

A RESOLUTION TO AMEND AND REENACT THE MORTON COUNTY LIQUOR ORDINANCE OF SEPTEMBER 1, 1967 AS AMENDED TO THE LICENSING OF DEALERS IN ALCOHOLIC BEVERAGES AND ESTABLISHING RULES AND REGULATIONS COVERING THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES IN MORTON COUNTY, NORTH DAKOTA, OUTSIDE OF INCORPORATED CITIES.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORTON COUNTY, NORTH DAKOTA THAT THE FOLLOWING RULES AND REGULATIONS OF THE MORTON COUNTY LIQUOR ORDINANCE OF SEPTEMBER 1, 1967 SHALL GOVERN THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES IN ALL PLACES IN MORTON COUNTY OUTSIDE THE LIMITS OF INCORPORATED CITIES PURSUANT TO THE POWERS SET FORTH IN TITLE 5 OF THE NORTH DAKOTA CENTURY CODE.

SECTION 1. DEFINITIONS

For the purpose of this Resolution and the Liquor Ordinances of Morton County the following words and phrases shall have the meanings respectively ascribed to them by this section.

- A. "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.
- B. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
- C. "Licensee" shall mean any person to whom a license has been issued under the provisions of the Morton County Liquor Ordinance and any amendments thereto.
- D. "Liquor" shall mean any alcoholic beverage except beer.
- E. "Minor" shall mean and include any person under the age of twenty-one (21) years.
- F. "Off-Sale" shall mean and include the sale of all alcoholic beverages in the original package for consumption off or away from the licensed premises where sold, and upon which premises the consumption of alcoholic beverages is unlawful.
- G. "On-Sale" shall mean and include the sale of alcoholic beverages for consumption on the licensed premises where sold only.
- H. "Original Package" or "Package" shall mean and include any container or receptacle holding alcoholic beverages which is corked or sealed by the manufacturer and which cork or seal has not been removed or broken prior to the sale of such package to the customer.
- I. "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 or employee.
- J. "Sell at Retail" or "Sale at Retail" shall mean a sale to a customer for use or consumption and not for the purpose of re-sale in any form.

- K. "Wholesaler" shall mean and include any person engaged in the sale of and distribution of liquor at wholesale to persons holding a retail license for the sale and distribution of alcohol and alcoholic beverages within the State of North Dakota or in interstate commerce.

SECTION 2. ZONES ESTABLISHED

- A. Zone number one is an area within a radius of one mile of the city limits of the City of Mandan, but it does not include any area within said City.
- B. Zone number two includes the areas within a radius of one mile from the corporate limits of the Cities of New Salem, Glen Ullin, Hebron, Almont and Flasher, but it does not include any area within the corporate limits of said municipalities.
- C. Zone number three includes all of Morton County except zones number one and two, and except the areas within the corporate limits of all cities within said County.

SECTION 3. MUST OBTAIN LICENSE-- WHEN LICENSE EXPIRES

No person shall sell alcoholic beverages without first obtaining a license to do so, as herein provided. All licenses granted under the provisions of this Resolution shall expire on the thirty-first day of December, in each year, unless sooner suspended or revoked for cause.

SECTION 4. TYPES OF LICENSE ISSUED-- FEES

- A. There shall be five classes of licenses issued, namely:
 - 1. Class A. General retail liquor (On-Sale and Off-Sale of liquor) license.
 - 2. No Class A license shall be issued unless licensee also receives a valid class B license.
 - 3. Class B. General retail beer (On-Sale and Off-Sale of beer) license.
 - 4. Class C. Exclusive Off-Sale of liquor. No Class C license shall be issued unless the licensee also receives a valid Class D license.
 - 5. Class D. Exclusive Off-Sale of Beer.
 - 6. Wholesale license.
- B. The license fee to be charged for a Class A license in the various zones is as follows:
 - Zone one: \$1,000.00
 - Zone two: The same amount as is required in the nearest city for an equivalent license.
 - Zone three: \$200.00
- C. The license fee to be charged for a Class B license in the various zones is as follows:
 - Zone one: \$500.00
 - Zone two: The same amount as is required in the nearest city for an equivalent license.
 - Zone three: \$200.00

- D. The license fee to be charged for a Class C license in the various zones is as follows:
- Zone one: \$1,000.00
 - Zone two: The same amount as is required in the nearest city for an equivalent license.
 - Zone three: \$200.00
- E. The license fee to be charged for a Class D license in the various zones is as follows:
- Zone one: \$200.00
 - Zone two: The same amount as is required in the nearest city for an equivalent license.
 - Zone three: \$200.00
- F. The license fee for a wholesale license shall be \$1,000.00.
- G. Refunds and proration. License fees will be prorated from the first day of the month in which the license is issued up to the last day of the month in which such license expires, except that no license fee will be prorated for more than six (6) months. Refunds will be prorated from the first day of the month following the month of voluntary surrender of the license to the last day of the month in which such license expires, except that no refund will exceed fifty percent of the original license fee which was paid. No refunds will be made if the license is surrendered as the result of suspension or revocation, or if there is a pending action to suspend or revoke the license.
- H. All delinquent property taxes must be paid before a license is issued to conduct business on the licensed premises.

SECTION 5. NUMBER OF LICENSES - -LOCATION

- A. The number of licenses issued by Morton County under this Resolution shall not exceed nineteen (19) until the population of the County as shown by a state, federal or special census shall reach 30,000 at which time an additional license may be issued for each 2,500 additional population, or major fraction thereof
- B. No more than seven (7) licenses shall be issued under this Resolution in Zone One.

SECTION 6. APPLICATION

Any person desiring a license to sell alcoholic beverages, either at whole sale or retail, shall make and file not less than ten days prior to the expiration of the license year a verified written application to the Board of County Commissioners. Said application shall be filed with the County Auditor on forms supplied by the County.

Said application shall be accompanied by certified check payable to the Morton County Treasurer, or cash in the sum necessary to pay the beer and liquor license fees required.

SECTION 7. INVESTIGATION OF FITNESS

The Sheriff of Morton County shall investigate the facts stated in the application, and the character, reputation, and fitness of the person or persons named in said application, and shall report on such matters to the Board of County Commissioners. The Board at their discretion may

require the applicant to submit such proof as they may require of the truth of any allegation contained in the application. The Board in their discretion may at any time require any licensee to present to the Board an affidavit disclosing the ownership, management or actual control of the licensed business.

SECTION 8. QUALIFICATIONS FOR LICENSE

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

1. The applicant, other than an organization, must be a legal resident of the United States and a resident of this state and be a person of good moral character.
2. If applicant is
 - A. Corporation, then:
 - (1) The manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and
 - (2) The shareholders:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.
 - B. A limited liability company, then:
 - (1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
 - (2) The members:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
 - (3) The applicant must first be properly registered with the secretary of state.
 - C. A limited partnership, then:
 - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.
 - (2) The general partners and limited partners:
 - (a) If individuals, must be legal residents of the United States and of good moral character; and
 - (b) If organizations, must meet the requirements of this section for applicants that are organizations.
 - (3) The applicant must first be properly registered with the secretary of state.

- D. A general partnership, then:
 - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
 - (2) The partners:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

- E. A limited liability partnership, then:
 - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
 - (2) The partners:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

Limited liability partnership applicants must first be properly registered with the secretary of state.

- 3. The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer; or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.
- 4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
- 5. The applicant for a state license must have first secured a local license.
- 6. The attorney general, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.
- 7. The applicant may not have any financial interest in any wholesale alcoholic beverage business.

SECTION 9. DISPENSING PROHIBITED ON CERTAIN DAYS-- PENALTY

Any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before twelve noon on Sundays, 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 Christmas Day, after one a.m. on Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

SECTION 10. LICENSE NOT TRANSFERABLE

No license issued hereunder shall be transferable except to the executors or administrators of the estate of the deceased licensee or by approval of the Board of County Commissioners.

No licensee shall employ a manager of the licensed premises other than the manager named in the license application without first securing the approval of the Board of County Commissioners.

No person shall transfer any control or ownership interest in a licensed alcoholic beverage establishment or shall transfer stock in a corporation licensed to deal in alcoholic beverages without first securing the approval of the Board of County Commissioners.

SECTION 11. LICENSE TO BE POSTED

Licenses issued hereunder shall be posted in a conspicuous place in that portion of the premises for which the license has been issued.

SECTION 12. LOCATION

No retail license shall be issued for any building, room, or place within 150 feet of any church, public or parochial school grounds, or any public institution. No license shall be issued for the retail sale of alcoholic beverages where the premises sought to be licensed is in any basement or below the first floor of any building or above the first or ground floor of any building, except where such non-conforming premises are presently licensed, but when a licensee maintains a dining room separate from the room in which a bar is located, he may sell alcoholic beverages in accord with State law and County regulations in such dining room, regardless of whether it is on the main floor.

SECTION 13. SUSPENSION AND REVOCATION OF LICENSE

Licenses issued pursuant to this ordinance shall be revoked, or in appropriate cases suspended, for the following causes:

- A. The death of the licensee unless the license is transferred to his executors or administrators.
- B. When the licensee ceases business at the location licensed or closes his establishment for 30 days.
- C. When the licensee has been adjudged bankrupt.
- D. When the licensee has been convicted of any felony.
- E. When the licensee ceases to be a legal, bona fide resident and citizen of the State of North Dakota.
- F. When the license or permit to the licensee from the State of North Dakota has been suspended or revoked.

- G. When the business of the licensee at the location licensed shall be conducted in violation of law, or shall constitute a nuisance.
- H. When the licensee or any agent or employee shall refuse to permit the Sheriff, State's Attorney, or other health or peace officer to enter upon the licensed premises for the purpose of inspection, or to determine whether the premises are being conducted in accordance with the laws of the State of North Dakota and this ordinance.
- I. When the licensee or any agent or servant of such licensee shall violate any provision of this resolution or any law of the State of North Dakota relating to the manufacture, sale, or distribution of alcoholic beverages.
- J. When the licensee makes any misstatement or concealment of fact in an application for a license, or in an affidavit required under the provisions of Section 7.

When a license is terminated or revoked for cause, or the licensee voluntarily ceases to do business, no part of the license fee previously paid to the County of Morton shall be returned to said licensee or those claiming under him.

Any license issued hereunder may be suspended or revoked for cause shown at any time by the Board of County Commissioners, subject to review by the Courts.

SECTION 14. PARTITION, SCREENS. ETC. PROHIBITED

No licensee for the retail sale of alcoholic beverages shall construct, maintain or allow to be constructed or maintained or placed in the licensed premises any side room, closed booth, or other enclosure. All booths located in such premises shall open into the main part of said premises and shall be accessible from the aisles therein and shall not have thereon any screen, curtain, partition, door, or blind or other obstruction of any kind preventing clear view into said booths from the main room or aisle of said premises.

SECTION 15. DISPOSITION OF FEES

All license fees collected by Morton County under this ordinance shall be turned over by the County Auditor to the County Treasurer to be credited to the General Fund of Morton County.

SECTION 16. SANITARY REQUIREMENTS

All licensed premises must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and kept in a clean and sanitary condition.

SECTION 17. INSPECTION OF LICENSED PREMISES TO BE ALLOWED

The licensee accepts the license privilege upon the condition, which need not elsewhere be expressed, that the Sheriff or any health or peace officer of the County, may at any time enter upon the premises licensed under this resolution for the purpose of determining whether the premises are being conducted in compliance with this resolution and the laws of the State of North Dakota.

SECTION 18. SUNDAY ALCOHOLIC BEVERAGE PERMIT-- PENALTY

- A. Permit Required. No person may dispense, sell or permit the consumption of alcoholic beverages within a licensed premises or publicly owned or operated facility on any Sunday unless said person has been granted a permit under the provisions of this section. A Sunday Alcoholic Beverage Permit shall cover all the Sundays during the license year which is January first through December thirty- first. The permit shall be issued administratively by the County Auditor without further action of the board to any licensee qualified under the provisions of this section to hold such a permit.
- B. Eligible Applicants. Pursuant to the provisions of NDCC 05-02-05.1 only the following alcohol licensees or facilities are eligible to apply for a Sunday Alcoholic Beverage Permit:
 - 1. A "qualified alcoholic beverage licensee" which is defined to mean any licensee by the county.
- C. Application. An eligible applicant may make written application to the County Auditor for an annual permit to authorize the applicant to dispense alcoholic beverages on its premises between the hours of twelve noon on Sunday and one a.m. on the following Monday. The applicant shall furnish such information as may be required by the County Auditor upon forms furnished by the county. The application must be accompanied by an annual fee not to exceed two hundred sixty dollars (\$260.00) for all Sundays of the year. The fee may be prorated as five dollars (\$5.00) for each Sunday. No proration of the permit fee shall be made because the permittee could have operated on a Sunday pursuant to the permit but chose not to do so.
- D. Penalty. Any person who dispenses, sells or permits the consumption of alcoholic beverages in violation of this section is guilty of a Class A Misdemeanor. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of the conditions of a Sunday Alcoholic Beverage Permit, or who furnishes information required by this section which is false or misleading is guilty of a Class B Misdemeanor.
- E. Effective Date. This shall be effective after July 31, 1993.

SECTION 19. SPECIAL CATERING PERMIT-- FEE-- PENALTY

Any qualified alcoholic beverage licensee, may obtain a special catering permit to engage in the sale of alcoholic beverages permitted to be sold under the restrictions of the regular liquor license at an event or public dance which is located off and away from the licensed premises and on premises designated by the permit. For the purposes of this section, "qualified alcoholic beverage licensee" means a licensee by the county. The fee for the special catering permit shall be twenty-five dollars (\$25.00). The permit shall not be valid for a period greater than fourteen (14) days, and may include Sundays. The licensee granted a special catering permit shall be responsible for compliance with any restrictions or special conditions placed on the permit by the board. Any violation of the licensing code provisions, restrictions, or special conditions may subject the licensee to immediate revocation of the permit and suspension or revocation of the alcoholic beverage license. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of the special permit is guilty of a Class B Misdemeanor.

SECTION 20. SPECIAL ONE DAY COUNTY LIQUOR LICENSE -- FEE -- PENALTY

Any qualified alcoholic beverage licensee, not holding a current County alcoholic beverage license can obtain a one day County liquor license by filing the necessary forms and paying a fee of \$50.00 per day. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of the special permit is guilty of a Class B Misdemeanor.

SECTION 21. EFFECTIVE DATE – REPEAL

All resolutions in conflict herewith are repealed.

Dated this 5th day of December, 1995.

/s/Raymond Knoll
Raymond Knoll, Chairman
Board of County Commissioners
Morton County, North Dakota

Attest:

/s/Paul E Trauger
Paul E. Trauger, County Auditor