

ORDINANCE NO. 95

AN ORDINANCE LICENSING AND REGULATING THE SALE AT RETAIL OF BEER AND LIQUOR AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH:

Be it ordained by the City Commission of the City of Washburn, North Dakota.

SECTION I - DEFINITIONS

A. Alcoholic Beverages - The term "alcoholic beverages" as used in this ordinance shall be construed to be of such alcoholic content as is provided by the laws of the State of North Dakota.

B. Liquor - The term "liquor" as used in this ordinance shall be construed to be of such alcoholic content as is provided by the laws of the State of North Dakota.

C. Beer - The term "beer" as used in this ordinance shall be construed to be of such alcoholic content as is provided by the laws of the State of North Dakota.

D. Off-Sale - The term "off-sale" shall mean the sale of alcoholic beverages in original package for consumption off or away from the licensed premises where sold.

E. On-Sale - The term "on-sale" shall mean the sale of alcoholic beverages for consumption on the licensed premises where sold only.

F. Club or Lodge - The terms "lodge or club" shall mean and include any corporation or association organized for civic, fraternal, social or business purposes, or for the promotion of sports; and which said club or lodge does not engage in the sale of alcoholic beverages for more than 24 days during the year.

G. Retail Sale - "Sell at Retail", "Sale at Retail", when used in this ordinance shall have reference to a sale to a consumer for use or consumption and not for the purpose of resale in any form.

H. Person - The term "person" shall include persons, corporations, partnerships, and other unincorporated associations.

I. Sale - The term "sale" is defined to mean and include any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person whether principal proprietor, agent, servant or employee.

J. Minor - A "minor" shall mean any male or female person under the age of twenty-one (21) years.

SECTION II - LICENSE REQUIRED

It shall be unlawful for any person, firm, or corporation to engage in the sale of beer, liquor or alcoholic beverages within the City of Washburn without first obtaining a license herein provided.

SECTION III - LICENSES AND FEES

The fees for licenses under this ordinance shall be as follows:

- A. Off-Sale Beer, Retail - - - - - \$200.00
- B. On-Sale & Off-Sale Beer, Retail - - - - \$200.00
- C. Off-Sale Liquor, Retail - - - - - \$1,800.00
- D. On-Sale & Off-Sale Liquor, Retail - - - \$1,800.00
- E. Clubs and Lodges On-Sale Liquor and Beer License - - \$50.00. Subsections A, B, C and D shall not apply to local clubs and lodges.

In application for a new license, the fee may be pro-rated in those instances where such license is effective for fractional part of a year. When an applicant so desires, he may, if the application for license is made between June 30th and December 31st of any year, pay

the fee for such license in two (2) installments, the first payment thereof in an amount equal to fifty percent (50%) of the license fee or the pro-rated portion thereof as hereinbefore provided, shall be tendered and paid at the time of the filing of the application for license, either in cash or in the form of a cashiers check drawn upon a solvent bank and the license issued to such applicant shall be revoked on December 31st of the year in which issued unless applicant shall on or before said day, tender and pay in like manner the remaining fifty percent (50%) of the license fee, such revocation being exclusive of all other causes and manners of revocation as provided in this ordinance and the license shall, when issued, bear on its face, a stamp or writing to the effect that the fee for such license has been paid only until December 31st of such year and that such license is not effective after December 31st of said year without the payment of the additional amount of such license fee and when such license fee is paid there shall be stamped or written on such license a statement signed by the City Auditor and to the effect that the remainder of such license fee has been paid, and it shall be unlawful for any person holding such license to sell intoxicating liquor until h fees have been paid as aforesaid.

No license shall be issued to any lodge or club where sales of liquor in such lodge or ~~club~~ are made for the profit of any individual and unless such profits made on the sale of such intoxicating liquor by such lodge or club are used only for benevolent purposes.

Licenses issued to clubs and lodges shall be "On-Sale" only; all other licenses may be "On-Sale", "Off-Sale" or "On and Off-Sale".

SECTION IV - QUALIFICATIONS REQUIRED FOR LICENSE

In addition to qualifications now prescribed by law, no license authorizing the sale of beer, liquor, or alcoholic beverages shall be issued to any person, partnership, association of individuals or corporation by the City of Washburn unless such applicant shall file a sworn application therefor, accompanied by the required fee, and shall show in such application that he possesses the following qualifications:

- A. Applicant must be a citizen of the United States and of the State of North Dakota and have bona fide residence in the City of Washburn, State of North Dakota, and be a person of good moral character.
- B. Applicant shall not have been convicted of a felony, or of pandering or of keeping a house of prostitution, or have been convicted within five (5) years of the date of his application of any violation of the laws of the State or the laws of the United States relating to beer, liquor or alcoholic beverages.
- C. Applicant shall not have had revoked, within five (5) years next preceding his application, any license issued to him pursuant to the ordinances or resolutions of a city, village or board of county commissioners, to the laws of this state, or any state, to sell beer, liquor or alcoholic beverages.
- D. If applicant is a co-partnership all members of the co-partnership must be personally qualified to obtain a license.

SECTION V - LICENSES ISSUED TO OWNERS ONLY

No license shall be issued to any person, firm or corporation engaged in business as the representative or agent of another. The license may issue only to the owner or owners of the business being conducted at the location sought to be licensed.

SECTION VI - APPLICATIONS

Applications for licenses under this ordinance shall be written, under oath, setting forth:

- A. Name of applicant.
- B. Residence of applicant.
- C. Citizenship.
- D. Legal description of premises where it is proposed to sell.
- E. Whether or not personal property or real estate taxes of applicant or premises are paid to date.

F. Such other information as may be required to act upon the application.

SECTION VII - LIMITATIONS AS TO LOCATION

No license shall entitle the holder to carry on such business at more than one location under one license. No license shall entitle the holder to carry on such business at retail except on the first or street level, except lodges and clubs. No sale, serving or consumption of beer, liquor or alcoholic beverages shall be lawful upon a street, sidewalk, alley, public way or upon or in a vehicle upon the same. No retail license shall be issued for any building, room or place within one hundred fifty (150) feet of any church or public or parochial school, synagogue, or public library, and in determining the distance, the distance shall be measured by the ordinary route of travel from the nearest point upon the grounds upon which such church or public or parochial school, synagogue or public library is located to the entrance of the premises for which license is sought.

SECTION VIII - TOILET REQUIREMENTS - ON-SALE PREMISES

That the premises where On-Sale License is granted must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and kept in a clean and sanitary condition. The On-Sale License may be revoked when the foregoing requirements, or any other health ordinance or regulation, is not, at all times, strictly observed.

SECTION IX - LIMITATION OF HOURS AND DAYS OF SALE

No licensee licensed pursuant to this ordinance shall sell, serve or permit to be sold, served or consumed on the premises named in the license any intoxicating liquor during the following periods:

A. WHEN DAYLIGHT SAVING TIME IS IN EFFECT:

1. Between 1:00 o'clock a.m. and 8:00 o'clock a.m. on Saturday, after 1:00 o'clock a.m. on Sunday, Memorial Day, Good Friday or on the day of any general, primary, special or local election held within this City while the polls are open or within one hour thereafter.
2. Between 12:01 o'clock a.m. and 8:00 o'clock a.m. on any other day of the week.

B. WHEN DAYLIGHT SAVING TIME IS NOT IN EFFECT:

1. On Sunday, Good Friday, after 6:00 p.m. Christmas Eve, Christmas Day or on the day of any general, primary, special or local election held within this City while the polls are open or within one hour thereafter.
2. Between 12:01 o'clock a.m. and 8:00 o'clock a.m. on any other day of the week.

SECTION X - LICENSEE RESPONSIBLE FOR CONDUCT OF PLACE OF BUSINESS

Every licensee is hereby made responsible for the conduct of his place of business and required to maintain order and sobriety in such place of business. No intoxicated person persons shall be permitted to remain upon the premises or to be sold intoxicating liquor any person holding any license issued pursuant to this ordinance.

SECTION XI - MINORS NOT TO BE PRESENT ON LICENSED PREMISES; EXCEPTION

No minor shall be permitted to enter and remain on any premises licensed under this ordinance serving or selling at retail. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if (1) accompanied by a parent or legal guardian, (2) employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age, and not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, or (3) if the person is a law enforcement officer entering the premises in the performance of official duty. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age.

SECTION XII - MINORS LIABLE FOR VIOLATION

Any minor who misrepresents his or her age for the purpose of purchasing or drinking any intoxicating liquor or beer shall be deemed guilty of a violation of this ordinance and subject to prosecution under the terms hereof.

SECTION XIII - TERMINATION REVOCATION AND CANCELLATION OF LICENSES

Licenses shall end on June 30th following the date of their issuance. They may be revoked or cancelled for any one or more of the following reasons:

A. The death of the licensee, unless upon application to the City Commission by the personal representative of the deceased, the City Commission shall desire to consent to the carrying on of such business by the personal representative.

B. When the licensee ceases business at the location licensed.

C. When the licensee shall be convicted of violating any of the provisions of this ordinance.

D. When the licensee ceases to be legal bona fide resident and citizen of the State of North Dakota.

E. When the license or permit of licensee from the United States Government or the State of North Dakota has been terminated or revoked.

F. When the licensee has been convicted of a crime under the laws of the United States or under the laws of one of the several states.

G. When the licensee, if an individual, or one of the partners, if the licensee is a partnership, or one of the officers, if the licensee be a corporation, be convicted in the Municipal Court of this City, or in any other Justice or District Court, of drunkenness or disorderly conduct.

H. When the licensee permits drunken, inebriate, or disorderly persons to frequent his place of business.

The causes enumerated above shall not be deemed to be exclusive and the Board of City Commissioners does hereby retain and reserve unto itself the right to cancel the license for any cause which it may deem sufficient, provided, however, before such license shall be revoked for cause other than above named, the Board of City Commissioners shall notify the licensee whose license is sought to be cancelled, that his license will be cancelled or terminated after hearing held before the Board of City Commissioners, which said notice shall further specify the time and place when and where said hearing shall be held and which notice shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a Summons in a civil action, and the date of such hearing shall not be less than three (3) nor more than ten (10) days after the date of the service of said notice, but may be adjourned from time to time in the discretion of the City Commission.

If, upon such hearing, it appears to the City Commission that such cause exists for the revocation or cancellation of such license, the City Commission shall make its order therein revoking or cancelling such license, and if upon such hearing, it appears to the City Commission that sufficient cause does exist for revoking or terminating and cancelling such license, then said license shall remain in full force and effect.

SECTION XIV - LIMITATION ON NUMBER OF LIQUOR AND BEER LICENSES

The number of licenses which may be issued for the retail sale of alcoholic beverages in the City of Washburn shall be and the same is hereby limited as follows:

A. One (1) Off-Sale Beer, Retail,

B. Three (3) On-Sale and Off-Sale Beer, Retail,

C. Two (2) Off-Sale Liquor, Retail,

D. Two (2) On-Sale and Off-Sale Liquor, Retail,
exclusive of Club licenses and licenses issued to restaurants.

No licenses for the sale of alcoholic beverages shall be issued in excess of the number

Affidavit of Publication

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PENALTIES
Any person found guilty of violating any of the provisions of this ordinance shall be punished by a fine of not more than \$500.00 or by imprisonment for not to exceed 30 days or both such fine and imprisonment in the discretion of the Court.

Ordinance No. 95 of which the above represents the title and penalty clause was passed by the City Commission of the City of Washburn, North Dakota, on the 2nd day of May, 1977.

JOHN ROMANICK
CITY AUDITOR

May 19

STATE OF NORTH DAKOTA)
County of McLean) ss

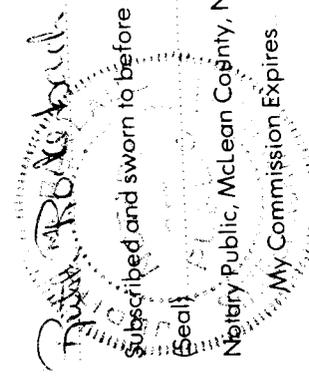
I, Ruth Rockenbach, being first duly sworn, on my oath, say that I am the bookkeeper of The Washburn Leader, a weekly newspaper of general circulation, published in the City of Washburn, in said county and state, and that the advertisement headed:

Ordinance No. 95

a printed copy of which hereunto annexed, was published in the regular and entire issue of said newspaper during the period and time of publication, and that the notice was published in the newspaper proper, and not in a supplement, for consecutive week May 19, 1977

May 19, 1977
_____, 19____
_____, 19____
_____, 19____
_____, 19____
_____, 19____
_____, 19____

Publishing fee, \$ 4.68



Subscribed and sworn to before me this 12 day of May, A.D. 19 77

JUDITH M. BORLAUG
Notary Public, McLean County, North Dakota
My Commission Expires JUNE 30, 1978

specified above exclusive of club licenses and licenses issued to restaurants until such time as the population of the City of Washburn as shown by Federal, State or local official census is in excess of 2000 and such official census shall be conclusive as to the determination of the population of the City of Washburn for such purposes.

This section shall not be construed to require that there be issued in the City of Washburn licenses to the number of licenses hereinbefore stated and the Board of City Commissioners in its discretion and in the event of cancellation and termination of licenses reducing the number of licenses below the number specified above, may refuse to issue additional licenses in the event it deems that a sufficient number of licenses have been issued.

SECTION XV - TRANSFERS

No license under this ordinance shall be transferable, without the approval of the Board of City Commissioners and payment of a transfer fee of \$10.00. No license shall be transferable from one location to another without approval of the Board of City Commissioners.

SECTION XVI - APPROVAL OF COMMISSION - LICENSE ISSUANCES

Any application, whether for sale of beer, or retail sale of intoxicating liquors must be approved by the Board of City Commissioners before a license shall be issued.

SECTION XVII - PENALTY

Any person found guilty of violating any of the provisions of this ordinance shall be punished by a fine of not more than \$500.00 or by imprisonment for not to exceed 30 days or both such fine and imprisonment in the discretion of the Court.

SECTION XVIII - REPEAL

Ordinance 69 and any amendments thereto are hereby repealed.

APPROVED: 
President, City Commission

ATTEST: 
Auditor

First Reading: April 18, 1977

Second Reading: May 2, 1977

Final Passage: May 2, 1977