

ORDINANCE

AN ORDINANCE TO CREATE AND ENACT ORDINANCES OF THE CITY OF BUFFALO RELATING TO THE REGULATION OF THE SALE OF ALCOHOLIC BEVERAGES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BUFFALO, NORTH DAKOTA:

SECTION 1. An ordinance relating to the regulation of the sale of alcoholic beverages in the City of Buffalo, North Dakota, is hereby created and enacted to read as follows:

1. DEFINITIONS. In this chapter unless the context or subject matter otherwise requires:

- a. "Person" shall include any natural person, association, co-partnership and corporation, and any clerk, agent, and abettor thereof.
- b. "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.
- c. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
- d. "Council" shall mean the City Council of the City of Buffalo, North Dakota.
- e. "Intoxicating Liquor" and "liquor" shall mean any alcoholic beverage except beer.
- f. "Sale" and "sell" shall mean and include all barter and all manners or means of furnishing of alcoholic beverages, including the selling, exchange, barter, disposition of, and keeping for sale of such alcoholic beverages.
- g. "Off Sale" shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold.
- h. "On Sale" shall mean the sale of alcoholic beverages for consumption only on the premises where sold.

2. LICENSE REQUIRED. No person, as defined in Section 1 of this chapter, shall sell, exchange, barter or keep for sale any alcoholic beverages, as defined in Section 1 of this chapter, without first having obtained a license pursuant to the provisions of this chapter.

2. Age.

The applicant, and all partners, and all officers, directors and shareholders holding more than five percent of the outstanding stock of the corporation shall be at least 21 years of age.

3. Fitness.

The applicant must not be deemed by the City Council to be unfit to engage in the business for which the license is sought.

4. Owner of Business.

No license shall be issued to any person as the representative or agent of another, and the license may be issued only to the owner or owners of the business being conducted at the location sought to be licensed.

5. Taxes.

No license shall be issued, transferred or renewed for any location in which the real and/or personal property taxes are delinquent and unpaid.

5. SURETY BOND OF LICENSEE - AMOUNT - CONDITIONS. No license for the sale of alcoholic beverages shall be issued unless the applicant shall first file with the City Auditor a surety bond in a sum set by the City Council by resolution, such surety bond to be approved as to legality and form, by the City Attorney and, as to sufficiency, by the governing body of the City.

All surety bonds shall be conditioned as follows: That the license applicant will faithfully perform any lawful condition imposed by the governing body upon the issuance of any license.

The amount specified in any surety bond is hereby declared to be a penalty and shall be forfeited upon failure of the licensee to comply with any lawful conditions imposed by the governing body upon issuance of any license within the time specified.

All such surety bonds shall be for the benefit of the City of Buffalo. Upon a determination by the governing body that the licensee has complied with the conditions imposed by the governing body upon the issuance of the license, the bond hereinbefore required will be released.

6. LIABILITY INSURANCE REQUIRED OF LICENSEES. Every person licensed under the authority of this chapter, other than wholesalers, shall deposit with the City Auditor, not later than thirty (30) days after a license is issued, proof of liability and liquor liability insurance (Dram Shop). Such insurance shall

provide coverage for at least the minimum amounts as set by the City Council by resolution. The adequacy of any such insurance shall be determined by the governing body of the City.

7. LICENSE APPLICATION. Any person desiring to obtain the issuance, transfer or renewal of a license for the sale of alcoholic beverages shall make and file an application for such license with the City Council, through the City Auditor. In the case of a renewal of the license, such application must be submitted at least twenty (20) days prior to the expiration date of the license. The application shall be made on a form approved by the Council and made available through the office of the City Auditor. In addition to the information supplied on the application form, the Council or the City Auditor, or anyone designated by them, may require such other information as they deem necessary in determining whether or not a license should be issued to the applicant. If a license is granted, the licensee shall have the affirmative duty of informing the City Auditor in writing within thirty (30) days of any changes in the facts supplied to the City in the application previously submitted.

8. INVESTIGATION OF FITNESS OF APPLICANT. The City Council, or such other person as may be designated by the City Council, shall investigate the facts stated in the application and the character, reputation, and fitness of the applicant, and shall report on said matters to the of City Council.

For purposes of this section the fitness of the applicant includes all owners, partners, shareholders, officers and directors of the corporations as well as a managing agent if designated in the application form.

9. ISSUANCE, RENEWAL AND TRANSFER OF LICENSES.

- a. No license shall be issued, renewed or transferred without the approval of the Buffalo City Council. A change in the location of the licensed premises shall be deemed to be a transfer.
- b. If the application is for a new license, and not a renewal, then notice that the applicant has applied for a license to sell alcoholic beverages at a place designated in the application, and that the application will be acted upon by the City Council on a certain day and time shall be published in a newspaper in the City at least ten (10) days before the date set for the hearing on the application. Such notice shall be signed by the City Auditor and the expense of its publication, in addition to the license fee, shall be paid by the applicant to the City Auditor before publication.
- c. No new license shall be issued unless and until the applicant has proven to the satisfaction of the governing

body, that the following conditions have been met. Provided, however, that these conditions shall not apply to license renewals:

- (1) That the premises to be licensed have a minimum of 3,000 square feet of interior floor space available and devoted to the business for which the premises are licensed.
- (2) That sufficient well lighted off-street parking will be available to the patrons of the establishment of the applicant.
- (3) That the establishment in question will be a definite asset to the City.

Additional factors to be considered in the granting of a new license:

- (1) The proximity of other businesses licensed to sell alcoholic beverages.
- (2) Protests of neighboring property owners or occupants.
- (3) Interference with neighboring properties.
- (4) Public convenience necessity.
- (5) Suitability of premises for sale of alcoholic beverages.
- (6) Recommendations and reports of appropriate city officials.
- (7) Zoning regulations.
- (8) Proximity of schools, churches, funeral homes, public buildings or buildings used by and for minors.

10. LICENSES - NO MORE THAN ONE TO A PERSON. Not more than one (1) retail license shall be directly or indirectly issued or granted to any person, nor shall more than one (1) license be issued for the same location.

11. LICENSE FEES - DISPOSITION OF FEES. All license fees collected by the City Auditor shall be credited to the general fund of the City.

12. POSTING OF LICENSES. Licenses issued to licensees hereunder shall be posted in a conspicuous place in that portion of the premises for which the license has been issued.

13. LICENSES - TERMINATION, SUSPENSION AND REVOCATION. All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on the June 30th next following the date of issuance; provided however, that any license issued under the provisions of this chapter may, under certain circumstances, terminate automatically, or be terminated, suspended or revoked by the City Council.

a. Any license issued under the provisions of this chapter shall automatically terminate:

- (1) Upon the death of the licensee unless, upon application to the Council by the personal representative of the decedent, the Council shall consent to the carrying on of such business by the personal representative. Said application must be submitted to the Council within thirty (30) days of the licensee's death.
- (2) When the licensee, for any reason, ceases business at the licensed premises. Business shall be deemed to have ceased when no sale of alcoholic beverages occurs on the licensed premises for a period of at least thirty (30) consecutive business days; provided, however, upon written request of the licensee, the Council in its discretion may grant a period of up to sixty (60) additional days before business shall be deemed to have ceased.
- (3) When any license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the licensed premises has terminated or been suspended or revoked.

b. The Council may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall, among others, include the following:

- (1) The licensee has filed a Petition of Bankruptcy.
- (2) An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual designated in the application as manager of the licensed business is convicted of violating any of the provisions of this chapter.
- (3) An individual licensee, one of the partners in a partnership licensee, or one of the officers, directors or shareholders in a corporation licensee, or any individual designated in the

writing, the name of the dealer selling the same and also the name and address of the purchaser thereof.

18. RULES FOR POSSESSION OF ALCOHOLIC BEVERAGE BY A LICENSEE.

- a. Possession of Unstamped Liquor Illegal. No alcohol or alcoholic beverages, as defined by the laws of the State of North Dakota, shall be permitted to be owned, held, or possessed upon any licensed premises, or by any person to whom a license has been issued unless the tax stamp, as provided by the laws of the State of North Dakota has been properly affixed thereto, and unless taxes on said alcohol and alcoholic beverages have been paid, and the possession of any container of any kind in which such alcohol or alcoholic beverage is found which does not bear the proper stamps issued by the State of North Dakota shall be deemed to be illegal and a violation of this section.
- b. Purchase to be from Licensed Wholesaler. No licensee hereunder shall purchase, have, or possess any alcohol or alcoholic beverages as defined by the laws of the State of North Dakota unless he has purchased the same from a wholesaler duly licensed pursuant to the provisions of the laws of the State of North Dakota.
- c. Invoices to be Filed, Contents of. Each licensee hereunder shall keep on file all invoices covering purchases by him of such alcohol or alcoholic beverages, showing the name and license number of the wholesaler, and the name of the municipality issuing such wholesale license. Such invoices shall be retained in possession of the licensee and shall, at all times, be open to inspection by any police officer or peace officer in the State of North Dakota.
- d. Records to be Kept. Each licensee under this chapter shall keep a book showing the kinds and quantities of all alcoholic beverages purchased by him, together with the name of the person from whom purchased, the license number of the wholesaler selling such alcoholic beverages to said licensee, and the name of the municipality issuing such wholesale license.

19. LICENSED PREMISES - REQUIREMENTS FOR.

- a. Every on-sale retail premise licensed for the sale of alcoholic beverages must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition.

having obtained a cabaret license as hereinafter provided.

- c. The license fee for cabaret license shall be \$250.00 per year.
- d. The license fee set forth in subsection c of this section shall be for a period of one year from July 1 to June 30 and shall be payable in advance at the time of the issuance of the licensee and thereafter, on or before June 10 of each subsequent year for renewal of said license.
- e. The application for cabaret license shall be made by the licensee on forms provided by the City Auditor's office of the City of Buffalo. The granting of a cabaret license shall be subject to the approval of the commission and it may be suspended or revoked in conformance with procedures established under Section 13.
- f. No live performances are permitted on a licensed premise which contain any form of dancing. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument. This restriction applies to all licensed premises whether or not they have a cabaret license.
- g. No live performances are permitted on a licensed premise which involve the removal of clothing, garments or any other costume. Such prohibition does not include the removal of headwear or footwear; or the incidental removal of a tie, suitcoat, sportcoat, jacket, sweater or similar outer garments. Incidental removal for purposes of this section shall mean the removal of a garment or article of clothing which is not a part of the act or performance. This restriction applies to all licensed premises whether or not they have a cabaret license.
- h. No entertainment on a licensed premise shall contain:
 - (1) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (2) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals;
 - (3) The actual or simulated displaying of the pubic hair, anus, vulva or genitals; or the nipples of a female.

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

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

22. APPLICATION OF CHAPTER. This chapter shall apply to all territory within the corporate limits of the City and, as permitted by state law to such outlying contiguous territory without the corporate limits within which the City may exercise police jurisdiction, as defined by law.

23. PENALTY. Any person, firm or corporation violating the terms of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$500.00 or imprisonment not to exceed 30 days, or by both such fine and imprisonment, at the discretion of the Court. Such a penalty should be in addition to the authority of the City Council to suspend or revoke a license pursuant to Section 13.

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

25. SPECIAL PERMITS FOR SALE OF ALCOHOLIC BEVERAGES.

- a. Authorization. The City Council shall have the authority to issue special permits for the sale of alcoholic beverages when authorized to do so by any state statute now in effect, or as amended, or enacted in the future which provides authority for cities to issue special permits for the sale of alcoholic beverages.
- b. Licenses and Special Conditions. Any person or entity seeking a permit as authorized by paragraph 1 of this section must apply to the City Council for such a permit. The City, in granting such a permit, shall have the authority to put additional conditions on the license over and above the conditions and requirements provided in state law, if the Council deems it desirable to do so.
- c. License Fee. The City, by resolution, may provide a schedule for fees for such special permits, which fees shall not exceed the maximum permitted by state law.

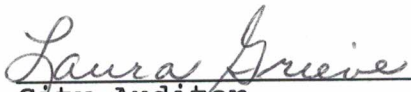
- d. Restrictions on License. Any special permits given pursuant to this section shall be subject to all of the provisions of ordinances of the City of Buffalo, except where such provisions are in conflict with the provisions of state law authorizing special permits.
- e. Revocation of License. The special licenses authorized by this section may be suspended or revoked by the City for violations of the terms of this section, as well as any other provisions of this chapter. In addition, violation of the provisions of this section also subject a violator to suspension or revocation of any other license for the sale of alcoholic beverages issued by the City of Buffalo pursuant to Section 13.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.



Mayor

ATTEST:



City Auditor

Date of First Reading: 7-22-93

Date of Second Reading: 7-29-93

Date of Publication: 8-19-93

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 3 OF THE LIQUOR ORDINANCE OF THE CITY OF BUFFALO, NORTH DAKOTA, RELATING TO FEES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BUFFALO, NORTH DAKOTA:


SECTION 1. Section 3 of the liquor ordinance of the City of Buffalo is hereby amended and reenacted to read as follows:

3. LICENSES - REGULATIONS AS TO CLASSES - FEES. Licenses authorizing the sale of alcoholic beverages within the City of Buffalo shall be divided into the following classes:

- a. Retail On and Off Premises Liquor License. The fee for a retail liquor on and off sale premises license or transfer fee shall be One Thousand One Hundred Dollars (\$1,100) per year, payable in advance at the time of the issuance of the license.
- b. Retail On and Off Premises Beer License. The fee for a retail on and off premises beer license or transfer fee shall be One Hundred Fifty Dollars (\$150) per year, payable at the time of the issuance of the license.
- c. Retail Sunday Alcoholic Beverage Permit. The fee for a Sunday alcoholic beverage permit shall be set by resolution from time to time by the City Council not to exceed the limit set by North Dakota statute.

The licenses for the sale of alcoholic beverages set out above shall be in effect for a period of one year commencing January 1 of each year and terminating on December 31 of each year.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.



Mayor

ATTEST:



City Auditor

Date of First Reading: 11-26-01

Date of Second Reading
and Final Passage: 12-3-01

Date of Publication: 12-19-01

FIRST READING OF ORDINANCE

Member ^{Daryl} Van Hale introduced a certain Ordinance entitled:

AN ORDINANCE TO AMEND AND REENACT SECTION 3 OF THE LIQUOR
ORDINANCE OF THE CITY OF BUFFALO, NORTH DAKOTA, RELATING
TO FEES.

and moved that it be given its first reading. Said motion was
seconded by Member Rose Mjor and on roll call, the following
members voted in favor of the adoption of said ordinance: _____
Gene Giese, Hoot (Daryl) Kasowski, Rose, Daryl. The following members
voted nay: none. The following members were absent
and not voting: none. The majority having voted
aye, the first reading was declared passed.

SECOND READING OF ORDINANCE AND FINAL PASSAGE

Member Rose Mjor moved that a certain Ordinance entitled:

AN ORDINANCE TO AMEND AND REENACT SECTION 3 OF THE LIQUOR ORDINANCE OF THE CITY OF BUFFALO, NORTH DAKOTA, RELATING TO FEES.

be given its second reading. Said motion was seconded by Member

Gene Giese and on roll call the following members voted aye:

Daryl Van Hale, Rose, and Gene. The following members voted nay: —. The following members were absent and not voting: Hoot Kasowski. The majority having voted aye, the motion was duly declared passed.

The Mayor then declared said motion duly carried and the above-entitled Ordinance was thereupon given its second reading and was duly adopted as read in its entirety.