

ORDINANCE NO. 2021- 2
ALCOHOLIC BEVERAGES

ORDINANCE REPEALING CITY OF COOPERSTOWN ORDINANCE NOS. 79, 81, 82, 89, 91, 94, 94A, 100, 101, 124, 1987-1, 1988-3, 1990-2, 1993-2, 2003-1, 2016-3, 2021-1 AND ANY OTHER HERETOFOR ENACTED ORDINANCE NOT SPECIFICALLY REFERENCED BY NUMBER RELATING TO LIQUOR, BEER, SALE OF LIQUOR AND/OR BEER, LICENSES AND FEES CHARGED FOR ALCOHOLIC LICENSES, SPECIAL SUNDAY EVENT ALCOHOL EVENT PERMITS, SUNDAY SALE OF BEER, LIQUOR AND WINE, AND HOURS DURING WHICH ALCOHOLIC BEVERAGES MAY BE DISTRIBUTED ON SUNDAYS; AND

ORDINANCE ENACTING CITY OF COOPERSTOWN ORDINANCE NO. 2021- 2.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COOPERSTOWN, GRIGGS COUNTY, NORTH DAKOTA:

THAT THE CITY OF COOPERSTOWN ORDINANCE NOS. 79, 81, 82, 89, 91, 94, 94A, 100, 101, 124, 1987-1, 1988-3, 1990-2, 1993-2, 2003-1, 2016-3, 2021-1 AND ANY OTHER HERETOFOR ENACTED ORDINANCE NOT SPECIFICALLY REFERENCED BY NUMBER RELATING TO LIQUOR, BEER, SALE OF LIQUOR AND/OR BEER, LICENSES AND FEES CHARGED FOR ALCOHOLIC LICENSES, SPECIAL SUNDAY EVENT ALCOHOL EVENT PERMITS, SUNDAY SALE OF BEER, LIQUOR AND WINE, AND HOURS DURING WHICH ALCOHOLIC BEVERAGES MAY BE DISTRIBUTED ON SUNDAYS ARE HEREBY REPEALED; AND

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF COOPERSTOWN, GRIGGS COUNTY, NORTH DAKOTA THAT ORDINANCE NO 2021- 2 BE ENACTED TO READ AS FOLLOWS:

Alcoholic Beverages

Section 1 Definitions

For the purpose of this article:

1. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
2. "Beer" means any malt beverage which contains one-half of one percent or more of alcohol by volume.
3. "Licensee" means any person, firm, corporation, association or club which shall have secured a license pursuant to provisions of this ordinance or their agent or employee.
4. "Liquor" means any alcoholic beverage except beer.

5. "Person" means and includes any individual, firm, corporation, association, club, co-partnership, society or any other organization; and shall include the singular and the plural.
6. "Sale" and "sell" mean all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of and keeping for sale of such alcoholic beverages.
7. "Package" and "original package" mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.
8. "Club" or "lodge" includes any corporation or association organized for civic, fraternal, social or business purposes or the promotion of sports, which has at least 100 members at the time of application for license.
9. "Retail sale" means the sale of alcoholic beverages for use or consumption and not for resale.
10. "Off-sale" means the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.
11. "On-sale" means the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

Section 2 Exceptions

1. This ordinance shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.
2. This ordinance shall not be construed to apply to the following products, when they are unfit for beverage purposes:
 - a. Denatured alcohol produced and used pursuant to Acts of Congress and the regulations thereunder.
 - b. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
 - c. Flavoring extracts, syrups and food products.
 - d. Scientific, chemical and industrial products; nor to the manufacturer or sale of said products containing alcohol.

Section 3 License Required

No person shall sell at retail within the city limits of the City of Cooperstown any alcoholic beverage without first having obtained a license therefore as herein provided. This section shall not apply to public carriers engaged in interstate commerce.

Section 4 Licenses – Classes of – Fees

1. The fee for an on and off sale liquor license is \$2,000.00 per year.
2. The fee for an on and off sale beer license is \$100.00 per year.
3. The fee for an on sale liquor license is \$1,000.00 per year.
4. The fee for an on sale beer license is \$100.00 per year.
5. The fee for an off sale liquor license is \$1,500.00 per year.
6. The fee for an off sale beer license is \$100.00 per year.
7. The fee for an on sale club license is \$100.00 per year.
8. In addition to any other license fees provided for by this section, the license fee shall be increased by \$5.00 for each Sunday the licensee sells alcoholic beverages.
9. License fees shall be payable in advance at the time of the filing of the application. Should a license be granted, the term of the license is one (1) year from the date of issuance. License fees shall not be prorated and are not refundable. No license issued pursuant to provisions of this section shall be assignable or transferrable, and the failure to pay any license fee on or before the date it is due shall automatically cancel the license.

Section 5 Event Permits

1. The City Council may by permit authorize a licensee to engage in the sale of alcoholic beverages at events designated by the permit. The fee for the event permit shall be twenty-five dollars (\$25.00). The permit shall be valid for a one (1) day and may include Sundays. The City Council may establish rules to regulate and restrict the operation of an event permit.
2. The City Council may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
 - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - b. Only employees of the licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine; and
 - c. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

Section 6 License – Qualifications

A retail license may not be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the qualifications set forth in 5-02-02, N.D.C.C., are satisfied.

Section 7 Application for Liquor License

Any person desiring a license to sell alcoholic beverages at retail as hereinbefore described shall make and present a written verified application, on a form approved by the city council, filed with the city auditor, containing the following information:

1. The name and address of the applicant; if the applicant is a partnership, the name and address and place of residence of each member of said partnership; if the applicant is a limited liability company the name and address and place of residence of each member and officer of the limited liability company and of the manager of the licensed premises; if the applicant is a corporation, the name and address of the officers of the corporation and of the manager of the licensed premises.
2. Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a partnership, the same preceding information for each member of the partnership; if the applicant is a limited liability company, the same preceding information for each member of the limited liability company, the date of organization, the state where organized, the purposes for which said limited liability company was organized, and if the limited liability company is a subsidiary or member of any other limited liability company, the same information for the parent limited liability company; and if the applicant is a corporation, the date of incorporation, the state where incorporated, the purpose for which the corporation was incorporated and if the corporation is a subsidiary of any corporation, the name of the parent corporation.
3. The legal description and the address of the premises for which license is sought.
4. The date on which the applicant acquired title to the premises sought to be licensed, and if the applicant does not have title to said premises, the name and address of the owner of the premises together with a copy of the applicant's lease, if written, under which he holds possession of said premises.
5. Whether there are any delinquent taxes against the premises sought to be licensed.
6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the applicant first began to operate.
7. Whether the applicant has ever had a license revoked or cancelled by a municipal, state or federal authority, and if so, the date of such cancellation, the place and authority canceling the same and the reason for such cancellation.

8. Whether the applicant has ever been convicted of the violation of any law of the United States or of any state, or of the violation of any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of place and courts in which said convictions were had.
9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation and the reasons assigned therefore.
10. Whether the applicant has ever been convicted of any other crime than stated in subsections (8) and (9) hereof, in this state or any other state, or under any federal law, and if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passed and the court in which convicted.
11. The name and address and the place of residence for a period of one year prior to the date of application of any person who will have charge, management or control of the establishment for which license is sought.
12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures or equipment in the premises for which license is sought, and if so, the name and address of such person together with a statement of the interest so held.
13. Whether the applicant has any interest whatsoever directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State of North Dakota, and if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, within the borders of the United States.
14. The occupations that the applicant has followed during the past five years.
15. The names and addresses of at least three business references.
16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.
17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.
18. The classification of license applied for.
19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the City Council a list of the members belonging to such lodge or club.

20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of this City or of the State of North Dakota.

Section 8 License - Application Fitness

The chief of police or such other person or officer as may be designated by the City Council shall, upon the filing of an application investigate the facts as stated in the application and the character, reputation and fitness of the applicant and shall report on said matters to the City Council.

Section 9 License - Location

No license shall be issued or transferred to any person, firm or corporation to engage in the sale of beer or alcoholic beverages within the City without approval as to the location of said licensed business by the City Council. The application for approval shall be in writing and shall be filed with the City Council. At the time of hearing, the City Council shall in its discretion determine if said location is in harmony with the public interest and welfare of the community and shall consider among other things the following factors:

1. The convenience of police regulations.
2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
5. Any protests of neighboring property owners or occupants.
6. Zoning regulations.
7. Proposed on- or off-sale or both licensee.
8. Interference with or proximity to residential property.
9. Interference with neighboring property.
10. Suitability of premises for sale of beer, liquor or alcoholic beverages.
11. Public convenience and necessity.

Section 10 License - Granting

After the City Council has received the application as provided herein, they shall meet and consider the same. If the City Council finds that the applicant meets the qualifications for a license and is satisfied as to the completeness and the accuracy of the information contained in the application, they may grant the license. If the City Council finds that the applicant does not meet with the qualifications or is not satisfied as to the completeness or accuracy of the information, they may request that the applicant supply more verified information to the City Council or they may reject the application.

Section 11 License - Posting

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

Section 12 License - Transfer

No license under the provisions of this article shall be transferable and any attempt to do so shall constitute a violation of the provisions of this ordinance.

Section 13 License Fees - Disposition

All license fees collected under this ordinance shall be transferable to the city auditor and credited to the general fund of the City.

Section 14 Hours and Time of Sale - Penalty

1. A licensee may not dispense or permit the consumption of alcoholic beverages on licensed premises between two a.m. and eight a.m., on Christmas Day, or after six p.m. on Christmas Eve. In addition, a licensee may not provide off-sale after two a.m. on Thanksgiving Day or between two a.m. and eight a.m. on Sundays. A person that violates this section is guilty of an offense which is punishable by a fine of up to five hundred dollars (\$500.00) and possible suspension or revocation of license.
2. All licensees shall close and keep closed their place of business during hours and times that liquor is not permitted to be sold as stated herein. It shall also be unlawful for any person to consume in any such place any alcoholic beverages after the hours set forth above in this section. Additionally, it shall be unlawful for any person to remain in any premises licensed to retail alcoholic beverages during hours and times that liquor is not permitted to be sold as stated in this section, except that the licensee and any employee may be allowed to remain on the premises after such hours for the sole purpose of cleaning up or stocking inventory, but shall leave as soon as their work is complete.

Section 15 Possession of Unsealed container

No person shall drink or consume nor have in his possession nor on his person nor keep beer, liquor, wine, or alcoholic beverages on or in any public street, sidewalk, alley, or in an automobile, truck, or at public functions in any municipal building, which has been opened or the contents of which have been partially consumed.

Section 16 Licensee's Responsibility

Every licensee is hereby made responsible for the conduct of the licensee's place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any obviously intoxicated person.

Section 17 Consumption of Liquor From Package

No person shall permit the consumption of beer, liquor, or alcoholic beverages upon the licensed premises or the opening of the container containing the alcoholic beverage, the same being in the original package in which the sale is made on the premises where sold, unless the licensee holds an on-sale license and the beverage dispensed is served in a glass or other similar container by the licensee or his employee; provided, however, that this shall not apply to the consumption of malt beverages from original packages. All sales of beer, liquor, or alcoholic beverages made by the licensee in packages shall be completed upon the licensed premises by the delivery of the container containing the beer, liquor, or alcoholic beverage to the person upon such premises. It shall be unlawful for any person to consume beer, liquor or alcoholic beverages off the licensed premises which were originally sold to the person for consumption upon the licensed premises and not originally sold as an off-sale.

Section 18 Gambling Prohibited - Exceptions

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board or any other machine or device of similar nature, nor shall gambling whether by cards, dice or otherwise, of any nature, be permitted upon the licensed premises. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting permit issued by the City Council or license issued by the State of North Dakota.

Section 19 Cashing Certain Checks Prohibited

No licensee hereunder shall cash any bank check, voucher, order or document of any kind drawn by a county welfare board or any state or federal agency in payment for wages made for work done on any so-called work relief project, or for relief purposes, which by its terms authorizes or permits any person presenting such bank check, voucher, order or document to receive payment of money.

Section 20 Sales Prohibited - Persons

No licensee, his agent or employee shall sell any alcoholic beverages to a person under twenty-one (21) years of age, a habitual drunkard, an incompetent or an intoxicated person.

Section 21 Minors in Licensed Premises

1. Except as permitted in this section, it is unlawful for a licensee to dispense alcoholic beverages to an individual under twenty-one years of age, or to permit an individual under twenty-one years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed.
2. An individual under twenty-one years of age may enter and remain on a licensed premises while alcohol is being sold or displayed, at the discretion of the licensee, if:
 - a. The individual is accompanied by a parent or guardian who is twenty-one years of age or older. For purposes of this section, "guardian" means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one years of age;
 - b. The individual is on the premises to consume a meal or in an emergency situation;
 - c. The premises serves at a tabletop, food that is prepared in a kitchen with at least an indoor grill;
 - d. The individual is not on the licensed premises after ten p.m.; and
 - e. The licensee receives permission from the City Council for individuals to be on the premises as allowed under this section.
3. An individual under twenty-one years of age may not remain in a restaurant where alcoholic beverages are being sold except if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the individual is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of an individual twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
4. An individual under twenty-one years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or if the individual enters the licensed premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the city council.
5. An individual under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 5 of this ordinance.
6. An individual who is eighteen years of age or older but under twenty-one years of age may be employed by a restaurant as provided in this paragraph 3 of this Section 23 to serve and collect money for alcoholic beverages, if the individual is under the direct supervision of an individual twenty-one or more years of age, but may not be

engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment that sells alcoholic beverages may employ individuals from eighteen to twenty-one years of age to work on the premises as a musician, disc jockey, or entertainer, or to perform duties directly related thereto if the individual is under the direct supervision of an individual twenty-one or more years of age.

7. For purposes of this section, an individual is not twenty-one years of age until eight a.m. on that individual's twenty-first birthday.

Section 22 Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises, a licensee, his agent or employee may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this ordinance.

Section 23 Street Sales Prohibited

The sale or consumption of alcoholic beverages upon or across any street, alley or public way is prohibited.

Section 24 Premises, Equipment of

Premises licensed hereunder for on-sale alcoholic beverages shall be equipped with tables, chairs, booths and stools in a sufficient number to accommodate reasonably the patrons.

Section 25 Purchase from Licensed Wholesaler

No licensee hereunder shall purchase, have or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the State of North Dakota pursuant to the provisions of Title 5 of the North Dakota Century Code. Each licensee hereunder shall keep on file all invoices covering purchases of such alcoholic beverages showing the name and license number of the wholesaler. Such records shall be retained in the possession of the licensee and shall be at all times open to inspection by any police officer or peace officer of the State of North Dakota.

Section 26 Deliveries - Off Licensed Premises

1. It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer or alcoholic beverages to make, or cause to be made any deliveries outside of the licensed place of business of beer, liquor or other alcoholic beverages to any purchaser or prospective purchaser.
2. It shall be unlawful for any person, firm or corporation to deliver by foot, carrier or motor carrier, any beer, liquor or alcoholic beverage to any person within the city

limits provided however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.

Section 27 Termination or Revocation of Licenses

1. Licenses issued pursuant to this article shall be deemed cancelled and terminated upon the happening of any one or more of the following contingencies:
 - a. The death of the licensee unless upon application to the City Council by personal representative of the decedent, the City Council consents to the carrying on of the business by the personal representative.
 - b. When the licensee ceases business at the location licensed, unless a new location has been approved.
 - c. When the licensee is adjudged bankrupt.
 - d. When the licensee has been convicted of the violation of any provision of this ordinance, or of the laws of the State of North Dakota pertaining to alcoholic beverages or of a felony under the laws of the United States, the State of North Dakota or of any other state of the United States.
2. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this ordinance.
3. When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the location licensed has been terminated or revoked.
4. When the licensee ceases to be a legal bona fide resident and citizen of the State of North Dakota.
5. Licenses issued pursuant to this ordinance may, in the discretion of the City Council, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:
 - a. When the licensee has been convicted of violating any of the provisions of this ordinance.
 - b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the City.
 - c. When the licensee, if an individual, or one of the partners, if the licensee is a partnership, or one of the officers, members or managers if the licensee is a limited liability company or corporation, be convicted in any Court of Law for drunkenness or disorderly conduct, or if any appeal is taken from such conviction, then when such conviction be sustained by the higher court or courts.
6. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and a license may also be cancelled and revoked or suspended at any time by the City Council for any cause deemed by the City Council to be sufficient cause and justified

by reason of public health or public morals. Such termination shall be subject only to review by the courts of the State of North Dakota.

7. When any license is terminated or revoked for cause, or the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through the licensee.

Section 28 Penalties

Any licensee, person, firm, corporation or association violating any of the provisions of this ordinance shall, upon conviction thereof, be subject to a fine not to exceed five hundred dollars (\$500.00). In addition, all powers, right and privileges given by any license granted under the terms of this ordinance may be terminated or revoked in accordance with Section 31. Each day or part thereof that any licensee, person, firm, corporation or association shall be in violation of the provisions of this Ordinance shall be considered a separate violation.

First Reading 11/01/2021

Voting AYE Lee Watne, Allen Gruman, Tim Erickson, Larry Olson, Deb Eslinger

Voting NAY None

Second Reading 12/09/2021

Voting AYE Allen Gruman, Steve Perry, Larry Olson, Deb Eslinger Absent: Paul Painter, Lee Watne

Voting NAY None

Final Passage and Adoption 12/09/2021

Publication (if required) December 31, 2021

APPROVED:

By:

Paul Paintner

PAUL PAINTNER, Mayor, City of Cooperstown

ATTEST:

Christine Olson

CHRISTINE OLSON, City Auditor, City of Cooperstown