

CHAPTER 120

LIQUOR LICENSES AND WINE AND BEER PERMITS

120.01 License or Permit Required
120.02 General Prohibition
120.03 Investigation
120.04 Action by Council
120.05 Prohibited Sales and Acts

120.06 Location
120.07 Regulations Covering Business
120.08 Teen Nights
120.09 Nudity Prohibited

120.01 LICENSE OR PERMIT REQUIRED. No person shall manufacture for sale, import, sell, or offer or keep for sale, alcoholic liquor, wine, or beer without first securing a liquor control license, wine permit or beer permit in accordance with the provisions of Chapter 123 of the Code of Iowa.

(Code of Iowa, Sec. 123.22, 123.122 & 123.171)

120.02 GENERAL PROHIBITION. It is unlawful to manufacture for sale, sell, offer or keep for sale, possess or transport alcoholic liquor, wine or beer except upon the terms, conditions, limitations and restrictions enumerated in Chapter 123 of the Code of Iowa, and a license or permit may be suspended or revoked or a civil penalty may be imposed for a violation thereof.

(Code of Iowa, Sec. 123.2, 123.39 & 123.50)

120.03 INVESTIGATION. Upon receipt of an application for a liquor license, wine or beer permit, the Clerk shall forward the application to the Marion Police Chief and Department of Criminal Investigation, who shall conduct a background investigation and submit a written report as to the truth of the facts averred in the application and qualifications to hold a license or permit. The Marion Fire Department and Marion Building Department shall also inspect the premises to determine if they conform to the requirements of the City Code. The Council shall not approve an application for a license or permit for any premises which does not conform to the applicable law and ordinances, resolutions and regulations of the City. The City Clerk shall not issue a license or permit under this chapter until the applicant has paid all fees required by the State of Iowa.

The applicant shall not be issued a license or permit under this chapter unless the applicant meets all of the requirements of state law including Section 123.40 of the Iowa Code, is of good moral character and has not been convicted within the past five years of a felony unless citizenship rights have been restored by the

Governor or of a crime involving sexual abuse, or a violation of Iowa Code 321J.2 (OWI) within the three years preceding the date of application.

(Ord. 06-08 – May 06 Supp.)

(Code of Iowa, Sec. 123.30)

120.04 ACTION BY COUNCIL. The Council shall either approve or disapprove the issuance of the liquor control license or retail wine or beer permit and shall endorse its approval or disapproval on the application, and thereafter the application, necessary fee and bond, if required, shall be forwarded to the Alcoholic Beverages Division of the State Department of Commerce for such further action as is provided by law.

(Code of Iowa, Sec. 123.32 [2])

120.05 PROHIBITED SALES AND ACTS. A person or club holding a liquor license or retail wine or beer permit and the person's or club's agents or employees shall not do any of the following:

1. Sell, dispense or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor, wine or beer.

(Code of Iowa, Sec. 123.49 [1])

2. Sell or dispense any alcoholic beverage, wine or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two o'clock (2:00) a.m. and six o'clock (6:00) a.m. on a weekday, and between the hours of two o'clock (2:00) a.m. on Sunday and six o'clock (6:00) a.m. on the following Monday; however, a holder of a license or permit granted the privilege of selling alcoholic liquor, beer or wine on Sunday may sell or dispense alcoholic liquor, beer or wine between the hours of eight o'clock (8:00) a.m. on Sunday and two o'clock (2:00) a.m. of the following Monday, and further provided that a holder of any class of liquor control license or the holder of a class "B" beer permit may sell or dispense alcoholic liquor, wine or beer for consumption on the premises between the hours of eight o'clock (8:00) a.m. on Sunday and two o'clock (2:00) a.m. on Monday when that Monday is New Year's Day and beer for consumption off the premises between the hours of eight o'clock (8:00) a.m. on Sunday and two o'clock (2:00) a.m. on the following Monday when that Sunday is the day before New Year's Day.

(Code of Iowa, Sec. 123.49 [2b and 2k] & 123.150)

3. Sell alcoholic beverages, wine or beer to any person on credit, except with bona fide credit card. This provision does not apply to sales

by a club to its members nor to sales by a hotel or motel to bona fide registered guests.

(Code of Iowa, Sec. 123.49 [2c])

4. Employ a person under eighteen (18) years of age in the sale or serving of alcoholic liquor, wine or beer for consumption on the premises where sold.

(Code of Iowa, Sec. 123.49 [2f])

5. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine or any other beverage in or about the permittee's place of business.

(Code of Iowa, Sec. 123.49 [2i])

6. Knowingly permit any gambling, except in accordance with Iowa law, or knowingly permit any solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49 [2a])

7. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49 [2j])

8. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the Alcoholic Beverages Division of the State Department of Commerce and except mixed drinks or cocktails mixed on the premises for immediate consumption.

(Code of Iowa, Sec. 123.49 [2d])

9. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been reused or adulterated.

(Code of Iowa, Sec. 123.49 [2e])

10. Allow any person other than the licensee, permittee or employees of the licensee or permittee to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as allowed by State law.

(Code of Iowa, Sec. 123.49 [2g])

11. Permit or allow any person under legal age as set by State law to enter the place of business of any permit holder or license holder in which the business of selling beer or alcoholic liquor and beer constitutes more than fifty percent (50%) of the annual gross business transacted therein, unless actually engaged in a trade, occupation or business other than the serving of alcoholic liquor or beer, which requires said person's presence within or upon said premises and the person is at least 18 years of age or unless authorized by a special permit endorsement reviewed

by the Chief of Police and approved by Council and conducted in accordance with the terms and conditions established therein.

(Ord. 18-04 – May 18 Supp.)

12. Permit or allow any person under legal age as set by State law to enter the place of business of any permit holder or license holder in which beer or alcoholic liquor is consumed on the premises except as provided below. Licensees in a business where selling beer or alcoholic liquor and beer for on-premises consumption constitutes less than fifty percent (50%) of the gross business may:

A. Allow persons under legal age on premises from opening until ten o'clock (10:00) p.m.

B. Allow persons under legal age on premises after ten o'clock (10:00) p.m. by special permit endorsement.

The Council shall, in its discretion, determine endorsements at the time of application by reviewing the nature of the business transacted from ten o'clock (10:00) p.m. until closing.

13. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

(Ord. 06-22 – Nov. 06 Supp.)

14. Any businesses desiring to establish that the selling of beer or alcoholic liquor and beer for on-premises consumption constitutes less than fifty percent (50%) of the annual gross business shall submit its business financial records for the prior year to the Chief of Police. The Chief of Police may waive this requirement for a new business when the Chief of Police is satisfied, due to the nature of the new business, that it will meet the fifty percent requirement. As a condition of such a waiver, the Chief of Police may require that the business submit its business financial records after the completion of its first year of operation.

(Ord. 07-29 – Nov. 07 Supp.)

15. Permit or allow any boxing, wrestling, mixed martial arts fighting, extreme fighting, ultimate fighting, shoot fighting matches or similar contests, events or exhibitions to occur on the premises covered by the license or permit. This prohibition does not apply to professional matches or contests licensed by the Labor Commissioner under Chapter 90A of the Code of Iowa.

(Ord. 07-34 – Feb. 08 Supp.)

16. Allow any person to remain or be on premises after the time established in subsection 2 of this section for the termination of the sale or dispensing of any alcoholic beverage, wine or beer. This subsection shall not apply to the owner or any employee of the establishment actually engaged in cleaning or post closing down activities of the establishment.

(Ord. 08-03 – May 08 Supp.)

120.06 LOCATION.

1. Definitions.
 - A. "School" means any state accredited public or private institution where formal education is provided by licensed instructors to any children Pre-Kindergarten through 12th grade; this excludes licensed childcare centers, registered or non-registered child development homes or businesses providing general childcare services as an accessory use.
 - B. "Religious institution" means a building where people regularly assemble for religious worship and ceremonies and is maintained and controlled by a religious body. This includes: church, synagogue, temple, mosque, or other structure used by congregations to worship. A school or religious building which is used for administrative or office purposes only shall not be included.
2. Location. The location of a building wherein there is sale of alcoholic liquor, wine, or beer for consumption on the premises shall be conducted in a properly zoned district under the City's Zoning Ordinance, Except as follows:
 - A. Nonprofit corporations which make application and are approved for a five-day liquor control license for special events.

In no case shall any building used for the sale of beer or liquor for consumption on the premises be within 200 feet of a building primarily used as a religious institution or school, except:

- A. Permits in force on the effective date of the ordinance, or renewals thereof.
- B. Permits in force prior to the establishment or relocation of any school within the 200 foot limitation.
- C. Businesses located within the Central Business District Commercial Zone (C2) shall be limited by schools; not religious institutions.
- D. Businesses desiring to establish that the selling of alcoholic beverages for on-premises consumption constitutes less than fifty percent (50%) of the annual gross business revenue.
- E. Nonprofit corporations which make application for a five-day liquor control license, where the sale of alcoholic beverages is done on a temporary basis for special events.

(Ord. 18-05 – May 18 Supp.)

120.07 REGULATIONS COVERING BUSINESS. The following provisions respecting operation of the establishment shall be complied with by every permittee where alcoholic liquor, wine or beer is consumed on the premises.

1. Lighting. The place of business shall comply with all administrative regulations issued by the Alcoholic Beverages Commission.

2. View of Premises. The place of business shall not at any time have curtains, screens, paintings or other obstructions on the doors or windows so as to prevent a full view of the interior from the street.
3. Seating Facilities. No alcoholic liquor, wine or beer shall be sold for consumption on the premises unless the place where such service is made is equipped with tables and seats sufficient to accommodate not less than 25 persons at one time.
4. Booths. No booths shall be permitted or used unless they are entirely open at one side with an unobstructed view therein from the rest of the room.
5. Food Service. No beer shall be sold for consumption on the premises unless food is served and consumed therewith.
6. Dancing. No dancing shall be permitted unless the permittee has first secured a dance hall license under the provisions of this Code of Ordinances.
7. Smoking Receptacles. The place of business shall provide receptacles for extinguishing and disposing of smoking materials at each entrance and maintain the grounds and walk ways free from discarded smoking materials.

(Ord. 11-05 – May 11 Supp.)

120.08 TEEN NIGHTS. Licensed establishments may apply to the Police Chief for a non-transferable permit to hold teen night events. The permit shall not constitute property or confer any property rights and is subject to revocation at any time the City determines revocation to be in the public interest. Permits will be issued if the licensee establishes to the satisfaction of the Police Chief that:

1. The business of the sale of beer or liquor constitutes less than fifty percent (50%) of the gross business transacted therein except licensees exempt from taxation under Section 501(c) of the Internal Revenue Code.
2. No beer or liquor will be sold or dispensed anywhere on the licensed premises during a teen night event except at private clubs where the sales are separated from the teen night event by locked doors which the Police Chief deems adequate to prevent problems.
3. All beer and liquor and gambling equipment and materials will be adequately secured from access by minors.
4. Attendees shall not be permitted to smoke and all tobacco products shall be made inaccessible to minors. Attendees shall not be under the influence of or possess alcoholic liquor or beer or any controlled substance. Attendees shall not possess any weapon of any kind.
5. Adequate adult supervision, including security personnel/off duty police, as determined by the Police Chief, will be present during the teen night event. Persons under the age of 13 years and over the age of 20 years will not be admitted except that parents and guardians shall be admitted without charge to observe the event.

6. The teen night event will cease operations no later than eleven-thirty o'clock (11:30) p.m. Attendees shall not be allowed to re-enter the premises after once leaving and shall not be allowed to congregate on the grounds of the licensed premises.
7. Police officers shall be allowed upon the premises at any time during a teen event and may order the event terminated at any time they deem it to be in the public interest.
8. The applicant will abide by all applicable rules and regulations adopted by the Police Chief pursuant to this section.
9. The applicant will meet such other conditions that are deemed reasonable and necessary by the Police Chief due to the unique nature of a particular proposed teen night event.

As used in this section a "teen night event" means any event which is intended by the licensee to be attended primarily by minors. The Police Chief is hereby authorized to adopt additional rules and regulations governing the operation of teen nights at licensed establishments and the conditions precedent to the issuance of a permit which the Chief deems necessary for the exercise of the powers and duties granted by this section. Applicants may appeal the denial of a permit by the Police Chief to the Council by filing a written request for Council review with the City Clerk within ten (10) days of the denial by the Police Chief. Failure to abide by a condition for the issuance of a teen night event permit as set forth in this section shall be deemed to be a violation of this Code of Ordinances and shall be punished in the manner provided in Section 1.06 of this Code of Ordinances.

120.09 NUDITY PROHIBITED. It is unlawful for any owner, manager, officer, agent, employee or person in charge of any establishment within the City licensed to sell beer, wine or liquor, for on-site consumption, to knowingly exhibit, suffer, allow, permit, engage in, participate in or be connected with any show, performance, or other presentation upon the licensed premises, which in whole or in part, depicts nudity or sexual conduct or any simulation thereof or to show or exhibit any motion picture, digital movie, or slides which in whole or in part, depict nudity or sexual conduct or any simulation thereof. Any movie rated "R" or lower by the Motion Picture Association of America is deemed not to be in violation of this section. Movies released before ratings by the Motion Picture Association of America will be deemed not to be in violation of this section until the owner, manager, officer, agent, employee or person in charge of any establishment within the City licensed to sell beer, wine or liquor, for on-site consumption is notified in writing by the City to the contrary. This section does not apply to reading or printed materials brought onto the licensed premises by a patron for his/her own reading. As used in this section, "nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully

opaque covering of any portion thereof below the top of the darkened area surrounding the nipple or the depiction of covered male genitals in a discernibly turgid state.