

ORDINANCE NO. 5186

AN ORDINANCE AMENDING CHAPTER 5 (ALCOHOLIC BEVERAGES), ARTICLE II (LICENSES), SECTION 5-16 (CLASSES OF LICENSES; LICENSE FEES; LICENSE RESTRICTIONS; LIMITATION ON NUMBER OF LICENSES), SUBSECTIONS (1), (2), AND (3), SECTION 5-31, AND SECTION 5-32 (SUSPENSION OR REVOCATION OF A LICENSE), SUBSECTION (1), SUBSECTION (D) OF THE CODE OF ORDINANCES RELATING TO ALCOHOLIC BEVERAGES

WHEREAS, The City of Minot has the authority to regulate the use and to regulate and license the sale of alcoholic beverages pursuant to NDCC § 40- 05-01(29);

WHEREAS, The City of Minot has the authority to fix fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers pursuant to Article 3(c) of the City of Minot Home Rule Charter;

WHEREAS, The City of Minot previously enacted various Ordinances under the Chapter 5 of the City of Minot Code of Ordinances relating to Alcoholic Beverages;

WHEREAS, The City of Minot wishes to amend section 5-16(1), (2), and (3), section 5-31, and section 5-32(1)(d), under Chapter 5.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:

§1. That subsection (1) (Retail Beer) of Section 5-16 (Classes of Licenses; license fees; license restrictions; limitation on number of licenses), Article II (Licenses), Chapter 5 (Alcoholic Beverages), of the Code of Ordinances, City of Minot, North Dakota, is hereby amended and re-enacted to read as follows:

1. Retail Beer

- a. A retail beer license shall be for the on-sale and/or off-sale of beer.
- b. Fee. The fee for a retail beer license shall be six hundred twenty-five dollars (\$625.00) per year.
- c. A holder of a retail beer license on or before June 1, 1973 shall not convey nor transfer that license and submit application for another license in one of the two newly designated classes of licenses.

§2. That subsection (2) (Retail Liquor) of Section 5-16 (Classes of Licenses; license fees; license restrictions; limitation on number of licenses), Article II (Licenses), Chapter 5 (Alcoholic Beverages), of the Code of Ordinances, City of Minot, North Dakota, is hereby amended and re-enacted to read as follows:

2. Retail Liquor

- a. A retail liquor license shall be for the on-sale and/or off-sale of liquor, beer, and wine.
- b. Fee. The fee for a retail liquor license shall be three thousand one hundred twenty-five dollars (\$3,125.00) per year.

- c. A holder of a retail liquor license on or before June 1, 1973 shall not convey nor transfer that license and submit application for another license in one of the two newly designated classes of licenses.
- d. Limitation on number of licenses. The total number of retail liquor licenses in force in any one (1) year shall not exceed one (1) for each one thousand five hundred (1,500) persons, or major fraction thereof, of the total population of the city. The city council may issue such additional licenses as it deems warranted by the change in population. Before the official 2020 United States Census, this population of the city shall be determined by the most recent official federal, regular, or special census. After the official 2020 United States Census, this population of the city shall be determined by the most recent official federal, regular, or special census or by the annual official United States Census Bureau population estimate.

§3. That subsection (3) (Retail Beer and Wine) of Section 5-16 (Classes of Licenses; license fees; license restrictions; limitation on number of licenses), Article II (Licenses), Chapter 5 (Alcoholic Beverages), of the Code of Ordinances, City of Minot, North Dakota, is hereby amended and re-enacted to read as follows:

3. Retail Beer and Wine

- a. A retail beer and wine license shall be for the on-sale and/or off-sale of beer and/or wine.
- b. Fee. The fee for a retail beer and wine license shall be nine hundred fifty dollars (\$950.00).

§4. That Section 5-31 (License to constitute a defeasible property right, transfer or other change in status, operation, or form of license, fee for approval of same), Article II (Licenses), Chapter 5 (Alcoholic Beverages), of the Code of Ordinances, City of Minot, North Dakota, is hereby amended and re-enacted to read as follows:

- (a) A licensee under this chapter shall enjoy a defeasible property right in the license. It is defeasible in the sense that it may be revoked by the city "for cause" without compensation to the licensee as provided in section 5-32 of this Code. Subject to that reservation of rights in the city, the licensee may sell, pledge, grant or retain a security interest in, give away in a will, or otherwise deal with the license.
- (b) No transaction affecting a license, including a transfer (whether full or partial), lease, grant or retention of a security interest, or other change in its status, operation, or form (hereafter a "license amendment"), is binding on the city until application for the license amendment has been filed by the licensee or other interested person with the city clerk and approved by the city council. However, as provided hereafter, the chief of police has the power to approve a license amendment for a temporary period of time, and if the chief does so it has the same force and effect as an approval by the city council during such temporary period of time.
- (c) The license amendment application shall include the information required in section 5-18 and a detailed description of any consideration received in exchange for the license transfer.

- (d) Before being submitted to the city council for its decision thereon, a license amendment application shall be forwarded to the chief of police for such investigation and such recommendation to the council concerning its merits as the chief believes is warranted or advisable under the circumstances. Moreover, if the license amendment application relates to the physical characteristics of the licensed premises it shall likewise be forwarded to the building official for the same purpose.
- (e) The chief of police shall have the authority to approve a license amendment application for a period of time not to exceed forty (40) consecutive days upon a showing satisfactory to the chief of pressing circumstances requiring action before the city council can take under consideration and act upon a license amendment application in the ordinary course of its business, as when, for example, a licensee dies or a secured party or lien holder forecloses on its security interest in a license. However, the chief or the council itself may revoke or suspend provisional approval given under this subsection, provided that reasonable notice of such contemplated action is first provided to the affected party or parties.
- (f) In the absence of provisional or final approval of a transfer as provided for in subsections (b) and (e), no person other than the named licensee may rely on the grant of the license as a defense to prosecution or a civil action brought under this chapter or otherwise provided in law for an offense or cause of action involving the sale of alcoholic beverages without a license.
- (g) No license amendment application may be acted upon until the applicant has paid a non-refundable application-review fee of two hundred fifty dollars (\$250.00).

§5. That subsection (4) of subsection (a) of Section 5-32 (Suspension or revocation of a license), Article II (Licenses), Chapter 5 (Alcoholic Beverages), of the Code of Ordinances, City of Minot, North Dakota, is hereby amended and re-enacted to read as follows:

(4) The licensee does not conduct the activity for which the license was issued at the licensed premises for a period of twelve (12) consecutive months.

§6. This Ordinance shall become effective upon final passage and approval.

PASSED FIRST READING: April 3, 2017

PASSED SECOND READING:

ATTEST:

APPROVED:

Kelly Matalka, City Clerk

Chuck Barney, Mayor