-Or-300, § 1, 12-16-83; 90-Or-036, § 1, 1-26-90; 94-Or-136, § 1, 9-30-94)

**Minneapolis Ordinance 362.395. "On sale" licenses in proximity to residentially zoned property.**
(a) After October 14, 1983, "on sale" licenses for new premises, in which the main entrance is within five hundred (500) feet from residentially zoned property, shall be issued only for premises which qualify as a "restaurant" under subsection 362.390(b) and which comply with the following requirements:
(1) The establishment shall maintain, on a monthly basis, gross sales revenue during each fiscal year from the sale of food and beverages not containing alcohol in an amount of not less than sixty (60) per cent of its total gross revenue from the sale of food and beverages.
(2) No such premises shall contain a "bar area" except as permitted herein. A "bar area" shall mean any area not devoted exclusively to full restaurant service to customers seated at tables, in which consumption of alcoholic beverages is a substantial activity, except an area predominantly used as a holding area for customers waiting for restaurant seating. The size and capacity of such

an area must bear a relationship to the size and capacity of the restaurant area which is consistent with its purpose as a waiting area. A waiting area of excessive size shall not be approved.

(b) The business records of the licensee, including federal and state tax returns, shall be available for inspection by duly authorized representatives of the city or of the city council at all reasonable times.

(c) In the event the city disputes the license applicant's statements, the matter shall be submitted to a neutral certified public accountant determined by the city. The certified public accountant shall make a determination based on accepted accounting principles, which shall be binding on both parties. The license applicant shall make any records available to such person as may be necessary to verify the statements. The entire cost of such audit and determination shall be paid by the applicant. Prior to such audit, the applicant shall post a bond or cash in an amount which the city believes reasonably necessary to pay the cost of the audit. (83-Or-301, § 10, 12-16-83; Ord. No. 2005-Or-024, § 3, 4-15-05)

**Best Practices – Food Requirements for Bowling Alleys with On-Sale Wine or Liquor Licenses**

| Benchmark City | Distance Requirements |
|---|---|
| Buffalo, NY<br>Regulated by the New York State Division of Alcohol Control<br>518474-3114 | Beer /Wine license or Liquor license. Required to provide food. Do not have a percentage of food to alcohol sales requirement. |
| Cincinnati, Ohio and Toledo Ohio<br>Regulated by State of Ohio<br>416-446-2000<br>Liquor Control | No food to alcohol sales required for Bowling Alleys with a beer, wine, or liquor license, State does have this requirement for other establishments. |
| Kansas City, MO<br>816-784-9000 | Either: 50/50 Food /Alcohol Sales or<br>A $200,000 minimum in food annually per establishment without any minimum/maximum alcohol sales requirement. |
| Omaha, NE<br>Regulated by NE Liquor Control Commission<br>402-471-2571 | No minimum food to alcohol sales requirement. |
| Pittsburgh, PA<br>Regulated by State of Pennsylvania.<br>717-783-8250 | If you want a liquor license, you must have a minimum of thirty seats for food services and 400 sq feet for liquor, wine and beer license or 300 sq ft for beer only license. No sales percentage requirement. |
| St. Louis, MO<br>314-622 | There are twelve moratorium zones in the 28 wards of the city which would require a 50/50 food/alcohol sales requirement for bowling alleys. Council members established these moratoriums which are not based on any specific criteria.<br><br>If a bowling alley is outside of moratorium, there are no food/alcohol sales requirements unless they have a Sunday license which requires a 50/50 sales percentage and this percentage does not apply if the bowling alley has an entertainment or amusement license. |
| St. Paul, MN<br>651-266-8989<br>0# after transfer | New bowling alley licenses are only eligible for liquor license if they have a kitchen (restaurant license) which needs to meet the 60/40.<br>Existing bowling alleys renewing their liquor license are not required to meet a food/alcohol sales ratio regardless of kitchen facilities or food license. All of these are grandfathered. |
| Tulsa, OK<br>918-596-9601<br>405-9213484 | No minimum food sales with beer, wine or liquor license. |

## INDUSTRY IMPACT

Most of the six bowling centers in Minneapolis do not have a 60/40 food requirement. This proposed change would make the “playing field” more level for those licensees with a full liquor license that have a 60/40 requirement.

## COMMUNITY IMPACT

There are six licensed bowling alleys in Minneapolis with alcohol licenses ranging from 3.2 Beer, to Wine with Strong Beer, to full Liquor. Only two of these have a 60/40 food requirement; Nokomis Lanes and Bryant-Lake Bowl. Nokomis Lanes is required to have 60/40 because of Minnesota statute 340a.404, sub. 5 requiring wine licenses to have a 60/40 split. Bryant-Lake Bowl is required to have 60/40 because of Minneapolis ordinance 362.395 because of its proximity to residentially zoned property. It appears that only one of these bowling alleys would qualify to benefit from this exception; Bryant-Lake Bowl. Skylane Bowling and Nokomis Lanes could qualify if they upgraded to full liquor. However, it appears that they are not interested in upgrading at this time.

It appears that most people who go to bowling alleys go to bowl, drink, and eat a little. It is not similar to a nightclub or bar atmosphere. It seems that having a 60/40 requirement would apply much more to places that are required to operate primarily as restaurants. It appears that communities would be impacted very little by having a 50/50 split for bowling centers.

## STAFFING IMPACT

Allowing this exception could give other licensees with food requirements incentive to investigate ways to have an exception allowed for them.

Our enforcement actions against an establishment that has trouble meeting 60/40 food requirements do not include immediate closing of the business. We take into consideration many factors and help guide the licensee and take progressive enforcement actions. We would do the same for establishments with 50/50 food requirements.

Implementing this change could have an impact on staff because staff will need to evaluate new bowling center liquor licenses that have food requirements for their entertainment. The type of entertainment allowed would need to be determined by Zoning, staff, and also by what fit best with the neighborhood.

## RECOMMENDATIONS

Council may choose to amend 362.395 with the following amendment:

**362.395. "On sale" licenses in proximity to residentially zoned property.** (a) After October 14, 1983, "on sale" licenses for new premises, in which the main entrance is within five hundred

(500) feet from residentially zoned property, shall be issued only for premises which qualify as a "restaurant" under subsection 362.390(b) and which comply with the following requirements:

(1) The establishment shall maintain, on a monthly basis, gross sales revenue during each fiscal year from the sale of food and beverages not containing alcohol in an amount of not less than sixty (60) per cent of its total gross revenue from the sale of food and beverages, <u>except that a bowling center shall maintain such revenue in an amount not less than fifty (50) per cent</u>.

(2) No such premises shall contain a "bar area" except as permitted herein. A "bar area" shall mean any area not devoted exclusively to full restaurant service to customers seated at tables, in which consumption of alcoholic beverages is a substantial activity, except an area predominantly used as a holding area for customers waiting for restaurant seating. The size and capacity of such an area must bear a relationship to the size and capacity of the restaurant area which is consistent with its purpose as a waiting area. A waiting area of excessive size shall not be approved.

(b) The business records of the licensee, including federal and state tax returns, shall be available for inspection by duly authorized representatives of the city or of the city council at all reasonable times.

(c) In the event the city disputes the license applicant's statements, the matter shall be submitted to a neutral certified public accountant determined by the city. The certified public accountant shall make a determination based on accepted accounting principles, which shall be binding on both parties. The license applicant shall make any records available to such person as may be necessary to verify the statements. The entire cost of such audit and determination shall be paid by the applicant. Prior to such audit, the applicant shall post a bond or cash in an amount which the city believes reasonably necessary to pay the cost of the audit.

Council may choose to amend 360.10 Definitions by adding thereto the following definition in alphabetical sequence to read as follows:

<u>*Bowling Center*: An establishment which is under the control of a single proprietor or manager which has no fewer than eight (8) fully functioning bowling lanes.</u>