

## **An Ordinance Regulating the Sale of Alcohol in the City**

The City Council of the City of Ellendale, Minnesota, ordains:

### **Section 1: Adoption of State Law by Reference.**

The provisions of Minn. Stat. Chap. 340A, as they may be amended from time to time, with reference to the definitions of terms, conditions or operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of alcohol are hereby adopted by reference and made a part of this Ordinance as is set out in full. It is the intention of the City Council that all future amendments to Minn. Stat. Chap. 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Ordinance was adopted.

### **Section 2: This Ordinance is More Restrictive than State Law.**

The City is authorized by Minn. Stat. 340A.509 to impose, and has imposed in this Ordinance, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in Minn. Stat. Chap. 340A.

### **Section 3: Nudity on the Premises of Licensed Establishments Prohibited.**

- A. The City Council finds that it is in the best interest of the public health, safety and general welfare of the people of the City of Ellendale that nudity be prohibited on the premises of any establishment licensed under this Ordinance. This is to protect and assist the owners, operators and employees of the establishment as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conducts, including prostitution, sexual assault and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this Ordinance reflects the prevailing community standards of the City of Ellendale.
- B. It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts and genitals covered with a non-transparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts and genitals covered with a non-transparent material.
- C. A violation of this section is justification for revocation or suspension of any licensee issued pursuant to this Ordinance or the imposition of a civil penalty under provisions of Section 20 of this Ordinance.

#### **Section 4: Consumption in Public Parks.**

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this Ordinance or in the municipal liquor store.

#### **Section 5: License Required.**

Except for the municipal liquor store, no person, firm, corporation, or partnership, except wholesalers and manufacturers to the extent authorized by law, shall deal in or dispose of by gift, sale, or otherwise, or keep or offer for sale, any alcoholic beverage without first having received a license as hereinafter provided. However, no license is required for a bed and breakfast facility, as defined in Minn. Stat. 340A.411, to provide, at no additional charge to a person renting a room at the facility, not more than two glasses of wine per day each containing not more than four fluid ounces, in accordance with the provisions in Minn. Stat. 340A.411.

#### **Section 6: Licenses.**

The City may issue four kinds of licenses: (1) 3.2 percent malt liquor on-sale licenses; (2) temporary 3.2 percent malt liquor on-sale licenses; (3) 3.2 percent malt liquor off-sale licenses; and (4) on-sale wine licenses.

- A. 3.2 percent malt liquor on-sale licenses may be issued only to restaurants, hotels, clubs, bowling centers and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.
- B. Temporary 3.2 percent malt liquor on-sale licenses may be issued only to a club, religious or non-profit organization.
- C. On-sale wine licenses, with the approval of the Commissioner of Public Safety, may be issued to restaurants that have facilities for seating at least twenty five guests at one time and meet the criteria set forth in Minn. Stat. 340A.404, subd. 1, as it may be amended from time to time. The holder of an on-sale wine license who also holds a 3.2 percent malt liquor on-sale license is authorized to sell malt liquor with content over a 3.2 percent (strong beer) without an additional license.

#### **Section 7: License Fees.**

- A. **Payment Required:** Each application for a license shall be accompanied by payment in full of the required fee for the license. Upon rejection of any application for a license, the City shall promptly refund the amount paid.
- B. **Expiration; Prorate Fees:** Every license, except a temporary license, shall expire on the 31<sup>st</sup> day of December in each year. Each license, except a temporary license, shall be issued for a

period of one year, except that if a portion of the license year has elapsed when the license is granted, the license shall be issued for the remainder of the calendar year.

C. **Fees:** Until modified by the Council, fees for the licenses provided by this Ordinance shall be:

1. 3.2 percent malt liquor on-sale licenses shall be \$50.00;
2. Temporary 3.2 percent malt liquor on-sale licenses shall be \$20.00 per day;
3. 3.2 percent malt liquor off-sale licenses shall be \$250.00;
4. On-sale wine licenses shall be \$50.00.

D. **Increase in License Fee:** No liquor license fee shall be increased except after notice and a hearing on the proposed increase. Notice of the proposed increase shall be mailed to all affected licensees at least thirty days before the date set for the hearing.

**Section 8: Council's Discretion to Grant or Deny a License.**

The Council in its sound discretion may either grant or deny an application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this Ordinance.

**Section 9: Application for License.**

- A. **Form:** Every application, except for an on-sale wine license, for a license issued under this Ordinance shall be on a form approved by the City. Every such application shall state the name of the applicant, the applicants age, representations as to the applicants character, with such references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is the owner and operator of the business, how long the applicant has been in the business at the place, and such other information as the Council may require from time to time. If a corporation is the applicant, the corporation shall provide on its application a list of all stockholders of the corporation to whom the license is issued, and the number or shares held by each, either individual or beneficially for others. It shall be the continuing duty of each corporate beneficial interest of such shares. The City Clerk, or an office of the City designated by the City Council, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify the names of the stockholders and persons voting at meetings of such corporation. An application for an on-sale wine license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the City. No person shall make a false statement in an application.

- B. **Financial Responsibility:** Prior to the issuance of any license under this Ordinance, the applicant shall, unless not required by state law, demonstrate proof of financial responsibility as defined in Minn. Stat. 340A.409, as it may be amended from time to time, with regard to liability under Minn. Stat. 304A.801, as it may be amended from time to time. This proof shall be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to Minn. Stat. 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this Ordinance without having on file with the City at all times effective proof of financial responsibility is a cause for revocation of the license, unless no such proof is required by this Ordinance and state law.

### **Section 10: Description of Premises.**

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

### **Section 11: Applications for Renewal.**

At least ninety days before the license issued under this Ordinance is to be renewed, an application for renewal shall be filed with the City. The decision whether or not to renew a license rests with the sound discretion of the Council. No licensee has a right to have the license removed.

### **Section 12: Transfer of License.**

No license issued under this Ordinance shall be transferred without the prior approval of the Council. Any transfer of stock of a corporate licensee is deemed to be transferred of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions in this Ordinance applying to applications for a new license shall apply.

### **Section 13: Investigation.**

- A. **Preliminary Background and Financial Investigation:** On an initial application for a license, on an application for a transfer of a license, and in the sound discretion of the Council that it is in the public interest to do so, on any application for renewal of a license, the City shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation fee of \$500.00 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500.00, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale wine license.
- B. **Comprehensive Background and Financial Investigation:** If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself, or contract with

the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation, to be paid by the applicant, shall be \$500.00, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000.00, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event that the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale wine license.

#### **Section 14: Hearing and Issuance.**

Opportunity shall be given to any person to be heard for or against the granting of a license under this Ordinance. After the investigation and hearing, the Council shall, in its sound discretion, grant or deny the application. No license shall become effective until proof of financial security, unless not required by this Ordinance and state statute, has been approved by the Commissioner of Public Safety.

#### **Section 15: Restrictions on Issuance.**

- A. Each license shall be issued only to the applicant for the premises described in the application.
- B. No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges or other financial claims with the City are delinquent and unpaid.
- C. No license shall be issued for any place or any business ineligible for a license under state law.
- D. No license shall be issued to any person who is not a resident of the state of Minnesota. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this paragraph shall not apply to any license existing on the effective date of this Ordinance or to the renewal of any existing license.
- E. No license shall be granted within 500 feet of any school or church which is not located in a commercial zone. The distance is to be measured from the closest side of the church or school to the closest side of the structure on the premises within which liquor is to be sold.
- F. No license shall be issued to a person in connection with the premises of another to whom a license could not be issued under this Ordinance or state law. This provision does not prevent the granting of a license to a proper lessee because the person leased the premises of a minor, a non-citizen who is not a resident alien, or a person who has been convicted of a crime other than a violation of this chapter.

## **Section 16: Conditions of License.**

- A. Every licensee is responsible for the conduct of the licensee's place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable for all penalties provided by this Ordinance and state law equally with an employee.
- B. Every licensee shall allow any peace officer, health officer, City employee, or other person designated by the City Council to conduct compliance checks, and to otherwise enter, inspect and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.
- C. No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.
- D. Compliance with financial responsibility requirements of state law and of this Ordinance is a continuing condition of any license.

## **Section 17: Hours and Days of Sale.**

- A. The hours of operation and sale are those set by Minn. Stat. 340A.504, as it may be amended from time to time.
- B. No person shall consume, nor shall any on-sale licensee permit any consumption of, intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premise more than 30 minutes after the time when the sale can legally occur.
- C. No on-sale licensee shall permit any glass, bottle or other container containing intoxicating liquor or 3.2 percent malt liquor to remain on any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.
- D. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

## **Section 18: Minors on Premises.**

- A. No person under the age of 18 years old shall be employed in any rooms constituting a place in which intoxicating liquor or 3.2 percent malt liquor is sold at retail on-sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services in places defined as a restaurant, hotel, motel or other multipurpose building serving food in rooms in which intoxication liquor or 3.2 percent malt liquor is sold at retail on-sale.

- B. No person under the age of 21 may enter a licensed establishment except to work, consume meals or premises, or attend social functions that are held in a portion of the premises where liquor is not sold.

#### **Section 19: Suspension and Revocation.**

- A. The Council may either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this Ordinance relating to liquor. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedure Act, Minn. Stat. 14.57-14.70, as this law may be amended from time to time. The Council may act as the hearing body under the act, or it may contract with the Office of Hearing Examiners for a hearing officer.
- B. The provisions of Section 20 of this Ordinance pertaining to administrative penalties may be imposed in addition to or in lieu of any suspension or revocation under this section of the Ordinance.

#### **Section 20: Penalties.**

- A. Any person violating the provisions of this Ordinance is guilty of a misdemeanor, unless state law makes the violation a more serious offense and upon conviction shall be punished as provide by law.
- B. The Council may impose a civil penalty up to \$2,000.00 for each violation of Minn. Stat. Chap. 340A and of this Ordinance. The civil penalty shall be in addition to any criminal penalties or any suspension or revocation imposed under Section 19. Conviction of a violation in a court of law is not required in order for the Council to impose a civil penalty. A hearing under the Administrative Procedures Act, Minn. Stat. 14.57-14.70, as that act may be amended from time to time, is not required before such a penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hears any person who wishes to speak. Nonpayment of the civil penalty is grounds for suspension or revocation of a license.
- C. The term "violation" as used in this Ordinance includes any and all violations of the provisions of this Ordinance, Minn. Stat. Chap. 340A, as it may be amended from time to time, or any rules promulgated under Minn. Stat. Chap. 340A, as they may be amended from time to time.

**Section 21: Repealer.**

Ordinances 33, 45, 47, 54, 86-6, 88-1, and 96-2 are hereby repealed.

**Section 22: Effective Date.**

This Ordinance becomes effective upon the date of its publication.

Passed by the City Council of Ellendale, Minnesota, this 13<sup>th</sup> day of November, 2003