INFORMATION MEMO

Operating a Municipal Liquor Store

Understand the city’s role in operating a municipal liquor store, including the establishment and operation of such a store, what to do with funds and profits, and financial reporting requirements. Also learn about how to abolish a municipal liquor store.

RELEVANT LINKS:


Minnesota Municipal Beverage Association, (MMBA) (763) 572-0222 or (800) 848-4912, ext. 3925.

Minn. Stat. § 340A.601, subd. 5.

Minn. Stat. § 340A.26, subd. 1.


Minn. R. 7515.0470.

I. Municipal Liquor Store

Any Minnesota city with a population of 10,000 or less, except those that have been incorporated for less than two years, has the authority to own and operate a retail municipal liquor store with off-sale liquor, on-sale liquor, or both. A recently incorporated city may establish a municipal liquor store in less than two years after incorporating if it previously was an urban town or major part of an urban town. Subsequent changes in population do not affect the ability of a city to operate a liquor store. Additionally, a city which established a liquor store prior to July 1, 1967, may continue to own and operate it.

The Minnesota Municipal Beverage Association (MMBA) provides helpful information to municipalities that operate municipal liquor stores. For additional information about municipal liquor store operations, contact the MMBA.

If a city establishes a municipal liquor store, all private intoxicating liquor licensing in the city must cease—unless the city has opted for split liquor or has annexed or consolidated with an area and a private liquor license holder was in that annexed or consolidated area. After the voters approve a split liquor system, cities may issue on-sale licenses to hotels, clubs, and restaurants, as well as brewer taproom licenses. A city with a municipal liquor store may not issue off-sale licenses to private license holders.

A. Establishing a municipal liquor store

Unless the city has voted to remain dry, the council of any city of less than 10,000 in population may establish a municipal liquor store. When establishing a municipal liquor store, the following items must be submitted to the commissioner of the Department of Public Safety:
A printed copy of the ordinance or resolution authorizing the establishment of a municipal liquor store.

- The results of any elections ever held by the municipality in which the question of permitting or prohibiting the sale of intoxicating liquor was voted. This does not include the repeal election of Sept. 12, 1933, or any county election. If no election was ever held, a statement to that effect is required.

- A certificate of registration stating the date established, name of the manager, and whether the municipal liquor store sells on-sale, off-sale, or both.

- Any change in location.

If no private retail liquor licenses are in force in the city, the council may establish a municipal liquor store at any time. If private licenses are in force, the city must publish a notice of the council’s intention to sell intoxicating liquor and that doing so will exclude issuance of retail licenses to private businesses. This notice must appear in the legal newspaper at least one year prior to the date the council proposes to begin such sales.

When the city wants to shift from private liquor sales to municipal sales, the most appropriate time to begin doing so is when the outstanding private licenses expire. The decision to open a municipal store probably is not sufficient legal justification for revoking a private license. The revocation of a private license always presents difficulties.

Generally speaking, there is no right to engage in or continue to engage in the sale of intoxicating liquor. Even private parties, who previously have had licenses to sell, do not have an inherent right to continue such a business in the future. Good practice suggests working closely with the city attorney in a situation where a city wishes to establish a municipal liquor store but has active private liquor licenses.

Minnesota statutes do not provide any definite method of financing the acquisition of a municipal liquor store building, fixtures, equipment, and stock. The attorney general has issued guidance that indicates a city may use money from the general operating fund to establish a municipal liquor store and acquire a stock of liquors.

B. Operation of a municipal liquor store

A municipal liquor store must comply with all state statutes regulating the days, hours and manner of sale, and with all applicable regulations of the liquor control division. The city may impose more stringent regulations if they do not conflict with state laws. While there is no clear answer in statute as to whether a municipal liquor store may operate on state holidays, the conservative approach is to be closed. Additionally, there are holidays where off-sale is prohibited by state law. They include:
• Thanksgiving Day
• Christmas Eve (after 8 p.m.)
• Christmas Day
• On any day during hours when the sale of liquor is illegal (For example, in a city that has set more restrictive hours, sales would be prohibited outside of these hours).

Although exempt from the state personal property tax, municipal liquor stores are not exempt from sales tax or state or national excise taxes. Because tax issues related to municipal liquor stores exceed the scope of this memo, cities may want to seek guidance on this issue from the city auditor, the MMBA, and the city attorney.

City councils have responsibility for the operation of the municipal liquor store. They may delegate ministerial duties relating to the daily operations of the store to a liquor store manager or commission. The council may not delegate any policy-making powers, nor may it give employees authority to approve disbursement of funds in the liquor account. A city may not contract with a private corporation for the management and operation of a municipal liquor store.

A liquor store manager, who acts under the direction of the council, manages the store but, according to an opinion from the attorney general, cannot share in the profits in addition to receiving a salary.

The following are policy recommendations to effectively manage a municipal liquor store:

• Segregate duties.
• Use all available cash register features to monitor types of payment.
• Ensure additional receipts and disbursements that are separate from liquor sales are documented properly and rung into the cash register.
• Establish check handling procedures.
• Make timely deposits.
• Ensure additional safeguards are in place to protect the city from unneeded risk.

The city must promptly report any change in location of the municipal liquor store to the liquor control division (accompanied by new liquor liability certification for the new location) or any change in the method of sale, such as from on-sale or off-sale to off-sale only.

1. Types of Sales

Like private liquor stores, any municipal liquor store may sell food and make coin-operated amusement devices available to customers.
Apart from that, off-sale only municipal liquor stores may only sell the following items:

- Alcoholic beverages.
- Tobacco products.
- Ice.
- Beverages, either liquid or powder, specifically designated for mixing with intoxicating liquor.
- Soft drinks.
- Liqueur-filled candies.
- Food products that contain more than one-half of one percent alcohol by volume.
- Cork extraction devices.
- Books and videos on the use of alcoholic beverages.
- Magazines and other publications published primarily for information and education on alcoholic beverages.
- Multiple-use bags designed to carry purchased items.
- Devices designed to ensure safe storage and monitoring of alcohol in the home, to prevent access by underage drinkers.
- Home brewing equipment.
- Clothing marked with the specific name, brand, or identifying logo of the municipal liquor store, and bearing no other name, brand, or identifying logo.

Municipal liquor stores that sell at on- and off-sale may sell any item that may lawfully be sold in an establishment with an on-sale intoxicating liquor license.

2. **Tastings**

Municipal liquor stores may conduct a wine, malt liquor, or spirits tasting on the premises in compliance with state law. Municipal liquor stores may conduct classes for a fee and allow tastings during those classes, provided that the amount served at a class is limited to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor during the class and consumption occurs on the premises only. Municipal liquor stores may provide, or permit, a licensed manufacturer or a wholesaler to provide samples of wine, liqueurs, cordials, and distilled spirits offered for sale by the store, provided the samples are free, consumed on the premises in a quantity less than 50 milliliters of wine per variety per customer, 25 milliliters of liqueur or cordial, and 15 milliliters of distilled spirits per variety per customer. Municipal liquor stores also may offer samples of malt liquor in a quantity of less than 100 milliliters per variety per customer and as otherwise prescribed by state law.
3. Entertainment

A municipal liquor store may offer recorded or live entertainment. If it offers music, it must pay performance royalties to the copyright owner (usually the composer or publisher) of works played in the store. This would apply to both live performances and when playing recordings, such as those on jukeboxes, stereo systems, radios, or music streaming services.

Cities may negotiate performance royalties by dealing directly with the copyright owner or, if the copyright owner belongs to an organization such as the American Society of Composers, Authors and Publishers (ASCAP) or Broadcast Music Inc. (BMI), the organization collects the payments on behalf of the composer. Often ASCAP and BMI sell blanket licenses that cover all performances of any works of their members. This generally is easier and less expensive than trying to pay a fee for each individual piece. The fee for this type of blanket license is based upon the size of the liquor store.

A sample license agreement between ASCAP and a city is available on the International Municipal Lawyers Association (IMLA) web site.

4. Gambling

Many cities lease space in the municipal liquor store to lawful gambling organizations because of the additional business and revenue gambling can draw. Municipal liquor stores are explicitly authorized to offer coin-operated amusement devices. However, allowing gambling in the municipal liquor store raises several questions that should be resolved before city property is used for lawful gambling.

a. Lease

State law generally restricts gambling to premises owned or leased by the licensed organization, although exceptions are provided for raffles and other lawful gambling that is conducted 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 required, a city may lease space in the municipal liquor store to gambling organizations. Leases must be in the form prescribed by the Gambling Control Board.
b. Rent

State law regulates the rent that may be charged for premises that are leased for lawful gambling. 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 by the Gambling Control Board, will cover all matters such as electric, heat, and cleaning services, as well as the cost of any communications network or service required for electronic pull tabs and electronic bingo. 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.

The regulations may be broadly separated into four classifications: booth operations, bar operations, booth and bar operations, and bingo premises.

(1) Booth operations

A “booth operation” is a method of selling and redeeming disposable gambling equipment by an employee of a licensed organization on the premises that the lawful gambling organization leases or owns. Monthly rent for a booth operation may not exceed 10% of gross profits for that month. However, the maximum combined rent for all organizations conducting lawful gambling on the premises may not exceed $1,750 per month.

(2) Bar operations

A “bar operation” is a method of selling and redeeming disposable gambling equipment by an employee of the lessor within leased premises which is licensed for the on-sale of alcoholic beverages. Monthly rent may not exceed:

- Fifteen percent of the gross profit from electronic pull-tabs and electronic bingo for that month.
- More than 20% of gross profits from all other forms of lawful gambling.

(3) Booth and bar operations

For electronic linked bingo and electronic pull tabs that are operated for separate time periods within a business day by a nonprofit organization and the lessor, monthly rent may be no more than:
• Fifteen percent of the monthly gross profits for the time periods operated by the lessor (the lessor is also responsible for any cash shortages that occur during these periods of operation).

• Ten percent of the monthly gross profits for the time periods operated by the lawful gambling organization (the lawful gambling organization is responsible for cash shortages during these periods of operation).

(4) Bingo
Rent paid by an organization for premises leased primarily for the conduct of bingo is restricted to either one of the following:

• Not more than 10% of the monthly gross profit from all lawful gambling activities held during bingo occasions.

• At a rate based on a cost per square foot not to exceed 110% of a comparable cost per square foot for leased space as approved by the director of the Gambling Control Board.

No rent may be paid for bar bingo.

c. City employees
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.

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.

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.
If the gambling organization compensates the employees, those individuals must register with the licensed organization documenting the individual’s identity and employment authorization. Registered employees must wear an identification card whenever they conduct lawful gambling for compensation.

An organization that leases a premises for lawful gambling 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. An employee of the lessor or a member of the lessor's immediate family may be compensated by an organization for the conduct of gambling at other sites not owned by the lessor.

**C. Municipal liquor store funds**

A city cannot appropriate any funds to the operation of the municipal liquor store unless the city council has first held a public hearing on the proposed transfer. Exceptions to this include funds for capital improvements, bonding costs, and construction and repairs the city can amortize and pay for from liquor store funds.

All liquor store disbursements must go to the city treasurer, and the city must make all disbursements in the same manner as for all other city disbursements. Although not required by law, the state auditor has recommended cities maintain a separate liquor store fund for each store.

**D. Municipal liquor store financial reporting**

The city must publish a balance sheet and a statement of operation of the liquor store within 90 days after the close of the fiscal year. This must appear in the official newspaper of the city. Additionally, municipal liquor stores must file a proof of financial responsibility with the commissioner of the Department of Public Safety by Jan. 15 of each year. This report is needed to show proof the city has liability insurance for the municipal liquor store. The publication requirements of this section shall be in addition to any publication or posting requirements for financial reports contained in state law. However, the council may choose to incorporate this information into the reports published pursuant to state law and in accordance with a form and style prescribed by the state auditor.

The law requires that a certified public accountant attest to financial statements in any city operating a municipal liquor store with total annual sales in excess of $350,000. A city with a municipal liquor store that has total annual sales in excess of $350,000 must submit these audited financial statements to the state auditor. The financial statements must be attested to by a certified public accountant, public accountant, or state auditor within 180 days after the close of the fiscal year.
The state auditor may extend the deadline upon request of the city and a “showing of inability to conform.” The state auditor may accept this report in lieu of the municipal liquor store reports previously described. Note: Cities should consult the city attorney to ensure that current publication requirements for the municipal liquor store are met.

E. Municipal liquor store profits

State law specifies how cities can use municipal liquor store profits.

For example, cities may use and apply revenue from liquor stores for the construction, operation, repair, and maintenance of sewers and sewage disposal plants and waterworks and water mains, and for the construction, operation, repair, and maintenance of public buildings. The council may irrevocably pledge liquor store profits to the payment of bonds, warrants, or certificates of indebtedness for the above listed purposes. Before making such a pledge, however, a majority of the voters at either a general or a special election must approve it. No such election is needed if the liquor store money will be used to pay bonds, warrants, or certificates of indebtedness to construct, reconstruct, enlarge, or equip a municipal liquor store. Also, state law allows cities to contribute liquor store profits toward the construction or improvement of a community or county hospital. It appears cities also may have authority to transfer liquor store profits into the city’s general fund. Because of the complexity of spending liquor store profits, a city should consult the city attorney if it wants to use liquor store profits outside of specific statutory purposes listed above.

The municipal liquor store does not have any independent authority to donate money or product. A municipal liquor store is a city operation similar to any other city department and the finances are controlled by the city council. However, some advertising specialty items such as ash trays, bottle or can openers, corkscrews, paper shopping bags, matches, printed recipes, wine lists, leaflets, blotters, post cards, pencils, stirrers, glassware, calendars, notebooks, greeting cards, folding knives, or any similar articles which bear advertising matter, may be furnished or given to consumers. The distribution of such advertising specialty items shall be limited to the licensed premises only. Such advertising specialty items shall be submitted to and approved by the commissioner before distribution.

F. City liability in municipal liquor store sales

The Minnesota Supreme Court has held cities accountable for injuries suffered by a third party as a result of the intoxication of a person to whom a municipal liquor store illegally sold liquor. To protect themselves, cities should purchase liability insurance covering the operation of their store(s).
Cities should purchase at least $500,000 in liquor liability coverage. However, since the tort liability limits do not apply to dram shop actions, cities should think about purchasing higher limits. Cities must show proof of financial responsibility as required for any other liquor licensee.

The League of Minnesota Cities Insurance Trust offers liquor liability coverage for off-sale municipal liquor stores, on-sale municipal liquor stores, and “special event” sales by an instrumentality of the city—for example, special event malt liquor sales by a fire relief association.

G. Changes in the manner of sale

The council can, at any time, make changes to the manner of sale in a municipal liquor store, such as changing from off-sale only to on- and off-sale. To do this, the city would have to go through the process of amending the liquor ordinance. If the city stops on-sale liquor sales from the municipal liquor store and then wanted to issue licenses for on-sale, there would need to be a split liquor election pursuant to state statute. However, on-sale licenses would be limited to hotels, clubs, and restaurants.

If the city does change the manner of sale for the municipal liquor store, the city must promptly report this change to the liquor control division. A copy of the city’s amending ordinance should be sufficient but a city making this change should reach out to the Minnesota Department of Public Safety’s Alcohol and Gambling Enforcement division to see if they have a preferred form. Additionally, the League recommends city’s reach out and work with their city attorney when making this change.

H. Suspending municipal liquor store operations

The state can suspend a city’s liquor store operations when any city officer or employee is convicted of selling intoxicating liquor or 3.2 percent malt liquor (beer):

- To a minor or other ineligible person.
- At a time when the law prohibits the sale.
- For resale.

The state also can suspend a city liquor store’s operation when any city officer or employee is convicted of violating gambling laws. Additionally, if the city has not paid state tax, the state can suspend the city’s liquor store operations.

The court must notify the commissioner of the Department of Public Safety within 10 days of the conviction. The commissioner then has the authority to suspend the operation of the municipal liquor store for up to 30 days. The commissioner must notify the city of the effective dates of the suspension. The city has the right to appeal the decision.
I. Abolishing a municipal liquor store

A city may discontinue the operation of a municipal liquor store in several ways:

- The liquor store must cease to operate if the city voters vote to have the city become dry. In this case, it is uncertain whether the municipal store must cease operations immediately after the election, or whether it may continue to operate for the balance of the year.
- The council can, at any time, abolish the municipal liquor store without public input. To do this, the council would amend the ordinance.
- If a city liquor store has a net loss prior to any inter-fund transfers in any two of three consecutive years, the city council must hold a public hearing on the question of whether the city shall continue to operate the liquor store.

The hearing must take place not more than 45 days prior to the end of the fiscal year following the three-year period. After the hearing, the council may, on its own motion, or must, upon petition of 5 percent or more of the registered voters of the city, submit the question of whether the city should continue liquor store operations by a date determined by the city council to the voters at a general or special election. The date to discontinue operation, designated by the city council, must not occur more than 30 months after the election.

After a city abolishes a municipal liquor store, it must negotiate the sale of the fixtures and buildings. The clerk must submit a certified inventory of the stock on hand to the liquor control division, giving the brand names, the size and number of containers, and the details of disposition. The clerk must also submit the retailer’s identification card to the division for cancellation. For further information regarding the inventory and identification card return process, or for additional questions concerning municipal liquor stores, contact the Minnesota Department of Public Safety, Alcohol and Gambling Enforcement Division.

J. Conclusion

Because city officials are ultimately responsible for the operation of municipal liquor stores, cities need to ensure they are actively monitoring operations and investigating any discrepancies.