

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE 2023-12

TEMPORARY NON-CODE ORDINANCE ALLOWING EXTENDED HOURS FOR THE SALE OF ALCOHOL BY THE DRINK ON DECEMBER 31, 2023 AND JANUARY 1, 2024

BE IT ENACTED BY THE UNALASKA CITY COUNCIL, as follows:

Section 1: Classification. This is a temporary non-code ordinance.

Section 2: Amendment of Section 9.20.020(B). Section 9.20.020(B) of the Unalaska Code of Ordinances is hereby temporarily amended as follows: [New language is underlined; and deleted language is ~~overstruck~~.]

§ 9.20.020 CLOSING HOURS FOR LICENSED PREMISES.

...

(B) Restaurants and bars with an existing license to dispense alcoholic beverages by the drink may lawfully do so on Sunday between the hours of 12:00 p.m. and ~~10:00 p.m.~~ 3:00 a.m. on Monday, January 1, 2024.

...

Section 3: Effective Date. This temporary non-code ordinance shall take effect December 31, 2023, and shall remain in effect through January 1, 2024. During the effective period, this ordinance supersedes UCO 9.20.020(B).

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on December 19, 2023.

Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:

Estkarlen P. Magdaong
City Clerk

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Marjie Veeder, Assistant City Manager
Through: William Homka, City Manager
Date: November 28, 2023
Re: Ordinance 2023-12: Temporary Non-Code Ordinance allowing extended hours for the sale of alcohol by the drink on December 31, 2023 and January 1, 2024

SUMMARY: In response to a directive to the City Manager issued on October 24, 2023, Ordinance 2023-12 is presented for consideration to provide a temporary extension of lawful hours to sell alcohol by the drink on New Year's Eve 2023. This temporary ordinance allows bars and restaurants to remain open and sell alcohol from noon on December 31, 2023, until 3:00 a.m. on January 1, 2024.

PREVIOUS COUNCIL ACTION: Council discussed this matter at their meeting on October 24, 2023, and issued a directive to the City Manager to prepare a non-code ordinance with a one day exception to code for New Year's Eve 2023.

Council has previously temporarily extended hours for alcohol sales on holidays:

- 1995 for New Year's Eve
- 1996 for Christmas Eve
- 1997 for Independence Day
- 2000 for New Year's Eve

This section of code was most recently amended in 2015 with Ordinance 2015-25. This amendment allowed bars that do not hold a "restaurant designation" liquor license to open at 8 a.m. on Sundays to serve food and non-alcoholic beverages.

Before 2015, this section of code was last amended in 2003 with Ordinance 2003-01. This amendment set the present operating hours of licensed premises; and also allowed liquor sales on Sundays from noon to 10 p.m.

BACKGROUND: New Year's Eve 2023 is Sunday, December 31, 2023. Unalaska's Code of Ordinances at § 9.20.020(B) dictates that restaurants and bars licensed to dispense alcoholic beverages by the drink may lawfully do so on Sunday between noon and 10 p.m. Council Member Looby, who owns the Norwegian Rat Saloon, inquired whether it was possible to have a one-day exception to code to allow licensed premises to remain open past 10 p.m. on New Year's Eve.

DISCUSSION: Council had the opportunity to fully discuss this issue at their October 24 meeting and a copy of the October 24 staff memo is attached for reference.

ALTERNATIVES: Council may choose to adopt the ordinance as presented; amend it; or take no action.

FINANCIAL IMPLICATIONS:

1. The City will incur attorney fees in relation to the non-code Ordinance.
2. If the exception is approved, the Police Department must provide additional police coverage on the night in question, most likely incurring overtime pay for our short-staffed Police Department.
3. If the exception is granted and hours of alcohol sales are extended, establishments selling alcohol by the drink will likely see an increase in revenue.
4. City sales tax revenue on liquor sales will likely increase if the exception is granted, but this is not considered significant.

LEGAL: The City's attorney has reviewed and approved this ordinance.

STAFF RECOMMENDATION: As this is in response to a directive from Council, staff recommends adoption.

PROPOSED MOTION: First reading: I move to introduce Ordinance 2023-12 and schedule it for public hearing and second reading on December 19, 2023.

Second reading: I move to adopt Ordinance 2023-12.

CITY MANAGER COMMENTS: I support the staff recommendation.

MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Marjie Veeder, Assistant City Manager
Through: William Homka, City Manager
Date: October 24, 2023
Re: New Year's Eve exception to operating hours for bars and restaurants serving alcohol by the drink

SUMMARY: New Year's Eve 2023 is Sunday, December 31, 2023. Unalaska's Code of Ordinances at § 9.20.020(B) dictates that restaurants and bars licensed to dispense alcoholic beverages by the drink may lawfully do so on Sunday between noon and 10 p.m. Council Member Looby, who owns the Norwegian Rat Saloon, inquired whether it was possible to have a one-day exception to code to allow licensed premises to remain open past 10 p.m. on New Year's Eve, presumably because it is common for celebrations of New Year's Eve continue well past 10 p.m. This memo is informational to aid in Council's discussion and decision whether to take action on this request.

PREVIOUS COUNCIL ACTION & BACKGROUND: Unalaska's Code of Ordinances presently states:

§ 9.20.020 CLOSING HOURS FOR LICENSED PREMISES.

(A) It shall be lawful to dispense alcoholic beverages in the city by a premises licensed under authority of the State of Alaska Alcoholic Beverage Control Board as follows:

- (1) Monday 8:00 a.m. through Tuesday 2:00 a.m.
- (2) Tuesday 8:00 a.m. through Wednesday 2:00 a.m.
- (3) Wednesday 8:00 a.m. through Thursday 2:00 a.m.
- (4) Thursday 8:00 a.m. through Friday 2:00 a.m.
- (5) Friday 8:00 a.m. through Saturday 3:00 a.m.
- (6) Saturday 8:00 a.m. through Sunday 3:00 a.m.

(B) Restaurants and bars with an existing license to dispense alcoholic beverages by the drink may lawfully do so on Sunday between the hours of 12:00 p.m. and 10:00 p.m.

(C) It shall be unlawful for any premises licensed under authority of the State of Alaska Alcoholic Beverage Control Board, licensee, agent or employee to dispense alcoholic beverages within the city during hours not authorized by this chapter.

§ 9.20.025 OPERATING HOURS FOR LICENSED PREMISES.

(A) Except as provided in this section, it shall be unlawful for a licensed premises to allow persons or customers who are not owners or employees to remain on the premises during hours when alcoholic beverages cannot be lawfully dispensed.

(B) Restaurants and bars with an existing license to dispense alcoholic beverages by the drink may lawfully allow persons or customers on premises for food and non-alcoholic beverage service on Sundays from 8:00 a.m. until such hour as the licensed premises is authorized to dispense alcoholic beverages by § 9.20.020 unless the establishment is otherwise required to be closed by this chapter or any other law.

This section of code was most recently amended in 2015 with Ordinance 2015-25, adopted on December 22, 2015. This amendment allowed bars that do not hold a “restaurant designation” liquor license to open at 8 a.m. on Sundays to serve food and non-alcoholic beverages.

Before 2015, this section of code was last amended in 2003 with Ordinance 2003-01 adopted on February 25, 2003. This amendment set the present operating hours of licensed premises; and also allowed liquor sales on Sundays from noon to 10 p.m., which were previously prohibited on Sundays, except “in good faith as an accompaniment to a meal.”

DISCUSSION: There are several issues that Council should consider in deciding whether to take action on this request.

1. **Value to the Community:** Would an exception to extend the hours for bars and restaurants to serve alcohol by the drink benefit the community as a whole, not just bar owners and their customers?
 - a. As noted above, New Year’s Eve celebrations typically continue well past 10 p.m., with a countdown to midnight ushering in the new calendar year.
 - b. Does the economic benefit to bar owners and the perceived benefit for customers wishing to purchase alcohol by the drink override any potential negative impacts and consequences of consuming alcoholic beverages?
2. **Conflict of Interest:** Administration takes no position on the potential or perceived conflict of interest, but in considering all angles, we must point out the conflict of interest ordinance contained in code due to Council Member Looby making the request and her ownership of a licensed premise. UCO 2.04.020 reads:

§ 2.04.040 CONFLICT OF INTEREST.

(A) A member of the City Council shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter.

(B) The Mayor shall rule on a request by a member of the City Council to be excused from a vote.

(C) The decision of the Mayor on a request by a member of the City Council to be excused from a vote may be overridden by the majority vote of the City Council.

Additional details of the City's conflict of interest process, which should be considered, are at UCO 2.88.030 and 2.88.040.

3. **Applicable to all Licensed Premises, but not package stores:** If Council chooses to provide an exception to the operating hours, it will apply to all bars and restaurants dispensing alcohol by the drink, but will not affect package stores. The businesses licensed by the State of Alaska to dispense alcohol by the drink in Unalaska are:
 - a. Harbor View Bar & Grill
 - b. Grand Aleutian Hotel
 - c. Grand Aleutian Hotel – Chart Room
 - d. Airport Restaurant & Lounge
 - e. Harbor Sushi
 - f. Norwegian Rat Saloon
 - g. Amelia's Restaurant
 - h. San Diego Tacos to Go (not presently open and operating)
4. **Setting a Precedent:** If Council provides a "one-time" exception to the operating hours of licensed premises due to a holiday falling on a Sunday, Council may be asked to consider additional requests for exceptions in the future.
5. **Department of Public Safety:** It is anticipated that additional police officers will need to be scheduled, most likely incurring overtime, if a one-time exception to the operating hours of licensed premises is made.
6. **Fire/EMS Department:** The Fire Chief doesn't believe this potential change will impact the department's ability to respond to 911 calls.
7. **City Fireworks Display:** The City of Unalaska puts on a New Year's Eve fireworks display, which is scheduled to begin on Sunday, December 31, 2023, at 11:59 p.m.
 - a. Police and Fire personnel must be on hand for the fireworks display. Having bars open past 10 p.m. further increases the need for extra personnel on this date. Additional overtime for a short-staffed police department is almost a certainty.
 - b. It is conceivable that allowing bars to remain open past 10 p.m. will reduce viewership of the fireworks display.
8. **Liability to the City:** Liability to the City for a one-time exception to closing hours for bars and restaurants is not a huge concern, but in the interest of a robust conversation on why Council might consider such an action, it is worth mentioning. For example, if someone got hurt driving home from the bar, the city might be criticized for expanding the hours, but the risk of actual liability to the city isn't significant. Council could consider requiring bar owners to mitigate risk, such as hiring taxi cabs for patrons, but this would be difficult to administer and to enforce.

ALTERNATIVES: Council may choose:

1. To take no action.

2. To direct the City Manager to prepare a non-code ordinance with a one-day exception to code for New Year's Eve 2023, as requested by Council Member Looby.
3. Council may also consider a permanent change to code providing extended operating hours for licensed premises when a holiday falls on a Sunday.

FINANCIAL IMPLICATIONS:

1. The City will incur attorney fees in preparing a non-code Ordinance.
2. If the exception is approved, the Police Department must provide additional police coverage on the night in question, most likely incurring overtime pay for our short-staffed Police Department.
3. If the exception is granted and hours of alcohol sales are extended, establishments selling alcohol by the drink will likely see an increase in revenue.
4. City sales tax revenue on liquor sales will likely increase if the exception is granted, but this is not considered significant.

LEGAL: Staff discussed this issue with the City Attorney, and at the attorney's suggestion, topics such as the value to the community as a whole, conflict of interest, and liability are discussed above. The City Attorney indicated a non-code ordinance would be appropriate if Council decides to provide a one-time exception to operating hours for licensed premises.

STAFF RECOMMENDATION: This is a City Council decision, but with heavy consideration for the staff of our Police and Fire Departments, staff recommends taking no action.

PROPOSED MOTION: Not applicable unless Council wishes to issue a directive to the City Manager.

CITY MANAGER COMMENTS: I support staff's recommendation.