ORDINANCE NO. 127

AN ORDINANCE RELATING TO THE LICENSING AND SALE OF ALCOHOLIC BEVERAGES AND OPERATING A CABERET

BE IT ORDAINED by the City Commission of the City of Washburn, North Dakota.

SECTION I - DEFINITIONS

1. "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.

2. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.

3. "Liquor" shall mean any alcoholic beverage except beer.

4. "Wine" shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

5. "Sparkling wine" shall mean wine made effervescent with carbon dioxide.

6. "Alcohol" shall mean neutral spirits distilled at or above 190 proof, whether or not such product is subsequently reduced, for nonindustrial use.

7. "Distilled spirits" shall mean any alcoholic beverage that is not beer, wine, sparkling wine or alcohol.

8. 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.

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

10. Club or Lodge - The terms "lodge or club" shall mean and include any corporation or association organized for civic, fraternal, social or business purposed, 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.

11. 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.

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

13. 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.

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

15. Eating Establishments - As used in this ordinance, "eating establishments" means a restaurant or other commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail, pursuant to Chapter 5-02 NDCC and which has a city license and has paid the appropriate city food and lodging taxes for a continuous period before the application for the permit, or which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.

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 as herein provided.

SECTION III - LICENSES AND FEES

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

A.	Off-Sale Beer, Retail - - - - - -	$ 300.00
B.	On-Sale & Off Sale Beer, Retail - -	$ 400.00
C.	Off-Sale Liquor, Retail - - - - -	$1,000.00
D.	On-Sale & Off Sale Liquor, Retail -	$1,200.00
E.	Clubs and Lodges One-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 there of 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 such fees have been paid as aforesaid.

No license shall be issued to any lodge or club where sales or 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 or individuals or corporation by the City of Washburn unless such applicant shall file a sworn application therefore, 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 descriptions 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 entitled 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 - DISPOSAL PROHIBITED ON CERTAIN DAYS - PENALTY

Except as permitted by 5-02-05.1 and 5-02-05.2 NDCC, any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before eight a.m. on Mondays, or between the hours of one a.m. and eight a.m. on

all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Good Friday or Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

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 is required to maintain order and sobriety in such place of business. No intoxicated person or persons shall be permitted to remain upon the premises or to be sold intoxicating liquor by 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 December 31st following the date of their issuance. They may be revoked or canceled 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 within the State of North Dakota, 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 canceled, that his license will be canceled 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 canceling such license, and if upon such hearing, it appears to the City Commission that sufficient cause does exist for revoking or terminating and canceling 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. Three (3) On-Sale and Off-Sale Liquor, Retail,
exclusive of Club licenses and licenses issued to restaurants.

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 the 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 - CABARET LICENSE

1. DEFINITIONS.

a. Entertainment - shall be defined for purposes of this Ordinance to mean all forms and types of performing or entertaining for patrons on licensed premises without regard as to whether such entertainment is provided by means of live performances or manually operated, electronic systems designed for stereophonic playback of prerecorded signals; provided, however, that entertainment shall not be deemed to include the use of any television, radio or coin operated music machine.

b. Live performances - shall be defined for the purpose of this Ordinance to mean any person who for consideration, monetary or otherwise, performs in person on a licensed premise as a singer, musician, dancer, comedian, model or any other type of entertainer.

2. No licensee under this Chapter shall permit entertainment for more than one day a week any given week without first having obtained a cabaret license as hereinafter provided.

3. The license fee for cabaret license shall be $1.00 per year.

4. The license fee set forth in subsection 3 of this Section shall be for a period of one year from January 1 to December 31 and shall be payable in advance at the time of the issuance of the license and thereafter, on or before June 10 of each subsequent year for renewal of said license.

5. The application for cabaret license shall be made by the licensee on forms provided by the City Auditor's office of the City of Washburn. The granting of a cabaret license shall be subject to the approval of the commission and it may be suspended or revoked in conformance with procedures established under Section XIII.

6. No live performances are permitted on a licensed premise which contain any form of dancing. Such prohibition on dancing does not include the incidental movement or choreography of singers or of a musical instrument. This restriction applies to all licensed premises whether or not they have a cabaret license.

7. No live performances are permitted on a licensed premise which involve the removal of clothing, garments or any other costume. Such prohibition does not include the removal of headwear or footwear; or the incidental removal of a tie, suitcoat, sportcoat, jacket, sweater or similar outer garments. Incidental removal for purposes of this section shall mean the removal of a garment or article of clothing which is not a part of the act or performance. This restriction applies to all licensed premises whether or not they have a cabaret license.

8. No entertainment on a licensed premise shall contain:

(a) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(b) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals;

(c) The actual or simulated displaying of the pubic hair, anus, vulva or genitals; or the nipples of a female.

This restriction applies to all licensed premises whether or not they have a cabaret license.

9. A licensee shall have the duty and responsibility to make available for inspection by a member of the McLean County Sheriff's Department, an identification card, such as a driver's license, containing a photograph and the age of all entertainers or performers on the licensed premise. The licensee shall not permit a person to make a live performance on the licensed premise if the licensee is not able to obtain the required identification from the performer.

10. If any section, subsection, sentence or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

SECTION XVIII - SUNDAY OPENING

1. The City may, it its sole discretion, issue an on-sale liquor or beer license to a current holder of an on-sale liquor or beer license, the right of an eating establishment to dispense or sell beer and wine in conjunction with the sale of prepared meals on Sunday between the hours of 12:00 noon and 9:00 p.m. for consumption only in that part of the eating establishment habitually used for serving prepared meals.

2. The City may issue a special Sunday alcohol beverage permit to a private club, lodge, restaurant, motel or hotel licensed as a retail alcoholic beverage establishment under 5-02 holding a current license within the City; or to a public owned or operated facility.

3. The authority for issuing such special permit rests solely with the governing body of the City. A special permit may be granted only upon proper application to and approval by the governing body, and must include the payment of a fee determined by the governing body. A special permit granted by the City may be effective for more than one Sunday.

4. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in the private club, lodge, restaurant or publicly owned or operated facility. The City may permit dancing and the distribution of alcoholic beverages between the hours of 12:00 noon on a specified Sunday, and 1:00 a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority and special permit. The private club, lodge, restaurant or publicly owned or operated facility granted this special permit shall enforce the requirements of this section.

5. For the purposes of this special Sunday alcoholic beverage permit, a restaurant means a commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail pursuant to this chapter, and which has a City or State restaurant license and has paid the appropriate City food and lodging tax for a continuous six month period before the application for the permit or which derives 50% or more of its annual gross receipts for the sale of prepared meals and noon-alcoholic beverages.

SECTION XIX - 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 XX - REPEAL

Ordinances Nos. 95, 99, 108, 113, 114 and 126 and any other amendments thereto, are hereby repealed.

SECTION XXI - EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its final passage and publication.

CITY OF WASHBURN

Approved: _____
President, City Commission

Attest: _____
City Auditor

First Reading: June 1,1992

Second Reading: June 15,1992

Final Passage: June 15,1992

CITY OF WASHBURN CORPORATE SEAL STATE OF NORTH DAKOTA

Ordinance change

ORDINANCE NO. 127

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City of Washburn
Approved: Perry Oberg
President, City Commission

Attest: Clayton E. Carr
City Auditor
First Reading: June 1, 1992
Second Reading: June 15, 1992
Final Passage: June 15, 1992
LN, June 25, 1992