



COMMITTEE OF THE WHOLE AGENDA
May 19, 2014 - 5:30 PM
City Hall Council Chambers

Committee of the Whole Meeting

1. Clay County Public Health Presentation - Minnesota E-Cig Regulations _____
2. Ordinance Housekeeping _____
 - A. Tobacco Sampling Ordinance _____
 - B. Dance Ordinance _____
 - C. Liquor License Penalties/Compliance Checks _____
3. 2015 Operating & Capital Budget Planning Session _____
4. City Manager Reports _____

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Mayor and Council Communication

May 19, 2014

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SUBJECT: Tobacco Sampling Ordinance

RECOMMENDATION: The Mayor and City Council are asked to create and enact an ordinance to amend and reenact Section 2-5A-3 of the Moorhead City Code to eliminate the practice of non-legitimate sampling of tobacco products in retail establishments licensed to sell tobacco products.

It is further requested that an ordinance be enacted to amend and reenact Section 2-5A-5 of the Moorhead City Code to remove the individual administrative penalty of \$50.00 charged to persons who sell tobacco to a person under the age of eighteen (18).

BACKGROUND / KEY POINTS: The amendment to Section 2-5A-3 of the Moorhead City Code will prohibit retail establishments which are licensed to sell tobacco products from providing tobacco related devices to customers for the purpose of sampling tobacco products unless such provision is a bona fide sale of the device. It would also prohibit the provision of seating within, or access to, an indoor area of the establishment provided for of a fee or other consideration. It also limits the indoor sampling of tobacco products within the licensed retail establishment to single service samples provided on the date and time the sample was furnished.

The amendment to Section 2-5A-5 of the Moorhead City Code will eliminate the administrative penalty of \$50.00 on individuals who sells tobacco products to a person less than eighteen (18) years of age. The administrative penalty is not necessary in that the Moorhead Police Department charges these persons at the time of investigation under Minnesota State Statute with providing tobacco products to a minor.

FINANCIAL CONSIDERATIONS: No expense is anticipated as a result of this ordinance.

VOTING REQUIREMENTS: Two-Thirds of Council (6)

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The City Attorney provides opinion on questions of voting requirements in accordance with the Moorhead City Code, Minnesota State Statutes, and parliamentary procedure.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Michael J. Kelly".

Michael J. Redlinger
City Manager

Department: Police
Prepared by: David Ebinger, Chief of Police

Attachments: Draft Ordinance

ORDINANCE NO. 2014-___

AN ORDINANCE TO AMEND AND REENACT SECTION 2-5A-3 AND SECTION 2-5A-5 OF THE MOORHEAD MUNICIPAL CODE RELATING TO LICENSE FOR SALE OF TOBACCO AND ADMINISTRATIVE REMEDIES.

BE IT ORDAINED by the City Council of the City of Moorhead as follows:

SECTION 1. Section 2-5A-3 of the Moorhead City Code is hereby amended and reenacted to read as follows:

2-5A-3: LICENSE:

A. **Application:** Application for a license shall state the full name and address of the applicant, the location of the building intended to be used by the applicant under the license, the kind of business conducted at such location, and such other information as shall be required by the application form.

B. **License Fee:** The fee for such license will be as established by the City's fee schedule. Licenses shall not be transferable from one person to another.

C. **Term:** All licenses issued under this section shall be valid for one calendar year from the date of issue.

D. **Revocation or Suspension:** Any license issued under this section may be revoked or suspended.

E. **Transfers:** All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid. If a transfer is needed, the applicant will need to reapply and submit new payment of licensee fees.

F. **Moveable Place of Business:** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this section.

G. **Display:** All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

H. **Issuance as Privilege and Not a Right:** The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

I. ~~**Smoking:** Smoking shall not be permitted, and no person shall smoke within the indoor area of any establishment with a retail tobacco license. This subsection does not prohibit the lighting of tobacco in a tobacco products shop by a customer or potential customer for the specific purpose of sampling tobacco products as defined by Minnesota Statute Section 144.4167 as amended from time to time.~~ **Sampling.** Pursuant to the authority granted under Minnesota

Statutes section 144.417, subdivision 4, the City of Moorhead prohibits the operator of any retail establishment from any of the following:

1. Except for a bona fide sale of a tobacco related device, providing or otherwise making available for use by a customer, potential customer, or any other person a tobacco related device for the purpose of sampling any tobacco product;
2. Providing in exchange for a fee or any other consideration seating within or access to the indoor area of a retail establishment; or
3. Permitting within the indoor area of a retail establishment the sampling of any tobacco product that was not furnished by the retail establishment on the date and at the time the sampling occurs.

A retail establishment may distribute single service samples of smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products suitable for smoking subject to the limitations on indoor sampling or smoking provided above.

J. **Background Check.** The police department shall conduct a criminal background check on the applicant. In the event a national criminal background investigation is required, the applicant shall be responsible for all additional fees incurred for such and, upon request, provide additional information required to complete this process. All applicants are required to complete an informed consent authorizing the disclosure of all criminal history record information. The City Clerk and the police department shall review such application and, without further authorization on the part of the Council, issue such license to the applicant if the applicant is eligible therefor.

SECTION 2. Section 2-5A-5 of the Moorhead City Code is hereby amended and reenacted to read as follows:

2-5A-5: ADMINISTRATIVE REMEDIES:

- A. Administrative Penalty, Suspension, Or Revocation: Any violation of the city's regulations relating to the issuance of a tobacco products license or of any conditions/restrictions attached to the issuance of such license shall be cause for the imposition of an administrative penalty, license suspension, and/or license revocation.
1. The first such violation shall subject licensee to an administrative penalty of seventy five dollars (\$75.00).
 2. The second violation within the probationary period shall subject licensee to a three (3) day suspension of the license and an administrative penalty of two hundred dollars (\$200.00).

3. The third violation within the probationary period shall subject licensee to a seven (7) day suspension of the license and an administrative penalty of two hundred fifty dollars (\$250.00).
4. Subsequent violations within the probationary period shall subject licensee to a thirty (30) day license suspension.
5. If any sale of tobacco products occurs on licensee's premises during a period of suspension, the license shall be suspended for a period of twelve (12) months.
6. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one offense during any twenty four (24) hour day.

~~B. Individual Penalties: Any individual who sells tobacco products or tobacco related devices to a person under the age of eighteen (18) years must be charged an administrative penalty of fifty dollars (\$50.00).~~

CB. Administrative Hearing/Waiver: Upon receipt of information indicating that a license violation has occurred, the city manager or his designee shall personally serve or send by certified mail a license violation notice to licensee and/or the individual who sold a tobacco product to a person under the age of eighteen (18). The license violation notice shall indicate the nature of the violation and whether such violation will result in an administrative penalty, license suspension, or license revocation. The notice shall also indicate that licensee or individual has the option of requesting a hearing before the city council prior to the license suspension, revocation, or imposition of a penalty, or waiving such hearing and accepting the disposition described in the license violation notice. The licensee or individual shall file a written request for a hearing within ten (10) days of the date specified in the license violation notice, or licensee or individual shall be deemed to have waived its right to a hearing. Upon receipt of a hearing request, the city manager or his designee shall schedule a hearing before the city council at the earliest opportunity and shall send a hearing notice to licensee or individual by certified mail. The decision of the city council must be in writing.

SECTION 3. This ordinance shall take effect upon publication in accordance with the Moorhead City Charter.

PASSED by the City Council of the City of Moorhead this ____ day of _____, 2014.

APPROVED BY:

DELRAE WILLIAMS, Mayor

ATTEST:

MICHELLE FRENCH, City Clerk

First Consideration:

Second Consideration:

Date of Publication:

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Mayor and Council Communication

May 19, 2014

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SUBJECT: Dance Ordinance

RECOMMENDATION: The Mayor and City Council are asked to consider the first reading of an ordinance to repeal Article E of Chapter 2 of the Moorhead City Code relating to dances.

BACKGROUND / KEY POINTS: The proposed amendment is being brought to City Council for approval to eliminate licensing of dances. This ordinance is very difficult to regulate as written. For example, all establishments or anyone holding a wedding dance must apply for an annual or special event license. Further, a review of City records has indicated that there have been no applications requested within the past six (6) years for a dance permit. Conduct at dances which the city would have an interest in regulating such as liquor licensing and service is already cover in other sections of the City ordinance.

FINANCIAL CONSIDERATIONS: There is no cost to the City.

VOTING REQUIREMENTS: Majority of Quorum

Disclaimer: Voting requirements may be subject to changes in the law, parliamentary procedural matters, or other unforeseen issues. The City Attorney provides opinion on questions of voting requirements in accordance with the Moorhead City Code, Minnesota State Statues, and parliamentary procedure.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Michael J. Redlinger".

Michael J. Redlinger
City Manager

Department: Administration
Prepared by: Michelle French, City Clerk
Attachments: Draft Ordinance

ORDINANCE NO. 2014-___

AN ORDINANCE TO REPEAL ARTICLE E OF CHAPTER 2 OF THE MOORHEAD CITY CODE RELATING TO DANCES.

BE IT ORDAINED by the City Council of the City of Moorhead as follows:

SECTION 1. Article E of Chapter 2 of the Moorhead City Code is hereby repealed in its entirety.

~~ARTICLE E. DANCES~~

~~2-2E-1: DANCE PERMIT ISSUANCE PROCEDURE; FEES~~

- ~~A. Applications for a public dance permit shall be made to the city clerk on forms provided by the city clerk and shall contain such information that the city clerk shall determine to be necessary for the issuance of such public dance permits, including specifically, the security forces to be provided by applicant for each public dance held.~~
- ~~B. The city clerk shall review the application and, if it is found to be in order, shall refer it to the chief of police for approval of the security to be provided.~~
- ~~C. The application shall then be forwarded directly to the council for action on the issuance of the public dance permit. (Res., 11-1-1982)~~
- ~~D. The permits shall be issued on an annual basis or on a special event basis and the permits shall be issued upon the fees as established by the city's fee schedule. Fees for annual permits for Concordia College, Moorhead State University, Moorhead Area Vocational Technical Institute, and all schools within the city shall be waived by the council upon issuance of the permits. (Res., 11-1-1982; amd. Ord. 2007-30, 1-7-2008, eff. retroactive to 1-1-2008)~~
- ~~E. The council shall have the authority to waive the permit fees under special circumstances.~~
- ~~F. In all events, a special event dance permit shall be required for each dance held at the Moorhead armory and at the Moorhead sports center building. (Res., 11-1-1982)~~

SECTION 2. This ordinance shall take effect upon publication in accordance with the Moorhead City Charter.

PASSED by the City Council of the City of Moorhead this ____ day of _____,
2014.

APPROVED BY:

DELRAE WILLIAMS, Mayor

ATTEST:

MICHELLE FRENCH, City Clerk

First Consideration:

Second Consideration:

Date of Publication:



Mayor and Council Communication

May 19, 2014

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SUBJECT: Liquor License Penalties/Compliance Checks

RECOMMENDATION: The Mayor and City Council are asked to consider amending and reenact Section 2-3-21 of the Moorhead City Code relating to Liquor Control penalty for violations and to create and enact Section 2-3-22 of the Moorhead City Code relating to Compliance Checks.

BACKGROUND / KEY POINTS: After reviewing and comparing our violations with Fargo and West Fargo for compliance checks, we have discovered that they offer a written warning for the first violation. We would like to have the opportunity to build relationships with the establishments before issuing an administrative fine. The recommendation is to eliminate the \$250 administrative fine for the first violation and issue a written warning.

The City of Moorhead and Clay County has joined efforts with compliance checks, we suggest that we add to the ordinance that any person holding a license to sell intoxicating liquor or 3.2 percent malt liquor shall be subject to a minimum of four (4) compliance checks per year to determine if alcohol is being sold or disbursed to minors. Staff is also purposing to add a provision that would prohibit establishments from banning minors for life from the establishment who are employed by the City of Moorhead or the Moorhead Police Department in conducting the compliance checks.

If City Council agrees to these modifications, we would send out a newsletter notifying all establishments of the changes.

FINANCIAL CONSIDERATIONS: There is no cost to the City.

VOTING REQUIREMENTS: Majority of Quorum

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Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Michael J. Redlinger".

Michael J. Redlinger
City Manager

Department: Administration
Prepared by: Michelle French, City Clerk

Attachments: Draft Ordinance

ORDINANCE NO. 2014-___

AN ORDINANCE TO AMEND AND REENACT SECTION 2-3-21 OF THE MOORHEAD CITY CODE RELATING TO LIQUOR CONTROL PENALTY FOR VIOLATIONS AND TO CREATE AND ENACT SECTION 2-3-22 OF THE MOORHEAD CITY CODE RELATING TO COMPLIANCE CHECKS.

BE IT ORDAINED by the City Council of the City of Moorhead as follows:

SECTION 1. Section 2-3-21 of the Moorhead City Code is hereby amended and reenacted to read as follows:

2-3-21: PENALTY FOR VIOLATIONS:

Any person or entity violating any of the provisions of this chapter shall, upon conviction, be penalized in accordance with the provisions of section 1-4-2 of this code. In addition, any person or entity violating any of the provisions set out in subsection A of this section will also be subject to the automatic sanctions as set forth in subsection A of this section. The city manager, upon receipt of a report of such violation, shall send out written notice of the violation to the liquor license holder and the sanctions to be automatically imposed in accordance with the schedule in subsection A of this section. Alternatively, if the city manager determines that the alleged violation(s) are so serious that a harsher sanction than the sanctions set out below may be appropriate, the city manager may refer the matter to the city council for action pursuant the provisions and procedures of section 2-1-10 of this title. In such case, the city council may impose any sanction they deem appropriate, whether or not it is more severe than the automatic sanctions set out below. The liquor license holder, within ten (10) days of receipt of the notice, may file a written request with the city clerk requesting a hearing before the city council to contest the sanction. If a hearing is requested, the sanction will be suspended until after the hearing before the city council. For a fourth, or subsequent violation, of a violation set forth in subsection A of this section within a twenty four (24) month period from the first violation, or for a violation of this chapter not set forth in subsection A of this section, the licensed liquor holder may be subject to an administrative fine not to exceed two thousand dollars (\$2,000.00) and suspension or revocation of the liquor license after action of the city council in accordance with the provisions and procedures of section 2-1-10 of this title.

A. Automatic Sanctions For Specified Liquor Violations: The following schedule is adopted for the imposition of automatic sanctions for the specified violations with no city council action necessary.

Each occurrence shall be considered a separate/individual violation for which the application of the following sanctions shall be imposed. Multiple violations that occur simultaneously shall be construed as one offense, although may be as a basis for the city manager to recommend council action rather than an automatic sanction. For example, serving five (5) under aged persons at one table would be one offense for purposes of automatic sanctions. For sanctions 1 through 7 below, a violation of any one of the seven (7) would be treated as a second violation if there were a prior violation of any of the seven (7) offenses within a twenty four (24) month period, likewise for determining third

and fourth offenses. In regard to violation of codes in sanction 7, the city manager may determine not to impose an automatic sanction nor to refer the matter for council action, if the violation is not life safety related and is remedied in a timely manner by the licensee upon notice of the violation.

Type Of Violation	First Violation	Second Violation (Within 24 Months Of Any First Violation)	Third Violation (Within 24 Months Of Any First Violation)
1. Sell, serve or furnish alcoholic beverages to an underage person	\$250.00 administrative fine <u>Written Warning</u>	1 day suspension and \$500.00 administrative fine	3 day suspension and \$1,000.00 administrative fine
2. Sell, serve or furnish alcoholic beverages to an obviously intoxicated person	\$250.00 administrative fine	1 day suspension and \$500.00 administrative fine	3 day suspension and \$1,000.00 administrative fine
3. Sell, serve or furnish alcoholic beverages after hours	\$250.00 administrative fine	1 day suspension and \$500.00 administrative fine	3 day suspension and \$1,000.00 administrative fine
4. Consumption of alcoholic beverages after permitted hours (in accordance to subsection 2-3-13B of this chapter)	\$250.00 administrative fine	1 day suspension and \$500.00 administrative fine	3 day suspension and \$1,000.00 administrative fine
5. Illegal gambling on premises	\$250.00 administrative fine	1 day suspension and \$500.00 administrative fine	3 day suspension and \$1,000.00 administrative fine
6. Allow person to leave premises with an alcoholic beverage	\$250.00 administrative fine	1 day suspension and \$500.00 administrative fine	3 day suspension and \$1,000.00 administrative fine
7. Violations of city code/state law pertaining to fire, building or health codes	\$250.00 administrative fine	1 day suspension and \$500.00 administrative fine	3 day suspension and \$1,000.00 administrative fine
8. Failure to pay an administrative fine within 30 days of its imposition	1 day suspension	3 day suspension	5 day suspension

Type Of Violation	First Violation	Second Violation
9. Commission of a felony related to the licensed activity	10 - 25 consecutive days of suspension	Revocation
10. Sell, serve or furnish alcoholic beverages while license is under suspension	Revocation	n/a

SECTION 2. Section 2-3-22 of the Moorhead City Code is hereby created and enacted to read as follows:

2-3-22: COMPLIANCE CHECKS:

Any person holding a license to sell intoxicating liquor or 3.2 percent malt liquor shall be subject to a minimum of four (4) compliance checks per year to determine if alcohol is being sold or disbursed to minors. Minors employed by the City or its police department in connection with compliance checks shall not be banned from entering any license holder's premise. If it is determined that any person holding a license to sell intoxicating liquor or 3.2 percent malt liquor has banned a minor employed by the City or its police department in connection with the compliance checks, the license shall be suspended for a period of not less than fourteen (14) days.

SECTION 3. This ordinance shall take effect upon publication in accordance with the Moorhead City Charter.

PASSED by the City Council of the City of Moorhead this ____ day of _____, 2014.

APPROVED BY:

DELRAE WILLIAMS, Mayor

ATTEST:

MICHELLE FRENCH, City Clerk

First Consideration:

Second Consideration:

Date of Publication:

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Mayor and Council Communication

May 19, 2014

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SUBJECT: 2015 Operating & Capital Budget Planning Session

RECOMMENDATION: The Mayor and City Council are asked to receive a presentation from the City Manager and Finance Director on planning parameters for the *Proposed* 2015 Operating & Capital Budget for the City of Moorhead. No action will be requested of the Mayor and City Council at this meeting.

BACKGROUND / KEY POINTS: The City Manager and Finance Director will provide a presentation on the goals, objectives, and planning parameters for the *Proposed* 2015 Operating & Capital Budget. The presentation will provide highlights, opportunities, changes, and challenges for 2015 to be considered in the development of the 2015 Operating & Capital Budget and 5-year revenue forecast.

A presentation and handout materials will be provided at the meeting. Mayor and City Council comments and strategic direction will be incorporated into the development of the *Proposed* 2015 Operating & Capital Budget, with submission of the document currently scheduled for mid-to late-July.

It is the practice of the City Manager and Finance staff to conduct early, strategic conversations with the Mayor and City Council on budget planning for the upcoming fiscal year in the spring/summer months preceding budget adoption.

FINANCIAL CONSIDERATIONS: Not Applicable

VOTING REQUIREMENTS: Not Applicable

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Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Michael J. Redlinger".

Michael J. Redlinger
City Manager

Department: Finance
Prepared by: Wanda Wagner, Finance Director
Attachments: N/A