



Lawful Gambling

255.7

December 2009

145 UNIVERSITY AVE. WEST
ST. PAUL, MN 55103-2044

PHONE: (651) 281-1200
TOLL FREE: (800) 925-1122
FAX: (651) 281-1299
WEB: WWW.LMC.ORG

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I. Introduction

Minn. Stat. §§ 609.75-.763.
25 U.S.C. 2701 et seq; Minn.
Stat. § 3.9221.
Minn. Stat. ch. 349A
Minn. Stat. ch. 240
Minn. Stat. ch. 349

While Minnesota law generally criminalizes gambling within the state, there are exceptions. Indian gaming may be conducted pursuant to a tribal-state compact. State law allows the making of private social bets and permits certain types of regulated gambling. Permitted gambling includes the state lottery, pari-mutuel betting (horse racing), card club operations, and lawful gambling. These are the only types of gambling that may be legally conducted in Minnesota.

Minn. Stat. § 349.12, subd. 24.

This memo specifically discusses lawful gambling. Lawful gambling is the “operation, conduct or sale of bingo, raffles, paddlewheels, tipboards, and pull-tabs.” It is the only type of gambling subject to municipal regulation.

II. Who may conduct lawful gambling?

Minn. Stat. § 349.12, subd. 28
Minn. R. 7861.0210, subp. 39.

State law only authorizes fraternal, religious, veterans’ or other non-profit organizations to conduct lawful gambling. For the purpose of conducting lawful gambling, “other” non-profit organizations:

- Have a current letter of exemption from the Internal Revenue Service recognizing the organization as a non-profit organization exempt from payment of income taxes.
- Are incorporated as nonprofit corporations and registered with the secretary of state under Minnesota law.
- Are affiliates, subordinates, or chapters of a statewide parent organization that qualify as nonprofits.

Minn. Stat. ch. 317A.

Minn. R. 7861.0220.

Minn. Stat. § 349.16, subd. 2

An organization may not conduct lawful gambling without first obtaining a license from the state of Minnesota through the Gambling Control Board (the Board). To qualify, an organization must have at least 15 active members at the time of its initial license application and thereafter have at least 13 members eligible to vote on gambling matters; have been in existence for the most recent three years preceding application; and identify a qualified gambling manager. In addition, the Board will not license organizations that are in existence solely for the purpose of conducting gambling. Qualified organizations include American Legions, Veterans of Foreign Wars, Moose Lodges, local athletic associations, and churches.

Minn. Stat. § 424A.001, subd.
4.
See LMCIT risk management
memo, *Raise Funds, Not Red
Flags*(<http://www.lmc.org/media/document/1/raisefundsnotredflags.pdf>).

Neither cities nor any city departments are authorized to conduct gambling. Therefore, a city fire department, for example, may not conduct lawful gambling. However, a fire relief association may conduct lawful gambling because it is a separately incorporated non-profit organization within the meaning of the law.

III. Lawful gambling expenditures

Minn. Stat. § 349.15

Organizations conduct lawful gambling to raise money, but are not completely free to spend it as they please. State law allows organizations to spend lawful gambling profits only on allowable expenses or for lawful purposes.

A. Allowable Expenses

Minn. Stat. § 349.12, subd. 3a

Allowable expenses include purchases of goods, services or other items directly related to the conduct of lawful gambling. Advertising expenditures are also allowable expenses, provided the advertisement only publicizes the conduct of lawful gambling by the organization, and lawful gambling profits do not pay for any non-lawful gambling-related content.

Minn. Stat. § 349.15.

In 2009, the Minnesota Legislature significantly amended the criteria used to judge an organization's use of lawful gambling profits. Under previous standards, organizations faced consequences if they exceeded the statutorily prescribed percentage of gross profits on allowable expenses. Under the new formula, organizations obtain a rating from the Board based on a comparison between annual lawful purpose expenditures and available profits for the same period. An organization:

- That expends 50 percent or more of gross profits on lawful purposes will receive a five-star rating.
- That expends more than 40 percent but less than 50 percent of gross profits on lawful purposes will receive a four-star rating.
- That expends more than 30 percent but less than 40 percent of gross profits on lawful purposes will receive a three-star rating.
- That expends more than 20 percent but less than 30 percent of gross profits on lawful purposes will receive a two-star rating.
- That expends less than 20 percent of gross profits on lawful purposes will receive a one-star rating.

Any organization that fails to obtain at least a three-star rating will be placed on probation for one year. If the organization is unable to raise its rating after the probationary term, the Board may either suspend the organization's license or impose a civil penalty.

Minn. Stat. § 349.15.

When determining the appropriate punishment, the Board will consider any "unique factors or extraordinary circumstances" that caused an organization to not meet the minimum rate of profitability, including but not limited to:

- The purchase of capital assets necessary to conduct lawful gambling.
- Construction that impaired access to gambling premises.

- Flooding, tornadoes, or other catastrophes that had a direct impact on the gambling operations.

Minn. Stat. § 349.151, subd. 4;
Minn. Stat. § 349.15.

Notwithstanding limitations on the penalties the Board may normally impose, civil penalties for violating the expense limitation may be, based upon the above formula, up to \$10,000.

B. Lawful purposes

Minn. Stat. § 349.12, subd. 25.

Lawful purposes for which profits from lawful gambling may be expended include:

- Contributions to non-profit or festival organizations.
- Contributions to individuals or families suffering from poverty, homelessness or disability.
- Contributions to a program recognized by the Minnesota Department of Human Services for the education, prevention or treatment of problem gambling.
- Contributions to or expenditures on registered or accredited public or private nonprofit educational institutions.
- Contributions to an individual, public or private nonprofit educational institution registered with or accredited by this state or any other state, or to a scholarship fund of a nonprofit whose primary mission is to award scholarships, for defraying the cost of education to individuals where the funds are awarded through an open and fair selection process.
- Contributions funding activities by an organization or government entity which recognize military service to the United States, the State of Minnesota or a community.
- Contributions for recreational, community, and athletic facilities and activities intended primarily for persons under age 21, provided that such facilities and activities do not discriminate on the basis of gender and the organization complies with Minn. Stat. § 349.154.
- Contributions to the United States, the State of Minnesota or any political subdivision, or any agency or any subdivision thereof other than a direct contribution to a law enforcement or prosecutorial agency.
- Contributions to or expenditures on projects approved by the commissioner of Natural Resources for wildlife management projects that benefit the public at large, grant-in-aid or other trail maintenance and grooming, and supplies and training for safety training and education programs coordinated by the Department of Natural Resources.
- Expenditures for conducting nutritional programs, food shelves, and congregate dining rooms primarily for persons who are age 62 or older or disabled.

Minn. Stat. § 349.154

- Contributions to a community arts organization, or an expenditure to sponsor arts programs in the community, including but not limited to visual, literary, performing, or musical arts.
- Contributions to honor an individual’s humanitarian service as demonstrated through philanthropy or volunteerism to the United States, the State of Minnesota, or a local community.

Minn. Stat. § 349.12, subd. 25.

Minn. Stat. § 471.6151.

Lawful gambling profits may not be used for the purpose of influencing the nomination or election of a candidate for public office, for the purpose of promoting or defeating a ballot question, or for the purpose of influencing the governmental decision-making process. Organizations may not make a contribution to a city with the knowledge that the city intends to use the contribution for a pension or retirement fund, nor may cities use any contributions derived from lawful gambling for the benefit of a pension or retirement fund. Organizations may not make contributions to a 501(c)(3) or other entity with the purpose or effect of noncompliance with lawful purpose restrictions or requirements.

IV. State regulation

Minn. Stat. § 349.151

Minn. R. 7861.

State law creates the Gambling Control Board. The Board has the power to make rules and regulate lawful gambling to ensure it is conducted in the public’s interest. It issues organization licenses, premises permits, and gambling manager licenses. The Board has the authority to suspend or revoke licenses and permits and may impose civil penalties up to \$1,000 for each violation of the state’s gambling laws or rules.

A. Organization licenses

Minn. Stat. § 349.16.

Organizations must be licensed by the Board to conduct most types of lawful gambling.

Minn. Stat. § 349.155.

For forms and information
Contact the [Gambling Control Board](#) at 651-639-4000.

Minn. Stat. § 349.16.

Minn. R. 7861.0220.

An organization desiring a gambling license must obtain an application from the Board. If the application complies with all legal requirements, the Board will grant the license. Licenses issued are now perpetual and are valid unless suspended or revoked by the Board, terminated by the organization, or if the license lapses. A licensed organization must notify the Board within 10 days when any changes in the application information occur. The license, when issued, is not transferable from one organization to another.

Minn. Stat. § 349.16.

A license will be considered lapsed if the organization does any of the following:

- Failed to conduct and report any gambling sales activity within seven months from the date of the last gambling activity.
- Failed to have a gambling manager as required.
- Failed to pay annual license and permit fees.

Minn. Stat. § 349.167.

Minn. Stat. § 349.19.

- Surrenders, withdraws, or otherwise terminates the license, and files a termination plan.

Minn. Stat. § 349.16, subd. 6.

There is an annual fee of \$350 for an organization’s license. Organizations that expect to receive less than \$100,000 in gross annual receipts may request a waiver of the organization license fees.

Minn. Stat. § 349.16,

An organization must also report and pay to the commissioner of Revenue a monthly regulatory fee of 0.1 percent of the monthly gross receipts from lawful gambling conducted each month. Failing to pay the monthly regulatory fees in a timely manner may result in disciplinary action by the Board.

B. Premises permits

Minn. R. 7861.0240.

Minn. Stat. § 349.165.

See Part IV – A- *Organization licenses.*

An organization applying for a gambling license must also apply for a premises permit to conduct lawful gambling at any specific location. The Board will not grant an organization license to an organization that has not applied for at least one premises permit. Because premises permits are location specific, licensed organizations that want to conduct lawful gambling at multiple locations must first obtain a separate premises permit for each place before lawful gambling can occur. Premises permit fees are \$150 per year. The premises permit(s) runs concurrently with the organization’s license and is perpetual unless revoked or suspended by the Board or otherwise terminated by the organization.

Minn. Stat. § 349.165,

Minn. Stat. § 349.213, subd. 2.

See Appendix B -*Sample Resolution Approving Premises Permit.*

The Board may not issue a premises permit unless the organization submits with its application a resolution from the city council approving the permit. The resolution must have been adopted within 90 days of the date of the application for the new permit.

C. Off-site permits

Minn. Stat. § 349.165.

See Part VI E- *Investigation fees.*

There are limited circumstances where a licensed organization may hold lawful gambling events at a location for which it does not hold a premises permit. Subject to local approval, the Board may issue off-site permits in connection with a county fair, the state fair, a church festival, or a civil celebration. Up to four off-site events are allowed each calendar year, and each event is limited to three days. Neither the Board nor the local authority may charge a fee for issuing an off-site permit.

D. Gambling manager licenses

[Minn. R. 7861.0230.](#)

[Minn. Stat. § 349.167.](#)

[Minn. Stat. § 349.167, subd. 4.](#)

The Board will not grant an organization license unless the applying organization has identified a gambling manager who will be licensed by the Board at the time the organization receives its license. All lawful gambling conducted by a licensed organization must be conducted under the supervision of a licensed gambling manager, someone who has passed the Board's gambling manager examination and receives continuing education training at least once during each calendar year. The gambling manager is responsible for ensuring that the organization conducts lawful gambling in compliance with all applicable laws and administrative rules. The gambling manager is also responsible for all receipts derived from lawful gambling.

[Minn. Stat. § 349.167, subd. 2.](#)

Upon the death, disability, or termination of the gambling manager, an organization must do both of the following:

- Contact the Board within one business day and establish a plan to replace the gambling manager.
- Submit a complete application and fee within four business days.

An organization that fails to follow these requirements will have to suspend its gambling operations until a gambling manager's license is received by the Board, and a license has been issued and received by the manager.

[Minn. Stat. § 349.167.](#)

The fee for a gambling manager license is \$100. The license runs concurrent with the organization license unless the gambling manager's license is suspended or revoked by the Board or otherwise terminated by the organization or gambling manager. In addition to the license, the gambling manager must maintain a dishonesty bond in the sum of \$10,000 in favor of the organization, conditioned on the faithful performance of the manager's duties.

E. Bingo hall licenses

A distinct bingo hall license is no longer required in the State of Minnesota.

V. Gambling excluded or exempted from state licensing

The state does not license all types of lawful gambling. State law provides exclusions and exemptions for some lawful gambling events. It is important for cities to know which lawful gambling events are excluded or exempted from state licensing requirements because cities may want to regulate these events through local permits.

A. Excluded gambling

Minn. Stat. § 349.166, subd. 1.

The following types of gambling are excluded from state licensing requirements:

- **Bingo** (with the exception of linked bingo) conducted by an organization in conjunction with a county fair, state fair or a civic celebration for no more than 12 consecutive days. The organization can make no more than four separate applications for activities applied for and approved per calendar year.
- **Bingo** (with the exception of linked bingo) conducted by an organization on four or fewer days in a calendar year.
- **Raffles** conducted by an organization that does not award raffle prizes with a total value in excess of \$1500 in a calendar year.
- **Bingo** conducted within a nursing home or senior citizens housing project, or by a senior citizens organization, if:
 - The prizes for a single bingo game do not exceed \$10.
 - Total prizes awarded at a single bingo occasion do not exceed \$200.
 - No more than two bingo occasions are held by the organization or at the facility each week.
 - Only members of the senior citizen organization, nursing home or housing project are allowed to play.
 - No compensation is paid to any people who conduct the bingo game.
 - A manager is appointed to supervise the bingo.

Minn. Stat. § 349.12, subd. 25a.

“Linked bingo” is a bingo game played at two or more locations where licensed organizations are authorized to conduct bingo, where there is a common prize pool and a common selection of numbers or symbols conducted at one location, and where the results of the selection are transmitted to all participating locations by satellite, telephone or other means by a linked bingo game provider.

Minn. R. 7861.0330.

An organization that conducts the first two types of excluded bingo must register with the Board before conducting a lawful gambling event and must obtain prior approval by the local governing body. Registration with the Board is not required for senior citizen or nursing home bingo, or raffles that award less than \$1,500 in a calendar year.

Minn. Stat. § 349.166

Minn. Stat. § 349.213

Minn. Stat. § 645.48

While the language of the statutes is subject to interpretation, cities would appear to have the authority to require a local permit for organizations that conduct the first two types of excluded bingo and raffles with prizes under \$1,500 in a calendar year (though as previously indicated, these raffles may be conducted without registering with the Board and without prior local approval). However, the law appears to specifically prohibit cities from requiring a local permit to conduct senior citizen or nursing home bingo.

B. Exempted gambling

[Minn. Stat. § 349.166, subd. 2.](#)

Certain lawful gambling events are exempt from the state licensing requirements. Under state law, bingo (except linked bingo games), raffles, paddlewheels, tipboards, and pull-tab operations may be conducted by an organization without a license, if the following conditions are met:

- The organization conducts lawful gambling on five or fewer days in a calendar year.
- The organization does not award more than \$50,000 in prizes for lawful gambling in a calendar year.

[Minn. Stat. § 349.166, subd. 2.](#)

- The organization pays a fee of \$50 and submits a Board-prescribed application in writing not less than 30 days before each lawful gambling occasion (the fee increases to \$100 if application is postmarked or received less than 30 days before the event). The application must include the date and location of the occasion, the types of lawful gambling to be conducted, and the prizes to be awarded.
- The organization notifies the local government unit 30 days before the lawful gambling occasion (60 days before a lawful gambling occasion held in a city of the first class).
- The organization purchases all gambling equipment and supplies from a licensed distributor.
- The organization complies with all of the Board's reporting requirements.

[Minn. R. 7861.0340.](#)

The application submitted to the Board must include local government approval. A currently licensed organization may not obtain an exemption permit, but may once it is no longer licensed to perform lawful gambling.

[Minn. Stat. § 349.213.](#)

See Part VI A *Local permits.*

Cities may require organizations that conduct exempted lawful gambling to obtain local permits. The fee for a local permit may not exceed \$100.

VI. Local regulation

Minn. Stat. § 349.213.

While cities may not require state-licensed lawful gambling organizations to obtain local gambling licenses or permits, state law does provide cities the authority to regulate lawful gambling. Cities may adopt gambling regulations that are more stringent than state law or prohibit lawful gambling altogether. A city could restrict the conduct of lawful gambling to certain hours, or to certain days of the week. A city could prohibit licensed organizations from employing non-members and limit the prizes to be awarded. A more stringent regulation or prohibition must apply equally to all forms of gambling within the jurisdiction, with one exception: paddlewheels. A city may exclusively prohibit the use of paddlewheels within its jurisdiction.

Minn. Stat. § 349.213

Cities are specifically authorized to: (a) require a local permit for the conduct of gambling exempt from state licensing requirements; (b) require organizations to make specific expenditures of up to 10 percent of the net profit from lawful gambling; (c) require organizations to contribute 10 percent of the net profit from lawful gambling to a fund administered by the city; (d) require an organization to expend all or a portion of its expenditures within the cities trade area; (e) charge an investigation fee or impose a gambling tax.

Minn. Stat. § 349.16, subd. 8

A. Local permits

Minn. Stat. § 349.213

See Part V - *Gambling excluded or exempted from state licensing.*

Cities may require a local permit for the conduct of lawful gambling exempt from state licensing requirements. The fee for a local permit may not exceed \$100.

B. Specific expenditures

Minn. Stat. § 349.213.

Cities may require organizations to make specific expenditures of up to 10 percent of net profits derived from lawful gambling, but must be careful when enacting such a regulation. Requiring specific expenditures may violate the U.S. Constitution, particularly when the city designates too specific a cause, and approval of a gambling license or permit is conditional on the organization abiding by the regulation.

U.S. Const. amend. I.

NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163 (1958).

Wooley v. Maynard, 430 U.S. 705, 97 S.Ct. 1428 (1977).

The First Amendment prohibits any level of government from making laws that abridge the freedom of speech or the right of people to peaceably assemble. The Supreme Court has held that the First Amendment implies that people shall have a right to freedom of association. The First Amendment also provides some protections from compelled association (requiring an individual to support ideals or beliefs with which he or she disagrees).

Int'l Ass'n of Machinists v. Street, 367 U.S. 740, 81 S.Ct. 1784 (1961).

Compelling an individual to support an organization or cause that he or she does not agree with is an infringement of that person's First Amendment rights. It is improper for a city to condition the granting of a benefit (approval of a lawful gambling operation) on the recipient's relinquishment of a constitutional right (freedom of association). Therefore, a municipal regulation that places a condition for the approval of a gambling license on the organization contributing to a cause it may not support is subject to challenge on constitutional grounds. Cities should use caution and work with their city attorney before requiring specific expenditures from qualified gambling organizations.

C. City-administered funds

Minn. Stat. § 349.213.

Minn. Stat. § 349.12, subd. 7a.

Minn. Stat. § 349.12, subd. 25(10).

A city may accept donations from a gambling organization, but may not require a donation as a condition of license approval or permit issuance. A city can, by ordinance, require organizations to contribute up to 10 percent per year of their net profits derived from lawful gambling to a fund administered by the city. The city may only disburse the funds for charitable contributions. Therefore, although a city may not require direct payments from a gambling organization to any city department, a city can establish a fund and disburse the proceeds of that fund to a city department for lawful purposes, such as a city park system. No direct contributions or payments of gambling money may be made to a law enforcement or prosecutorial agency.

D. Trade areas

Minn. Stat. § 349.213, subd. 1(g).

A city may, by ordinance, require those organizations conducting lawful gambling within its jurisdiction to expend all or a portion of their expenditures on lawful purposes conducted or located within a city's trade area. The ordinance must define the trade area. A city's trade area must include every city and township contiguous to the defining city. The ordinance must also specify the percentage of expenditures an organization must make within the trade area.

E. Investigation fees

Minn. Stat. § 349.16, subd. 8.

A city may assess an annual investigation fee on organizations applying for state-issued premises permits or are otherwise conducting lawful gambling operations within the jurisdiction. The fee may not exceed:

- \$500 in cities of the first class.
- \$250 in cities of the second class.
- \$100 in all other cities.

Minn. Stat. § 349.213, subd. 3.

Cities that charge an investigation fee may not impose a local gambling tax.

F. Local gambling tax

Minn. Stat. § 297E.02
Minn. Stat. § 349.213.

With certain exceptions, the state generally levies an 8.5 percent tax on lawful gambling. A city may impose a local gambling tax on licensed organizations of up to 3 percent per year of the gross receipts from gambling, less prizes actually paid out. The tax must only raise the revenue necessary to cover the cost of regulating lawful gambling. A city may not use these tax revenues for any other purpose. Thus, if regulating lawful gambling only costs the city an amount equal to 2.5 percent of the gambling revenues, then the city may only impose a tax of 2.5 percent, not the 3-percent maximum.

Form LG500 City or County
Annual Report, Up to 3%
Regulatory Tax.

The city must file an annual report with the Board by March 15 showing the amount of revenue raised by the tax and the use of the tax proceeds. Copies of the required form are available from the Board. All documents pertaining to local site inspections, fines, penalties or other corrective actions must be shared with the Board within 30 days of filing. If a city imposes a gambling tax, it may not assess an investigation fee against lawful gambling organizations.

VII. Gambling in the municipal liquor store

Cities may want to lease space in the municipal liquor store to lawful gambling organizations because of the additional business and revenue gambling draws. However, allowing gambling in the municipal liquor store raises a number of issues that should be resolved before the city allows its property to be used for the conduct of lawful gambling.

A. Authority to lease space

Minn. Stat. § 349.18
Minn. Stat. § 412.221.
*Penn-O-Tex Oil Co. v. City of
Minneapolis*, 207 Minn. 307,
291 N.W. 131 (1940).

State law generally restricts gambling to premises owned or leased by the licensed organization; exceptions are provided for raffles and gaming in conjunction with fairs and other civic celebrations. Cities have the authority to lease city-owned property to private parties when the property is not needed for municipal purposes. Because of the limited space gambling booths typically require (or the limited space needed behind the bar if bartenders sell pull-tabs), a city may lease space in the municipal liquor store to gambling organizations.

B. The lease agreement

Minn. Stat. § 349.18, subd. 1.
Minn. R. 7861.0240.

Leases for space to conduct lawful gambling must be in a form prescribed by the Board. Minnesota Rule 7861.0240 lists the provisions that must be contained in the lease agreement.

C. Rent

Minn. Stat. § 349.18

State law provides limits on the rent that may be charged for a leased premises. Those regulations may be broadly separated into three classifications: booth operations, bar operations, and bingo premises.

1. Booth operations

Minn. Stat. § 349.12, subd. 6a.
Minn. Stat. § 349.18, subd. 1(b)(1)

A booth operation involves the sales of gambling equipment by an employee (or volunteer) of a licensed organization within a separate enclosure, distinct from areas where food and beverages are sold. The maximum rent allowed is:

- In any month where the organization's gross profit at those premises does not exceed \$4,000, up to \$400.
- In any month where the organization's gross profit at those premises exceeds \$4,000, up to \$400 plus not more than 10 percent of the gross profit for that month in excess of \$4,000.
- The maximum total rent allowed per month, for all organizations on the premises combined, may not exceed \$1,750.

2. Bar operations

Minn. Stat. § 349.12, subd. 3b
Minn. Stat. § 349.18, subd. 1(b)(2)

A bar operation involves the sales of gambling equipment within a leased premises by an employee of the lessor from a common area where food and beverages are also sold. The maximum allowed rent is:

- Up to \$200 in any month where the organization's gross profits at those premises do not exceed \$1,000.
- Up to \$200, plus not more than 20 percent of the gross profit, in any month where the organization's gross profits at those premises exceed \$1,000.

Minn. Stat. § 349.18, subd. 1.

Unlike booth operations, there is no longer a maximum total rent amount for all organizations that conduct bar operations at the premises.

3. Bingo rent

Minn. Stat. § 349.18, subd. 1(c)

Rent paid by an organization for leased premises for the conduct of bingo is restricted to either:

- Not more than 10 percent of the monthly gross profit from all lawful gambling activities held during bingo occasions; or
- At a rate based on a cost per square foot for leased space as approved by the director of the Gambling Control Board.

Minn. Stat. § 349.18, subd. 1(c)(2)

No rent may be charged for "bar" or "noon" bingo. The board may also by rule limit the amount of rent payable for a premises leased for bingo.

Minn. Stat. § 349.18, subd. 1(d)

The lease must generally set forth all obligations between the city and the organization. Amounts paid as rent under lawful gambling leases are all-inclusive and unless specifically and separately approved the Board will cover all matters such as electric, heat and cleaning services. The lease will not become effective until approved by the Board. The city should consult the city attorney before agreeing to lease space in a municipal liquor store to a gambling organization.

D. Authority of municipal liquor store bartenders and other city employees and officials to participate in the conduct of gambling

Organizations that conduct lawful gambling may request that city employees sell pull-tabs from behind the bar at a municipal liquor store. This arrangement may benefit both the organization and the municipality. However, whether city employees can lawfully participate in such activity is open to debate.

Minn. Stat. § 340A.601
A.G. Op. 218-R (Sept. 26, 1978)
Minn. Stat. § 349.18.

The case can certainly be made that municipal liquor store employees can sell pull-tabs from behind the bar. State law allows on-sale municipal liquor stores to sell any item that may lawfully be sold at an establishment with an on-sale liquor license. In a 1978 opinion, the attorney general indicated a city may operate a liquor store in the same manner as a private proprietor. Since employees of licensed, private on-sale liquor stores may sell pull-tabs from behind the bar, the argument can be made that city employees are also authorized to sell pull-tabs from behind the bar.

See LMC information memo,
Public Purpose Expenditures.

The League of Minnesota Cities does not recommend allowing city liquor store employees to sell pull-tabs. The city pays these employees and provides for other employment-related costs, such as workers' compensation. If city employees sell pull-tabs, they devote city-paid time to the benefit of a private organization and may be violating the constitutional requirement that all city expenditures be for a public purpose. Cities should consult their city attorneys before authorizing municipal liquor store employees to sell pull-tabs.

Minn. Stat. § 349.168

If the gambling organization compensates the employees, those individuals must register on a form prescribed by the Board. Registered employees must wear an identification card whenever they conduct lawful gambling for compensation.

Minn. Stat. § 349.168, subd. 8(c)

An organization that leases a premises may not pay compensation to the lessor, a member of the lessor's immediate family, or to the lessor's employees other than as a seller of pull-tabs and tipboards within a booth operation on the premises.

VIII. High school raffles

Minn. Stat. § 609.761, subd. 5

School districts, or nonprofit organizations created primarily to support the programs of a school district, may conduct raffles if:

- Raffle tickets are sold and a drawing is conducted only at a high school event sponsored by the school district.
- All raffle tickets are sold for the same price.
- Raffle tickets are sold only to people 18 years of age or older attending the event.
- The drawing is held during or immediately after the conclusion of the event.
- Half the gross receipts from the sale of tickets are awarded as prizes for the raffle, and the remaining half may only be used to defray the school district's costs of sending event participants to high school activities held at other locations.

If a school district's (or nonprofit's) gross receipts from the conduct of raffles exceeds \$12,000 in a calendar year or \$5,000 in a single raffle, it must report the gross receipts received, the total expenses, total prizes, and an accounting of expenditures to the Board annually.

Because the statute authorizing high school raffles is not located in Minn. Stat. ch. 349, where the lawful gambling provisions are located, and because the law dedicates all of the receipts from high school raffles to specific purposes, cities probably do not have authority to regulate this permitted gambling activity. Cities that wish to regulate gambling conducted at high school events should consult their city attorney.

IX. Liquor raffles

Minn. Stat. § 340A.707.

A nonprofit organization conducting a silent auction, raffle or other fundraising event may conduct live, on-premises auctions or raffles of wine, beer or intoxicating liquors—provided that the funds from the auction or raffle are dedicated to the charitable purposes of the nonprofit organization, such auctions or raffles are limited to not more than six occasions per year, and the alcohol may only be auctioned or raffled to persons who demonstrate they are 21 years of age or older and do not show signs of obvious intoxication.

An organization that intends to award a liquor prize as part of a raffle must qualify as a nonprofit under Minnesota Statutes and Rules, and would be subject to the same local and state regulations as any other raffle.

As this provision was recently adopted by the Minnesota Legislature, cities with questions concerning their role regulating these events should consult their city attorney or Alcohol and Gambling Enforcement.

X. Enforcement

Lawful gambling benefits cities by providing entertainment for citizens and raising revenues to support worthy purposes. However, because of the large sums of money involved in lawful gambling, there is great potential for unlawful activity. Illegal gambling activity could result in loss of faith in the integrity of lawful gambling, defrauded citizens and organizations, and even organized crime. Cities must work with lawful gambling organizations and state agencies to ensure lawful gambling continues to have a positive impact upon the community.

Gambling Control Board.

The Legislature created the Gambling Control Board to maintain the integrity of lawful gambling through licensing and regulation. A city that believes an organization conducting lawful gambling is not complying with the lawful gambling laws should contact the Board at (651) 639-4000 or visit the [Gambling Control Board](#) web site.

Department of Public Safety's
Alcohol and Gambling
Enforcement Division.

The Department of Public Safety's Alcohol and Gambling Enforcement Division investigates allegations of criminal conduct related to all forms of gambling. If a city suspects that criminal gambling laws are being violated, it should contract the Division at (651) 201-7500 or visit the [Alcohol and Gambling Enforcement Division](#) web site.

Appendix A

LEAGUE OF MINNESOTA CITIES MODEL ORDINANCE REGULATING LAWFUL GAMBLING

(December 2009)

Before adopting this ordinance, a city should be familiar with the contents of the LMC information memo "Lawful Gambling" LMC 255.7 (December 2009).

INTRODUCTION AND INSTRUCTIONS:

This model lawful gambling ordinance contains a number of provisions a city may want to adopt. A city wishing to adopt this ordinance should review it with the city attorney to determine which provisions are suited to the city's circumstances. A city can modify this ordinance by eliminating provisions that concern activities it does not seek to regulate. Because most of the provisions of this ordinance are controlled by statute, the city attorney should review any modifications to ensure they conform with state law. In addition, the city attorney should review the entire ordinance before it is adopted because it establishes rights and responsibilities of both the city and the license applicants and holders.

This model ordinance is drafted in the form prescribed by Minn. Stat. § 412.191, subd. 4, for statutory cities. Home rule charters often contain provisions concerning how the city may enact ordinances. Home rule charter cities should consult their charter and city attorney to ensure that the city complies with all charter requirements.

This ordinance will affect existing gambling licenses. Therefore, a copy of the proposed ordinance should be mailed to each licensee to inform the licensees of its contents and provide them an opportunity to make their views known.

If your city has codified its ordinances, a copy of any lawful gambling ordinance must be furnished to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND REGULATING THE CONDUCT OF LAWFUL GAMBLING WITHIN THE CITY OF _____, MINNESOTA

THE CITY COUNCIL OF THE CITY OF _____ DOES ORDAIN:

SECTION 1. ADOPTION OF STATE LAW BY REFERENCE

The provisions of Minn. Stat. ch. 349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the Council that all future amendments of Minn. Stat. ch. 349, are hereby adopted by reference or referenced as if they had been in existence at the time this ordinance was adopted.

SECTION 2. CITY MAY BE MORE RESTRICTIVE THAN STATE LAW

The Council is authorized by the provisions of Minn. Stat. § 349.213, as it may be amended from time to time, to impose, and has imposed in this ordinance, additional restrictions on gambling within its limits beyond those contained in Minn. Stat. ch. 349, as it may be amended from time to time.

SECTION 3. PURPOSE

The purpose of this ordinance is to regulate lawful gambling within the City of _____, to prevent its commercialization, to insure the integrity of operations, and to provide for the use of net profits only for lawful purposes.

SECTION 4. DEFINITIONS

In addition to the definitions contained in Minn. Stat. § 349.12, as it may be amended from time to time, the following terms are defined for purposes of this ordinance:

BOARD, as used in this ordinance, means the State of Minnesota Gambling Control Board.

CITY, as used in this ordinance, means the City of _____.

COUNCIL, as used in this ordinance, means the City Council of the City of _____.

LICENSED ORGANIZATION, as used in this ordinance, means an organization licensed by the Board.

LOCAL PERMIT, as used in this ordinance, means a permit issued by the city.

TRADE AREA, as used in this ordinance, means _____

Comment: The city must define the boundaries of its trade area by ordinance pursuant to Minn. Stat. § 349.213, subd. 1(g). The city's trade area must include each city and township contiguous to the defining city.

SECTION 5. APPLICABILITY

This ordinance shall be construed to regulate all forms of lawful gambling within the city except bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if the prizes for a single bingo game do not exceed \$10, total prizes awarded at a single bingo occasion do not exceed \$200, no more than two bingo occasions are held by the organization or at the facility each week, only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game, no compensation is paid for any persons who conduct the bingo, and a manager is appointed to supervise the bingo.

Comment: The city should be aware of cross-reference problems in Minn. Stat. § 349.166 that make it a little unclear whether cities can regulate excluded lawful gambling. Cities should consult the city attorney for an opinion on this issue.

SECTION 6. LAWFUL GAMBLING PROHIBITED

No person or organization shall conduct lawful gambling within the City of _____.

Comment: This section should be adopted only if the city wishes to completely prohibit lawful gambling. If the city adopts this section, it should also adopt Sections 19-21, and omit Sections 7-18.

SECTION 7. LAWFUL GAMBLING PERMITTED

Lawful gambling is permitted within the city provided it is conducted in accordance with Minn. Stat. §§ 609.75-.763, inclusive, as they may be amended from time to time; Minn. Stat. §§ 349.11-.23, inclusive, as they may be amended from time to time; and this ordinance.

SECTION 8. COUNCIL APPROVAL

Lawful gambling authorized by Minn. Stat. §§ 349.11-.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provisions of this ordinance and state law.

SECTION 9. APPLICATION AND LOCAL APPROVAL OF PREMISES PERMITS

Subd. 1. Any organization seeking to obtain a premises permit from the Board shall file with the city clerk an executed, complete duplicate application, together with all exhibits and documents accompanying the application as will be filed with the Board.

Subd. 2. Upon receipt of an application for issuance of a premises permit, the city clerk shall transmit the application to the chief of police for review and recommendation.

Comment: Some cities do not have their own police services. Under these circumstances, the county sheriff may be willing to conduct an investigation for a fee. In that case, the ordinance should state that the clerk shall transmit the application to the county sheriff, as well as replace “chief of police” with “county sheriff” throughout the body of the ordinance.

Subd. 3. The chief of police shall investigate the matter and make the review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the city.

Subd. 4. Organizations applying for a state issued premises permit shall pay the city a \$_____ investigation fee. This fee shall be refunded if the application is withdrawn before the investigation is commenced. If approved by the City Council and the Board, a licensed organization will be responsible for an annual investigative fee for conducting lawful gambling within the city.

Comment: The fee may not exceed \$100 for third and fourth class cities; \$250 for cities of the second class; \$500 for first class cities. Minn. Stat. § 349.16, subd. 8. A city may not charge an investigation fee if it levies a gambling tax. Minn. Stat. § 349.213, subd. 3.

Subd. 5. The applicant shall be notified in writing of the date on which the Council will consider the recommendation.

Subd. 6. The Council shall receive the police chief's report and consider the application within 45 days of the date the application was submitted to the city clerk.

Subd. 7. The Council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application.

Comment: Under Minn. Stat. § 349.213, subd. 2, the resolution must have been adopted within 90 days of the date of the application for the new or renewed permit to the Board. However, because the application for a state-issued premises permit includes an acknowledgement of local approval within its application materials, it is the responsibility

of the applicant (and not the city) to meet those statutory requirements. The model ordinance requires Council action in 60 days to ensure that the resolution will be passed in a timely manner, but is not specifically required by law.

Subd. 8. The Council shall deny an application for issuance or renewal of a premises permit for any of the following reasons:

Comment: *These are sample conditions that other cities have adopted. Cities may want to adopt more, fewer, or different conditions depending on their circumstances.*

- (i) Violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling within the last three (3) years.
- (ii) Violation by the on-sale establishment or organization leasing its premises for gambling of any state statute, state rule, or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice and protection of public safety within the last three (3) years.
- (iii) Lawful gambling would be conducted at premises other than those for which an on-sale liquor license has been issued.
- (iv) Lawful gambling would be conducted at more than __ premises within the city.

Comment: *Cities may use this provision to limit the number of premises where lawful gambling may be conducted.*

- (v) An organization would be permitted to conduct lawful gambling activities at more than one (1) premises in the city.
- (vi) More than one licensed organization would be permitted to conduct lawful gambling activities at one (1) premise.
- (vii) Failure of the applicant to pay the investigation fee provided by Subdivision 4 within the prescribed time limit.

Comment: *The city should not make this a condition if it does not charge an investigation fee.*

(viii) Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

Otherwise, the Council shall pass a resolution approving the application.

SECTION 10. LOCAL PERMITS

Subd. 1. No organization shall conduct lawful gambling excluded or exempted from state licensure requirements by Minn. Stat. § 349.166, as it may be amended from time to time, without a valid local permit. This section shall not apply to lawful gambling exempted from local regulation by Section 5 of this ordinance.

Subd. 2. Applications for issuance or renewal of a local permit shall be on a form prescribed by the city. The application shall contain the following information:

- (i) Name and address of the organization requesting the permit.
- (ii) Name and address of the officers and person accounting for receipts, expenses, and profits for the event.
- (iii) Dates of gambling occasion for which permit is requested.
- (iv) Address of premises where event will occur.
- (v) Copy of rental or leasing arrangement, if any, connected with the event including rental to be charged to organization.
- (vi) Estimated value of prizes to be awarded.

Subd. 3. The fee for a local permit shall be \$100. The fee shall be submitted with the application for a local permit. This fee shall be refunded if the application is withdrawn before the investigation is commenced.

Comment: The local permit fee is authorized by Minn. Stat. § 349.213. The fee for a permit may not exceed \$100.

Subd. 4. Upon receipt of an application for issuance or renewal of a local permit, the city clerk shall transmit the notification to the chief of police for review and recommendation.

Subd. 5. The chief of police shall investigate the matter and make review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the city.

Subd. 6. The applicant shall be notified in writing of the date on which the Council will consider the recommendation.

Subd. 7. The Council shall receive the public safety department's report and consider the application within 45 days of the date the application was submitted to the city clerk.

Subd. 8. The Council shall deny an application for issuance or renewal of a premises permit for any of the following reasons:

Comment: These are sample conditions that other cities have adopted. Cities may want to adopt more, fewer, or different conditions depending on their circumstances.

- (i) Violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling within the last three (3) years.
- (ii) Violation by the on-sale establishment, or organization leasing its premises for gambling, of any state statute, state rule, or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to the operation of the establishment, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice and protection of public safety within the last three (3) years.
- (iii) The organization has not been in existence in the city for at least three (3) consecutive years prior to the date of application.
- (iv) The organization does not have at least thirteen (13) active and voting members.
- (v) Exempted or excluded lawful gambling will not take place at a premises the organization owns or rents.
- (vi) Exempted or excluded lawful gambling will not be limited to a premises for which an on-sale liquor license has been issued.
- (vii) Exempted or excluded lawful gambling will occur at more than ____ premises within the city.

- (viii) An organization will have a permit to conduct exempted or excluded lawful gambling activities on more than one (1) premises in the city.
- (ix) More than one licensed, qualified organization will be conducting exempted or excluded lawful gambling activities at any one (1) premises.
- (x) Failure of the applicant to pay the permit fee provided by subdivision 3 within the prescribed time limit.
- (xi) Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

Otherwise the Council shall approve the application.

Subd. 9. Local permits shall be valid for one (1) year after the date of issuance unless suspended or revoked.

SECTION 11. REVOCATION AND SUSPENSION OF LOCAL PERMIT

Subd. 1. A local permit may be revoked, or temporarily suspended for a violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling.

Subd. 2. A license shall not be revoked or suspended until written notice and an opportunity for a hearing have first been given to the permitted person. The notice shall be personally served or sent by certified or registered mail. If the person refuses to accept notice, notice of the violation shall be served by posting it on the premises. Notice shall state the provision reasonably believed to be violated and shall also state that the permitted person may demand a hearing on the matter, in which case the permit will not be suspended until after the hearing is held. If the permitted person requests a hearing, the Council shall hold a hearing on the matter at least one week after the date on which the request is made. If, as a result of the hearing, the Council finds that an ordinance violation exists, then the Council may suspend or revoke the permit.

SECTION 12. LICENSE AND PERMIT DISPLAY

All permits issued under state law or this ordinance shall be prominently displayed during the permit year at the premises where gambling is conducted.

SECTION 13. NOTIFICATION OF MATERIAL CHANGES TO APPLICATION

An organization holding a state issued premises permit or a local permit shall notify the city within ten (10) days in writing whenever any material change is made in the information submitted on the application.

SECTION 14. LOCAL GAMBLING TAX

Subd. 1. A local gambling tax of _____percent per year is imposed on the gross receipts of a licensed organization from all lawful gambling less prizes actually paid out by the organization.

Comment: The tax may be imposed only in the amount necessary to cover the costs incurred by the city to regulate lawful gambling. Three-percent is the maximum gambling tax a city may impose. A city may not charge an investigation fee if it levies a gambling tax. If a city imposes a lawful gambling tax it must file annually, by March 15, a report, with the Board showing (1) the amount of revenue produced by the tax during the preceding year, and (2) the use of proceeds of the tax. The report must be on a form prescribed by the Board. Minn. Stat. § 349.213, subd. 3.

Subd. 2. The tax shall be paid by the organization on a monthly basis and shall be reported on a copy of the monthly gambling activity summary and tax return filed with the Minnesota Department of Revenue. The report shall be an exact duplicate of the report filed with the Department, without deletions or additions, and must contain the signatures of organization officials as required on the report form.

Subd. 3. The tax return and payment of the tax due must be postmarked, or, if hand-delivered, received in the office of the city clerk, on or before the last business day of the month following the month for which the report is made.

Subd. 4. An incomplete tax return will not be considered timely filed unless corrected and returned by the due date for filing.

Subd. 5. Interest shall be charged at a rate of eight percent (8%) on all overdue taxes owed by the organization under this Section.

SECTION 15. CONTRIBUTION OF NET PROFITS TO FUND ADMINISTERED BY CITY

Subd. 1. Each organization licensed to conduct lawful gambling within the city pursuant to Minn. Stat. § 349.16, as it may be amended from time to time, shall contribute ten percent (10%) of its net profits derived from lawful gambling in the city to a fund administered and regulated by the city without cost to the fund. The city shall disburse the funds for charitable contributions as defined by Minn. Stat. § 349.12, subd. 7a, as it may be amended from time to time.

Comment: Under Minn. Stat. § 349.213, cities may require organizations conducting lawful gambling within the city to contribute ten percent (10%) of their net profits derived

from lawful gambling to a fund administered and regulated by the city. The city may disburse the funds for lawful purposes. Lawful purposes for which these funds may be expended are listed in Minn. Stat. § 349.12, subd. 25. Cities may also expend these funds for police, fire, and other emergency or public safety-related services, equipment and training, excluding pension obligations. A city making expenditures authorized under this paragraph must by March 15 of each year file a report with the Board, on a form the Board prescribes, that lists all such revenues collected and expenditures for the previous calendar year. Minn. Stat. § 349.213, subd. 1(f)(2).

Subd. 2. Payment under this section shall be made on the last day of each month.

Subd. 3. The city's use of such funds shall be determined at the time of adoption of the city's annual budget or when the budget is amended.

SECTION 16. DESIGNATED TRADE AREA

Subd. 1. Each organization licensed to conduct gambling within the city shall expend 100 percent of its lawful purpose expenditures on lawful purposes conducted within the city's trade area.

***Comment:** A city may require that a licensed organization conducting lawful gambling within its jurisdiction expend all or a portion of its expenditures for lawful purposes conducted or located within the city's trade area. The percentage that the city requires to be spent within the trade area must be specified in the ordinance defining the trade area. Minn. Stat. § 349.213, subd. 1(g).*

Subd. 2. This section applies only to lawful purpose expenditures of gross profits derived from gambling conducted at a premises within the city's jurisdiction.

SECTION 17. RECORDS AND REPORTING

Subd. 1. Organizations conducting lawful gambling shall file with the city clerk one copy of all records and reports required to be filed with the Board, pursuant to Minn. Stat. ch. 349, as it may be amended from time to time, and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the Board.

Subd. 2. Organizations licensed by the Board shall file a report with the city proving compliance with the trade area spending requirements imposed by Section 16. Such report shall be made on a form prescribed by the city and shall be submitted annually.

SECTION 18. HOURS OF OPERATION

Lawful gambling shall not be conducted between 1 a.m. and 8 a.m. on any day of the week.

Comment: Cities may regulate hours and days of operation pursuant to Minn. Stat. § 349.213. A city with a 2 a.m. closing time for on-sale liquor stores could use 2 a.m. instead of 1 a.m.

SECTION 19. PENALTY

Any person who violates: any provision of this ordinance; Minn. Stat. §§ 609.75-609.763, inclusive, as they may be amended from time to time; or Minn. Stat. §§ 349.11-349.21, as they may be amended from time to time or any rules promulgated under those sections, as they may be amended from time to time, shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for a term not to exceed 90 days, or both, plus in either case the costs of prosecution. In addition, violations shall be reported to the Board and recommendation shall be made for suspension, revocation, or cancellation of an organization’s license.

SECTION 20. SEVERABILITY

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 21. EFFECTIVE DATE

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Passed by the Council this _____ day of _____, _____.

Mayor

Attested:

Clerk

Appendix B

Sample resolutions approving and denying Board-issued premises permits follow. The Board will not approve a premises permit without an acknowledgement from the city where the premises is located.

Resolutions have legal effect. The City Council should consult the city attorney before taking action on a resolution to ensure it complies with law.

SAMPLE RESOLUTION APPROVING PREMISES PERMIT

RESOLUTION NO. _____

WHEREAS, the City Council of the City of _____ allows gambling licenses to be issued within the city;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of _____ that ___(organization's name)___ request for a premises permit at ___(address of premises)___ hereby be approved.

Adopted this ___ day of _____

MAYOR

CITY OF _____

ATTEST _____
CITY CLERK

SAMPLE RESOLUTION DENYING PREMISES PERMIT

RESOLUTION NO. _____

WHEREAS, Ordinance No. ____ allows lawful gambling to be conducted at only one premises within the City of _____;

WHEREAS, lawful gambling would be conducted at more than one premises within the City of _____ if the Council approved ____ (organization's name)____, request for a premises permit;

Comment: This is an example provided for illustrative purposes. A city denying a request for a premises permit should use WHEREAS clauses to list the reasons why the premises permit is being denied. Reasons for denial should be stated in the city's gambling ordinance. Cities should consult the city attorney before denying a premises permit.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of _____ that ____ (organization's name)____ request for a premises permit at ____ (address of premises)__ hereby be denied.

Adopted this ____ day of _____

MAYOR

CITY OF _____

ATTEST _____
CITY CLERK