

AND ORDINANCE REGULATING THE SALE AND CONSUMPTION OF BEER; PROVIDING FOR THE ISSUANCE OF LICENSES TO THOSE ENGAGED IN THE SALE OF BEER, AND FIXING THE LICENSE FEE THEREFOR; REGULATING THE BUSINESS OF VENDORS AT RETAIL OF BEER AUTHORIZED TO BE SOLD BY THE LAWS OF THE STATE; AND PROVIDING FOR PUNISHMENT FOR VIOLATION OF THE PROVISIONS OF THIS ORDINANCE.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WASHBURN, NORTH DAKOTA.

SECTION 1. BEER DEFINED. The term beer as used in this ordinance shall be construed to be a beverage of such alcoholic content as is now or may hereafter defined by the Act of Congress of the United States as beer.

SECTION 2. SALE WITHIN CITY. WHO MAY SELL. Any person, firm or corporation, partnership or association having a legal and bona fide residence in and being a citizen of the State of North Dakota and engaged in any legitimate and lawful business may engage in the retail sale of beer as described herein in the City of Washburn under such restrictions as are hereinafter provided.

SECTION 3. RETAIL SALE OF BEER DEFINED. The term "retail sale of beer" is hereby defined to include all sales of beer except sales made for purpose of resale.

SECTION 4. SALES TO CERTAIN PERSONS UNLAWFUL. No retailer of beer shall be permitted under the provisions of this ordinance to sell beer to a minor, incompetent person, Indian as defined by Federal Law, or a person who is an inebriate or habitual drunkard.

SECTION 5. TRANSFER OF LICENSE. No license issued under the provisions of this ordinance shall be transferable without the approval of the City Commission, and upon the City Commission approving such transfer, the person to whom the license is transferred shall pay as a condition precedent to such transfer being made a fee of Five Dollars (\$5.00) to the City of Washburn.

SECTION 6. LICENSES LIMITED AS TO LOCATION. No license to sell beer under the provisions of this ordinance shall entitle the holder thereof to carry on such business at more than one location under one license, and each license shall contain the legal description of the place where the holder thereof operates his business. No license shall be issued to any applicant where the location sought to be license is not within the commercial district, viz: on Jewell Avenue, between Walnut and Maple Street.

SECTION 7. UNLAWFUL TO SELL BEER WHEN. It shall be unlawful for any person, firm, or corporation to engage in the reatall sale of beer as defined herein within the City of Washburn, without first obtaining a license so to do as provided herein, and it shall further be unlawful for any person, firm, or corporation to sell any beer within the City of Washburn, North Dakota, between the hours of 12:00 P.M. Saturday and 8:00 A. M. Monday, and no sale of beer shall be made on Sunday, Good Friday, Memorial Day, Independence Day, Armitice Day, Thanksgiving Day, Christmas Day, or any Election Day, either general or City. Nothing in the ordinance shall be construed ~~#####~~ as permitting the sale or dispensing of such beer where such sales are prohibited hereby. An election day shall be construed to mean the entire day during which such election is held and not as designated at the time of the closing of the polls.

SECTION 8. OFF-PREMISES LICENSE.--HOW OBTAINED. Any person, firm or corporation as defined in Section 2 of this ordinance may obtain a license to sell beer within the City of Washburn by executing an application to be duly verified, under oath, by the applicant in writing and upon the form to be provided by the City Auditor, setting forth the name, citizenship, and the place of the residence of the applicant, the legal description of the premises where it is proposed to sell, and said application shall also show the age of each partner if the applicant is a partnership, and if the applicant be a corporation, the application must the name and address of each officer, together with the date of the charter and name of the State wherein incorporated. The application shall also state whether or not the applicant will personally conduct the said business, and if said business is not personally conducted by the applicant, the name of the manager or person whoe shall be placed in charge of the business, and there shall also be incorporated in such application the following words:

"The applicant herein does hereby consent that the President of the Board of City Commissioners, the Police Commissioners, and Police Office of the City of Washburn may enter upon the premises described in this application at any hour of the day or night, and such person shall have a free access to the said premises described and every part thereof for the purpose of inspecting the premises and the records of this applicant relating to the purchase and sale of beer, and applicant does hereby waive and all rights that he may have under the Constitution of the United States and the Constitution of the State of North Dakota relative to searches and seizures without issuance or use of a search warrant, and the applicant does hereby agree that such immunities shall never be claimed by him, and that such search, seizure and inspection may be made at any time without a search warrant."

The applicant shall also furnish as part of the application satisfactory proof that applicant is duly authorized to sell beer at the location stated pursuant to the license or permit from the United States and from the State of North Dakota, and the application shall be accompanied by a fee of Twenty Five Dollars (\$25.00) as the license fee. The City Auditor shall submit the application to the Board of City Commissioners at its next meeting. If approved, the City Auditor shall issue the applicant a receipt showing the date and amount paid, and by whom paid, and for what location, which shall constitute the license. The license must be displayed at all times in a prominent place on the premises described therein. Each must license must be given an identification number and a permanent record must be kept by the City Auditor showing the name and address of the licensee and the legal description of the place licensed. The application must also state that the applicant agrees to abide by all future amendments to this ordinance that may be legally enacted by the Board of City Commissioners of the City of Washburn.

The serving or consumption of beer on the premises licensed is declared to be unlawful unless the licensee obtains and "On-Premises License" as provided in the next section.

SECTION 9. ONE PREMISE LICENSE--HOW OBTAINED. If the licensee mentioned in the preceding section of this ordinance desires to serve or permit the consumption of beer at the place licensed, such licensee shall so state in the application and shall pay an additional fee of Fifty Dollars (\$50.00) therefor, at the time of filing such an application and the license to be issued by the City Auditor shall indicate the class of license issued.

SECTION 10. TERMINATION OF LICENSE. The license provided for in this ordinance shall terminate on December 31st next following the date issuance or for such shorter term as may arise by reason of the revocation of such license for cause which shall include among other grounds, the following:

- (1) 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 the carrying on of such business by the personal representative.
- (2) When the licensee ceased business at the location licensed.
- (3) When the licensee shall be convicted for violating any of the provisions of this ordinance.
- (4) When the licensee ceases to be a legal and bona fide resident and citizen of the State of North Dakota.
- (5) When the license or permit of licensee from the United States Government or the State of North Dakota to sell beer at the location licensed has been terminated or revoked.
- (6) 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.
- (7) When the business of the licensee at the location licensed shall be conducted in violation of the health or sanitary regulations or other ordinances of the City of Washburn.
- (8) When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers, if the licensee be a corporation, be convicted in the police magistrate's court of this city, or in any other Justice or District Court, of drunkenness or disorderly conduct.
- (9) 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 would 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 that the date of such hearing shall not be less than three nor more than ten days after the date of the service of the 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 hearing, it appears to the City Commission that sufficient cause does not exist for revoking or terminating and cancelling such license, the said license shall remain in full force and effect.

When any license is terminated or revoked for cause, the licensee or those claiming under him shall not be entitled to a return of any portion of the license fee previously paid to the City.

SECTION 11. ADMINISTRATION. To facilitate the orderly administration of this ordinance, each applicant will be required to pay a flat license fee for the period from the time this ordinance takes effect until December 31st, 1933 as follows;

For an Off Premises License, as provided in Section 8 hereof, the sum of Ten Dollars (\$10.00)

For any On Premises License, as provided in Section 9 hereof, the sum of Fifteen Dollars (\$15.00) additional, making a total fee of \$25.00.

SECTION 12. DISPOSITION OF LICENSE FEES. All license fees collected by the City Auditor shall be delivered to the City Treasurer and by him credited to the general fund of the City.

SECTION 13. LICENSE 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. That license may be issued only to the owners or owner of the business being conducted at the location sought to be licensed.

SECTION 14. OFF PREMISES LICENSE. WHERE LICENSE MAY BE HAD. No ~~Off~~ Premises license shall be issued to any person, partnership, firm or corporation in any place or location in the City of Washburn except where legitimate business is conducted.

SECTION 14. STREET SALE OR USE FORBIDDEN. The sale or serving or consumption of beer as defined in this ordinance upon or across any street, sidewalk, alley or public way and upon or within any automobile or any other vehicle upon the Streets of the City of Washburn is hereby prohibited.

SECTION 16. ONE PREMISES LICENSE. WHERE LICENSEE MAY SELL. ON PREMISES LICENSED AND CONDITION OF INTERIOR OF BUILDING AS TO BOOTHS AND ENTRANCE. No licensee holding license for the sale or consumption of beer as described in this ordinance as an "On Premises License" shall be permitted to sell beer within the City of Washburn except upon premises located on the first or street level floor of the building located on the premises described in the application and no license shall be granted to any licensee to sell beer upon any premises or from any building not having its main opening located upon or immediately adjacent to a street or main thoroughfare within this city.

No licensee holding such license shall be permitted to sell beer for use or consumption in the basement of the building upon the premises for which license is issued or upon any other floor or department of such building except the main or first floor as hereinbefore set forth, and it shall be unlawful for any person, firm, or corporation to maintain in its basement or upon any other floor or department of the premises licensed any tables, booths, benches, bars, or other equipment ordinarily found or used on premises where beer is consumed, and no such licensee shall permit persons to carry any beer into such basement or other department of floor of the premises licensed, other than the first or main floor thereof for the purpose of consumption thereon, provided however, that this action shall not be construed as prohibiting hotel keepers, duly licensed under the laws of this State to engage in the business of operating hotels and duly licensed under this ordinance, to sell beer, from delivering beer to their guests for ~~the~~ purpose of consumption in their rooms.

No On-Premises Licensee shall construct, place or maintain, or suffer to be constructed, placed, or maintained any side room, any closed booth, or other enclosure in any part of such place of business for which license has been issued, and all booths within said premises shall open into the main part of said room and shall be accessible from the aisles therein, and no booth shall have any thereon any screen, curtain, partition, or blind or obstruction of any kind preventing a clear view into the said booth from the main room or aisle of the said premises.

No. licensee procuring an "On-Premises" License, as provided in this ordinance, shall sell or permit to be sold on any premises licensed hereunder any beer whatsoever unless said premises shall have its main opening upon a street or main thoroughfare, or immediately adjacent thereto, as described in this Section, and shall at all times maintain from such street or main thoroughfare an open, clear and unobstructed view into and through the said premises, and he shall not place any screen, blind, frosting, coloring, or other substance upon the windows or doors of said premises so as to obstruct said view and he shall not place in any window any advertising, signs or other materials designed or having the effect of obstructing the clear view into the said described premises from such street or main thoroughfare. And such licensee shall at all times maintain the interior of said premises in a clean and sanitary condition and conduct and maintain his business in a clean, orderly and respectable manner.

SECTION 17. LODGE AND CLUB ROOMS. The provisions of this ordinance relating to licenses for sale of beer off premises shall not be construed to apply to any local lodge or club existing at the date of the enactment of this ordinance, and which lodge or club is affiliated with a National Organization at the date hereof. But such lodge or club shall be permitted and granted a license to sell beer to members only in its club room and shall pay for such license a fee of Twenty Dollars (\$20.00) for such license up to and including the 31st day of December 1933, and Fifty Dollars per year thereafter, and no license shall be granted to any such lodge or club after January 1, 1934 for any portion less than one year. Provided, further, that any lodge or club desiring to obtain such license shall make its application therefor to be signed and verified by its duly elected Supreme Officer. Such application shall be in the form provided for the issuances of the license as set forth in Section 8 of this ordinance and shall in addition thereto state whether or not said lodge or club desires to sell beer for its own profit or whether such lodge or club grants a concession to a member or non-member to handle the sale of beer, and no license shall be granted to any lodge or club except where such lodge or club sells said beer for its own profit only.

SECTION 18. LODGE PREMISES AND CLUB ROOMS SEARCH. The premises for which the license is granted pursuant to the provisions of this ordinance to any lodge or club, shall, at all times except during the session thereof, be open to inspection in the same manner as other premises where beer is sold and the license granted shall be subject to all the laws, ordinance and regulations of the City of Washburn and to all the regulations pursuant to the terms of this ordinance except those specifically excepted by the terms thereof.

SECTION 19. POLICE POWERS DEFINED. This ordinance is declared to be an exercise of the police power directly affecting and designed to promote the peace, safety, good order, health, and well-being of the people of the City of Washburn.

SECTION 20. SAVING CLAUSE AS TO CONSTITUTIONALITY. The object sought by this ordinance is to provide for the sale and regulation of the sale of beer in the City of Washburn, and is hereby declared that if any provision of this ordinance, in any manner, controverts the Constitution of this State or of the United States that the remaining provisions would have been enacted even though such provisions are found to be in violation of the Constitution of the State or of the United States, had been eliminated from this ordinance. Therefore, if any of the provisions are found to be in violation of the Constitution of the United States or the State of North Dakota, the remaining provisions shall not be affected by such invalidity but shall remain in full force and effect.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WASHBURN, NORTH DAKOTA:

Section Seven (7) of Ordinance No. ⁴⁷ of the City of Washburn, North Dakota as amended on October 7th 1948 and as amended January 17, 1946 and being Ordinance regulating the time and sale of beer and providing and fixing the hours of sale of beer within the city limits by licensees and providing for the punishment for violation of the provisions of this ordinance and Section Eleven (11) of Ordinance No. 48 and being Ordinance regulating the time and sale of intoxicating liquor and providing and fixing the hours of sale of intoxicating liquor within the city limits by licensees and providing for the punishment for violation of the provisions of this ordinance ^{as} hereby amended and reenacted to read as follows:

Section 1: Section 7 Ordinance No. 47 and Section 11 Ordinance No. 48. UNLAWFUL TO SELL AND DISPENSING LIQUOR WHEN. It shall be unlawful for any person, firm or corporation to engage in the retail sale of beer and intoxicating liquor as defined herein within the City of Washburn without first obtaining a license as to do as provided herein, and it shall further be unlawful for any person, firm or corporation to sell any beer or intoxicating liquor within the City of Washburn, North Dakota between the hours of 12:00 PM Sunday and 8:00 AM Monday and no sale or dispensing of beer and intoxicating liquor shall be made on Sunday, Good Friday, Memorial Day, Armistice Day, Thanksgiving Day, Christmas Day or any and all election days. 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 or beer before 8:00 AM or after 12:00 PM on any day. Be it further ordained that all establishments selling beer or intoxicating liquor shall be closed to all persons with the exception of owners and employees by 12:00 PM on any day, and that all shades shall be raised and a night light on so as to present a clear and unobstructed view of the premises, at 12:00 PM. Nothing in this ordinance shall be construed as permitting the sale or dispensing of such intoxicating liquor or beer where such sales are prohibited hereby. And election days shall be construed to mean entire day during which such elections are held and not as designated at the time of the closing of the polls.

Section 2: This Ordinance shall take effect and be in force ten (10) days after its second reading and final adoption and publication of the title and penalty clauses as provided by law.


R.C. Everson,

President of the City Commission


R.L. Luttrell,
Deputy City Auditor.

First Reading, April 2, 1951.
Second Reading, and final passage, April 16, 1951.

Publications made April 5 and April 12, 1951.

