ORDINANCE NO. 88

AN ORDINANCE OF THE CITY OF UNDERWOOD, MINNESOTA, AMENDING ORDINANCE #47 ENTITLED AS AMENDED “AN ORDINANCE LICENSING AND REGULATING THE SALE AND CONSUMPTION OF INTOXICATING AND 3.2 PERCENT MALT LIQUOR WITHIN THE CITY OF UNDERWOOD MINNESOTA AND PROVIDING A PENALTY FOR THE VIOLATION THEREOF BY REPLACING THE PROVISIONS THEROF AS FOLLOWS:

THE CITY COUNCIL OF THE CITY OF UNDERWOOD DOES ORDAIN:

SECTION 1. Adoption of State Law by Reference and Definition of Terms.

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 made a part of this Charter as if set out in full. It is the intention of the City Council that all future amendments to M.S. Ch. 304A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.
2. City may be More Restrictive than State law. The Council is authorized by the provisions of M.S. §340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. 304A, as it may be amended from time to time.
3. Definitions, In addition to the definitions contained in Minn. Stat. §340.101, as it may be amended from time to time, the following terms are defined for purposes of this ordinance:

Subd. 1. Liquor. As used in this ordinance, without modification by the words “intoxicating’ or“3.2 percent malt” includes both intoxicating liquor and 3.2 percent malt liquor.

Subd. 2. Liquor Store. Liquor store means an establishment used exclusively for the retail sale of intoxicating and 3.2 percent malt liquor, with the incidental sale of tobacco and soft drinks.

SECTION 2. License Required.

Subd 1. Licenses. No person 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 liquor within the City without first having received a license as hereinafter provided. Licenses shall be of three kinds: (1) Regular “on-sale”; (2) Temporary “on-sale”; (3) “off-sale”.

Subd. 2 .Regular On-sale. Regular “on-sale’ licenses shall (sic) granted only to clubs, liquor store, exclusive “on-sale liquor store, drug stores, restaurants, hotels, and bowling centers where food is prepared and served for consumption on the premises.

Subd. 3. Temporary “On-Sale”. Temporary “on-sale” licenses shall be granted only to clubs or charitable, religious or non-profit organizations for the sale of liquor for consumption on the premises only.

Subd. 4. “Off-Sale” licenses shall permit the sale of intoxicating liquor and 3.2 percent malt liquor at retail, in the original package for consumption off the premises only.

SECTION 3. License Applications.

Subd. 1. Form. Every application for a license to sell liquor shall be made to the City Clerk on a form supplied by the City and containing such information as the Clerk or the City Council may require. It shall be unlawful to make any false statements in an application. Every application for the issuance or renewal of a license shall include a copy of each summons received by the applicant under Minnesota Statutes 140A.802 during the preceding year.

Subd. 2. Proof of Financial Responsibility. Prior to the issuance of a liquor license, the applicant shall demonstrate proof of financial responsibility as defined in Minnesota Statutes, Section 340A.409, Subd. l, with reference to liability under the statutes, Section 340A.801. Such proof shall be filed with the commissioner of public safety except that if a license involves sales of liquor of a prospective vendor who is not required by law to file such proof with the commissioner of public safety, such proof shall be filed with the City Clerk. Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minnesota Statutes Section 340A.409.

Subd. 3. Approval of Security. Liability insurance policies required by this ordinance but not by state law shall be approved as to form by the City Attorney. Operation of a business licensed by this ordinance without having on file with the state insurance commissioner or the City at all times effective security as required in subd. 2 is a cause for revocation or suspension of the license.

SECTION 4. License Fees.

Subd. 1. Payment Required. Each application for a license shall be accompanied by a receipt from the city treasurer for payment in full of the required fee for the license. All fees shall be paid into the general fund of the City. Upon rejection of any application for a license, the treasurer shall refund the amount paid.

Subd 2. Expiration; Pro Rata Fees. Every license except a temporary license shall expire on the last 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 year for a pro rata fee. In computing such a fee, any unexpired fraction of a month shall be counted as one month. A temporary license shall be issued for a specific period in which a special event, to which the sale is incident, is being held and such period shall be stated on the license.

Subd. 3. Fees. The annual fee for a regular “on-sale” license is $650.00.

The annual fee for an “off-sale” license is $25.00.

The annual fee for Sunday Special “on-sale” is $150.00

The fee for a temporary “on-sale” license is $12.50 per day.

Subd. 4. Refunds. No part of the fee paid for any license issued under this ordinance shall be refunded except in the following instances upon application to the council within 30 days from the happening of the event. There shall be refunded a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, if:

1. The business ceases to operate because of destruction or damage;
2. the licensee dies;
3. the business ceases to be lawful for a reason other than a license revocation; or
4. the licensee ceases to carry on the licensed business under the license.

SECTION 5. Granting of License.

Subd. 1. Investigation and Hearing. The City 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 such investigation and hearing, the Council shall grant or refuse the application in its discretion.

Subd. 2. Transfers. Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another place without the approval of the Council.

SECTION 6. Persons Ineligible for License. No license shall be granted to or held by any person who:

1. is under 21 years of age;
2. has within five years prior to the application for such license, been convicted of a felony, or of violating any law of this state of local ordinance relating to the manufacture, sale, distribution, or possession for sale or distribution of intoxicating liquors, and cannot show competent evidence under Minnesota Statutes Section 364.03 of sufficient rehabilitation and present fitness to perform the duties of beer licensee;
3. is a manufacturer of liquor or is interested in the control of any place where liquor is manufactured;
4. is not a citizen or resident alien, is a non-resident or a non-resident of the city;
5. is not of good moral character;
6. is not the proprietor of the establishment for which the license is issued.

SECTION 7. Conditions of License.

Subd. 1. General Conditions. Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this ordinance and of any other applicable ordinance of the city or state law.

Subd. 2. Insurance. Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license granted pursuant to this ordinance.

Subd. 3. Sales to Minors or Obviously Intoxicated Persons. No liquor shall be sold or served to any obviously intoxicated person or to any person under 21 years of age.

Subd. 4. Consumption by Minors. No person under the age of 21 years shall be permitted to consume liquor on the licensed premises.

Subd. 5. Interest of Manufacturers or Wholesalers. No manufacturer or wholesaler of liquor shall have any ownership of, or interest in, an establishment licensed to sell at retail contrary to the provisions of Minnesota Statutes Section 340A.30l, Subd. 7. No retail licensee and manufacturer or wholesaler of liquor shall be parties to any exclusive purchase contract. No retail licensee shall receive any benefits contrary to law from a manufacturer or wholesaler of liquor and no such manufacturer or wholesaler shall confer any benefits contrary to law upon a retail licensee.

Subd. 6. Sales of Intoxicating Liquor. No licensee who does not hold a consumption and display permit shall sell or permit the consumption or display of intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of such a licensee shall be prima facie (sic) evidence of possession of intoxicating liquors for the purpose of sale; and the serving of any liquid for the purpose of mixing with intoxicating liquors shall be prima facie (sic) evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to this ordinance.

Subd. 7. Searches and Seizures. Any peace officer may enter, inspect and search the premises of a licensee during business hours without a search and seizure warrant and may seize all intoxicating liquors found on the licensed premises in violation of Subd. 6.

Subd. 8. Licensee’s Responsibility. Every licensee is responsible for the conduct in the licensed establishment and any sale of alcoholic beverages by any employee authorized to sell such beverages is the act of the licensee.

Subd. 9. Banquet Rooms. A regular “on-sale” license shall entitle the holder to serve liquor in a separate room of the licensed premises for banquets or dinners at which are present not fewer than 5 persons.

SECTION 8. Places ineligible for License.

Subd. 1. General Prohibition. No liquor license shall be issued for any restaurant ineligible for such license under state law.

Subd. 2. Time in Business. No license shall be issued to any restaurant until it has been in operation continuously for at least three (3) months.

Subd. 3. Delinquent Taxes and Charges. No license shall be granted for operation on any premises on which taxes, assessments or other financial claims of the city are delinquent and unpaid.

Subd. 4. Distance from School or Church. No license shall be granted within 250 feet of any school or with 250 feet of any church.

SECTION 9. Clubs. No club shall sell liquor except to members and to guests in the company of members.

SECTION 10. Restrictions on Purchase and Consumption.

Subd. 1. Consumption. It is unlawful for any person under the age of 21 years to consume liquor unless in the household of the person’s parent or guardian and with the consent of the parent or guardian.

Subd. 2. Purchasing. It is unlawful for any person:

1. to sell, barter, furnish or give liquor to a person under 21 years of age, except that a parent or guardian of a person under that age may give or furnish liquor to that person solely for consumption in the household of the parent or guardian;
2. under the age of 21 years to purchase or attempt to purchase liquor; or
3. to induce a person under the age of 21 years to purchase or procure liquor.

Subd. 3. Possession. It is unlawful for a person under the age of 21 years to possess liquor with the intent to consume it at a place other than the household of the person’s parent or guardian. Possession at a place other than the household of a parent or guardian is prima facie (sic) evidence of intent to consume it at a place other than the household of the parent or guardian.

Subd. 4. Entering Licensed Premises. It is unlawful for a person under the age of 21 years to enter an establishment licensed under this ordinance in order to purchase liquor or have liquor served or delivered.

Subd. 5. Misrepresentation of Age. It is unlawful for a person under the age of 21 years to misrepresent his or her age for the purpose of purchasing liquor.

Subd 6. Proof of age. Proof of age for purchasing or consuming liquor may be established only by a valid driver’s license or Minnesota identification card or in the case of a foreign national by a valid passport.

Subd. 7. Consumption Prohibited—where. It shall be unlawful for any person to consume liquor in any theatre, recreation hall or center, dance hall, ball park, or other place of public gathering used for the purpose of entertainment, amusement or playing of games.

Subd. 8. Liquor Consumption and Display. No person shall consume or display any intoxicating liquor on the premises of a licensee who does not hold a consumption and display permit.

SECTION 11. Suspension and Revocation. The Council shall either suspend for up to sixty (60) days or revoke any liquor license, or impose a civil fine not to exceed $2,000.00 for each violation upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to alcoholic beverages. Except in cases of failure of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded any (sic) opportunity for a hearing pursuant to Minnesota Statutes Sections 14.57 to 14.69 of the administrative procedure act. The lapse of required dram shop insurance or bond, or withdrawal of a required deposit of cash or securities, shall effect an immediate suspension of any license issued pursuant to this ordinance without further action of the City Council. Notice of cancellation, lapse of a current liquor liability policy or bond, or withdrawal of deposited cash or securities 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 bond, or withdrawal of a required deposit, or of suspension or revocation of a license, may request a hearing thereon, and if such a request is made in writing to the clerk, a hearing shall be granted within ten (10) days or such longer period as may be required. Any suspension under this paragraph shall continue until the City Council determines that the financial responsibility of this ordinance has again been met.

SECTION 12. Penalty. Any person violating any provision of this ordinance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500.00 or imprisonment in the county jail for not more than ninety (90) days, or both, plus the cost of prosecution in any case.

SECTION13. Repeal. Ordinance #14, passed November l, 1937, is hereby repealed. Ordinance #16, passed June 6, 1938 is hereby repealed. Ordinance #48, passed on May 7, 1990 is hereby repealed. Ordinance #49, passed on April 24, 1991 and amended on December 5, 1994 is hereby repealed.

SECTION 14. Effective Date. This ordinance becomes effective upon its passage and publication of Title Summary.

THIS ORDINANCE was introduced on the 12th day of June, 2017, and adopted by the City Council of the City of Underwood, Minnesota, on the 12th day of June, 2017.

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Mayor Paul Hoff City Clerk Anna M. Kiser

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