

RESOLUTION

A RESOLUTION LICENSING AND REGULATING THE SALE OF BEER, LIQUOR, OR ALCOHOLIC BEVERAGES IN McLEAN COUNTY, NORTH DAKOTA, OUTSIDE THE CORPORATE LIMITS OF A CITY AND REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH:

BE IT RESOLVED, by the Board of County Commissioners of McLean County, North Dakota:

SECTION I - DEFINITIONS:

- A. **ALCOHOLIC BEVERAGES** - The term "Alcoholic Beverages" as used in this resolution shall be construed to be of such alcoholic content as is provided by the laws of the State of North Dakota.
- B. **LIQUOR** - The term "Liquor" as used in this resolution shall be construed to be of such alcoholic content as is provided by the laws of the State of North Dakota.
- C. **BEER** - The term "Beer" as used in this resolution shall be construed to be of such content as is provided by the by the laws of the State of North Dakota.
- D. **OFF-SALE** - The term "Off- Sale" shall mean the sale of all alcoholic beverages in original package for consumption off or away from the licensed premises where sold.
- E. **ON-SALE** - The term "On-Sale" shall mean the sale of any alcoholic beverages for consumption on the licensed premises where sold only.
- F. **RETAIL SALES** - "Sell at Retail" when used in this resolution shall have reference to a sale to a consumer for use or consumption and not for the purpose of resale in any form.
- G. **PERSON** - The term "Person" shall include persons, corporations, partnerships, and other unincorporated associations.
- H. **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.
- I. **MINOR** - A "Minor" shall mean any male or female person under the age of twenty-one (21) years.
- J. **CLUB OR LODGE** - The term "Club or Lodge" shall mean and include any corporation or association organized for civic, fraternal, social or service purpose and in existence for a period of two (2) years prior to application for a license.

SECTION II - LICENSE REQUIRED

No person, firm or corporation shall engage in the sale of beer, liquor or alcoholic beverages within the County of McLean outside the corporate limits of a city without first obtaining a license as herein provided.

SECTION III - LICENSES AND FEES

The fees for annual licenses under this resolution shall be as follows:

- 1. Class 1 license - On and off-sale beer and liquor license - \$750.00
- 2. Class 2 license - Club or lodge on and off-sale beer and liquor license - \$165.00
- 3. Class 3 license - Retail off-sale beer and/or liquor license - \$450.00

*HOURS - Any retail business, club or lodge shall not open for business before 0800 cst and must be closed after 0100 cst Monday through Sunday except no beer or liquor shall be sold before 1200 cst (noon) on Sunday. No beer or liquor may be sold or consumed on any licensed premises during closed hours.

*Holidays - No beer or liquor shall be sold after 1800 cst on Christmas Eve, on Christmas Day or after 0100 cst Thanksgiving Day.

No license shall be issued to any person at any time for less than the full amount of the annual license fee as hereinbefore provided and regardless of the date of issuance of such license; and any fraction or portion of year between the date of issuance and the next following 31st day of December shall be considered as a full year for the purpose of fixing the fees for such license.

No license shall be issued for the sale of beer, liquor or alcoholic beverages on any premises which the real estate taxes are delinquent nor to any applicant whose personal property taxes are delinquent at the time of filing the application.

SECTION IV - QUALIFICATION 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 of individuals or corporation by the County of McLean unless such applicant shall file a sworn application therefor, accompanied by the required fee, and shall show in such applications that he possesses the following qualifications:

- A. Applicant, other than corporate, must be a citizen of the United States and of the State of North Dakota and have bona fide residence in the County of McLean, State of North Dakota and be a person of good moral character.
- B. Applicant or manager shall not have been convicted of a felony, or of pandering or keeping a house of prostitution, or have been convicted within five (5) years of the date of his application of any violation of the laws of the State or of the laws of the United States relating to beer, liquor or alcoholic beverages.
- C. Application shall not have been revoked, within five (5) years next preceding his application, any license issued to him pursuant to the ordinances or resolutions of a city, village or board of county commissions, to the laws of the 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 V - LICENSES ISSUED TO OWNERS ONLY

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

SECTION VI - APPLICATIONS

Applications for license under this resolution shall be written, under oath, setting forth:

- A. Name of applicant
- B. Residence of applicant
- C. Citizenship
- D. Legal description of premises where it is proposed to sell
- E. Whether or not personal property taxes of applicant or real estate taxes on the 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. No sale, serving or consumption of alcohol, liquor or alcoholic beverages shall be permitted adjacent to the room or rooms for which the license is issued. No retail license shall be issued for which the license is issued. No retail license shall be issued for any building, room or place within six hundred (600) 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 VIII - TOILET REQUIREMENTS

That the premises where a license is granted must be equipped with adequate and sufficient lavatories and toilet, separately maintained for men and women, and kept in a clean and sanitary condition. License may be suspended or revoked when the foregoing requirements or any other health ordinance or regulation, is not, at all times, strictly observed.

SECTION IX - ENTERTAINMENT

1. Appearances, entertainment or performances of any type consisting of or containing any nude performer or nude dancer, or topless female performer or topless female dancer are prohibited on licensed premises.

a. A "nude performer" or "nude dancer" means any person who performs or appears in attire such that any portion of the pubic area, anus, vulva or genitals is exposed to view or not covered with an opaque material.

b. "Topless female performer" or "topless female dancer" means any female who performs, or appears in attire such that any portion of her breasts below the top of the areola is exposed to view or not covered with an opaque material.

2. Performances commonly referred to as "striptease," or any performance involving the removal of clothing, garments or any costume are prohibited on licensed premises. Such prohibition does not include the removal of headgear or footwear or the incidental removal of a tie, suitcoat, sportcoat, jacket, sweater or similar outer garment or article of clothing which is not a part of the act or performance.

3. Performances which contain any form of dancing other than incidental movement or choreography of singers or musicians made in connection with signing or playing of musical instruments, are prohibited on licensed premises.

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 resolution.

SECTION XI - MINORS NOT TO BE EMPLOYED OR PRESENT ON LICENSED PREMISES

No minor shall be permitted to enter and remain on any premises licensed under this resolution serving or selling at retail except in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian nor shall a minor be employed in or about such premises.

SECTION XII - SUSPENSION, TERMINATION, REVOCATION AND CANCELLATION OF LICENSES

Licenses shall end on December 31st following the date of issuance. They may be suspended or revoked or

cancelled for any or more of the following reasons:

- A. The death of the licensee, unless upon application to the County of Commissioners by the personal representative of the deceased, the County Commissioners 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 has violated any of the provisions of this resolution of the laws of the State or of the United States relating to beer, liquor or alcoholic beverages.
- D. When the licensee ceases to be a legal bona fide resident of the County of McLean.
- E. When the licensee has been convicted of a felony under the laws of the United States or under the laws of the several states.

The causes enumerated above shall not be deemed to be exclusive and the Board of Commissioners does hereby retain and reserve unto itself the right to suspend or revoke the license for any cause which it may deem sufficient provided; however, before such license shall be suspended or revoked, a hearing upon notice to the licensee shall be conducted in accordance with the provisions of the title: Alcoholic Beverages, North Dakota Century Code as amended.

If, upon such hearing, it appears to the Board of County Commissioners that such cause exists for the suspension or revocation of such license, and if upon such hearing, it appears to the Board that sufficient cause does not exist for revoking or terminating and cancelling such license, then said license shall remain in full force and effect.

SECTION XIII - LIMITATION NUMBER OF LIQUOR AND BEER LICENSES

The number of licenses which may be issued for the retail sale of beer and intoxicating liquors in the County of McLean shall be and the same is hereby limited to twelve (12). This section shall not be construed to require that there be issued in the County of McLean licenses to the number of twelve (12), and the Board of County Commissioners, in its discretion, may reduce the number of licenses below twelve (12) in the event that a sufficient number of licenses have been issued.

SECTION XIV - TRANSFERS

No license under this resolution shall be transferable, without the approval of the Board of County Commissioners and payment of transfer fee of \$50.00. No license shall be transferable from one location to another without approval of the Board of County Commissioners.

SECTION XV - APPROVAL OF COMMISSIONERS - LICENSE ISSUANCES

Any application, whether for sale of beer, or retail sale of intoxicating liquors must be approved by the Board of County Commissioners before a license shall be issued.

SECTION XVI - INSPECTION OF LICENSED PREMISES TO BE ALLOWED CERTAIN OFFICIALS

The licensee accepts the license privileges upon the condition, which need not be elsewhere expressed that the Sheriff, State's Attorney, the Board of County Commissioners, or any member thereof, or any Peace Officer of this State, may at any time enter upon the premises licensed for the purpose of police inspection or to determine whether the premises licensed are being conducted in compliance with the terms of this resolution and with the laws of the State of North Dakota.

SECTION XVII - REPEAL

All previously adopted resolutions and ordinances with regard to the licensing and regulation of the retail of beer, liquor and alcoholic beverages are hereby repealed.

SECTION XVIII - RESOLUTION EFFECTIVE WHEN

This resolution shall take effect and be in force on and after its adoption by the Board of County Commissioners of McLean County, North Dakota, and the publication thereof in one issue of the official newspaper of McLean County, North Dakota.

Approved and adopted this 13th day of June, 1968.

Attest: Otto Vetter
Auditor, McLean County

Board of County Commissioners
McLean County, North Dakota
By: /S/ Otto Bauer
Otto Bauer, Chairman

Amendments to this ordinance include Item J. under Section I, DEFINITIONS, "CLUB OR LODGE" and Item C. under Section III, LICENSE AND FEES, "Clubs and Lodges". Amendments were approved July 7, 1982, and effective upon adoption.

Approved and adopted this 7th day of July 1982, at Washburn, ND.

Attest: Marlan Hvinden
Auditor, McLean County

Board of County Commissioners
McLean County, North Dakota
By: /S/ Otto Bauer
Otto Bauer, Chairman

Amendments to this ordinance include Section IX, ENTERTAINMENT. Amendment was approved February 27, 2006, and effective upon adoption.

Approved and adopted this 27th day of February, 2006, at Washburn, ND.

Attest: Les Korgel
Auditor, McLean County

Board of County Commissioners
McLean County, North Dakota
By: /S/ Ron Kresbach, Chairman