

ORDINANCE 90-2

AN ORDINANCE RELATING TO THE REGULATION OF LICENSING AND SALE OF ALCOHOLIC BEVERAGES AND PROVIDING FOR A SPECIAL SUNDAY EVENT ALCOHOLIC BEVERAGE PERMIT

BE IT ORDAINED by the City Council of the City of Max, North Dakota:

SECTION 1 - 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 non-industrial 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 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.
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.

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 Max 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. On-Sale & Off Sale Beer and Liquor Retail - - - - \$800.00
initially, but the fee may be adjusted and revised annually
by the City Council.

- B. Clubs and Lodges On-Sale Liquor - - - - - Determined
and Beer License upon application

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 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 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 Max 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 Max, State of North Dakota, and be a person of good moral character.
- B. Applicant shall not have been convicted of a felony, or of pondering or of keeping a house of prostitution, or have been convicted within three (3) 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 three (3) 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 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 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.

A license holder may, with permission of the City Council, be temporarily located in the Civic Center for special events.

SECTION VIII - TOILET REQUIREMENTS - ON SALE PREMISES

That the premises where On-Sale license is granted must be quipped 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 regulations, is not, at all times, strictly observed.

SECTION IX - DISPOSAL PROHIBITED ON CERTAIN DAYS - PENALTY

Except as permitted by sections 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 Thanksgiving Day, Christmas 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 June 30TH 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 Council by the personal representative of the deceased, the City Council 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 a 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 City Council 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 City Council shall notify the licensee whose license is sought to be canceled, that his license will be canceled or terminated after hearing held before the City Council, 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 Council.

If, upon such hearing, it appears to the City Council that such cause exists for the revocation or cancellation of such license, the City Council shall make its order therein revoking or canceling such license, and if upon such hearing, it appears to the City Council that sufficient cause does not exist for revoking or termination 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 Max shall be and the same is hereby limited as follows:

- A. On-Sale and Off-Sale Beer, Retail
- B. On-Sale and Off-Sale Liquor, Retail, exclusive of Club licenses and licenses issued to restaurants

A total of five (5) licenses.

No licenses for the sale of alcoholic beverages shall be issued in excess of the number specified above, exclusive of club licenses and licenses issued to restaurants until such time as the population of the City of Max has 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 Max for such purposes.

This section shall not be construed to require that there be issued in the City of Max licenses to the number of licenses herein before state and the City Council 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 City Council and payment of a transfer fee of \$75.00. No license shall be transferable from one location to another, without approval of the City Council.

SECTION XVI - APPROVAL OF COUNCIL - LICENSE ISSUANCES

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

SECTION XVII – SPECIAL SUNDAY EVENT ALCOHOLIC BEVERAGE PERMIT

SECTION XVIII - 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 of both such fine and imprisonment in the discretion of the Court.

SECTION XIX - EFFECTIVE DATE

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

CITY OF MAX
Approved: (Donald J Nett)
Mayor

Attest: (C. T. Jacobson)
City Auditor

First Reading 10-1-1990
Second Reading 11-5-1990
Final Passage 12-3-1990

BE IT RESOLVED BY THE CITY OF MAX as FOLLOWS:

That Ordinance # 90-2 shall be amended to add the following;

That any License Holder shall be entitled to a Sunday Alcohol Beverage Permit provided that they meet the definition of a “Qualified Alcoholic Beverage Licensee” upon payment of a fee not to exceed \$5.00 per Sunday.

No person may dispense or permit the consumption of alcoholic beverages on licensed premises after 1:00 o’clock a.m. or before 12:00 noon on Sundays.

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

CITY OF MAX
Approved (Donald J Nett)
Mayor of Max

Attest: (Edwin Schmidt)
City Auditor

First Reading 7 - 6-93
Second Reading 8 - 2 - 93
Third Reading 9 - 7 - 93

Ordinance 90-2 was amended by McElwain motion, second by Mack, liquor license set at \$800.00 fee, for a year, payable at \$400.00 every 6 months. All voting aye, MC.

Reading: 7 - 5- 94

This Ordinance is in accordance with State Law.

REVISED:
First Reading: 2 - 3 - 03
Second and Final Passage 3 - 03 - 03

APPROVED: (Jody Gullickson)
Mayor

ATTEST: (Patricia Hannegrafs)
Auditor

Ordinance 90-2 was amended by Haynes motion, second by Krebsbach to allow only two (2) liquor licenses to be issued in the City of Max, All voting aye, MC.

First Reading October 4, 2004
Second Reading November 1, 2004
Final Reading and Passage January 3, 2005

Ordinance 90-2 was amended by Krebsbach motion second by Barden, anyone applying for a liquor license will pay \$200.00 application fee which will be returned only upon acceptance of liquor license application by the City Council, All voting aye, MC.

First Reading October 4, 2004
Second Reading November 1, 2004
Final Reading and Passage December 6, 2004

APPROVED: (Jody Gullickson)
Mayor

ATTEST: (Patricia Hannegrafs)
Auditor

Ordinance 90-2 was amended by Moreno motion second by Barden, to permit bars to remain open until 2:00 AM according to state law, but must stop sale of alcohol beverages at 1:00 AM, All voting aye, MC.

First Reading: September 6, 2005
Second Reading and Final Passage: October 3, 2005.

APPROVED: (Jody Gullickson)
Mayor

ATTEST: (Patricia Hannegrafs)
Auditor

Ordinance 90-2 was amended by Krebsbach motion, second by Swanson to add the following to section VII - Limitations as to Location:

In the case of an establishment, licensed for On and Off-sale, that shares a common wall with a non-licensed restaurant, patrons of the restaurant may enter the licensed establishment through a connecting door in the common wall, purchase an alcoholic beverage and then re-enter the restaurant to consume said alcoholic beverage with a meal. This allowance will only apply in the situation where the non-licensed and the licensed establishments share a common wall.

Employees of the non-licensed restaurant are not allowed to deliver or purchase an alcoholic beverage for a restaurant patron and employees of the licensed establishment are not allowed to deliver or sell an alcoholic beverage to the patron on the restaurant side. Only the patron can purchase a beverage at the licensed establishment and then bring that beverage back to the restaurant to be consumed.

First Reading: April 6, 2009

Second Reading and Final Passage: May 4, 2009

Approved: _____
Jody Gullickson, Mayor

Attest: _____
Tonya Balaban, Auditor

Ordinance 90-2 amended by Swanson motion, second by Krebsbach, to add a liquor license purchase fee of \$500.00, a one time fee charged at the issuance of a new license and good for the life of the license.

First Reading: April 6, 2009

Second Reading and Final Passage: May 4, 2009

Approved: _____
Jody Gullickson, Mayor

Attest: _____
Tonya Balaban, Auditor

Be it resolved by the City Council of the City of Max:

Ordinance 90-2 Section IX – Disposal prohibited on certain days-Penalty and amendment to Section IX, dated October 3, 2005, is hereby amended and replaced as follows:

Except as permitted by NDCC section 5-02-05.1, a person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between the hours of two a.m. and eight a.m. on Saturdays, between the hours of two a.m. and twelve noon on Sundays, between the hours of one a.m. and eight a.m. on all other days of the week, or on Thanksgiving Day, Christmas Day or after six p.m. on Christmas Eve. A person that violates this section is guilty of a class A misdemeanor.

First Reading 7-16-2012

Second Reading and Final Passage _____

Approved: _____
Richard Seklecki, Mayor

Attest: _____
Tonya Balaban, Auditor

Be it resolved by the City Council of the City of Max:

Ordinance 90-2 Section XI – MINORS NOT TO BE PRESENT ON LICENSED PREMISES; EXCEPTION - Penalty and amendment to Section XI, dated October 3, 2005, is hereby amended and replaced as follows:

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 enter and remain on the licensed premises while alcoholic beverages are being sold or displayed if: (1) accompanied by a parent or legal guardian who is twenty-one years of age or older and the individual is on the premises to consume a meal or in an emergency situation. The premises serves at a tabletop in the designated dining area; food that is prepared in a kitchen with at least an indoor grill. The individual is not on the licensed premises after ten p.m. and The owner of the licensed premises receives permission of the local licensing authority for individuals to be on the premises as allowed under this section and the licensed premises is located in the a city with a population of one thousand five hundred or fewer people as per NDCC 5-02-06. For purposes of this section, “guardian” means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one years of age. (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.

First Reading 3-14-2017

Second Reading and Final Passage 4/3/2017

Approved: _____
Joel Hauf, Mayor

Attest: _____
Katherine Klemetsrud, Auditor

Be it resolved by the City Council of the City of Max:

Ordinance 90-2 Section IX – Disposal prohibited on certain days-Penalty and amendment to Section IX, dated July 16, 2012, is hereby amended and replaced as follows:

Except as permitted by NDCC section 5-02-05.1, a person may not dispense or permit the consumption of alcoholic beverages on a licensed premises and all patrons are not allowed to occupy the premises between the hours of two am and eight am on Saturdays, between the hours of two am and twelve noon on Sundays, between the hours of one am and eight am on all other days of the week, or on Thanksgiving Day, Christmas Day or after six pm on Christmas Eve. A person that violates this section is guilty of a class A misdemeanor.

(The penalty is found in Section XVIII – 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 of both such fine and imprisonment in the discretion of the court.

First Reading 12/4/2017

Second Reading and Final Passage 1/8/2018

Approved: _____
Joel Hauf, Mayor

Attest: _____
Katherine Klemetsrud, Auditor