

ORDINANCE 203

AN ORDINANCE REGULATING THE POSSESSION, SALE AND CONSUMPTION OF INTOXICATING AND 3.2 PERCENT MALT LIQUOR

The City Council of the City of Bird Island, Minnesota does ordain:

Section 1. ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Ch. 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Ordinance as if set out in full. It is the intention of the City Council that all future amendments to M.S. Ch. 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Ordinance is adopted.

Section 2. DEFINITIONS.

In addition to the definitions contained in M.S. 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this ordinance:

3.2 PERCENT MALT LIQUOR. Malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight.

INTOXICATING LIQUOR. Ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent of alcohol by weight.

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by M.S. 157.16, as it may be amended from time to time, and meet the definition of either a "small establishment," "medium establishment" or "large establishment" as defined in M.S. 157.16, subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this ordinance unless it meets the definitions of a "small establishment," "medium establishment" or "large establishment."

Section 3. KINDS OF LIQUOR LICENSES.

A. 3.2 percent malt liquor on-sale licenses, which may be issued only to golf courses, 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. 3.2 percent malt liquor off-sale license.

C. Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

D. Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994.

E. On-sale intoxicating liquor and Club licenses, which may be issued to the following establishments as defined by M.S. 340A.101, as it may be amended from time to time, and this ordinance: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veterans' organizations, theaters and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety to incorporated clubs or to congressionally chartered veterans' organizations which have been in existence for 3 years.

F. Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S. 340A.504, subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued to a restaurant as defined in Section 2 of this Ordinance, club, bowling center, or hotel with a seating capacity for at least 30 persons, holding an on-sale intoxicating liquor license, and serving liquor only in conjunction with the service of food between the hours of 10:00 a.m. on Sundays and 1:00 a.m. on Mondays.

G. On-sale and off-sale licenses separately to the same licensee, or a combination on-sale/off-sale license to the same licensee.

H. Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

I. On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating at least 25 guests at one time

and meet the criteria of M.S. 340A.404, subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in section 2; to licensed bed and breakfast facilities which meet the criteria in M.S. 340A.401, subd. 1, as it may be amended from time to time and to theaters that meet the criteria of M.S. 340A.404(b), as it may be amended from time to time. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

Section 4. LICENSE FEES.

A. The annual fee for liquor licenses shall be as follows: \$150.00 for 3.2 percent malt liquor on-sale; \$5.00 for 3.2 percent malt liquor off-sale; \$100.00 for off-sale intoxicating liquor; \$2000.00 for on-sale intoxicating liquor; \$100.00 for a club license; \$100.00 for Sunday on-sale intoxicating liquor; and \$100.00 for on-sale wine license. Temporary on-sale liquor licenses shall be \$50.00 per day. These fees may be changed from time to time by simple resolution of the City Council.

B. Each application for a license shall be accompanied by a receipt from the city for payment in full of the license fee. All fees shall be paid into the general fund. If an application for a license is rejected, the city shall refund the amount paid.

C. Each license shall be issued for a period of one year except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as one month. Every license shall expire on the last day of June.

D. No refund of any fees shall be made except as authorized by Statute.

Section 5. APPLICATION FOR LICENSE.

A. **Form.** Every application for a license issued under this ordinance shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with 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 owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor 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 demonstrate proof of financial responsibility as defined in M.S. 340A.409, as it may be amended from time to time, with regard to liability under M.S. 340A.801, as it may be amended from time to time. This proof will 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 M.S. 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.

Section 6. TRANSFER OF LICENSE.

No license issued under this ordinance may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer 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 of this code applying to applications for a license shall apply.

Section 7. INVESTIGATION AND ISSUANCE.

The Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

Section 8. 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 of 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 granted within 300 feet of any school or church.

Section 9. CONDITIONS OF LICENSE.

The failure of a licensee to meet any one of the conditions of the license specified below shall result in suspension of the license until the condition is met.

A. Every licensee is responsible for the conduct of the 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 the law equally with the employee.

B. Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the 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 the hours when the sale of liquor is prohibited.

Section 10. RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place. No person shall consume liquor on a public highway, public park or other public place.

Section 11. SUSPENSION AND REVOCATION.

A. The Council shall 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. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. 14.57 to 14.70, as it may be amended from time to time.

B. Lapse of required proof of financial responsibility shall affect an immediate suspension of any license pursuant to this ordinance or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Administrator, a hearing

before the Council shall be granted within ten days. Any suspension under this division shall continue until the Council determines that the financial responsibility requirements of state law and this ordinance have again been met.

C. The provisions of Section 12 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this ordinance.

Section 12. PENALTIES.

A. Any person violating the provisions of this ordinance or M.S. 340A, as it may be amended from time to time, or any rules promulgated under that chapter, as they may be amended from time to time, is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

B. The Council may impose a civil penalty of up to \$2000 for each violation of M.S. 340A, as it may be amended from time to time, and of this ordinance. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M.S. 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license.

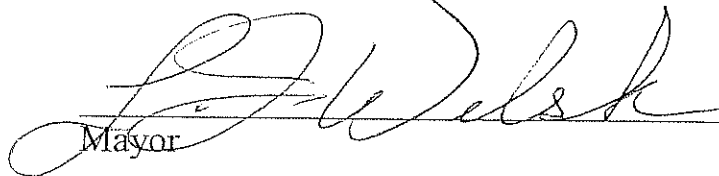
Section 13. REPEAL.

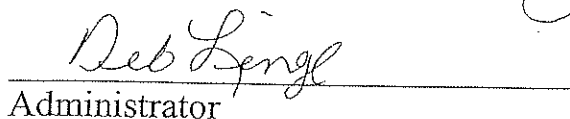
All ordinances and provisions of any ordinance inconsistent with this ordinance are hereby repealed.

Section 14. EFFECTIVE DATE.

This ordinance becomes effective upon its passage and publication according to law.

Passed by the City Council of Bird Island this 8 day of
December, 2008.


Mayor


Administrator