

ORDINANCE # 600-002
LIQUOR AND BEER LICENSING AND REGULATION

The City Council of the City of Hewitt does ordain as follows:

SECTION 1: DEFINITIONS: As used in this Chapter the following words and terms shall have the meanings stated, unless the context clearly state or calls for otherwise:

Application: a form with blanks or spaces thereon, to be filled in and completed by the applicant as his request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

Applicant: any person making and application for a license under this Chapter.

License: a document, issued by the City to an applicant permitting him to carry on and transact the business stated therein.

Licensee: an applicant who, pursuant to his approved application, holds a valid, current, unexpired and unrevoked license from the City for carrying on the business state therein.

License Fee: the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.

Intoxicating Liquor and Liquor: ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent alcohol by weight.

Beer: non-intoxicating malt liquor, which contains not in excess of 3.2 percent alcohol by weight.

Off-sale: the retail sale of beer or liquor in original packages for consumption off or away from the premises where sold.

On-sale: the retail sale of beer or liquor, by the glass or by the drink, for consumption on the premises where sold only.

Sell, Sale and Sold: all barters and all manners or means of furnishing beer or liquor to persons.

Manufacturer: every person who, by any process of manufacturing, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces liquors or beers for sale.

Wholesaler: any person engaged in the business of selling liquor or beer to retail dealers.

Package and Original Package: any container or receptacle holding liquor or beer, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

Club: any corporation duly organized under the laws of this State, and in existence for fifteen (15) years or more, or a congressionally chartered veterans' organization which has been in existence for ten (10) years, for civic, fraternal, social or business purposes or for intellectual improvement or for the promotion of sports, which shall have more than fifty (50) members and shall, for more than a year, have owned, hired or leased a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, and whose affairs and management are conducted by a Board of Directors, Executive Committee or other similar body chosen by the members, officers, agents or employees are paid directly or indirectly any compensation by way of profit for the distribution or sale of beverages to the members of the club, or to its guests, beyond the amount of such reasonable salary or wages as may be fixed and voted each year by members or other governing body.

Restaurant: any establishment, other than a hotel, under the control of a single proprietor or manager, having appropriate facilities for the serving of meals, and where, in consideration of payment therefor, meals are regularly served at tables to the general public, which employs and adequate staff to provide the usual and suitable service to its guests, the principal part of the business being the serving of foods, and which shall have seating facilities for seating not less than twenty-five (25) guests at one time.

Hotel and Motel: include any establishment having a resident proprietor or manager, where in

consideration of payment thereof, food and lodging are regularly furnished to transients, and which contain not less than fifty (50) guest rooms with bedding and other suitable and necessary furnishings in each room, and which is provided with a suitable lobby, desk and office for the registration of its guests at its main entrance and on the ground floor, which employs an adequate staff to provide suitable and usual service, and which maintains under the same management and control as the rest of the establishment and has an integral part thereof a dining room with at least one thousand five hundred (1,500) square feet with appropriate facilities for seating not less than one hundred twenty-five (125) guests at one time, where the general public is, in consideration of payment thereof, served with meals at tables. Such establishment shall also have facilities for off-street parking for a minimum of fifty (50) motor vehicles.

Church: a building, which is principally used as a place where persons of the same faith regularly assemble for the public worship of God.

Fraternal Club: a club which serves only members and their guests and which uses any profits derived from liquor sales principally for sponsoring activities beneficial to the community and not for profit of any individual and which has been in existence for fifteen (15) years or more, or to a congressionally chartered veterans' organization which has in existence for at least ten (10) years. Such club, either of which in order to be eligible, must be incorporated to come within this definition.

Wine: wine not exceeding fourteen percent (14%) alcohol by volume

Resident: a person living within fifteen (15) radial miles of the corporate limits of the City of Hewitt

Minor: any person under the age of eighteen (18) years of age

Exclusive Liquor Store: an establishment used exclusively for the sale of intoxicating liquor and includes the incidental sale of ice, tobacco, 3.2 beer mixes, soft drinks, liquor filled candies, cork extraction devices and books and videos on the use of alcohol in preparation of food.

SECTION 2: APPLICATIONS AND LICENSES

2.01: All applications shall be made at the office of the City Clerk/Treasurer upon forms prescribed by the proper agency of the State of Minnesota together with such additional information as the Council may desire. All questions asked or information required by the application forms shall be answered and provided fully and completely by the applicant.

2.02: It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall, upon discovery of such falsehood, constitute an automatic refusal of license, or, if license is already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this Ordinance, or any part thereof.

2.03: At the time of the initial application, an applicant for any liquor license shall pay to the City the full amount as prescribed in the Master Fee Schedule, as may be amended from time to time. This shall be considered an application and investigation fee and shall be used for the same.

2.04: An applicant for any liquor license shall be prepared to prove to the City and furnish to the City upon request, proof of ownership, as the City shall require. Such proof of ownership may include Certificate of Incorporation issued by the State of Minnesota, an appropriately filed and executed Certificate of Assumed Name or such other proof as the Council may, at its sole discretion, require.

2.05: An applicant shall file with the City Clerk/Treasurer, a certificate that there is in effect for the license period an insurance policy pool, or bond of surety company in the amount of not less than fifty thousand dollars (\$50,000) coverage for bodily injury in any one occurrence, one hundred thousand dollars (\$100,000) coverage of bodily injury to more than one person in any one occurrence, and one hundred fifty thousand dollars (\$150,000) because of injury to or destruction of property of others in any one occurrence, fifty thousand dollars (\$50,000) for loss of means of support of any one person and one hundred thousand dollars (\$100,000) for loss of means of support for two or more persons in any one occurrence which shall specifically

provide for the payment by the insurance company on behalf of the insured of all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for injuries or damage to persons, other than employees, including liability imposed by reason of Minnesota statutes 340A.409.

2.06: An annual aggregate policy limit for dram shop insurance of not less than \$300,000.00 per policy may be included in the policy provisions.

2.07: Such liability insurance policy shall further provide that no cancellation of the same for any cause can be made by either the insured or the insurance company without first giving thirty (30) days written notice to the City of intention to cancel the same. Such notice shall be addressed to the City Clerk of the City of Hewitt. This provision shall not apply to cancellation due to non-payment. Cancellation due to non-payment shall require ten (10) days prior written notice, in the same manner as provided above.

2.08: The licensee and the City shall be named as joint insureds in the policy. Sales by a licensee without such liability insurance coverage shall be grounds for revocation.

SECTION 3: ACTIONS

3.01: Granting: The Council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. All applications, including proposed license periods, must be consistent with this Ordinance.

3.02: Issuing: If the application is approved, the City Clerk/Treasurer shall forthwith issue a license pursuant thereto in the form prescribed by the City or the proper agency of the State of Minnesota, as the case may be, and upon payment of the license fee as set forth and prescribed in the Master Fee Schedule, as may be amended from time to time. All licenses shall be on a calendar-year basis unless specified otherwise herein. For licenses issued and which are to become effective other than the on the first day of the licensed year, the fee to be paid with the application shall be a pro-rata share of the annual license fee. Licenses shall be valid only at one location and on the premises therein described. Changes in the corporate or association of officers, corporate charter, articles of incorporation, by-laws or partnership agreement, as the case may be, shall be submitted to the City Clerk/Treasurer within thirty (30) days after such changes are made.

3.03: Refundment of License Fee: In the event that, during the license year, the licensed premises shall be destroyed or so damaged by fire or other that the licensee shall cease to carry on the licensed business, or in case the business of the licensee shall cease by reason of his or her illness or death, or if it shall become unlawful for the licensee to carry on the licensed business under his license, except when such license is revoked, the City shall, upon happening of any such event, refund the licensee, or to his estate, such part of the license fee paid by him as corresponds to the time such license had yet to run. In the event of death of the licensee, his personal representative is hereby authorized to continue operation of said business for not more than six (6) months after the death of such licensee.

3.04: Transfer: No license shall be transferred or transferable between persons or to a different location under any circumstances. If licensee or premises change, a new license application is required. It is unlawful to make any transfer in violation of this Section.

3.05: Refusal, Revocation and Termination: The Council may, at its sole discretion and for any reasonable cause, refuse to grant any application, or revoke or suspend any license granted or application made under the provisions of this Ordinance. The Council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for any violation of any law relating to the sale or possession of beer or liquor upon the premises of the licensee. If it shall be made to appear at the hearing thereon that such violation was not willful, the Council may order suspension, for not more than a period of ninety (90) days, provided that revocation shall be ordered upon the third such violation of offense. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing in front of the City Council. No license shall be granted to a person of questionable moral character or business reputation. Licenses shall be terminated only by expiration or revocation.

3.06: Duplicate Licenses: Duplicates of all original licenses may be issued by the City Clerk/Treasurer, without action by the Council, upon licensee's affidavit that the original has

been lost or destroyed and upon payment of the duplicate license fee as set forth in the Master Fee Schedule, as may be amended from time to time. All duplicate licenses shall be clearly marked as "DUPLICATE".

3.07: Posting: All licensees shall post their licenses clearly and visibly in the place of business relative to which the license is issued.

3.08: Persons Disqualified: In addition to any other provision of law, no person shall qualify for a license under this Ordinance who has been convicted within the past five (5) years, of violating any law relating to the manufacture, sale or distribution of beer or liquor, or whose license therefor has been revoked within such period of time. Nor shall any person qualify as a licensee who has not attained the age of twenty-one (21) years of age or who is not a citizen of the United States.

SECTION 4: RENEWAL OF LICENSE: Application for renewal of an existing liquor license shall be made at least ninety (90) days prior to the date of expiration of the license, and shall contain such information as required by the City. This time requirement may be waived by the Council for good and sufficient cause.

SECTION 5: No license shall be granted for operation on any premises upon which taxes, assessments or installments thereof, or other financial claims of the City are owed by the applicant and are delinquent and unpaid.

SECTION 6: No person shall be granted a beer or liquor license at more than one location. For the purposes of this section, any person owning an interest of five percent (5%) or more of the entity to which the license is issued, or such ownership by a member of his or her immediate family, shall be deemed to be a license.

SECTION 7: Notwithstanding any provision of law to the contrary, the Council may, upon finding the necessity therefor, place such conditions and restrictions upon a license as the Council, in the Council's discretion, may be deemed reasonable and justified.

SECTION 8: Unless expressly stated therein, a license issued under the provisions of this Chapter shall be valid only in the building or structure situated on the premises described in the license, and all transactions and actions relating to the sale under such license must take place within such building or structure.

SECTION 9: UNLAWFUL ACTS

9.01: Consumption: It is unlawful for any person to consume, or for any licensee to permit to be consumed any on-sale of beer or liquor, on the licensed premise more than thirty (30) minutes after the minute of when a sale thereof can legally be made. Further, it is unlawful for any licensee to permit any glass, bottle or other container to remain upon any table, bar, stool or other place where customers are served, more than thirty (30) minutes after the minute of when a sale thereof can legally be made.

9.02: Closing: It is unlawful for any person, other than a licensee's actual employee engaged in the performance of his or her employed duties, to be on the premises licenses under this Ordinance, more than thirty minutes after the legal time for making such a sale. It shall be unlawful for any licensee's employee, engaged in the performance of his or her employed duties, to remain on the premise licensed under this Ordinance, more than sixty (60) minutes after the legal time for making such a sale as afforded by a license issued under this

Ordinance.

9.03: Inspection: It is unlawful for any licensee, his or her employee or agent to hinder or prevent a police officer or City Official or any other official from making an inspection or to observe whether or not this Section and all other applicable, Federal, State and Local Laws are being followed and complied with.

SECTION 10: EXCEPTIONS: Licensing requirements in the Ordinance shall not apply to sales by

manufacturers to wholesalers, not to sales by wholesalers, as those terms are defined herein and within such definitions. Such requirements shall not apply to sales made by municipal liquor store employees or municipal liquor store buildings.

SECTION 11: SALE BY EMPLOYEE: Any sale of beer or liquor in or from any premises licensed under this Ordinance by any employee authorized to make such sale in or from such place is the act of the employer as well as of the person actually making the sale and every such employer is liable to all of the penalties provided by law for such sale, equally with the person actually making the sale.

SECTION 12: ON-SALE WINE LICENSE: On-sale wine licenses shall only be issued only to restaurants meeting the qualifications of Minnesota Statutes Section 340A.404, Subdivision 5, as may be amended from time to time, and shall permit only the sale of wine not exceeding fourteen percent (14%) alcohol by volume, for consumption on the licenses premises only, in conjunction with the sale of food.

SECTION 13: The annual license fee for a wine license shall be set in the Master Fee Schedule, as may be amended from time to time.

SECTION 14: COMMUNITY FESTIVAL LICENSE: The on-sale intoxicating liquor licensee may apply, in writing to the City Council, for a special community festival license, which will authorize the sale and consumption of intoxicating liquor at a specific, designated area within the City Limits for a specific date(s). Application must be made no later than the Regular City Council Meeting prior to the date of the festival. Proof of separate, additional liability insurance for this festival must be provided. The fee for such festival license shall that set in the Master Fee Schedule, as may be amended from time to time.

SECTION 15: BEER: It is unlawful for any person to sell, keep or offer for on-sale or off-sale, any beer without a license from the City. The annual fee for an on-sale beer license shall be that as set in the Master Fee Schedule, as may be amended from time to time. The annual fee for an off-sale beer license shall be that as set in the Master Fee Schedule, as may be amended from time to time.

SECTION 16: TEMPORARY BEER LICENSE

16.01: Applicant: A club or charitable, religious or non-profit organization, duly incorporated as such under the laws of the State of Minnesota, and having its registered office and principal place of activity within the Limits of the City of Hewitt, shall qualify for a temporary on-sale beer license, for serving beer on and off school grounds, and in and out of school buildings.

16.02: Conditions:

1. An application for a temporary license shall state the exact dates and place or proposed temporary sale;
2. No applicant shall qualify for a temporary license for more than a total of twelve (12) days in any calendar year;
3. If the premises proposed to be licensed are City-owned property, the Council may, at its discretion, as a condition to issuance of the license, require insurance coverage;
4. The applicant shall comply with all other restrictions, limitations and regulations for the sale of beer under the City Code and all applicable State Statutes.

16.03: The fee for a temporary on-sale beer license shall be that as set in the Master Fee Schedule, as may be amended from time to time.

SECTION 17: BEER LICENSE RESTRICTIONS AND REGULATIONS

17.01: No gambling or gambling device shall be permitted on any licensed premises, except such as are licensed under this City Code.

17.02: No beer license shall, during the effective period of such license, be the owner or holder

of a Federal retail liquor dealer's tax stamp for the sale of intoxicating liquor, and ownership or holding thereof shall be grounds for revocation.

17.03: No license shall be granted to a manufacturer of beer or to anyone holding a financial interest in such manufacture.

17.04: Except as herein otherwise provided, every licensee shall be responsible for the conduct of his place of business and shall maintain conditions of sobriety and order.

17.05: No person who has not attained the age of eighteen (18) years shall be employed to sell or serve any beer or liquor in any licensed establishment; provided however, that a person who has attained the age of eighteen (18) years may be employed in any restaurant licensed to sell beer in which the principal part of said business is the serving of food.

17.06: No person who has not attained the age of eighteen (18) years shall be employed to sell beer in any off-sale establishment except in the capacity of a cashier at a checkout counter.

17.07: No license shall be granted for any building within three hundred (300) feet of any public elementary or secondary school structure, or within one hundred (100) feet of any church structure. This provision shall not be applicable to a temporary beer license.

17.08: No more than one on-sale beer license shall be issued for each increment of one hundred (100) population based on the last census of the City.

SECTION 18: HOURS AND DAYS OF SALE OF BEER AND LIQUOR

18.01: No sale of on-sale beer or liquor shall be made between the hours of 1:00 a.m. and 8:00 a.m. Monday through Friday, inclusive. No sale of on-sale beer or liquor shall be made between the hours of 2:00 a.m. and 8:00 a.m. Saturday. No sale of on-sale beer or liquor shall be made between the hours of 2 a.m. and 12:00 p.m. on Sunday.

18.02: No sale of off-sale beer or liquor shall be made between the hours of 10:00 p.m. and 8:00 a.m. Monday through Saturday, inclusive. No sale of off-sale beer or liquor shall be made during any hours of any Sunday.

18.03: No sale of on-sale beer or liquor shall be made between the hours of 8:00 p.m. December 24 and 10:00 a.m. December 26.

18.04: No sale of off-sale beer or liquor shall be made on any Sunday nor on Thanksgiving Day or Christmas Day or between the hours of 8:00 p.m. December 24 and 8:00 a.m. December 26.

SECTION 19: UNLAWFUL ACTS

19.01: Minor: For the purposes of this Chapter, a minor shall be considered to be any person under the age of twenty-one (21) years. It shall be unlawful for any:

1. Person other than the parent or legal guardian to procure beer or liquor for a minor;
2. Person to induce a minor to purchase or procure beer or liquor;
3. Minor to misrepresent his age for the purpose of obtaining beer or liquor;
4. Minor to consume beer;
5. Minor to have in his or her possession any beer or liquor, with intent to consume the same at a place other than the household of his or her parent or guardian. Possession of such beer or liquor at a place other than the household of his or her parent or guardian shall be prima facie evidence of intent to consume the same at a place other than that of his or her parent or guardian;
6. Licensee or his or her employee to permit any minor to loiter or to remain on licensed premises where beer or liquor is being sold or served, except as otherwise provided for in this City Code;
7. Minor to purchase beer or liquor either directly or indirectly from a licensee, or procure another to purchase beer or liquor for him or her;
8. Person knowingly induce or to mane an illegal sale or purchase of beer or liquor;
9. Licensee or employee of a licensee to sell or serve beer or liquor to any person who is obviously intoxicated.

SECTION 20: GENERALLY

20.01: it is unlawful for any person to be a wholesaler or manufacturer of beer or liquor without

a license therefor from the State of Minnesota.

20.02: It is unlawful for any person to sell beer or liquor or to take, receive or solicit any order for the sale of beer or liquor without a license from the City. This shall not apply to natural fermented or fruit juices in the home for family use.

20.03: The City Council of the City of Hewitt, having heretofore authorized the same, may issue on-sale liquor licenses as authorized by State Statute.

20.04: The number of licenses which may be issued by the City Council, shall be equal to the number of on-sale licenses authorized by State Statute.

20.05: The annual fees for any type of beer or liquor license issued by the City shall be that as set forth in the Master Fee Schedule, as may be amended from time to time.

20.06: All license fees shall be paid in full before the initial or renewal application is approved by the City Council.

20.07: No manufacturer or wholesaler shall either directly or indirectly own or control or have a financial interest in any retail business selling beer or intoxicating liquor. This restriction shall not be construed to deny such person the right to use or have his or her property rented for such purposes in any case where the manufacturer or wholesaler was an owner of the premises prior to November 1, 1933, nor to prohibit a licensed manufacturer of wine containing not more than twenty-five percent (25%) alcohol by volume nor less than fifty-one percent (51%) wine manufactured from Minnesota grown agricultural products from selling at off-sale wines manufactured or processed by that manufacturer at not more than one location in conjunction with a winery without procuring an off-sale license.

20.08: No manufacturer or wholesaler shall require by contract, understanding or otherwise any licensed retailer to handle or sell only the products of any particular manufacturer or wholesaler.

20.09: No on-sale or off-sale license shall be effective beyond the compact and contiguous space named therein for which the same was granted.

20.10: No license shall be effective until a permit shall be issued to the licensee under the laws of the United States or under the laws of the State of Minnesota, if such permit is required under such laws.

20.11: Every license shall be granted subject to the provisions of this Ordinance and all other applicable provisions of this City Code and other laws relating to the operation of such business.

20.12: Except as otherwise herein provided, every licensee shall be responsible for the conduct of his or her place of business and shall maintain conditions of sobriety and order therein.

20.13: No person under the age of eighteen (18) shall be employed upon licensed premises, or in any rooms constituting the same.

20.14: No licensee shall sell, offer for sale or keep for sale liquor or beer in any original package that has been refilled or partly refilled.

20.15: No person shall be employed on licensed premises who has been convicted of a felony or of any law relating to the manufacture, sale or transportation of beer or liquor.

20.16: Every person employed by a licensee issued by the City of Hewitt shall be required to complete an "alcohol awareness" course within thirty (30) days of the first date of employment.

20.17: Every licensee shall produce and provide to the City, at the request of the City, a list of all persons employed by the licensee.

20.18: Every licensee shall provide any other documentation, proof or information requested by the City, with just cause or reason, in a manner prescribed by the City.

SECTION 21: This shall take effect and be in full force from and after its passage and publication as prescribed by law.

This shall supersede Ordinance #78

Passed and adopted by a majority vote of the City Council of the City of Hewitt this ___ day of May, 2009.

By Juanita Mitchell, Mayor

Attest: Miriam A. Collom, City Clerk/Treasurer