



MEMORANDUM

"...meeting community needs...enhancing quality of life."

TO: CEDC

FROM: Karen Harkness, Director of Community & Economic Development

DATE: April 1, 2014

RE: #6-R-14/Jirschele Resolution

ATTACHMENTS TO THIS MEMO INCLUDE:

1. Memo form Legal Services Department of City Clerk RE: Demerit Point Assessments
2. Appleton Police Department Policy Licensed Premises Inspections
3. Four maps
 - A) Beer/ Liquor Licensing 2013 Type B (Beer/Liquor) by type and if owner occupied or not.
 - B) Beer/ Liquor Licensing 2013 Reserve by type and if owner occupied or not.
 - C) Beer/ Liquor Licensing 2013 Reserve & Type B by type and if owner occupied or not.
 - D) Beer/ Liquor Licensing 2013 All by type and if owner occupied or not.

At the regular meeting of the Common Council held February 19, 2014 the following item of business were referred to the Community and Economic Development Committee.

1. #6-R-14/Jirschele –

“Whereas it is important to the City of Appleton to maintain a safe and vibrant entertainment component to its commercial entertainment opportunities, and

Whereas protecting the tax base and avoiding vacant buildings or blighted areas is an important element of Appleton’s municipal and financial health,

Be it resolved that Appleton’s Community and Economic Development Department be directed to review the city’s municipal codes regarding the revocation of a liquor license-particularly Code section 9-54-and

- a) Outline the economic and development ramifications/implications of the codes as they now stand, and
- b) Offer possible alternatives that may serve the intent of municipal code, yet serve the economic and development concerns of the community as well, and

Report to the Community and Economic Development Committee of the Appleton Common Council at its first meeting in April, 2014.”

Overview

Appleton has maintained a stringent standard regarding the use and misuse of alcohol, particularly in the licensed establishments within the city.

Of particular interest as identified in the above resolution, is Article 3, Section 9-54, Subsection D, of the Appleton Municipal Code which requires the revocation of a liquor license in establishments which accumulate 200 "points" under the Appleton demerit system within an 18 month period.

License revocation carries with it the requirement that: “Whenever any license is revoked, at least six months from the time of such revocation shall elapse before another license shall be granted for the same premises, and 12 months shall elapse before any other license shall be granted to the person whose license was revoked.”

Recently, a revocation either has produced or had the possibility to produce ramifications and implications beyond a legal punishment/ consequence. Revocation of an establishment’s liquor license produces impacts on several levels.

Business / Property Owners

1. Personal savings and ongoing livelihood put in jeopardy
2. Business value jeopardized or destroyed
3. Loan defaults likely
4. Downstream obligations (vendors) endangered

Growth

1. Appearance of business districts may suffer
2. Visual blight of possible empty, rundown buildings affect growth momentum
3. Pedestrian traffic in primary business areas may decrease
4. Fees for organizations such as ADI impacted
5. Credibility, membership and desirability of associations drops
6. Utilities fees--city revenue – drops
7. Possible business fail or failure visible to ranking/investment organizations (e.g. Moody’s, Baird, etc.)

Commercial health

1. Investment climate may appear inhospitable
2. Possible unwillingness to directly or indirectly fund improvements by primary or secondary resources
3. Overall business district strength diminished as a factor in investment
4. Investment/development restricted
5. Advertising and promotional critical mass diminished
6. Cross-selling capacities of viable businesses, in terms of direct interchange and secondary leveraging (e.g. Fox Cities PAC) affected, thus affecting growth opportunities

Revenue support

1. Direct tax support to city, county, state possibly diminished
2. Impact on property assessments
3. Business traffic, generating profitability as well as revenues within business district, may be affected

Job stability

1. Possible loss of jobs within primary business site
2. Possible loss of jobs/contract work for support industries and/or vendors

Development/developers

1. Possible damage to existing investment, investment standing
2. Overall appearance of empty, perhaps rundown, buildings as disincentive to even development
3. Impact to city long-term planning

Image/marketing positioning

1. Blighted appearance in primary business areas (e.g. Senor Tequila area in proximity of Fox Cities Performing Art Center) suggesting area trending downward
2. Perception of city as "inhospitable" to investment among critical audiences
3. Perceptions among users and stakeholders (e.g. Moody's, site selectors, NFL shoppers, etc.)
4. Perception of rigid/ authoritarian city policy and administration

Maintaining the safety of all citizens through proper enforcement of municipal ordinances is a critical initiative for Appleton. Applying and enforcing standards for the responsible use of adult beverages is an important element of that safety and cannot be underemphasized.

Possible courses of action

With this information and background in mind, staff from Community and Economic Development, Attorney's Office, Appleton Police Department and the Clerks Department met to discuss this resolution, the revocation process, implications and impacts.

Wendy Helgeson shared the list of 2013 licensed premises and reminded the group of the types of licenses (see below) and supplied Municipal Code Sec.9-54 Demerit point system (attached) for review.

Types:

A-BEER – Beer only for off premises consumption (typically C-Store)

A-BEER/LIQUOR – Beer and Liquor for off premises consumption (grocery, other retail)

B-BEER/C-WINE - Beer and wine for on premises consumption (typically restaurant)

B-BEER/LIQUOR – Beer and Liquor for on premises consumption

RESERVE – A type of Beer/Liquor License for off premises consumption-\$10,000 license

EXEMPT – A type of Beer/Liquor License for off premises consumption – seating for at least 300 people and can only be issued if ALL liquor licenses have been issued.

Stacy Doucette reviewed the license revocation history which showed that over the last 10 years four establishments have had the potential to have their license revoked. Attorney Doucette expressed support for the current policy and explained the formal and informal process/procedure currently in place.

Chief Helein reviewed the Police Department Policy on Licensed Premises Inspections (attached). The purpose of this policy is to establish guidelines for coordinating licensed premises inspections and controlled alcohol transactions. Primary functions of the licensed premises inspection teams are also covered in this document.

Both the Attorneys Office and the Police Department believe the current policy is appropriate and meets their needs.

However, all parties at the table understood the concerns expressed in the resolution and by the staff of Community and Economic Development Department. As the discussion continued, the following suggestions were made and agreed to:

1. Formalize an educational process that includes both the licensed establishment owner/operator and the property owner/ property manager.
2. Notice to property owner when licensed establishment received demerit points.
3. If there is a “troubled” property, work collaboratively with staff from Community and Economic Development to advocate for and to the business and help insure an understanding of the risks involved to all stakeholders if the troubling behavior(s) continue.
4. Training component for property owners discussing leasing, management, leveraging, etc. One example of training may be to discuss lease language with the property owners that may protect their interest’s vis-à-vis a liquor license.

There was discussion about the portion of the code that states, “Whenever any license is revoked,

at least six months from the time of such revocation shall elapse before another license shall be granted for the same premises". Community and Economic Development staff suggested that 6 months was too long and encouraged 2 months. Attorney and Police Department staff believes the 6 months is appropriate and anything less than that will not be as effective. Consensus was not reached on this topic.

Staff will continue this discussion and collaboration as we work on the 4 initiatives outlined above.

Staff also looks forward to any recommendations from CEDC and Council.



LEGAL SERVICES DEPARTMENT

Office of the City Clerk

Charlene M. Peterson, Clerk

100 North Appleton Street

Appleton, WI 54911

Phone: 920/832-6443

Fax: 920/832-5823

"...meeting community needs...enhancing quality of life."

MEMO

Date: March 27, 2014

To: Community and Economic Development Committee

Re: Demerit Point Assessments

As part of the Demerit Point Assessment education process, the City Clerk's Office provides the attached two documents to all new establishments applying for a Beer/Liquor License and again at renewal time each year.

The Ordinance (gold) provides information for the types of violations and the assessed demerit points. The Employee Training form (blue) provides employee training information offered by the Police Department. These two forms are the only colored pieces in the packet(s) and are strategically placed at the front to draw attention to their importance.

If there are any questions on either of these two forms, please contact the City Clerk's Office.

AN ORDINANCE AMENDING SECTION 9-54 OF CHAPTER 9 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO DEMERIT POINT SYSTEM.

(Safety and Licensing Committee – 5-20-09)

The Common Council of the City of Appleton does ordain as follows:

Section 1: That Section 9-54 of Chapter 9 of the Municipal Code of the City of Appleton, relating to demerit point system, is hereby amended to read as follows:

Sec. 9-54. Demerit point system.

(a) There is hereby established a point system for the purpose of guiding the Safety and Licensing Committee in the suspension or revocation of alcoholic beverage licenses. The number of demerit points is assigned according to the type of violation. This system is intended to identify habitually troublesome liquor licensees who repeatedly violate state statutes and/or City of Appleton ordinances and to take consistent action against such licensees.

(b) There is hereby assigned the following demerit points for each type of violation:

| <u>TYPES OF VIOLATIONS</u> | <u>DEMERIT POINTS</u> (per violation) |
|---|--|
| Refusal to cooperate with Fire Chief, Police Chief or designees | 100 |
| Exceeding posted occupancy capacity | 80 |
| Exceeding posted occupancy capacity by more than 30% | 150 |
| Sale of person under age 21 | 80 |
| Person under age 21 on premises | 80 |
| Sale to intoxicated person | 80 |
| False statement on application | 70 |
| Operating while license is suspended | 200 |
| Unauthorized transfer/use of license | 90 |
| Conducting unlawful business | 150 |
| No licensed bartender on premises | 40 |

| | |
|---|-----|
| Open after hours/failure to vacate | 50 |
| After hours carry-outs | 50 |
| Gambling/gambling paraphernalia on premises | 150 |
| Nude or semi-nude entertainer/employee on premises | 150 |
| Failure to display license | 25 |
| Owner/employee selling controlled substances | 150 |
| Illegal drug paraphernalia on premises | 100 |
| Other acts – failure to maintain order/disorderly conduct, noise complaints, etc. | 45 |
| <i>Penalty enhancer for severe offenses:</i> | 100 |

Enhanced penalty for conduct which
(1) result in bodily harm to any individual
(2) creates a substantial risk of death or bodily harm;
(3) involves the use of a firearm or other dangerous weapon; or
(4) demonstrates an ongoing disregard for the requirements of state law or municipal ordinances

| <u>HEALTH CODE VIOLATIONS</u> | <u>DEMERIT POINTS</u> (per violation) |
|--------------------------------------|--|
| Non-critical violation | 25 |
| Critical violation | 80 |

(c) ***Calculating violations*** In determining the accumulated demerit points, the date of the violation is used as the basis for assigning demerit points per violation. Points shall be assigned only after conviction for violations.

(d) ***Suspension and revocation of license.*** The Police Department shall notify the Safety and Licensing Committee of any convictions which result in the assessment of demerit points against any licensee. Following this notification, or the filing of a complaint pursuant to W.S.A. §125.12, the Committee shall hold a hearing if required by W.S.A. §125.12 or this section, and shall take the following action, after first determining the number of demerit points to be assessed against the licensee:

- (1) For demerit points totaling 25-149 within a 12-month period, a warning to the licensee of the consequences of additional violations.
- (2) For demerit points totaling 150-199 within a 12-month period, suspension of the license for a period of not less than 10 days nor more than 90 days.

- (3) For demerit points totaling 200 or more within an 18-month period, revocation of the license. Whenever any license is revoked, at least six (6) months from the time of such revocation shall elapse before another license shall be granted for the same premises, and twelve (12) months shall elapse before any other license shall be granted to the person whose license was revoked.

(e) **Scope.** Nothing in this section shall be construed to conflict with, abridge or modify, the rights or procedures established for revocation or suspension of licenses in W.S.A. §125.12. Notwithstanding the requirements of this section, the Safety and Licensing Committee may require the appearance before it of any licensee at any time.

(f) **Transfer/sale of licensed business.** Upon the transfer or sale of the licensed business, all accumulated demerit points shall be canceled unless any of the following apply:

- (1) The new licensee is related to the former licensee by blood, adoption or marriage;
- (2) The new licensee held a business interest in the previously licensed business, real estate or equipment;
- (3) The former licensee or an individual related to the former licensee by blood, adoption or marriage retains an interest in the business, real estate or equipment used by the business;
- (4) The new licensee's acquisition of the business did not involve an arm's length transaction consisting of an open market sale in which the owner is willing, but not obligated to sell, and the buyer is willing, but not obligated to buy.

If any of the above apply, the new licensee shall inherit the demerit points previously assessed and be subject to the penalties set forth in the Code.

Section 2: This ordinance shall be in full force and effect from and after its passage and publication.

Dated: June 4, 2009

Timothy M. Hanna, Mayor

Cynthia I. Hesse, City Clerk

| | | | |
|---|--|---------------------------|-------------------------|
| -APPLETON POLICE DEPARTMENT POLICY | TITLE: Licensed Premises Inspections | | |
| ISSUE DATE: 04-19-95 | REVIEW DATE: 06-18-13 | REVISED DATE: 06-18-13 | SECTION: Operational |
| POLICY SOURCE: Lt. Assigned to Safety & Licensing Committee | | | TOTAL PAGES: 3 |
| SPECIAL INSTRUCTIONS: Amends: Licensed Premises Inspections 06-09-11 | | | |

I. PURPOSE

The purpose of this policy is to establish guidelines for coordinating licensed premises inspections and controlled alcohol transactions. Primary functions of the licensed premises inspection teams are also covered in this document.

II. POLICY

It is the responsibility of the Appleton Police Department (APD) to ensure that liquor license holders are in full compliance with all Wisconsin State Statutes and Municipal Ordinances that regulate the selling, procuring, dispensing, and storage of alcoholic beverages.

To ensure compliance from liquor license holders and their employees, the APD will routinely conduct inspections and controlled alcohol transactions in licensed establishments.

III. DISCUSSION

The challenge of reducing the availability and opportunity for purchasing, procuring, and consuming alcoholic beverages by legally prohibited consumers is one the APD takes seriously. To adequately address this growing social problem, the Department strives to work with alcohol license holders and servers of alcoholic beverages to increase their awareness of the problem and to reduce underage drinking in Appleton.

IV. DEFINITIONS

- A. Controlled Alcohol Transaction: An attempt to purchase alcoholic beverages by an agent of the APD who is not otherwise lawfully permitted to purchase, or consume alcoholic beverages, or loiter in licensed establishments.
- B. Liquor License Year: The start of a liquor license year is July 1 and ends June 30 the following year.

V. PROCEDURE

A. Licensed Premises Inspections

1. APD officers will periodically visit premises with liquor licenses to ensure that:
 - a. All licenses and permits are current;
 - b. Bartenders are properly licensed;
 - c. There are no lawfully prohibited patrons on the licensed premises;
 - d. Business operations are conducted lawfully;
2. Inspections reinforce the need to take necessary precautions for obtaining age verification from patrons, thereby ensuring that they are selling only to persons of lawful age.
3. After conducting these inspections, the Department will provide feedback to the licensee, owner, and bartenders involved, identifying any existing violations and problems observed.

B. Licensed Premises Inspections Team

1. An appointed coordinator will form a licensed premises inspection team.
2. This Coordinator will provide the respective district commanders with a schedule of on-going inspections of all licensed establishments for the licensing year.
3. All licensed premises within the city of Appleton will be subject to a routine inspection a minimum of two times every year. The licensed premises inspections team will arrange these inspections.
4. Controlled alcohol transactions will be conducted twice per year at all licensed premises to ensure compliance with appropriate procedures and practices in the sale, dispensing, and procurement of alcoholic beverages. Repeated violations will result in more intensive enforcement.
5. The APD will continue to work with license holders to identify areas of concern, improve efficiencies and expand communication.

C. Controlled Alcohol Transaction

1. In addition to licensed premises inspections, the department will conduct controlled alcohol transactions in licensed establishments.

2. The Licensed Premises Inspections Team will coordinate controlled alcohol transactions and forward the results of the activity to the Lieutenant assigned to the Safety and Licensing Committee for appropriate action.
3. The following guidelines apply to agents used for controlled alcohol transactions:
 - a. The agent should be of an appropriate age for the type of operation, though not looking older than his/her age. The agent should not be chosen with intent to deceive the person(s) operating the licensed premises.
 - b. Whenever possible, the agent should be an employee of the APD.
 - c. The agent must conduct himself/herself in a straightforward manner, without a deliberate attempt to deceive, trick, or misrepresent.
 - d. The agent must not consume any alcoholic product purchased during the operation.

D. Enforcement

1. Any violation observed by an officer while conducting a licensed premises inspection should be addressed at that time with all involved parties.
2. Any violation observed by an officer while conducting a controlled alcohol transaction should be addressed at that time with an arrest of all involved parties.
3. The arresting officer will notify the respective licensed premises agent through the issuance of a written warning (in person or by mail).

Peter J. Helein
Chief of Police

06-26-2013

Date



APPLETON POLICE DEPARTMENT

LICENSED PREMISE

EMPLOYEE TRAINING

The Appleton Police Department is pleased to announce that we are offering a training program for employees of licensed premises. This program is an ongoing cooperative venue between the police department and our city's licensed premises.

Topic covered include:

- *The benefits of working together**
- *Acceptable forms of ID**
- *Recognizing an altered ID**
- *Handling disorderly/unwelcome patrons**
- *Selling to intoxicated patrons**
- *Closing procedures**
- *License and ordinance laws**
- *Illegal gambling operations**
- *Video gambling devices**

Registration Information

When and where are the sessions held?

The sessions are scheduled by appointment. Sessions are typically conducted at the Appleton Police Department.

What is the cost?

The training sessions are offered free of charge.

What do my employees need to bring?

We recommend that note taking materials are brought with the employee. A copy of the Power Point presentation will be provided.

How do I register?

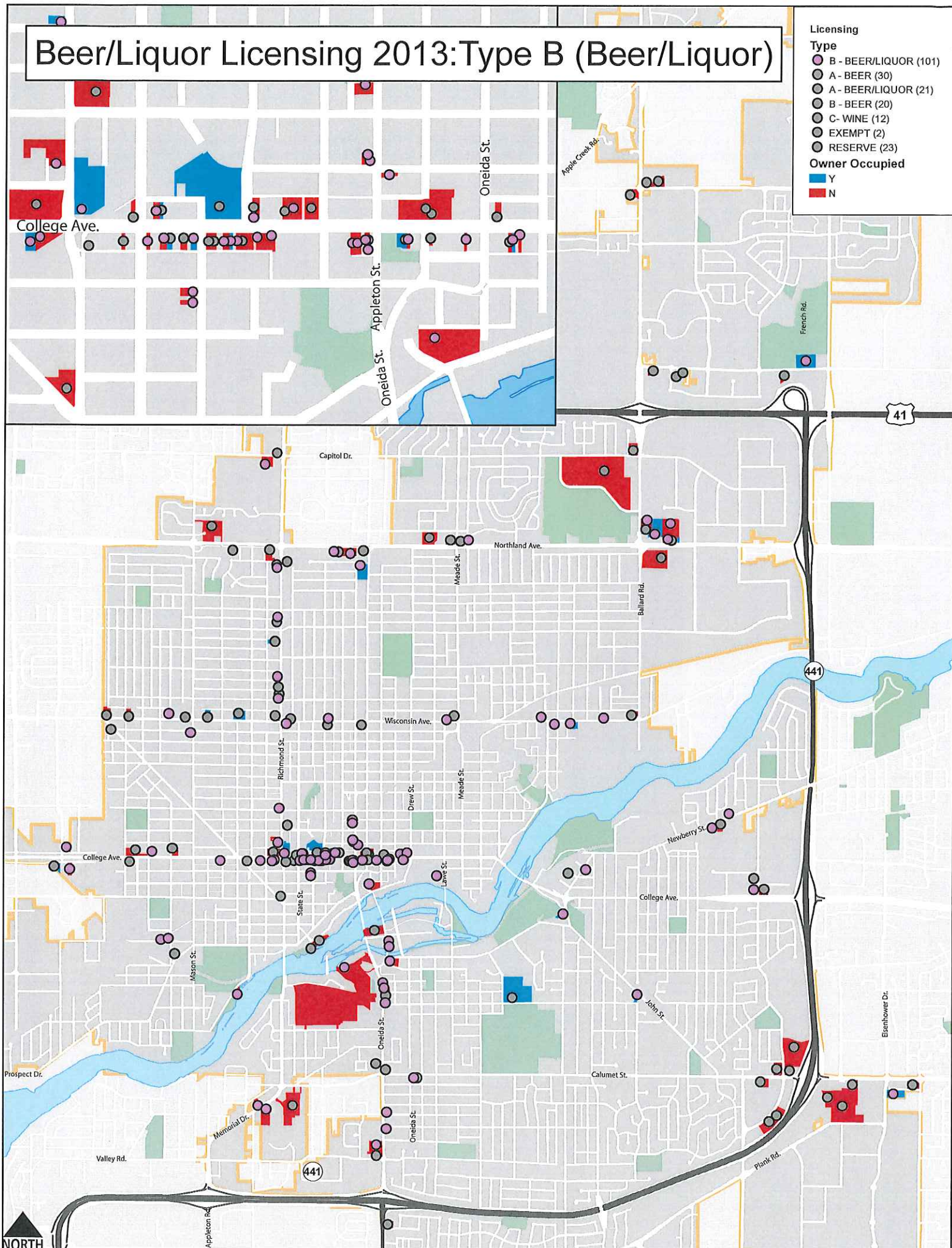
Participants may register by contacting Lt. Stephen Elliott at 832-5524.

Questions?

Contact Lt. Stephen Elliott at 832-5524.

Beer/Liquor Licensing 2013: Type B (Beer/Liquor)

- Licensing**
- Type**
- B - BEER/LIQUOR (101)
 - A - BEER (30)
 - A - BEER/LIQUOR (21)
 - B - BEER (20)
 - C - WINE (12)
 - EXEMPT (2)
 - RESERVE (23)
- Owner Occupied**
- Y
 - N



Beer/Liquor Licensing 2013: Reserve

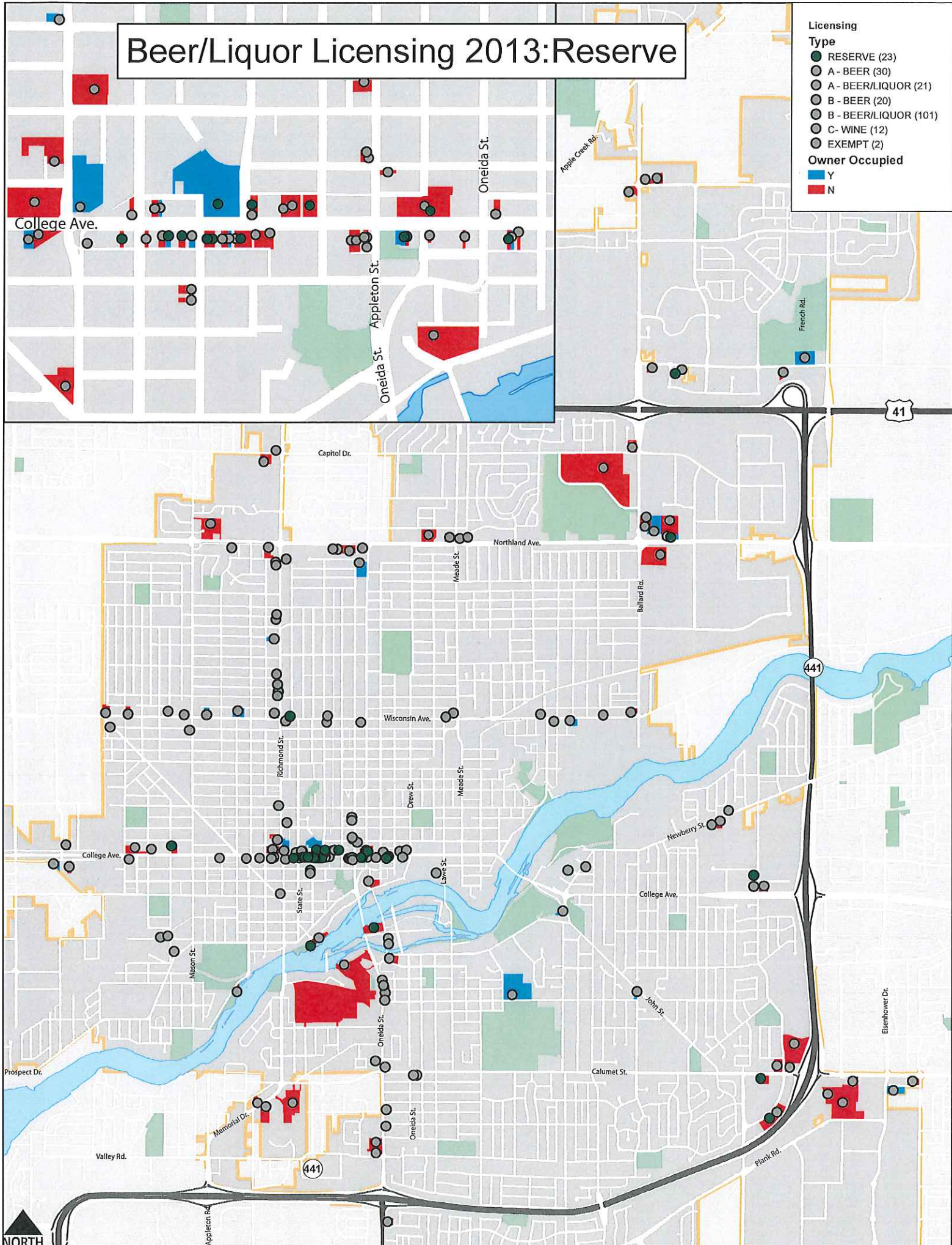
Licensing

Type

- RESERVE (23)
- A - BEER (30)
- A - BEER/LIQUOR (21)
- B - BEER (20)
- B - BEER/LIQUOR (101)
- C - WINE (12)
- EXEMPT (2)

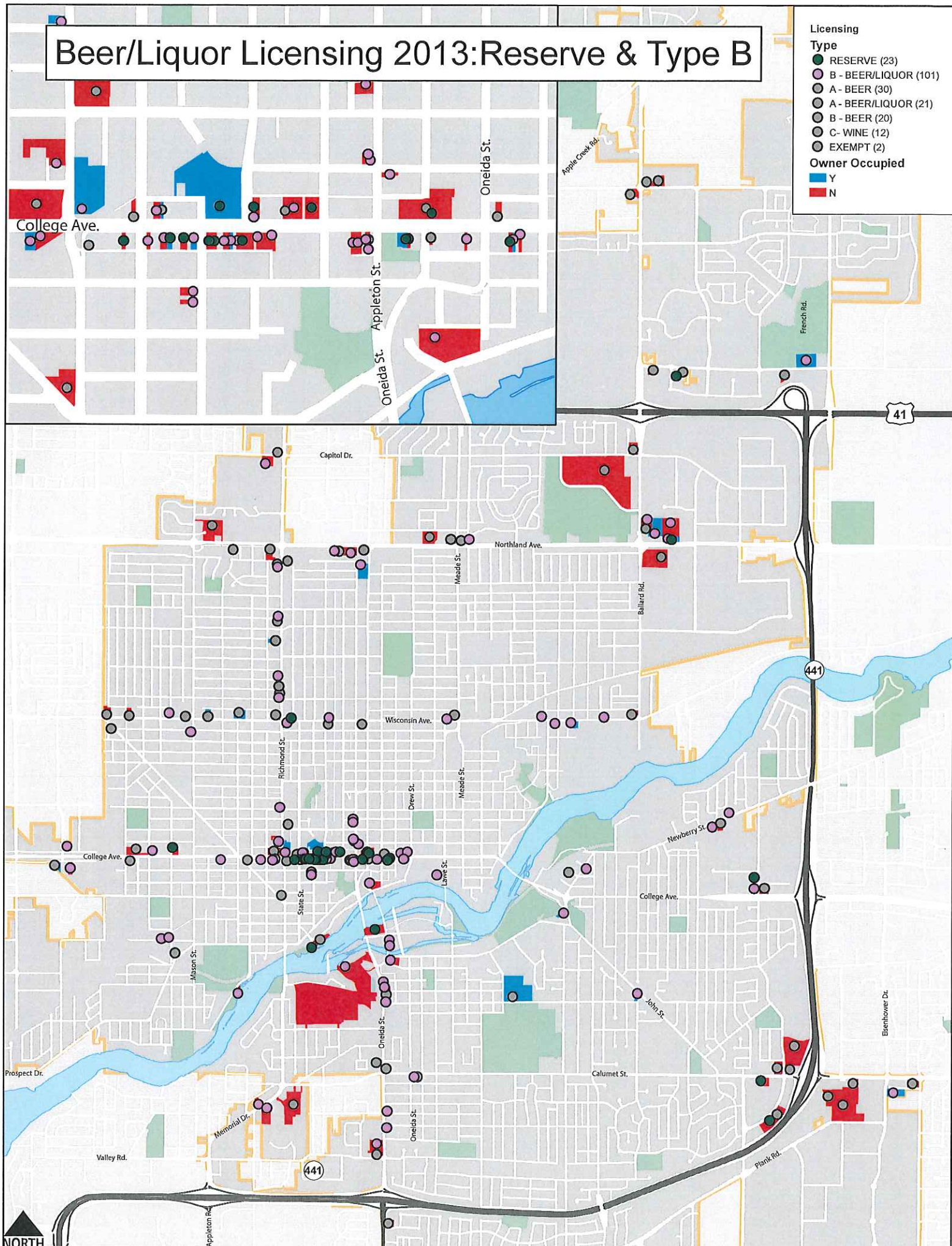
Owner Occupied

- Y
- N



Beer/Liquor Licensing 2013: Reserve & Type B

- Licensing**
- Type**
- RESERVE (23)
 - B - BEER/LIQUOR (101)
 - A - BEER (30)
 - A - BEER/LIQUOR (21)
 - B - BEER (20)
 - C - WINE (12)
 - EXEMPT (2)
- Owner Occupied**
- Y
 - N



Beer/Liquor Licensing 2013:All

- Licensing**
- Type**
- A - BEER (30)
 - A - BEER/LIQUOR (21)
 - B - BEER (20)
 - B - BEER/LIQUOR (101)
 - C - WINE (12)
 - EXEMPT (2)
 - RESERVE (23)
- Owner Occupied**
- Y
 - N

