



Legislation Text

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ORDINANCE AMENDING CHAPTER 8 AND REPEALING CHAPTER 15 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REPEALING DANCING RESTRICTIONS.

CITY PROPOSAL:

Section 1. That Chapter 8, Section 8-25, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-25. ~~Music, dancing and entertainment restrictions.~~

Except as provided in this Section, on sale establishments may permit music, theatrics, floor shows or entertainment upon the licensed premises. Adult entertainment, ~~and late hours entertainment and dancing participated in by the public~~ are prohibited except as authorized pursuant to Section 8-40 and Chapter 5, Article IV of this Code.

Section 2. That Chapter 8, Section 8-40, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-40. ~~Dancing and late hours entertainment licenses for liquor establishments.~~

(a) No person licensed to sell intoxicating liquor or 3.2 percent malt liquor on sale shall allow ~~dancing participated in by the public~~ or late hours entertainment on the licensed premises unless a license has been issued pursuant to this Section;

(b) A dance license, whether an annual, seasonal or a one day license, shall entitle the on sale licensee to have ~~dancing participated in by the public on the licensed premises;~~

(1) Notwithstanding any provision of this Section or Chapter to the contrary, clubs and congressionally chartered veterans organizations that are open only to members and bona fide guests of members may have ~~dancing participated in by members and guests, without securing a dance license;~~

(2) The term of the annual dance license shall be the same as the term of the on sale license. ~~The term of the seasonal license is limited to the months of May through August;~~

(3) The fee for any dance license shall be set in accordance with Section 8-56(d). ~~The fee for the annual license shall be prorated in the same manner as on sale licenses;~~

(4) The procedures and standards applicable to the issuance of the late hours entertainment license, where applicable, ~~shall apply to the issuance of the annual or seasonal dance license;~~

(5) The city clerk is authorized to issue the one day dance license. ~~The following procedures and standards are applicable to the issuance of the one day dance license:~~

(A) No license shall be issued unless an application for the license is received by the city clerk at least 60 days prior to the event date;

(B) The license is subject to approval by the police and fire departments. Such approval is subject to, but not limited to, the following standards:

1. No license shall be issued in an area or under circumstances that would result in the disturbance of adjoining properties or the surrounding neighborhood;

2. The police and fire departments shall apply the same considerations applicable to the late hours entertainment license;

3. The license may contain conditions and limitations concerning security for the event and the hours during which the dancing event may be held; however, the license shall not authorize dancing after the time authorized for the sale of intoxicating liquor or 3.2 percent malt liquor;

4. The city clerk shall notify the licensee in writing of the action taken on the

application by any reasonable means, including but not limited to, the United States mail or electronic transmission. The licensee may appeal the action of the city clerk to the alcohol, gambling and tobacco commission. The appeal is subject to the following procedures:

(i) The appeal shall be made in writing within seven days after written notice of the action is issued, on a form provided by the city clerk, and filed with the city clerk. The appeal shall be accompanied by an appeal fee which shall be established by the city council pursuant to Section 31-6(a). The issues on appeal shall be limited to the issues presented in the written appeal;

(ii) In deciding the appeal the commission shall apply the same criteria required of the city clerk;

(iii) The decision of the commission shall be the final decision of the city subject to appeal to the Minnesota Court of Appeals pursuant to Minnesota Statutes Section 606.01;

(iv) The failure of the applicant to submit an application sufficiently in advance of the proposed dance event to allow for an appeal is the sole responsibility of the applicant;

(eb) Notwithstanding any provision of this Section or Chapter to the contrary, late hours entertainment licenses may be issued to establishments holding on sale intoxicating liquor licenses or 3.2 malt liquor beverages if they meet the criteria set forth in Section 8-40(e)(c). The late hours entertainment license shall allow the establishment to have music and entertainment, including dancing by patrons, after the hours when sales of intoxicating liquor or 3.2 percent malt liquor are required to cease. The fee for such license shall be set in accordance with Section 8-56(d);

(dc) The annual and seasonal dance license and the late hours entertainment license shall be subject to the following procedures and standards:

(1) Every application shall be investigated by the police and fire departments and alcohol, gambling and tobacco commission;

(2) No license shall be issued in an area or under circumstances where the dancing or late hours entertainment would disturb adjoining properties or the surrounding neighborhood;

(3) In their investigation and recommendations, the police and fire departments and the alcohol, gambling and tobacco commission shall consider, without limitation:

(A) The proximity of the establishment to residences and residentially zoned property;

(B) The character of the neighborhood surrounding the establishment;

(C) Parking facilities at the establishment;

(D) The acoustic properties of the building housing the establishment;

(E) The past record of the establishment; and

(F) Any past complaints from adjoining property owners;

(4) The license may contain conditions and limitations concerning types of entertainment and hours of entertainment or dancing;

(5) No entertainment or dancing shall be allowed after 3:00 a.m.;

(6) All establishments allowing late hours dancing must have a dancing license as required by paragraphs (a) and (d) of this Section;

(7) During all times when dancing or late hours entertainment is conducted on the licensed premise the licensee shall provide adequate security personnel. The chief of police shall approve the security personnel plan. The licensee is responsible for all fees or expenses of such security personnel.

Section 3. That Chapter 8, Section 8-52, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-52. Terms and conditions of on sale licenses.

On sale intoxicating and 3.2 percent malt liquor licenses shall be issued subject to the following terms and conditions:

(a) No on sale license shall be granted to any applicant or for any premises if, in the judgment of the city council, the operations of the proposed establishment are likely to become a public nuisance or detrimental to public morals;

~~(b) No dancing shall be conducted on the licensed premises unless the establishment has been granted a license under the provisions of Section 8-40.~~

Section 4. That Chapter 8, Section 8-62, of the Duluth City Code, 1959, as amended, entitled Dance and Dance Halls, is hereby repealed in its entirety.

Sec. 8-62. Issuance--generally.

(a) Except as provided in this Section, the city clerk shall not issue any license under this Division unless directed to do so by resolution duly adopted by the city council. Where a license is made available by revocation, abandonment, surrender, cancellation or for some other cause, such available license may, upon application to the city council, be reissued by the city council as determined by a resolution adopted for such purpose. Any resolution granting a license may be conditioned on final departmental approvals, payment of taxes or any other condition the council deems appropriate. The city clerk shall not issue any license until all such conditions are met;

(b) Except as provided in this Section, the alcohol, gambling and tobacco commission shall cause an investigation to be made of all of the representations set forth in the applications. Opportunity shall be given at a meeting of the alcohol, gambling and tobacco commission to any person to be heard on an application. After such investigation, the city council shall grant or refuse such license in its discretion; provided, that no off sale intoxicating liquor license shall become effective until it, together with any required proof of insurance, has the approval of the liquor control commissioner of the state;

(c) The licensed premises shall have the license posted in a conspicuous place;

~~(d) The city clerk may issue a one day or seasonal dance license to any on sale licensee as provided in Section 8-40(d).~~

Section 5. That Chapter 15, of the Duluth City Code, 1959, as amended, entitled Dance and Dance Halls, is hereby repealed in its entirety.

STATEMENT OF PURPOSE: Ordinances regulating dancing and dance halls were initially introduced in 1925 and derived from prohibition era concerns around the regulation of alcohol and immorality. State law previously contained similar requirements for the regulation of dancing; however, this type of regulation was repealed at the state level in 1989. The city currently has no licensed dance halls, and the regulation of dancing is difficult to monitor and enforce. The difficulty in enforcement creates inequity in the licensing system, with some licensees obtaining the license while others do not, creating an inequitable financial burden. The city continues to regulate late-hours operation (2 a.m. licenses) and any late-hours entertainment public safety concerns will continue to be addressed through the remaining code provisions.