

## ORDINANCE NO. 90-3

AN ORDINANCE RELATING TO THE REGULATION OF LICENSING AND SALE OF ALCOHOLIC BEVERAGES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF MAX, MCLEAN COUNTY, NORTH DAKOTA:

### SECTION I - DEFINITIONS

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. *Alcoholic beverages* shall mean any liquid suitable for drinking by human beings, which contains one-half (1/2) of one (1) per cent or more of alcohol by volume.
2. *Beer* shall mean any malt beverage containing more than one-half (1/2) of one (1) per cent of alcohol by volume.
3. *Liquor* shall mean any alcoholic beverage except beer.
4. *Licensed premises* shall mean the premises on which, beer, liquor, or alcohol beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
5. *Off-sale* shall mean and include the sale of alcoholic beverages in the original package, or in a growler as defined in this section. For consumption off or away from the licensed premises where sold, including permitted deliveries.
6. *On-sale* shall mean and include the sale of alcoholic beverages for consumption on the licensed premises where sold.
7. *Person* shall mean and include persons, partnerships, unincorporated associations, and bodies corporate.
8. *Restaurant* shall mean a business which prepares and sells food and meals for consumption on the premises where sold, which is properly licensed or permitted for such activity by the appropriate public health authorities who have charge of such matters.
9. *Sale* shall mean and include any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal proprietor, agent, servant, employee or corporation.

10. *Minor* shall mean any male or female person under the age of twenty-one (21) years.
11. *Twenty-one years of age* shall mean it is after 8:00 am on the date twenty-one (21) years on a person's date of birth.

## SECTION II – APPROVAL OF COUNCIL - LICENSE ISSUANCES

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

- A. On-sale and Off-sale Beer and Liquor Retail Licenses fees are \$800 initially, paid annually, but the fees may be adjusted and revised by the Max City Council.
- B. Clubs and Lodges will be issued Licenses for On-sale Beer and Liquor only, and Licenses will be determined upon application.

The fees for On-sale and Off-sale licenses in this section shall be as follows:

1. A \$500 one-time application fee for new applicants which may be prorated where such license is effective for a fractional part of the year. Reissuance of licenses fees are \$800 annually in two payments as described as follows;
  - a) \$400 due no later than the day of license approval, (December Council Meeting) for the period of January 1<sup>st</sup> through June 30<sup>th</sup> of upcoming year.
  - b) \$400 due no later than the day of license approval, (June Council Meeting) for the licensed period of July 1<sup>st</sup> through December 31<sup>st</sup>, of the current year.
2. Licenses may be paid by cash, check, or money order drawn upon a solvent bank only.
3. Payments made will be held in the Auditor's office and deposited only after licenses have been issued.

No reissuance of licenses will occur if all fees are not paid within the time frames described in this section. It shall be unlawful for any establishment to sell Beer or Alcohol until license reissuance has occurred. All licenses will bear a stamp or writing indicating fees have been paid, and signed by the City Auditor verifying as such.

#### 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:

1. Applicant, if an individual, must be a legal resident of the United States, a resident of the State of North Dakota and a person of good moral character.
2. If applicant is a corporation or limited liability company, the manager of the licensed premises and the officers, directors, shareholder, or members must be legal residents of the United States and persons of good moral character. Corporate and limited liability applicants must first be properly registered with the North Dakota Secretary of State.
3. If applicant is a partnership, the manager of the licensed premises and all of the members must be legal residents of the United States and of good moral character. Partnership applicant must first be properly registered with the North Dakota Secretary of State.
4. Applicant or manager must not have been convicted of an offense determined by the North Dakota Attorney General to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer.
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 business at the licensed location is to be conducted by a manager or agent, the manager or agent must possess the same qualifications required of the licensee. (Source: North Dakota Century Code section 5-02-02)

In conjunction with the qualifications specified in this article, the Max city council deems it a requirement for licensed establishments located in the city of Max, to obtain and provide a mailing address (Post office box or residence) for said establishment, within the Max city limits.

## SECTION V - 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 VI - LIMITATIONS AS TO LOCATION -EXEPTIONS

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.

### BY SPECIAL PERMISSION FROM MAX CITY COUNCIL:

A license holder may operate, at street level, a "Beer Garden", outside of their establishment, that is blocked off and designated for special community events.

A licensed holder may, with permission from the Max City Council, be temporarily located in the Civic Center, or other Event Location where a special permit has been approved and granted.

In the city of Max, it is deemed that the license holder is responsible to obtain law enforcement presence for all public events where alcohol will be sold and/or served.

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 VII - 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 regulations, is not, at all times, strictly observed.

## SECTION VIII - DISPENSING PROHIBITED ON CERTAIN DAYS

Licensed establishments are prohibited from dispensing or allowing the consumption of alcoholic beverages on licensed premises:

- Between 2:00 am, and 8:00 am on any day of the week;
- After 6:00 pm on Christmas Eve, and all of Christmas Day;
- No off-sale after 2:00 am on Thanksgiving Day or between 2:00 and 8:00 am on Sundays.

## SECTION IX - 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 X – PROVISIONS RELATING TO MINORS IN LICENSED PREMISES EXCEPTION-CITES WITH 1,500 OR FEWER PEOPLE

- A. Except as otherwise provided in this Section, or under state law, no person under the age of twenty-one (21) may enter any premises licensed for the sale of alcoholic beverages.
- B. No person in charge of a licensed premises shall permit any person under the age of twenty-one (21) to enter upon or to remain upon licensed premises within his control, subject to the following exceptions and any other exception provided in state law.
  - 1. A person under the age of twenty-one (21) years of age may remain in a restaurant if the restaurant is separated from the designated area in which alcoholic beverages are opened or mixed and if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the designated area;

2. A person under the age of twenty-one (21) years of age may remain in licensed establishment if the person is employed by the establishment as a food waiter, food waitress, busboy or busgirl under the direct supervision, of an individual twenty-one years of age or older, and does not engage in the sale, dispensing, delivery, or consumption of alcoholic beverages;
3. A person who is eighteen (18) years of age or older but under the age of twenty-one (21) when employed by a restaurant licensed to sell alcoholic beverages, to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one (21) or more years of age, but such person may not be engaged in mixing, dispensing, or consuming alcoholic beverages;
4. A person who is under twenty-one (21) years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, or consuming alcoholic beverages;
5. A person who is under twenty-one (21) years of age may enter and remain on the licensed premises if the individual is a law enforcement officer or other public official who enters the licensed premises in the performance of official duty;
6. Notwithstanding any other ordinance or state statute to the contrary, a person under the age of twenty-one (21) cooperating with and under control of a law enforcement officer may enter a licensed premises for the purposes of a compliance check on whether the licensee is complying with the laws prohibiting the sale of alcoholic beverages to a person under twenty-one (21) years of age.
7. A person who is under twenty-one (21) years of age may attend an event where alcoholic beverages are sold in accordance with the conditions of an event permit issued pursuant to applicable law.
8. At the discretion of the owner of the licensed premises, an individual under twenty-one (21) years of age may be permitted to enter and remain in a restaurant where alcoholic beverages are being sold and in the area of the premises designated for the opening or mixing of alcoholic beverages if the individual;
  - i. Is accompanied by a parent or guardian;
  - ii. Is there to consume a meal or in an emergency situation;
  - iii. Is not seated at or within three feet (0.91 meters) of the bar counter;
  - iv. Does not enter or remain in the licensed premises after 10:00 p.m.

All of these provisions in this ordinance are lawful if the owner of a licensed premises receives permission of the city governing body for individuals to be on the premises as allowed under this section and the licensed premises is located in a city with a population of one thousand five hundred or fewer people. (NDCC Section 5-02-06)



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 XI - TERMINATION, REVOCATION AND CANCELLATION OF LICENSES

Licenses expire on June 30<sup>th</sup>, and December 31<sup>st</sup>, requiring re issuance by the 1<sup>st</sup> day of the following month. Licenses 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/her 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 XII - 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 XIII - 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 XIV - 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 XV-REPEAL

All ordinances and amendments adopted prior to this ordinance and which conflict with this ordinance are herewith repealed and replaced with Ordinance No. 90-3.

#### SECTION XVI - EFFECTIVE DATE


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

#### CITY OF MAX


First Reading: June 19, 2023

Second Reading: June 29, 2023

Attest:

  
Anita Porter-City Auditor

Approved: \_\_\_\_\_

  
Aaron Zabka-Mayor

(Seal)

