

**ORDINANCE NO. 497****AN ORDINANCE RELATING TO ALCOHOLIC LIQUOR; PROVIDING A PENALTY, AND REPEALING ORDINANCE NO. 237.**

**WHEREAS, the city of Madras has engaged the League of Oregon Cities to update and improve the ordinances of the city of Madras, and pursuant to that review recommended repealing Ordinance No. 237, and establishing a new [alcoholic liquor] ordinance in accordance therewith.**

**NOW, THEREFORE, the city of Madras ordains as follows:**

**Section 1. Definitions.**

1) For the purpose of this ordinance, the following words and phrases shall mean:

- (a) Alcoholic Liquor. Any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by human beings.
- (b) Commission. The Oregon Liquor Control Commission.
- (c) Distilled Spirits or Distilled Liquor. Any alcoholic beverage containing more than fourteen percent (14%) of alcohol by volume, including sweet wines and all spirituous liquor.
- (d) Licensee. A person who has an alcoholic liquor license from the Commission, authorizing such person to sell or dispense alcoholic liquor.
- (e) License Premises. The room or enclosure at the address within the corporate limits of the city for which a license has been issued by the Commission for the serving, mixing, handling or selling of alcoholic liquor.
- (f) Liquor Control Act. The state law so designated by ORS 471.027 as now or hereafter amended and supplemented, and including the Oregon Distilled Liquor Control Act as defined by ORS 472.020 as now or hereafter amended and supplemented.
- (g) Minor. Any person under the age of twenty-one (21) years.
- (h) Other Responsible Relative.
  - 1. An adult who is the spouse of a minor.
  - 2. An adult, related to the minor, who has taken over the parental duties of governing the minor's actions.
  - 3. A duly appointed, qualified, and acting guardian who has taken over the parental duties of governing the minor's actions.

- (i) Person. An individual, partnership, corporation, association, or club.
- (j) Sell. To solicit or receive an order; to keep or expose for sale; to deliver for value in any way other than purely gratuitously; to peddle; to keep with intent to sell; to traffic in; or for any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, to procure or allow to be procured for any other person.

2) As used in this ordinance, the singular includes the plural and the masculine includes the feminine.

**Section 2. Providing Liquor to Certain Persons Prohibited.** No person shall sell, give, furnish, serve or otherwise make available any alcoholic liquor to:

- 1) Any minor except as provided in Section 5 of this ordinance.
- 2) Any person visibly intoxicated.

**Section 3. Persons Not Allowed to Drink Alcoholic Liquor on Licensed Premises.**

- 1) No person shall allow or permit any person, who is visibly intoxicated, to drink or consume any alcoholic liquor upon any licensed premises.
- 2) No bartender shall drink or consume any alcoholic liquor, or be under the influence of alcoholic liquor while on duty in a licensed premises.

**Section 4. Purchase or Possession of Liquor by Minor.**

- 1) Except as provided in Section 5 of this ordinance, no minor shall attempt to purchase or acquire, or have in his possession, any alcoholic liquor.
- 2) For the purposes of this section, possession of alcoholic liquor includes the acceptance or consumption of a bottle of such liquor, or any portion thereof, or a drink of such liquor. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

**Section 5. Lawful Consumption of Liquor by Minor.** Nothing contained in this ordinance shall be construed as prohibiting a parent or other responsible relative of a minor from giving such minor alcoholic liquor and permitting him to consume the same within the home of such parent or other responsible relative of the minor, or at such other private place not in view of the public where the parent or other responsible relative is present.

**Section 6. Loitering on Licensed Premises by Minors.** Except as provided in Section 8 of this ordinance, no minor, whether or not he is accompanied by a parent or other responsible relative, shall enter, loiter or remain on any licensed

premises, or any portion thereof, which has been posted by the Commission to prohibit the use thereof by minors.

**Section 7. Minors Not Permitted to Drink or Loiter on Licensed Premises.**

- 1) No licensee or his employee or agent shall permit any minor to:
  - (a) Consume any alcoholic liquor upon any licensed premises, whether or not such alcoholic liquor is given to the minor by a parent or other responsible relative.
  - (b) Loiter on such licensed premises which have been posted by the Commission to prohibit the use thereof by minors, except as provided in Section 8 of this ordinance.
  - (c) Remain upon such premises or any portion thereof, except as provided in Section 8 of this ordinance.
- 2) The fact that a parent or other responsible relative has accompanied a minor upon any licensed premises shall not constitute a defense to any charge brought for violation of this section, except as provided in Section 8 of this ordinance.

**Section 8. Permitting Minors on Licensed Premises.**

- 1) The provisions of Sections 6 and 7 of this ordinance shall not be construed to prohibit:
  - (a) Any minor from entering any licensed premises, or portion thereof, for the transaction of any business pursuant to his duties in the regular course of his lawful employment.
  - (b) A minor spouse from entering and remaining on licensed premises, or any portion thereof, when he is in the immediate company of his spouse who is twenty-one (21) years of age or older.
- 2) This section shall not be construed to authorize a minor spouse to consume alcoholic liquor on any licensed premises.

**Section 9. Delivering or Selling Liquor by Minor.**

- 1) Except as provided in Subsection (3), no minor, either for himself or as agent or employee of another, shall sell, offer for sale, or deliver any alcoholic liquor.
- 2) Except as provided in Subsection (3), no person shall employ, hire or engage any minor to sell, offer for sale or deliver any alcoholic liquor.
- 3) Any employee eighteen (18) years of age or older, or a person who holds any package store license from the Commission, may sell any alcoholic liquor authorized by such license on the licensed premises.

**Section 10. Sales by Unlicensed Persons Prohibited.** No person shall sell alcoholic liquor unless he has a license from the Commission to sell alcoholic liquor. Sales by a licensee or his employee shall be only such sales as are authorized by the license issued for the premises.

**Section 11. Intoxicated Persons on Licensed Premises.** No licensee or his employee or agent shall permit a visibly intoxicated person to enter upon the licensed premises which the licensee controls.

**Section 12. Bringing Alcoholic Liquor Upon Licensed Premises.** No licensee of the Commission, nor any agent or employee of such licensee, shall keep or knowingly permit to be kept, brought or consumed upon the licensed premises any alcoholic liquor not allowed to be sold or served upon said premises.

**Section 13. Disposal of Liquor Containers.**

1) No licensee or his employee or agent shall permit any empty or discarded containers of alcoholic liquor to be in the public view on the exterior of his licensed premises or in parking areas maintained in connection with such premises.

2) No person shall discard, throw away, or dispose of any container of alcoholic liquor, whether broken or not, upon any street, alley, public grounds or public place.

**Section 14. Lawful Hours of Sale.**

1) No package store licensee shall sell, dispense, deliver or permit the removal of any alcoholic liquor from the licensed premises between the hours of 1:00 a.m. and 7:00 a.m.

2) No retail malt beverage restaurant or dispenser licensee shall sell, dispense, deliver or allow the consumption of any alcoholic liquor on any licensed premises or permit the removal of any alcoholic liquor from any licensed premises between the hours of 2:30 a.m. and 7:00 a.m.

**Section 15. Defense of Written Age Statement.** If a licensee or his employee or his agent is prosecuted in the municipal court under this ordinance for selling alcoholic liquor to a minor, or permitting a minor to consume alcoholic liquor or to enter or loiter upon the licensed premises, the licensee or his employee or agent may offer in his defense any written statement made by or for such minor prior to the violation, which statement was made and taken pursuant to the laws of Oregon and the rules and regulations of the Commission; and such statement shall constitute a prima facie defense.

**Section 16. Liquor in Public Dance Hall.** No person shall possess, keep, sell, give away or otherwise dispose of or consume alcoholic liquor in any public dance hall, or in any room or building used for public dancing, that is not licensed under the Liquor Control Act.

**Section 17. Nuisances.** Any room, house, building, boat, structure or place of any kind where alcoholic liquor is sold, manufactured, bartered or given away in violation of the law; or where persons are permitted to resort for the purpose of drinking alcoholic liquors in violation of the law; or any place where alcoholic liquors are kept for sale, barter, or gift in violation of the law; and all alcoholic liquor, whether purchased from or through the Commission or purchased or acquired from any source; and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, and all furniture, furnishings and equipment; and all facilities for the mixing, storing, serving, or drinking of alcoholic liquor kept and used in such place, hereby are declared to be a common nuisance; and any person who maintains or assists in maintaining such common nuisance is guilty of a violation of this ordinance.

**Section 18. Possession of Open Container.** No person shall have in possession on his person any bottle, can or other receptacle containing alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed, while in or upon any of the following places:

- 1) Public street, sidewalk or parking lot.
- 2) Schools and school grounds.
- 3) Private parking areas that are open to public travel.

**Section 19. Drinking in Public Places.** No person shall drink or consume alcoholic liquor in or upon a street, alley, mall, parking lot or structure, motor vehicle, public grounds or other public place unless such place has been licensed for that purpose by the Oregon Liquor Control Commission. Provided, however, consumption of alcoholic liquor in the park shall be permitted when a permit therefor has been received from the council.

**Section 20. Responsibility of License for Employees.** Each licensee is responsible and liable to prosecution for any violation of any provisions of this ordinance pertaining to his licensed premises and for any act or omission of any servant, agent or employee of such licensee in violation of any provision of this ordinance.

**Section 21. Penalty.** Violation of any provision of this ordinance is punishable by a fine not to exceed \$500.

**Section 22. Liquor Commission to be Notified.** When a conviction is obtained against any licensee of the commission, or a conviction is obtained against any person where the violation was committed on a licensed premises, the municipal court shall

notify the Commission of such conviction.

**Section 23. Repeal.** Ordinance No. 237 is hereby repealed.

Passed by the council and approved by the mayor September 24, 1991.