

ORDINANCE NO. 387

AN ORDINANCE AMENDING AND RE-ENACTING PARTICULAR SECTIONS OF CHAPTERS FIVE, SIX, SEVEN, EIGHT, AND TEN OF THE CITY CODE OF THE CITY OF BEACH, NORTH DAKOTA AS HEREINAFTER SET FORTH

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEACH, NORTH DAKOTA, AS FOLLOWS:

Section 1: Section 5.0105 entitled “Rules and Regulations” is hereby amended and re-enacted as follows:

5.0105 POLICIES AND PROCEDURES:RULES-AND-REGULATIONS: The chief law enforcement officer may make or prescribe such policies and procedures ~~rules and regulations~~ that are deemed advisable; such policies and procedures ~~rules~~, when approved by the governing body, shall be binding on such members. Such policies and procedures ~~rules and regulations~~ may cover, besides the conduct of the members, uniforms and equipment to be worn or carried, hours of service, vacations, and all other similar matters necessary or desirable for the better efficiency of the department.

Section 2: Section 5.0301 entitled “False Alarms-Interference” is hereby amended and re-enacted as follows:

5.0301 FALSE ALARMS-INTERFERENCE: No person shall give or cause to be given, or make, or place or cause to be given, any false report, call, or communication of any kind to the police, or any false police alarm with intent to deceive; ~~or tamper with or set off any law enforcement alarm or signal box with like intent; or tamper, meddle, or interfere with any such police alarm box; or intentionally cut, break, deface or remove any such box, or wires or supports thereof, connected with the police alarm system;~~ or intentionally interfere with or injure any property of any kind belonging to or used by the law enforcement department; or hinder or delay any apparatus or equipment or vehicle belonging to the police department.

Section 3: Section 6.0401 entitled “Changes in Existing Installations” is hereby amended and re-enacted as follows:

6.0401 CHANGES IN EXISTING INSTALLATIONS: The ~~city street officer~~ Public Works Superintendent is hereby given authority to order and supervise the repair, alteration or removal of any sanitary sewer connection or plumbing, any connection to storm-water sewer, or any private sanitary drain, cesspool, or privy, which in his or her judgment is so installed, or as in such condition as to be unsanitary, or to constitute a public nuisance or menace to health. In case of such repair, alteration or removal, if the plumbing code is not observed and connections not properly executed by the owner or owners thereof, in accordance with the Public Works Superintendent’s ~~his~~ directions, he or she may cause the same to be discontinued from any source of water supply. It shall thereafter be unlawful for any person in any manner to use any such installation, or to supply water thereto, until the same shall have been put in a safe and sanitary condition according to his directions.

Section 4: Section 6.0402 entitled “DUTY OF THE OWNER TO MAINTAIN” is hereby amended and re-enacted as follows:

6.0402 NEW INSTALLATIONS: All plumbing work and all excavations in the public streets or alleys, the cutting and replacing of pavement, laying of water and sewer connections, and connections to storm-water sewers, and all construction of private sanitary drains, and cesspools, within the corporate limits shall be undertaken and executed only by a master plumber, or other persons, as have obtained a general license for such work, as required herein, provided that the tapping of water mains and the placing of corporate cocks therein can be done by city employees. Such work shall be supervised by the Public Works Superintendent city street officer.—

Section 5: Section 8.0104 entitled “Fees” is hereby amended and re-enacted as follows:

8.0104 FEES: Fees under the Building Code shall be as set by Resolution of the City Council, which may be updated from time to time, as deemed appropriate by the City Council.~~follows: For work valued at less than \$100,000.00, the fee shall be \$25.00, and for work valued at \$100,000.00 and over, there shall be an additional fee of \$10.00 for each additional \$10,000.00 of valuation or fraction thereof in excess of \$100,000.00.~~

Section 7: Section 10.0203 entitled “License Fee” is hereby amended and re-enacted as follows:

10.0203 LICENSE FEE: The license fee to be required of all transient merchants for the transaction of such business within the city, is contemplated and provided for and in by Section 51-04-09 NDCC, is hereby fixed at the sum of one hundred twenty-five and 00/100 DOLLARS (\$25100.00) per day for each and every day during which any such transient merchant shall transact business in the city.

Section 8: Section 10.0205 entitled “Bond” is hereby amended and re-enacted as follows:

10.0205 BOND: Before any license shall be issued to a transient merchant for engaging in business in this city, the applicant therefor shall file with the city auditor a bond running to the city in the sum of ~~one~~ five thousand and 00/100 DOLLARS (~~\$15000.00~~) executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the State of North Dakota; said bond not to revocable nor to terminate prior to the passage of two (2) years' time after the expiration of the license issued pursuant thereto not until due notice that the terms of the bond are to be canceled have been given to the city auditor; said bond to be approved by the city attorney, conditioned that said applicant shall comply with all of the provisions of the ordinances of the city and the statutes of the State of North Dakota, regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against said applicant for any violation of said ordinances or statutes, or any of the, together with all judgments and costs that may be recovered against him by any person or persons for damage

growing out of any misrepresentation or deception practiced on any person transacting such business with such applicant, whether said misrepresentation or deceptions were made or practiced by the owners or by their servants, agents, or employees, either at the time making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought to the name of the city to the use of the aggrieved person.

Section 9: Section 10.0209 entitled “Enforcement by Police” is hereby amended and re-enacted as follows:

10.0209 ENFORCEMENT BY SHERIFFPOLICE: It shall be the duty of the Sheriff of Golden Valley County, and appointed deputies ~~police officers of the city~~ to examine all places of business and persons in their respective territories subject to the provisions of this article, to determine if this article has been complied with and to enforce the provisions of this article against any person found to be violating the same. The city auditor shall deposit with Sheriff chief of police ~~chief of police~~ a record of each license, together with the location within the city of the business licensed thereunder to assist and promote such enforcement. Failure to abide by the provisions of the Article 10.02 shall be a violation. A violation of the Article shall be punishable by a fine not to exceed ~~\$50~~ \$100 per occurrence.

Section 10: Section 10.0303 entitled “Fees-Bond” is hereby amended and re-enacted as follows:

10.0303 FEES--BOND: The license fee for hawking or peddling within the city shall be ~~one hundred twenty-five~~ one hundred and 00/100 DOLLARS (~~\$100~~25.00) per day for each day or portion of day, and five hundred and 00/100 DOLLARS (\$500.00) per month if paid in advance. In addition to the payment of such fee and as a prerequisite for the obtaining of such license, any hawker or peddler who is not a resident of the County of Golden Valley, North Dakota, shall obtain and file with the City Auditor a performance bond in the amount of ~~one~~ five thousand and 00/100 DOLLARS (~~\$1~~5,000.00), which bond shall run to the benefit of the City and shall remain in full force and effect for a period of six (6) months after the expiration of the license applied for. Such bond shall by its terms guarantee that such license fee will perform all of his contractual obligations incurred while doing business within the city and should such licensee default or fail to perform any of such obligations, that any person aggrieved thereby shall then be empowered to have and recover his claims against such licensee directly from such performance bond. Such performance bond shall either be in the form of cash deposited with the City Auditor or in the form of a surety bond written by a surety company authorized to do business within the state.

Section 11: Section 10.0309 entitled “Penalty” is hereby amended and re-enacted as follows:

10.0309 PENALTY: Failure to abide by the provisions of this Article 10.03 shall be a violation. A violation of this Article shall be punishable by a fine not to exceed ~~\$100~~\$50 per occurrence.

Section 12: Section 10.0404 entitled "License – Term of" is hereby amended and re-enacted as follows:

10.0404 LICENSE -- TERM OF:

1. All licenses issued hereunder shall be for a period of not more than one year and shall expire on Midnight on the 31st ~~30th~~ day of December ~~June~~ in each year. Where a license is granted for a period less than a year subsequent renewal thereof must be made for the full annual term.

2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees therefore shall be as follows:

(a) If the short term be for three months or less, the license fee therefore shall be 25% of the annual license fee.

(b) If the term be for more than three months and less than six months, the license fee therefore shall be 50% of the annual license fee.

(c) If the term be for more than six months but less than nine months, the license fee therefore shall be 75% of the annual license fee.

(d) For any term in excess of nine months, the full annual license fee shall be paid.

(e) The license fees shall be payable before the license is issued. Provided, however, the full annual license fee may be payable in two equal installments which shall be payable on or before July 1 and January 1 of each year.

Section 13: Section 10.0405 entitled "License-Classes of" is hereby amended and re-enacted as follows:

10.0405 LICENSE -- CLASSES OF:

1. On and off sale liquor licenses at an annual fee of one thousand one ~~nine~~ hundred dollars (~~\$900~~\$1,100.00).

2. Off sale liquor license at an annual fee of nine ~~eight~~ hundred fifty ~~ten~~ dollars (~~\$950.00~~\$10.00).

3. On and off sale beer license at an annual fee of two hundred fifty dollars (~~\$250.00~~\$200.00).

4. Off sale beer license at an annual fee of ~~one~~ two hundred dollars (~~\$200.00~~\$100.00).

5. In addition to the licenses authorized in 1 through 4 above, specialty restaurant beer and wine licenses may be issued permitting on-sale beer sales and/or wine sales subject to the following restrictions and conditions:

(a) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.

(b) The food and beer and/or wine license hereunder shall be for the sale of beer and/or wine for consumption on the premises only, and no sales for consumption off the premises shall be made.

(c) A licensee hereunder shall sell tap beer only which shall be dispensed by the licensee or an employee from kegs or barrels, and the sale of beer in bottles, cans or similar packages

shall not be permitted. Wine may be sold on tap or by bottles for consumption on the premises with food.

(d) Beer and wine shall be consumed at tables or booths only, and no beer or wine shall be consumed at a counter or bar.

(e) ~~Reserved for future use. No dancing will be permitted in an establishment holding a license hereunder.~~

(f) An establishment holding a license hereunder shall provide adequate off-street parking, within the discretion of and subject to the approval of the City Council.

(g) The license fee for food and beer and/or wine license shall be ~~Four~~ Five Hundred Dollars (~~\$500.00~~\$400.00) per year, payable in the manner provided in Section 10.0404 above.

(h) Licenses issued under this Section shall be limited to the current number of licenses issued, which is based on the 2010 population of 1,019. ~~one for the current population as of July 1, 1981, which is deemed to be 1,392.~~ Thereafter, one additional license may be issued for each 1,000 additional people in the City as determined by the City Council.

(i) Gross receipts from sales of beer and wine hereunder shall not exceed twenty-five percent of the gross receipts from sales of all food items and beer and wine combined.

(j) Except as modified in this Section, a license hereunder shall comply with and be subject to all of the remaining provisions of this Ordinance.

6. In addition to any alcoholic beverage licenses that may be issued under subsections 1 through 5 above of this section, it is hereby provided that the City may grant an alcoholic beverage license for both on and off-sale to any hotel or motel within the City limits which has seventy-five or more rental units or rooms which has, as an integral part of such hotel or motel, adequate meeting room space and sufficient dining area and facilities to adequately serve its patrons, as well as the public generally. In order to qualify for an alcoholic beverage license under this provision, it is necessary that the dining area and other food service facilities be in operation and open for business at least as many hours daily as the alcoholic beverage portion of the premises. The annual fee for said license shall be ~~\$1,000.00~~ \$1,200.00 per year, payable in the manner provided in Section 10.0404 above.

7. Any eating establishment that (I) is licensed to engage in the sale of alcoholic beverages at retail pursuant to ordinances pertaining thereto, (ii) and who shall meet the definitions hereafter, and (iii) has paid the fee hereinafter described, shall have the right to dispense and sell beer and wine in conjunction with the sale of prepared meals on Sunday between the hours of ~~12:00 noon~~ eleven a.m. and 9:00 p.m. for consumption only in that part of the eating establishment habitually used for the serving of prepared meals.

(a) As used in this subsection 7 "eating establishment" means a restaurant or other commercial establishment that is licensed as above described to engage in the sale of alcoholic beverages, and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.

(b) Any establishment conducting sales on Sunday under this subsection 7 shall pay an additional annual fee of \$150.00.

Section 14: Section 10.0406 entitled "Limitations of Number of Licensees issued under Classifications 1 through 4 of section 10.0405" is hereby amended and re-enacted as follows:

10.0406 LIMITATION ON NUMBER OF LICENSEES ISSUED UNDER CLASSIFICATIONS 1 THROUGH 4 OF SECTION 10.0405.

1. On ~~January 1, 2019~~~~July 1, 1981~~, there were presently existing a total of five (5) licenses, including both on-sale and off-sale only licenses. The last official federal census of the City prior to that date revealed the population of the City to be ~~1,109~~ ~~1,392~~. No additional licenses under Section 1 through 4 shall be granted, except as hereinafter provided, until the population of the City reaches an estimated 2,100 people, at which time one additional license under said Sections 1 through 4 may be added. Thereafter an additional license under Sections 1 through 4 may be granted for each population increase of 700 people, as determined by the City Council from annexations, household units or other methods of estimated population.

2. In addition to the licenses provide for in Section 10.0405, it is hereby provided that the City shall license any alcoholic beverage premises in existence on July 1, 1981, outside the City, which may hereafter become annexed to and become a part of the City; provided that the licensee can meet the other requirements of this chapter; and provided and that each such alcoholic beverage establishment shall be located in the same place at the time of licensure by the City as it was located on July 1, 1981. Any alcoholic beverage establishments, either on-sale and off-sale or off-sale only, that are established and approved outside the City limits after July 1, 1981, shall not be entitled to a license under this chapter, except under the provisions of subsection (1) of this section providing additional licenses upon an increase in population. Any commercial license which is added to the City by virtue of annexation as approved in this subsection (b) shall not be included in any computation under subsection (a) hereinabove relating to requisite population increases for any additional commercial licenses.

3. Each year when the issuance of licenses is considered by the City Council it shall first consider applications from persons holding existing licenses before considering any requests for new applicants. In considering whether or not to issue licenses to those previously licensed, the City Council will review and evaluate the past record of such licensees, including any violations of City Ordinance and state law and also the general manner in which the licensed premises has been conducted and managed. The actual decision of whether or not a license should be issued under this chapter, whether it be a previous license or to a new applicant, shall be made only in the discretion of the City Council and in accordance with the various requirements of this chapter. No licensee shall necessarily be entitled to an automatic renewal of his license. In the event of the issuance of a license to a new applicant, such license shall be granted to the applicant deemed most qualified by the City Council.

Section 15: Section 10.0409 entitled “License-Applicant Fitness” is hereby amended and re-enacted as follows:

10.0409 LICENSE -- APPLICANT FITNESS: The Golden Valley County Sheriff’s office ~~chief of police~~ or such other person or officer as may be designated by the City Council, upon the filing of an application, and upon a request of the City Council shall 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 governing body.

Section 16: Section 10.0422 entitled “Minors in Licensed Premises” is hereby amended and re-enacted as follows:

10.0422 MINORS IN LICENSED PREMISES: No licensee shall permit any person under 21 years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except that a person under 21 years may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian, until ten p.m.

Section 17: Section 10.0432 entitled “Permit Required for Catering Alcoholic Beverages” is hereby amended and re-enacted as follows:

10.0432 PERMIT REQUIRED FOR CATERING ALCOHOLIC BEVERAGES:
The holder of an alcoholic beverage license issued pursuant to this chapter may obtain a permit to cater alcoholic beverages to private grounds, or parties, conventions or similar social gatherings, excluding any public dance, show, exhibition or similar event sponsored, operated or conducted in the expectation of a profit; such permit to allow catering of alcoholic beverages at a location other than the holder's licensed premises and upon the further following terms and conditions:

A. That application for such permit shall be made to the City Auditor prior to the date of the event to be catered and such application shall be accompanied by payment of an application fee in the amount of fifty dollars (\$50.00), ~~twenty-five dollars (\$25.00)~~. The City Council shall have approved such application. If such application shall be approved, the City Auditor shall issue such permit and shall state on such permit the period of time for which it shall be valid not to exceed three (3) days, and such other conditions as the City Council may direct.

B. That the catering and dispensation of alcoholic beverages pursuant to a permit issued under this section shall be fully in compliance with the remaining provisions of this chapter which are consistent with the purposes and intent of this section.

C. Security: The sheriff shall determine the number, if any, of deputy sheriffs, special officers, or licensed private security officers needed to police the Special Event properly. Before the Special is held the person conducting the Special Event, shall pay to the sheriff, peace officer, or licensed private security provider the expense of any deputy sheriff, special officer, or licensed private security officer required for the proper policing of the Special Event, and no Special Event may be permitted to proceed unless the officer or officers are present and the fees are paid.

D. Refusal and Revocation of Permit for Cause: The governing body of the City shall refuse to issue such permit and revoke a permit already issued, where it appears that:

(1)The permitted site is or is likely to become a public nuisance or detrimental to public morals;

(2) Alcoholic beverages or controlled substances are being sold or given away except as provided by such permit;

(3)Any of the ordinances of the City or of the laws of the state are being violated; or

(4)In the sole judgment of the governing body, protests to the issuing of such permit are made, either orally or in writing, by a sufficient number of the people living in the neighborhood

of the site for which application for such permit is made to warrant refusal or revocation of such permit as being in the public interest; or

(5) The required security personnel are not, or will not be present at the event. If such application is approved, the City Auditor shall issue such permit for the period specified and shall state such other conditions as the City Council may direct. Failure to comply with the conditions shall be grounds for revocation of the permit.

~~C. Failure to comply with the ordinances of the City and the conditions set forth on the permit shall be grounds for revocation thereof.~~

Section 18: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 19: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Ordinance shall continue in full force and effect.

Section 20: Effective Date: This Ordinance shall be in full force and effect from and after final passage.

Henry Gerving, Mayor

ATTEST:

Kimberly Gaugler, City Auditor

First Reading: July 15, 2019

Second Reading: August 5, 2019

Final Reading: August 5, 2019