

ORDINANCE NO. 00-02

AN ORDINANCE REVISING AND RE-ENACTING CERTAIN SECTIONS OF THE REVISED ORDINANCES OF THE CITY OF HEBRON, MORTON COUNTY, NORTH DAKOTA OF 1971 AND AMENDMENTS THERETO, WITH RESPECT TO ALCOHOLIC BEVERAGES AND LIQUOR LICENSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEBRON, MORTON COUNTY, NORTH DAKOTA, AS FOLLOWS:

- I. That Chapter 11-04 ALCOHOLIC BEVERAGES, and any subsequent amendments made thereto, are hereby repealed and re-enacted as follows:

11-04-01. Definitions

For purposes of this article:

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. "Licensee" shall mean any person, firm, corporation, association, or club which shall have secured a license pursuant to provisions of this chapter or their agent or employee.
4. "Liquor" shall mean any alcoholic beverage except beer.
5. "Person" shall mean and include any individual, firm, corporation, association, club, co-partnership, society, or any other organization; and shall include the singular and the plural.
6. "Sale" and "sell" shall mean all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of, and keeping for sale of such alcoholic beverages.
7. "Package" and "original package" shall mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.
8. "Club" or "lodge" shall include any corporation or association organized for civic, fraternal, social or business purposes, or promotion of sports, which has at least 200 members at the time of application for license and in existence on November

3, 1936.

9. "Retail sale" shall mean the sale of alcoholic beverages for use of consumption and not for resale.
10. "Off-sale" shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.
11. "On-sale" shall mean the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

11-04-02. Exceptions

1. This article shall not apply to wine delivered to priests, rabbis and ministers for sacramental use.
2. This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:
 - a. Denatured alcohol produced and used pursuant to Acts of Congress, and the regulations thereunder.
 - b. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
 - c. Flavoring extracts, syrups and food products.
 - d. Scientific, chemical, and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

11-04-03. License Required

No person shall sell at retail within the city limits of this city any alcoholic beverage without first having obtained a license therefore as herein provided. This section shall not apply to public carriers engaged in interstate commerce.

11-04-04. Licenses - Class of - Fee

On and off-sale beer licenses at a semi-annual fee of \$150.00, amounting to \$300.00 per

year.

On and off-sale liquor licenses at a semi-annual fee of \$350.00, amounting to \$700.00 per year.

11-04-05. Licenses - Limit of Number

The maximum number of licenses which may be issued shall be as follows:

On and off sale beer and liquor license - three (3).

11-04-06. Licenses - Term of

1. All licenses issued hereunder shall be for a period of not more than six (6) months and shall expire on the 30th day of June and on the 31st day of December in each year. Where a license is granted for a period of less than six (6) months any subsequent renewal thereof must be made for the full semi-annual term.
2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees for said license shall be proportional to represent the number of whole months which said license will be in effect.

11-04-07. License - Qualifications for

No retail license shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. Applicant, if an individual, must be a citizen of the United States, State of North Dakota and must be a person of good moral character.
2. If applicant is a corporation, the manager of the licensed premises and the officers, directors and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the Secretary of State.
3. If applicant is a co-partnership, all the members must be citizens of the United States and residents of North Dakota for a period of more than one year prior to the date of application and be persons of good moral character.
4. Applicant or manager must not have been convicted of a felony.
5. Building in which business is to be conducted must meet local and state requirements regarding sanitation and safety.
6. Taxes on property for which application for license is made must not be

delinquent.

7. If applicant's place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the licensee.

11-04-08. Application for Liquor License

Any person desiring a license to sell alcoholic beverages at retail as hereinbefore described shall make and present a written verified application to the City Council of this city, filed with the City Auditor, containing the following information:

1. The name and address of the applicant; if the applicant is a co-partnership, the name and address and place of residence of each member of said co-partnership; if the applicant is a corporation, the name and address of the officers of the corporation and the manager of the licensed premises.
2. Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; and if the applicant is a co-partnership the same preceding information for each member of said co-partnership; and if the applicant is a corporation, the date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated and if such corporation is a subsidiary of any corporation, the name of the parent corporation.
3. The legal description and the address of the premises for which license is sought.
4. The date on which the applicant acquired title to the premises sought to be licensed, and if the applicant does not have title to said premises, the name and address of the owner of the premises together with a copy of the applicant's lease if written, under which he holds possession of said premises.
5. Whether there are any delinquent taxes against the premises sought to be licensed.
6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the applicant first began to operate business.
7. Whether the applicant had ever had a license revoked or canceled by a municipal, state or federal authority, and if so, the date of such cancellation, the place and name of the authority canceling the same, and the reason for such cancellation.
8. Whether the applicant has ever been convicted of a violation of any law of the United States or of any state, or of the violation of any local ordinance with regard

to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of place, and courts, in which said convictions were had.

9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation, and the reasons assigned therefore.
10. Whether the applicant has ever been convicted of any other crime than as stated in subsections (8) and (9) hereof, in this state or any other state, or under any federal law, and if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passed, and the court in which convicted.
11. The name and address and the place of residence for a period of one year prior to the date of application of any person who will have charge, management, or control of the establishment for which license is sought.
12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures, or equipment in the premises for which license is sought, and if so, the name and address of such person together with a statement of the interest so held.
13. Whether the applicant has any interest whatsoever directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State of North Dakota, and if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, and within the borders of the United States.
14. The occupations which the applicant has followed during the past five years.
15. The names and addresses of at least three business references.
16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency as well as a description of the type of such insurance coverage including policy limits.
17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.
18. The classification of license applied for.

19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized, and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the City Council a list of the members belonging to such lodge or club.
20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of this city or of the State of North Dakota.
21. Such other and further information as the City Council may from time to time require.

11-04-09. License - Application Fitness

The Chief of Police of such other person or officer as may be designated by the City Council shall, upon the filing of an application investigate the facts as stated in the application and the character, reputation and fitness of the applicant, and shall report on said matters to the City Council.

11-04-10. License - Location of

No license shall be issued or transferred to any person, firm or corporation to engage in the sale of beer or alcoholic beverages within the city without approval as to the location of said licensed business by the City Council. The application for approval shall be in writing filed with the City Council. At the time of hearing the City Council shall in its discretion determine if said location is in harmony with the public interest and welfare of the community, and shall consider among other things the following factors:

1. The convenience of police regulations.
2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings, or buildings used by or for minors.
5. Any protests of neighboring property owners or occupants.
6. Zoning regulations.
7. Proposed on or off-sale or both licensee.
8. Interference with or proximity to residential property.

9. Interference with neighboring property.
10. Suitability of premises for sales of beer, liquor or alcoholic beverages.
11. Public convenience and necessity.

11-04-11. License - Granting

After the City Council has received the application as provided herein they shall meet and consider the same. If they find that the applicant meets the qualifications for a license and are satisfied as to the completeness and the accuracy of the information contained in the application, they may grant the license. If they find that the applicant does not meet with the qualifications or they are not satisfied as to the completeness or accuracy of the information they may request that the applicant supply more verified information to the City Council or they may reject the application.

11-04-12. License - Limit to One Applicant

Not more than one license of each classification shall be issued or granted to any applicant; and each license shall be valid only for the specific premises licensed.

11-04-13. License - Posting of

License issued hereunder shall be posted in a conspicuous place in the premises for which the license has been issued.

11-04-14. License - Transfer of

No license under the provisions of this article shall be transferable and any attempt to do so shall constitute a violation of the provisions of the article.

11-04-15. Special Event Alcoholic Beverage Permit Authorized

The City Council may by special permit authorize an alcoholic beverage license to engage in the sale of alcoholic beverages at special events, public dances, or music festivals on such licensed premises as may be designated by such permit. The fee for such local special permits shall be \$10.00 and such permits shall not be valid for a period greater than three (3) consecutive days.

Application for Special Event

An alcoholic beverage licensee desiring to conduct a special event, public dance, or music festival wherein alcoholic beverages will be sold, or to sell alcoholic beverages at a special event, public dance or music festival conducted by any other person who has been granted a permit to do so by the City Council shall make an application for a special permit to do

so to the City Council. The application shall set forth:

1. The name of the applicant;
2. The time or period for which the permit is desired;
3. The place where such special event, public dance, or music festival is to be conducted or held.

It is required that the Licensee, his manager, employees or agents shall at all times be present during the special event to sell, serve and distribute the alcoholic beverages to those persons purchasing the same.

Persons Under 21 Years of Age at Special Event

The City Council may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:

1. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
2. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
3. The area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license; and
4. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

Refusal and Revocation of Permit for Cause

The City Council shall refuse to issue such permit and shall revoke a permit already issued, where it appears that;

1. The permitted site is or is likely to become a public nuisance or detrimental to public morals;
2. Alcoholic beverages or controlled substances are being sold or given away except as provided by such permit;
3. Any of the ordinances of this city or the laws of the State of North Dakota are

being violated; or

4. In the sole judgment of the City Council, protests to the issuing of such permit are made, whether orally or in writing, by a sufficient number of the people living in the neighborhood of the site for which application for such permit is made to warrant refusal or revocation of such permit as being in the public interest.

11-04-16. Sunday Alcoholic Beverage Permit Authorized

The City Council may by special permit authorize an alcoholic beverage license to engage in the sale of alcoholic beverages and dancing may be permitted in the establishment or facility between the hours of 12:00 noon on Sunday and 1:00 A.M. on Monday. There will be no additional fee. The City may grant a Sunday permit for more than one Sunday.

11-04-17. License Fees - Disposition of

All license fees collected under this article shall be transferable to the City Auditor and credited to the general fund of the city.

11-04-18. Hours and Time of Sale - Penalty

Any person one who dispenses or permits the consumption of alcoholic beverages on a licensed premises after 1:00 A.M. on Sunday, before 12:00 noon on Sundays without a Sunday permit, or between the hours of 1:00 A.M. and 8:00 A.M. on all other days of the week, or who dispenses alcoholic beverages or permits such consumption of alcoholic beverages on licensed premises on Christmas Day, after 1:00 A.M. on Thanksgiving Day or after 6:00 P.M. on Christmas Eve is guilty of an offense. Any offense is punishable by a fine of up to \$1000.00, 30 days imprisonment or both.

11-04-19. Licensee's Responsibility

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, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person, nor shall any intoxicated person be permitted to remain upon the premises.

11-04-20. Gambling Prohibited - Exceptions

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board, or any other machine or device of similar nature, nor shall gambling, whether by cards, dice, or otherwise, of any nature, be permitted upon the licensed premises. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder and such license shall be revoked upon conviction of any such violation. This section shall not apply to gambling or games

of chance conducted by a licensee under the authority of a valid and subsisting license issued by the State of North Dakota.

11-04-21. Cashing Certain Checks Prohibited

No licensee hereunder shall cash any bank check, voucher, order or document of any kind drawn by a County Welfare Board, or any state or federal agency in payment for wages made for work done on any so-called work relief project, or for relief purposes, which by its terms authorizes or permits any person presenting such bank check, voucher, order or document to receive payment of money.

11-04-22. Sales Prohibited - Items

No licensee shall sell on the licensed premises any item other than alcoholic beverages, soft drinks, tobacco products, drink mixing supplies, peanuts, pretzels, potato chips, and related sundries; except a licensee may sell alcoholic beverages in a restaurant separated from the room in which alcoholic beverages are opened or mixed if gross sales of food are at least equal to sales of alcoholic beverages in the dining area.

11-04-23. Sales Prohibited - Persons

No licensee, his agent, or employee shall sell any alcoholic beverages to a person under twenty-one (21) years of age, a habitual drunkard, an incompetent person or an intoxicated person.

11-04-24. Minors in Licensed Premises

No licensee shall permit any person under twenty-one (21) years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except that a person under twenty-one (21) years may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to the sales of alcoholic beverages that are consumed in the dining area, if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one (21) or more years of age and is not engaged in the sale, dispensing, or consumption of alcoholic beverages, or if the person is a law enforcement officer entering the premises in the performance of an official duty. Any person who is nineteen (19) years of age or older but under twenty-one (21) years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, but may not be engaged in mixing, dispensing or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ person from eighteen (18) to twenty-one (21) years of age to work in the capacity of musicians under the direct supervision of a person twenty-one (21) years or more of age.

11-04-25. Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises a licensee, his agent or employee, may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this article.

11-04-26. Street Sales Prohibited

The sale or consumption of alcoholic beverages upon or across any street, alley, or public way is prohibited except as provided for in a special permit issued under Section 11-04-15.

11-04-27. Premises, Equipment of

Premises licensed hereunder for on-sale alcoholic beverages shall be equipped with tables, chairs, booths, and stools in a sufficient number to reasonably accommodate the patrons.

11-04-28. Closed or Screened Areas

No premises licensed for on-sale of alcoholic beverages shall contain any side rooms, closed booths, or other screened enclosures, nor shall any screen, partition, curtain, blind, or obstruction of any kind prevent a clear view at all times of all parts of the interior of the premises licensed. All booths located in such premises shall open directly into the main part of said premises and shall be accessible from the aisles therein.

11-04-29. Purchase from Licensed Wholesaler

No licensee hereunder shall purchase, have or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the State of North Dakota pursuant to the provisions of Title V of the North Dakota Century Code; and each licensee hereunder shall keep on file all invoices covering purchases by him of such alcoholic beverages showing the name and license number of the wholesaler, and such records shall be retained in the possession of the licensee and shall be at all times open to inspection by any police or peace officer of the State of North Dakota.

11-04-30. Toilets Required

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.

11-04-31. Deliveries - Off Licensed Premises

1. It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer or alcoholic beverages to make, or cause to be made any deliveries outside of the licensed place of business of beer, liquor or other alcoholic beverages to any purchaser or prospective purchaser.
2. It shall be unlawful for any person, firm or corporation to deliver by foot, carrier or motor carrier, any beer, liquor or alcoholic beverage, to any person within the city limits provided however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.
3. Where any retail alcoholic beverage or beer licensee is a club or lodge, such licensee shall sell to members only.

11-04-32. Termination or Revocation of Licenses

1. Licenses issued pursuant to this article shall be deemed canceled and revoked and terminated upon the happening of any one or more of the following contingencies:
 - a. The death of the licensee unless upon application to the City Council by personal representative of the decedent, the City Council shall consent to the carrying on of the business by the personal representative.
 - b. When the licensee ceases business at the location licensed, unless a new location has been approved.
 - c. When the licensee be adjudged bankrupt.
 - d. When the licensee has been convicted of violation of any provision of this article, or of the laws of the State of North Dakota pertaining to alcoholic beverages, or of a felony under the laws of the United States, the State of North Dakota, or of any other state of the United States.
 - e. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.
 - f. When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcohol beverages at the location licensed has been terminated or revoked.
 - g. When the license ceases to be a legal bona fide resident and citizen of the State of North Dakota.
2. Licenses issued pursuant to this ordinance may, in the discretion of the City

Council, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:

- a. When the licensee has been convicted of violating any of the provisions of this article.
 - b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the city.
 - c. When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager if the licensee be a corporation, be convicted in municipal or district court of drunkenness or disorderly conduct, or if any appeal be taken from such conviction then when such conviction be sustained by the higher court or courts.
3. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and such license may also be canceled and revoked or suspended at any time by the City Council for any cause deemed by said City Council to be sufficient cause and justified by reason of public health or public morals. Such termination shall be subject only to review by the courts or the State of North Dakota.
4. When any license is terminated or revoked for cause, or the licensee voluntarily ceases his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

11-04-33. Release of Liability and Indemnification.

Licensee shall be solely responsible for any damages or injuries to persons or property upon the licensed premises or site or resulting from the sale of alcoholic beverages by the Licensee, his employees or agents. By accepting a license issued under this chapter for the sale of alcoholic beverages the Licensee agrees to release the city from any liability associated with such damages or injuries and shall indemnify and hold the city harmless for any such damages or injuries.

11-04-34. Penalties

Any person, firm, corporation or association violating any of the provisions of this article shall upon conviction thereof, be subject to a fine not to exceed One Thousand and No/100 Dollars (\$1000.00), or to imprisonment of not to exceed thirty (30) days; or in the discretion of the court to both such fine and imprisonment; and in addition to both such fine and imprisonment all powers, rights, and privileges given by any licenses granted under the terms of this article may be terminated or revoked in accordance with section 11-04-29 of the article.

- II. **SEVERABILITY**. All ordinances or parts of ordinances in conflict herewith are hereby repealed and rescinded.
- III. **SAVINGS CLAUSE**. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.
- IV. **EFFECTIVE DATE**. This ordinance shall be in full force and effect from and after its final passage and approval and the publication of its title and penalty clause.

Margaret Nolte, Mayor

ATTEST:

Stacey G. Rebel, City Auditor

Introduction and First Reading: May 1, 2000

Second Reading and Final Passage: 6-27-00

Publication Date: _____