

CITY OF CARPIO - ORDINANCE NO. 2024-01

AN AMENDED AND RESTATED ORDINANCE REGULATING THE SALE OF ALCOHOLIC BEVERAGES WITHIN THE CITY OF CARPIO, NORTH DAKOTA.

1. Definition of terms used in this ordinance:

A. "Alcoholic beverage" or "alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.

B. A "Minor" shall mean any person male or female, under the age of 21.

C. "Sale" or "Sell" shall mean all manners or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of, and keeping for sale of such alcoholic beverages.

D. "Retail" shall mean the sale of alcoholic beverages for use or consumption (on or off site) and not for resale.

E. A "Full Service Restaurant" shall mean a business which prepares and sells food for consumption on the premises where sold, which is properly licensed or permitted for such activity by the appropriate public health authorities who have charge of such matters, and which derives, on an annual basis, more income from the sale of food consumed on its business premises than it does from the sale of alcoholic beverages consumed on its business premises.

2. Licenses required.

A. License required: No person may engage in the sale of alcoholic beverages in the City without first obtaining an appropriate license from the City and from the North Dakota Attorney General. This section does not apply to public carriers engaged in interstate commerce.

B. Classes of Licenses: The following classes of licenses pertaining to the sale of alcoholic beverages shall be allowed:

1) Retail Alcoholic Beverage License.

2) Full Service Restaurant Alcoholic Beverage License

C. Maximum Number: The maximum number of licenses which may be issued for the retail sale of alcoholic beverages in the City of Carpio shall be:

1) Two (2) Retail Alcoholic Beverage Licenses.

2) Two (2) Full Service Restaurant Alcoholic Beverage Licenses.

D. Fees:

1) The license fee for a Retail Alcoholic Beverage License shall be \$800.00 per year, payable in advance.

2) The license fee for a Full Service Restaurant Alcoholic Beverage License shall be \$800.00 per year, payable in advance.

3) All licenses must be applied for at the regular December meeting of the City Council. Any person making application for such license at any other time requiring a special meeting of the Council shall pay an additional fee of \$500.00.

E. Qualifications: No retail license shall be issued to any person unless the applicant shall file sworn application, accompanied by the required fee showing the following qualifications:

1) Applicant, is an individual, must be a citizen of the United States, a resident of North Dakota and be a person of good moral character.

2) No license shall be issued to any person under the age of twenty-one (21) years or to any person deemed by the City Council to be morally unfit to engage in the business for which license is sought.

3) If the application seeks a Full Service Restaurant Alcoholic Beverage License, the applicant's business must satisfy the definition of a "full service restaurant".

4) If the applicant is a corporation then:

a. the manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and

b. the shareholders, if individuals, must be legal residents of the United States and of good moral character or, if organizations, must meet the requirements of this section for applicants that are organizations; and

c. the corporation must be properly registered with the secretary of state and authorized to conduct business in this State.

5) If the applicant is a limited liability company, then:

a. the manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character; and

b. the members; if individuals, must be legal residents of the United States and of good moral character or, if organizations, must meet the requirements of this section for applicants that are organizations; and

c. the applicant must be

properly registered with the secretary of state and authorized to conduct business in this State

6) If the applicant is a limited partnership, then:

a. the manager of the licensed premises must be a legal resident of the United States and of good moral character; and

b. the general partners and limited partners, if individuals, must be legal residents of the United States and of good moral character or, if organizations, must meet the requirements of this section for applicants that are organizations; and

c. the applicant must be properly registered with the secretary of state.

7) If the applicant is a general partnership, then:

a. the manager of the licensed premises must be a legal resident of the United States and of good moral character; and

b. the partners, if individuals, must be legal residents of the United States and of good moral character or, if organizations, must meet the requirements of this section for applicants that are organizations.

8) If the applicant is a limited liability partnership, then:

a. the manager of the licensed premises must be a legal resident of the United States and of good moral character.

b. the general partners and limited partners, if individuals, must be legal residents of the United States and of good moral character or, if organizations, must meet the requirements of this section for applicants that are organizations; and

c. limited liability partnership applicants must be properly registered with the secretary of state and authorized to conduct business in this State.

9) Neither the applicant nor the manager of the licensed premises shall have been convicted of an offense determined by the City Council to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer, or following conviction to any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.

10) The premises on which business is to be conducted must meet local and state requirements regarding sanitation and safety.

11) Premises which extend out-of-doors must meet the following requirements in respect to the portion located out-of-doors (hereafter called the "outdoors"):

a. The outdoors must be contiguous with the rest of the licensed premises (hereafter called the "indoors").

b. The periphery of the outdoors-to the extent not adjoining the indoors-must be enclosed with a wall or fence meeting the following requirements:

1. If, under state law, persons under the age of twenty-one (21), who cannot claim an employment exception, may enter the indoors only because of the volume of food sold and consumed therein, then the wall or fence must be at least forty-two (42) inches in height.

2. If the wall or fence is associated with an indoors not described in subsection a above, then the wall or fence shall be at least seventy-two (72) inches in height, and except for the doors and gates provided for hereafter, shall not contain any opening in excess of four (4) square inches.

III. A temporary wall or fence may be employed, but it shall be so designed, installed and maintained as to form, while in use, a barrier fully equivalent to a permanent wall or fence.

IV. A wall or fence required under subsection 2) may not contain any gates or fences except as required under the fire code. Such gate or fence shall remain locked during business hours, but shall be equipped with an approved interior "panic bar" or equivalent device which allows for emergency exit from the premises.

12) All taxes and fees for municipal services supplied to the premises on which business will be conducted shall be current.

13) If applicant's place of business is to be conducted by a manager(s) or agent(s), said manager(s) or agent(s) must possess the same qualifications required of the licensee.

14) Not more than one license of each classification shall be issued or granted to any applicant; and each license shall be valued only for the specific premises licensed.

F. Application for License: Applicants shall be submitted to the City Auditor on forms supplied by the City and shall include the following information:

1) The type of license being applied for.

2) Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application and, if so, the sale and type of business and place where so engaged.

3) 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 address of such establishments.

4) 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 licensure is sought.

5) The street address and legal description of the premises sought to be licensed accompanied by a clear and understandable floor plan of the premises to be licensed.

6) Any agreements or understandings to obtain an alcoholic beverage license for any other person, partnership, or corporation must be indicated on the application.

7) Whether the applicant is engaged in or intends to be engaged in any business other than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business.

8) If applicant is buying an existing business, application must include a copy or purchase agreement.

9) If applicant is leasing an existing business, application must include a copy of lease agreement.

10) Whether there are any delinquent taxes or fees for municipal services owed against the premises sought to be licensed.

11) Whether applicant has ever had a license revoked or canceled by a municipal, state or federal authority and, if so, the date of such revocation or cancellation, the authority in question and the reason(s) for revocation or cancellation.

12) Whether the applicant has ever been convicted of any crime 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.

13) Other information determined by the Council to be necessary to enable it to determine if a license should be granted.

G. Term: All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 31st day of December in each year. No license shall be issued for any part of a year for less than that required for the entire year.

H. Transfer of license: No license shall be transferred from one person to another without the approval and consent of the City Council, and any attempt to do so shall constitute a violation of this ordinance. No license required by this article shall be issued to any person engaged in business as the representative or agent of another. The license shall be issued only to the owner of the business being conducted at the location to be licensed.

3. Licensee's Responsibility:

A. Every licensee must conspicuously display the required license in his/her place of business.

B. A retailer shall sell only to individual patrons for their own consumption, and not for resale to others.

C. It shall be unlawful for any person, firms 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 such purchaser or prospective purchaser. 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.

D. No licensee shall dispense, sell, serve or permit to be dispensed, sold, served or consumed on the licensed premises any alcoholic beverages between the hours of 2:00 a.m. and 8:00 a.m. on all other days of the week, on Christmas day or after 6:00 p.m. on Christmas eve, nor may a licensee provide for sale after 2:00 a.m. on Thanksgiving day or between 2:00 a.m. and 12:00 p.m. on Sundays.

E. Except as provided by this ordinance, no person under the age of twenty-one (21) shall be sold, served or permitted on any premises where alcoholic beverages are sold or on display and every licensee shall post conspicuously on the licensed premises the following sign: "PERSONS UNDER THE AGE OF TWENTY-ONE (21) YEARS ARE NOT ALLOWED".

Notwithstanding the foregoing, an individual under twenty-one (21) years of age may enter and remain on a licensed premises while alcohol is being sold or displayed if:

1) the individual is in a restaurant where alcoholic beverages are being sold and 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 consumed in the dining area; or

2) the individual is employed by the restaurant as a food waiter, food waitress, busboy or bus girl under the direct supervision of an individual twenty-one (21) or more years of age and is not engaged in the sale, dispensing, delivery or consumption of alcoholic beverages provided, however, an individual who is eighteen (18) years of age or older but under twenty-one (21) years of age may serve and collect money for alcoholic beverages if the individual is under the direct supervision of an individual twenty-one (21) or more years of age but may not be engaged in mixing, dispensing, or consuming alcoholic beverages; or

3) the individual is an independent contractor or an employee of an independent contractor engaged in contract work and is not engaged in selling, dispensing, delivering or consuming alcoholic beverages; or

4) the individual is a law enforcement officer or other public official who enters the licensed premises in the performance of an official duty; or

5) the individual enters the licensed premises for training, education or research purposes under the supervision of an individual twenty-one (21) or more years of age with prior notification to the City Council; or

6) the individual is in an area where beer, wine or sparkling wine is sold in accordance with the conditions of an Event Permit; issued in accordance with this ordinance; or

7) all of the following conditions are met:

a. The individual is accompanied by a parent or guardian who is twenty-one (21) years of age or older; and

b. the individual is on the licensed premises to consume a meal or in an emergency situation; and

c. the licensed premises serves at a table top with the food prepared in a kitchen with at least an indoor grill; and

d. the individual is not on the licensed premises after 10:00 p.m.; and

e. the owner of the licensed premises has received permission of the City Council for individuals under age twenty-one (21) to be on the licensed premises as allowed by this section.

F. 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 proof of such person's age.

G. Every licensee is respon-

sible for the conduct of his or her place of business and is required to maintain order in such place of business. Alcoholic beverages shall not be served to any intoxicated person, nor shall any intoxicated person be permitted to remain upon the premises.

H. 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; and each licensee hereunder shall maintain on file all invoices documenting purchases of such alcoholic beverages showing the name and license number of the wholesaler, and such records shall be retained in the possession of the licensee.

I. The premises and the records of the licensee shall be available to the police department for immediate inspection whenever the licensed premises are open for public patronage and the premises shall be available to the police department for immediate inspection at any other time when there are persons on the licensed premises.

4. Event Permits

A. A permit issued pursuant to NDC5-02-01.1, to allow a licensee to temporarily operate at premises other than the licensed premises to which the license relates shall be issued administratively by the city clerk upon the following terms and conditions:

1) The payment by the applicant of a nonrefundable fee of one hundred dollars (\$100.00)

2) The submission by the applicant, as part of the application required by the City,

a. of a brief narrative explaining:

a. The nature of the occasion for the permit (e.g., wedding, dance, trade show or promotion, etc); and

b. The steps which will be undertaken by the permittee to restrict the sale to, and consumption of, alcoholic beverages by minors at such occasion.

3) The written approval by the chief of police of the issuance of the permit.

4) A permit issued pursuant to this subsection may not be used for the off-sale of alcoholic beverages.

5) A permit issued pursuant to this section may not be valid for a period greater than fourteen (14) days and may include Sundays.

Each month the chief of police shall submit a report to the City Council concerning the permits allowed and the permits denied under this subsection subsequent to the last prior such report. Applications, whether granted or not, shall be retained by the city clerk for no less than three (3) years.

5. Revocation / Suspension:

A. Licenses issued pursuant to this article shall be deemed canceled and revoked and terminated upon the happening of any one or more of the following contingencies:

1) When the licensee ceases business at the location licensed, unless a new location has been approved.

2) When the licensee be ad-

judged bankrupt.

3) When the license has been convicted of the violation of any provision of this article, 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

4) When the licensee ceases to possess any of the qualifications required of an applicant for a license as set out in this article.

5) 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 for been revoked.

6) When the licensee ceased to be legal bona fide resident and citizen of the State of North Dakota, or ceases to be a legal bona fide resident of the County of Ward.

7) When the application for a license is determined to contain any false statement.

B. Licenses issued pursuant to this ordinance may, at the discretion of the governing body, be either revoked or suspended for any cause deemed sufficient by the governing body and justified by reason of public health or public morals including (but not limited to):

1) When the license has been convicted of violating any of the provisions of this article.

2) 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.

Such causes detailed above shall not be deemed to be exclusive. For a first violation by a licensee for serving alcoholic beverages, the governing body shall accept as a mitigating factor, if applicable, the fact that the retail licensee provided its employees with alcohol server training approved by the City that addressed intoxication, drunk driving and underage drinking. If applicable, a mitigating factor must result in a lesser punishment than the licensee would otherwise have received but for the mitigating factor. Termination or revocation shall be subject only to review by the courts of the State of North Dakota. 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.

C. In addition to cancellation, revocation or suspension of a license issued under this ordinance, a fine of One hundred dollars (\$100.00) shall apply upon conviction or violating any of the provisions of this ordinance.

6. Prior Ordinances Repealed. All provisions of ordinances passed by the City Council regulating alcoholic beverages which conflict with those of this ordinance, are hereby repealed.

Council. Passed on first reading, July 8, 2024.

Attest:
I, Ann Gates, City Auditor

Public Notice

Carpio City Council Meeting Minutes

July 8, 2024

Carpio City Hall

The meeting was called to order by Mayor Burkett at 6:31pm. Council members present were Mayor Austin Burkett, Peter Thorp, Dawson Huber and Megan Wentworth. Kelvin Faul was absent. The Pledge of Allegiance was recited.

Councilman Thorp moved that the minutes of the last meeting be approved as submitted. Councilman Huber seconded the motion. Carried by all.

Visitors Present: Robert Banet & Chief Al Schmidt

Police Report: The chief and one of his officers conducted an interdiction on about 25 trucks going through the area in an attempt to shut down the drug corridor. Went very well. Berthold street dance on the 4th went well. No issues. The chief has been in contact with the owner of the old bank in town. The owner wants to burn the inside of the building. Further information required as to the purpose then proper permits will need to be acquired if approved by the council.

Maintenance Report
Dump grounds: Open by appointment. Roll off has been changed.

New Business
Sewer: Bid process is underway. Reading to happen next week.

City Hall/Admin: Notary issue resolved. Letterhead and business cards have been received. AC to be installed this week at City Hall. Issue with front door. To be replaced on Tuesday.

Oaths of Office taken and notarized by the city auditor. Councilman Thorp moved to elect Coun-

cilman Faul as president. Second by Councilman Huber. Carried by all. Councilman Huber moved to elect Councilman Thorp as vice president. Second by Councilwoman Wentworth. Carried by all. It was further moved by Councilman Thorp to appoint Chris Larson as the building inspector for the city. Second by Councilman Huber. Carried by all.

Unfinished Business
The shed on Mary Kaas property was discussed again. Progress on the tear down is being made.

Mayor Burkett is still researching solutions to the internet issue for cameras at the park.

Resolution 2024-04 for the Myers alley closure was read. Councilman Thorp moved to approve, second by Councilman Huber. Carried by all.

First reading of ordinance 2024-01 regarding the sale of alcoholic beverages. Councilman Thorp moved to approve as read. Second by Councilman Huber. Carried by all.

Discussion of proposed changed to ordinance 2024-02 by the attorney were discussed. Councilman Huber moved to make the recommended changes. Second by Councilwoman Wentworth. Carried by all. First reading at the August meeting.

New Business
With changes to the council positions, it was moved by Councilman Huber and second by Councilwoman Wentworth that Kelvin Faul and Peter Thorp be added to the bank account as signers and that Chris Larson be removed from the account as a signer. Carried by all.

2025 preliminary budget dis-

ussion was had. All council members to look over the existing budget and make notes on any areas for final discussion at the August meeting.

It was requested by council members to ask Donn Brown Const to do some additional blading and clean up the banks a bit.

Building Permits: None issued

Gambling Permits: None issued.

The monthly financial report was reviewed. Councilman Thorp moved that the bills be paid. Second by Councilman Huber. Carried by all. Bills paid were as follows: Check 6313 to Curb 2 Curb, LLC for \$930.00; check 6314 to MDU for \$904.90; check 6315 to Ann Gates for \$1,677.26; check 6316 to SRT for \$84.36; check 6317 to Circle Sanitation for \$1,843.25; check 6318 to North Prairie Regional Water for \$67.22; check 6319 to Coulee Services for \$940.00; check 6320 to Kenmare News for \$763.82; check 6321 to Minot Daily News for \$358.80; check 6322 to North Dakota League of Cities for \$366.00; check 6323 to Moore Engineering for \$2,700.00; check 6324 to IRS for \$688.50; auto withdrawal to Reinan Business Solutions for \$30.00; check 6325 to Ward County Auditor for \$745.80; check 6326 to Western Agency for \$816.00; check 6327 to Farmers Union Oil for \$997.89; check 6328 to United Agronomy for \$677.24; check 6329 to McGee, Hankla & Backes PC for \$195.00.

Meeting adjourned at 7:42pm. Next meeting: August 5, 2024, at 6:30pm.

Austin Burkett, Mayor
Ann Gates, Auditor