

**Bottineau Municipal Code Revised**

**Chapter Eight**

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## Chapter Eight

### Business Regulations and Licenses

#### ARTICLE 1 - General Provisions

##### 8.0101 Licenses - Not Transferable

No license or permit shall be assignable or transferable except by permission of the governing body. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. Whoever shall violate any of the provisions of this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

##### 8.0102 Licenses – Revocation

All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the City's governing body. Any person who shall violate any provision of this article relating to his license may be proceeded against for any fine or penalty imposed thereby, and his license may be revoked or forfeited in the discretion of the governing body or the court before which any action may be brought for the recovery of any fine or penalty.

Where not otherwise provided, any license may be revoked by the governing board at any time for cause. "Cause" shall include, but not be limited to, the following:

1. Violation of the laws of the State of North Dakota or any of the ordinances of the City dealing with or pertaining to the business or trade licensed.
2. The willful making of any false statement as to a material fact in the application for license.
3. Permitting any disorderly or immoral practices upon the premises where the licensee is licensed to carry on the business or trade.
4. The death of a licensee.
5. When the licensee ceases business at the location licensed.
6. When the licensee ceases to be a legal and bona fide citizen of the State of North Dakota.

When the license is terminated or revoked for cause, the licensee or those claiming under the licensee, shall not be entitled to any return of any portion of the license fee previously paid to the City.

##### 8.0103 Licenses - Posting of

All licenses and permits issued by the City for the operation of any business establishment, trade or any part of the operation thereof, shall be posted in a conspicuous place in the main business establishment.

##### 8.0104 Licenses - Enforcement

All City officials having duties to perform with reference to licensed premises, including all police officers, shall have authority to enter the licensed premises with or without a search warrant to check for violations of ordinances or state laws by the licensee.

## ARTICLE 2 - Transient Merchants

### 8.0201 Definitions

For the purpose of this article:

1. "Transient merchant" includes any person, individual, co-partnership or corporation, either as principal or agent, who engages in, does or transacts any temporary or transient business in the City limits, either in one locality or in traveling from place to place selling goods, wares and merchandise who does not intend to become and does not become a permanent merchant of the City and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, structure, lots, tract, railroad car or motor vehicles for the exhibition and sale of such goods, wares and merchandise. The person, individual, co-partnership or corporation so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer.

2. "Merchandise" shall not include any livestock or agricultural product.

### 8.0202 License Required

It shall be unlawful to do business in the City as a transient merchant without having first secured a license therefore as is herein provided. For the purpose of this article, any merchant engaging or intending to engage in business as a merchant in the City for a period of time not exceeding 100 days shall be considered as a transient merchant, provided that peddlers shall not be considered transient merchants.

### 8.0203 License Fee

The license fee to be required of all transient merchants for the transaction of such business within the City is hereby fixed at the sum of \$25.00 per day for each and every day during which any such transient merchants shall transact business in the City.

### 8.0204 License - Application for

The application for a license as a transient merchant shall be made in writing to the City Auditor. The City Auditor shall issue such license to an applicant for a period of not to exceed one year from the date of its issuance. Making sales or offering to do so without such license, as provided by this chapter, shall be unlawful.

### 8.0205 Transfer

No license issued to a transient merchant in the City shall be transferred.

### 8.0206 Enforcement by Police

It shall be the duty of the police officers of the City to examine all places of business and persons in their respective territories subject to the provisions of this article, to determine if this article has been complied with and to enforce the provisions of this article against any person found to be violating the same. The City Auditor shall deposit with the police a record of each license number, together with the location within the City of the business licensed thereunder to assist and promote such enforcement.

### 8.0207 Revocation

1. Any license issued pursuant to this article may be revoked by there governing body of the City, after notice and hearing for any of the following causes:

- A. Any fraud, misrepresentation or false statement contained in the application for license;
- B. Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
- C. Any violation of this article;
- D. Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
- E. Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

2. Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.

#### 8.0211 Expiration of License

All licenses issued under the provisions of this article shall expire at the expiration of the period for which application has been made and prepaid, to be renewable by the City Auditor upon application and payment therefore.

### ARTICLE 3 – Junk Dealers

#### 8.0301 Definitions

"Junk dealer" when used in this chapter means any person maintaining a store, shop or place of business wherein purchases are made of used metals, rags, bottles, bones, dead animals or scrap of any kind or material of any description for the purpose of resale, either at retail or otherwise. "Junk dealer" shall also mean any person who solicits the purchase, sale, resale, or purchases or sells for resale, other than from or to a licensed junk dealer in the City, any used metals, rags, bottles, bones, dead animals, scrap or material of any description. "Junk dealer" shall also mean any person who operates or maintains a store, shop or place of business where farm or other machinery, equipment or automobiles are purchased for the purpose of wrecking, dismantling and sale as scrap, parts or otherwise. This section shall not be construed to mean or include any person who, as an incident to the business of selling merchandise in a new condition, takes in trade used articles merchandise for the purpose of resale as such.

#### 8.0302 License Required

Every person desiring to conduct or carry on the business of junk dealer in the City shall first apply to the City Council for a license to do so.

#### 8.0303 License - Application

The license required by this chapter shall be applied for on forms to be provided by the City Auditor and the application for such license shall be accompanied by a fee of \$25.00 twenty-five dollars. Upon approval by the City Council, the City Auditor shall issue a license for the conduct of such business. Such license shall be on a calendar year basis, shall expire December 31st of each year and shall be renewed not later than January 2nd immediately following expiration.

8.0304 License - Revocation

Every license issued under the provisions of this chapter may be revoked by the City Council at any time upon the conviction of the holder thereof of any violation of this code or other ordinances of the City or any law of the state or for any other cause which, to the City Council, may be deemed sufficient.

8.0305 License - Failure

The keeping, storing, selling or displaying of any junk, as defined in Section 8.0301, at any place within the City without first obtaining a license therefore is hereby declared to be a nuisance.

8.0306 Condition of premises generally

The person obtaining a license required by this chapter shall keep the premises for which the same is issued in a neat and orderly fashion and free of any junk or property which might create obnoxious odors or disease. Such premises shall at all times be kept clean. Water and sewer shall be installed in any premises for which a license is granted, if water and sewer is available to the premises.

8.0307 Fencing of Junk Yard Required

No material shall be piled or stored in the area comprising the premises upon which a license is issued for a junk yard unless a tight board fence not less than six feet high and securely built shall be erected so as to completely enclosed the yard or place where such piling or storing is to be done. The gates or places of access to such place where such material is to be piled or stored shall likewise be constructed of board and shall be of equal height as the fence herein required. Such gates or places of access, shall not be constructed closer than one foot from the property line, shall at all times be kept and maintained in a good state of repair and no signs or advertising shall be painted or placed thereon or attached thereto; provided, however, that where any railway spur is located within the confines of such junk yard and where such spur is used for the transportation in and out of such yard, any part of the fence herein provided for which is within fifty feet of such spur track may be built of tightly woven wire fence, of the same height as the board fence required herein and of such texture that the operation of any railway equipment within such fence may be observed from the outside.

ARTICLE 4 – City Lodging and Restaurant Tax

8.0401 Lodging Tax

Pursuant to Section 40-57.3-01 of the North Dakota Century Code there is hereby levied a City tax of two (2) percent upon the gross receipts of retailers on the leasing or renting of hotel, motel or tourist court accommodations within the City of Bottineau, of less than thirty consecutive calendar days, or one month.

8.0402 Occupancy Tax Fund

There is hereby established an "Occupancy Tax Fund" into which shall be deposited all proceeds received by the City from the levy and collection of the City Lodging Tax. Disbursements from said fund shall be used to promote, encourage and attract visitors to come to the City and use the travel and tourism facilities within the City.

8.0403 Restaurant

For the limited purposes set forth in Section 5-02-05.1(1) of the North Dakota Century Code, a "restaurant" shall be defined to include any licensed premises that dispenses on-sale alcoholic beverages, that sells any edible foods or products for human consumption.

8.0404 City, Lodging and Restaurant Tax Established

Pursuant to Section 40-57.3-01.1 of the North Dakota Century Code there is hereby levied a tax of 1% upon the gross receipts of retailers on the leasing or renting of hotel, motel or tourist court accommodations within the City, for periods of less than thirty (30) consecutive calendar days, or one (1) month, and upon the gross receipts of restaurants for any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, which are subject to State Sales taxes.

8.0405 Visitor Promotion Capital Construction Fund Established

There is hereby established a Visitor Promotion Capital Construction Fund which shall be deposited all proceeds received by the City from the levy and collection of the above Lodging and Restaurant Tax. Said money shall be used as provided by Section 40-57.3-02 of the North Dakota Century Code, and any amendments thereto.

ARTICLE 5 - Sales and Use Tax (1993)

8.0501 Creation

There is hereby created Chapter 8, Article 5 of the Bottineau Municipal Ordinances, putting into effect a sales and use tax in the City, as follows:

8.0502 Definitions

All terms defined in Chapter 57-39.2 NDCC, and Chapter 57-40.2, including all future amendments, are adopted by reference and incorporated herein.

8.0503 Sales Tax Imposed

Except as otherwise provided in this chapter, a tax of one percent is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, as provided in this section, within the corporate limits of the City of Bottineau, North Dakota, of the following Consumers or users:

1. Tangible personal property, consisting of goods, wares or merchandise.
2. The furnishing or service of gas, communication services, or steam other than steam used for processing agricultural products.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
4. Magazines and other periodicals.
5. The leasing or renting a hotel and motel or tourist court accommodations.
6. The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales or use tax under this chapter.
7. Sales of Alcoholic beverages and tobacco products as defined in Section 57-39.2-03.2 NDCC.

8. Furnishing and installment or attachment to real property in this State by a contractor or a Subcontractor, who is a retailer of drapes, hardware for hanging drapes, or carpet for floor covering.

8.0504 Use Tax Imposed

Except as otherwise provided in this chapter, an excise tax of one percent is imposed on the storage and use or consumption in the City of Bottineau on:

1. The purchase price of tangible personal property purchased at retail for storage and use or consumption within the City.

2. The fair market value of tangible personal property, which was not originally purchased for storage and use or consumption in the City, at the time which it is brought into this City.

3. Alcoholic beverages and tobacco products, which are stored and used or consumed in this City, as provided in Section 57-39.2-03.2 NDCC.

4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill contract, as defined in Section 57-40.2-03.2 NDCC. This tax applies only to bids submitted on or after the effective date of this chapter.

8.0505 Exemption and Refunds

1. There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it the following:

A. All sales, storage, use or consumption of tangible personal property, which are exempt from imposition and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provisions of this Chapter.

B. Natural gas sales.

C. Farm machines.

D. Farm machine parts.

E. Farm irrigation equipment.

F. Sales to contractors that are exempt, pursuant to Subsection 15 of Section 57-39.2-04 NDCC, shall be exempt from any City sales tax, but contractors shall be subject to the City use tax on those items used within the City that would be taxed, pursuant to Section 57-40.2-03.3 NDCC, on which the City sales tax has not previously been paid.

2. Refunds allowed by the State of North Dakota for sales and use taxes paid are also allowed by this Ordinance under the same terms and conditions provided for in the North Dakota Century Code.

8.0506 Maximum Tax Imposed

No single transaction by the taxpayer from any one customer, involving one or more items is subject to a tax in excess of \$25.00.

8.0507 Tax Returns and Information Reports

The tax administrator is authorized to create, publish and to require the use of such tax return forms and information reports as in his judgment are necessary to administer the tax provided for herein.

To the extent feasible, these forms shall incorporate or be integrated with the returns and reports required by the State Tax commissioner under NDCC Chapter 57-39.2 and 57-40.2.

8.0508 Tax Payment, Collections and Penalties

The tax imposed herein shall be paid and collected as nearly as practical, in accordance with the payment, collection and penalty provisions of NDCC Chapters 57-39.2 and 57-40.2.

8.0509 Tax Administer

The tax administer shall be the City Auditor. However, the City Auditor is authorized to contract with the State Tax Commissioner to enforce this chapter, subject to confirmation of the contract by the City Council. If the contract is made and confirmed the tax administer shall be the State Tax Commissioner, as long as the contract remains in force.

8.0510 Corporate Officer Liability

Officers of any corporation required to remit taxes imposed by this chapter are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax penalty and interest due may be assessed and collected, pursuant to the provisions adopted by this chapter.

8.0511 Compensation

City sales and use tax permit holders are allowed to retain a portion of their City tax collections or use tax obligations to help recover administrative expense. The compensation shall equal three percent (3%) of the City sales and use tax due, however, the deduction is limited to \$50.00 per month or \$150.00 per quarter. A tax return must be filed and paid in full by the scheduled due date or the compensation will be disallowed and the tax obligation will be subject to penalty and interest.

8.0512 Dedication of Tax Proceeds

All revenues raised and collected under this article shall be dedicated for infrastructure improvements, economic and jobs development. All revenues shall be placed in a separate sales and use tax fund.

8.0513 Effective Date

This Ordinance shall take effect, following final passage, adoption and publication. The tax shall be implemented and take effect on October 1, 1993.

ARTICLE 6 – Sale and Use Tax (1999/2011)

8.0601 Creation

There is hereby created Article 6 of the Bottineau Municipal Ordinances, putting into effect a sale and use tax which is in addition to the sales and use tax passed by the City of Bottineau and titled as Article 6 in the City of Bottineau, of Bottineau Municipal Ordinance.

8.0602 Definitions

All terms defined in Chapter 57-39.2 NDCC, and Chapter 57-40.2, including all future amendments, are adopted by reference and incorporated herein.

#### 8.0603 Sales Tax Imposed

Except as otherwise provided in this chapter, a tax of one percent is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, as provided in this section, within the corporate limits of the City of Bottineau, North Dakota, of the following Consumers or users:

1. Tangible personal property, consisting of goods, wares or merchandise.
2. The furnishing or service of gas, communication services, or steam other than steam used for processing agricultural products.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
4. Magazines and other periodicals.
5. The leasing or renting a hotel and motel or tourist court accommodations.
6. The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales or use tax under this chapter.
7. Sales of Alcoholic beverages and tobacco products as defined in Section 57-39.2-03.2 NDCC.
8. Furnishing and installment or attachment to real property in this State by a contractor or a Subcontractor, who is a retailer of drapes, hardware for hanging drapes, or carpet for floor covering.

#### 8.0604 Use Tax Imposed

Except as otherwise provided in this chapter, an excise tax of one percent is imposed on the storage and use or consumption in the City of Bottineau on:

1. The purchase price of tangible personal property purchased at retail for storage and use or consumption within the City.
2. The fair market value of tangible personal property, which was not originally purchased for storage and use or consumption in the City, at the time which it is brought into this City.
3. Alcoholic beverages and tobacco products, which are stored and used or consumed in this City, as provided in Section 57-39.2-03.2 NDCC.
4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill contract, as defined in Section 57-40.2-03.2 NDCC. This tax applies only to bids submitted on or after the effective date of this chapter.

#### 8.0605 Exemption and Refunds

1. There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it the following:

- A. All sales, storage, use or consumption of tangible personal property, which are exempt from imposition and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provisions of this Chapter.
- B. Natural gas sales.
- C. Farm machines.
- D. Farm machine parts.
- E. Farm irrigation equipment.
- F. Sales to contractors that are exempt, pursuant to Subsection 15 of Section 57-39.2-04 NDCC, shall be exempt from any City sales tax, but contractors shall be subject to the City use tax on those items used within the City that would be taxed, pursuant to Section 57-40.2-03.3 NDCC, on which the City sales tax has not previously been paid.

2. Refunds allowed by the State of North Dakota for sales and use taxes paid are also allowed by this Ordinance under the same terms and conditions provided for in the North Dakota Century Code.

8.0606 Maximum Tax Imposed

No single transaction by the taxpayer from any one customer, involving one or more items is subject to a tax in excess of \$25.00 which is in addition to the \$25.00 tax imposed by Section 8.0506 of the Bottineau City Ordinance.

8.0607 Tax Returns and Information Reports

The tax administrator is authorized to create, publish and to require the use of such tax return forms and information reports as in his judgment are necessary to administer the tax provided for herein. To the extent feasible, these forms shall incorporate or be integrated with the returns and reports required by the State Tax commissioner under NDCC Chapter 57-39.2 and 57-40.2.

8.0608 Tax Payment, Collections and Penalties

The tax imposed herein shall be paid and collected as nearly as practical, in accordance with the payment, collection and penalty provisions of NDCC Chapters 57-39.2 and 57-40.2.

8.0609 Tax Administer

The tax administer shall be the City Auditor. However, the City Auditor is authorized to contract with the State Tax Commissioner to enforce this chapter, subject to confirmation of the contract by the City Council. If the contract is made and confirmed the tax administer shall be the State Tax Commissioner, as long as the contract remains in force.

8.0610 Corporate Officer Liability

Officers of any corporation required to remit taxes imposed by this chapter are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax penalty and interest due may be assessed and collected, pursuant to the provisions adopted by this chapter.

8.0611 Compensation

City sales and use tax permit holders are allowed to retain a portion of their City tax collections or use tax obligations to help recover administrative expense. The compensation shall equal three percent (3%) of the City sales and use tax due, however, the deduction is limited to \$50.00 per month or \$150.00 per quarter. A tax return must be filed and paid in full by the scheduled due date or the compensation will be disallowed and the tax obligation will be subject to penalty and interest.

8.0612 Dedication of Tax Proceeds

All revenues raised and collected under this article shall be dedicated for street improvements, repair and maintenance and curb and gutter installation, repairs and maintenance of the streets, less administrative expenses. All revenues shall be placed in a separate sales and use tax fund.

8.0613 Effective Date

This Ordinance shall take effect, following final passage, adoption and publication. The tax shall be implemented and take effect on October 1, 2011.

ARTICLE 7 – Adult Business Operation

8.0701 Activity Prohibited

1. Any business within the City limits of the City of Bottineau and within one half mile from said City limits shall not engage in the following activities:

A. Adult Bookstore: A commercial enterprise or activity at a fixed place of business which sells books, magazines, films and video tapes, which materials depict visually or describe verbally specified sexual activities, and which materials are delivered to or obtained by the purchaser at such place of business.

B. Adult Cinema: A commercial enterprise or activity at a fixed place of business which consists of the direct or indirect projection on a regular basis of materials which visually depict specified sexual activities for observation by persons who pay a valuable consideration to do so, irrespective of the number or patrons who may be able to view the presentation at one time.

C. Specified Sexual Activities:

- I. Human genitals in a state of sexual stimulation or arousal;
- II. Acts of human masturbation, sexual intercourse or sodomy;
- III. Fondling by one person of another person's genitals, public region, buttock, or breast.

8.0702 Covering Required

No person who is within or upon premises which are licensed under this chapter shall knowingly omit to cover securely with an opaque covering the following portions of his or her anatomy:

1. The nipples; (female only)
2. The cleavage between the buttocks; and
3. The genitals.

## ARTICLE 8 - Alcoholic Beverages

### 8.0801 Definitions

For the purpose of this article:

1. "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
2. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
3. "Licensee" shall mean any person, firm, corporation, association or club which shall have secured a license pursuant to provisions of this chapter or their agent or employee.
4. "Liquor" shall mean any alcoholic beverage except beer.
5. "Person" shall mean and include any individual, firm, corporation, association, club, co-partnership, society or any other organization; and shall include the singular and the plural.
6. "Sale" and "sell" shall mean all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of and keeping for sale of such alcoholic beverages.
7. "Package" and "original package" shall mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.
8. "Club" or "lodge" shall include any corporation or association organized for civic, fraternal, social or business purposes or the promotion of sports, which has at least 200 members at the time of application for license.
9. "Retail sale" shall mean the sale of alcoholic beverages for use or consumption and not for resale.
10. "Off-sale" shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.
11. "On-sale" shall mean the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

### 8.0802 Exceptions

1. This article shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.
2. This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:
  - A. Denatured alcohol produced and used pursuant to Acts of Congress and the regulations there under.

- B. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
- C. Flavoring extracts, syrups and food products.
- D. Scientific, chemical and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

8.0803 License Required

No person shall sell at retail within the City limits of this City any alcoholic beverage without first having obtained a license therefore as herein provided. This section shall not apply to public carriers engaged in interstate commerce.

8.0804 Licenses - Classes of – Fees - Availability

On-sale and off-sale liquor & beer licenses have an annual fee of 2000.00. On-sale only licenses have an annual fee of \$400.00. Off-sale only licenses have an annual fee of \$1000.00. All of the above fees shall include the fee for Sunday openings. The number of licenses available shall hereby be limited to the following: Six (6) licenses of the on-sale only category and six (6) licenses of the on & off sale liquor and beer and off-sale only category are available in the City limits. (A total of 12 licenses)

8.0805 Licenses - Terms of

1. All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 30<sup>th</sup> day of June in each year. Where a license is granted for a period less than one (1) year, any subsequent renewal thereof must be made for the full annual term.
2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees for said license shall be proportional to represent the number of whole months which said license will be in effect.

8.0806 License - Qualifications for

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

1. Applicant, if an individual, must be a legal resident of the United States, a resident of the State of North Dakota, at least 21 years of age or older, and a person of good moral character.
2. If applicant is a corporation, the manager of the licensed premises and the officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must first be properly registered with the Secretary of State
3. If applicant is a co-partnership, all the members must be legal residents of the United States and of good moral character.
4. Applicant or manager must not have been convicted of a felony.
5. Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
6. Taxes on property for which application for license is made must not be delinquent.
7. If applicant's place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the licensee.

8.0807 Application for Liquor License

Any person desiring a license to sell alcoholic beverages at retail as hereinbefore described shall make and present a written verified application to the governing body of this City, filed with the City Auditor, containing the following information:

1. The name and address of the applicant; if the applicant is a co-partnership, the name and address and place of residence of each member of said co-partnership; if the applicant is a corporation, the name and address of the officers of the corporation and the manager of the licensed premises.

2. Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a co-partnership the same preceding information for each member of said co-partnership; and if the applicant is a corporation, the date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated and if such corporation is a subsidiary of any corporation, the name of the parent corporation.

3. The legal description and the address of the premises for which license is sought.

4. The date on which the applicant acquired title to the premises sought to be licensed, and if the applicant does not have title to said premises, the name and address of the owner of the premises together with a copy of the applicant's lease, if written, under which he holds possession of said premises.

5. Whether there are any delinquent taxes against the premises sought to be licensed.

6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the applicant first began to operate.

7. Whether the applicant has ever had a license revoked or cancelled by a municipal, state or federal authority, and if so, the date of such cancellation, the place and authority canceling the same and the reason for such cancellation.

8. Whether the applicant has ever been convicted of the violation of any law of the United States or of any state, or of the violation of any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of place and courts in which said convictions were had.

9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation and the reasons assigned therefore.

10. Whether the applicant has ever been convicted of any other crime than stated in subsections (8) and (9) hereof, 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.

11. 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 license is sought.

12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures or equipment in the premises for which license is sought, and if so, the name and address of such person together with a statement of the interest so held.

13. 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 addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, within the borders of the United States.

14. The occupations that the applicant has followed during the past five years.

15. The names and addresses of at least three business references.

16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.

17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.

18. The classification of license applied for.

19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the governing body a list of the members belonging to such lodge or club.

20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of this City or of the State of North Dakota.

#### 8.0808 License - Application Fitness

The chief of police or such other person or officer as may be designated by the governing body may, upon the filing of an application investigate the facts as stated in the application and the character, reputation and fitness of the applicant and may report on said matters to the governing body.

#### 8.0809 License - Location of

No license shall be issued or transferred to any person, firm or corporation to engage in the sale of beer or alcoholic beverages within the City without approval as to the location of said licensed business by the governing board. The application for approval shall be in writing and shall be filed with the board. At the time of hearing, the board shall in its discretion determine if said location is in harmony with the public interest and welfare of the community and shall consider among other things the following factors:

1. The convenience of police regulations.
2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
5. Any protests of neighboring property owners or occupants.
6. Zoning regulations.
7. Proposed on- or off-sale or both licensee.

8. Interference with or proximity to residential property.
9. Interference with neighboring property.
10. Suitability of premises for sale of beer, liquor or alcoholic beverages.
11. Public convenience and necessity.

8.0810 License - Granting

After the governing body of the City has received the application as provided herein, they shall meet and consider the same. If they find that the applicant meets the qualifications for a license and are satisfied as to the completeness and the accuracy of the information contained in the application, they may grant the license. If they find that the applicant does not meet with the qualifications or they are not satisfied as to the completeness or accuracy of the information, they may request that the applicant supply more verified information to the governing body or they may reject the application.

8.0811 License - Limit to One Applicant

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

8.0812 License - Posting of

License issued hereunder shall be posted in a conspicuous place in the premises for which the license has been issued.

8.0813 License - Transfer of

No license under the provisions of this article shall be transferable and any attempt to do so shall constitute a violation of the provisions of this article.

8.0814 License Fees - Disposition of

All license fees collected under this article shall be transferable to the City Auditor and credited to the general fund of the City.

8.0815 Hours and Time of Sale - Penalty

Anyone who dispenses or permits the consumption of alcoholic beverages on a licensed premises after two o'clock a.m. on Sundays, before eight o'clock a.m. on Mondays or between the hours of two o'clock a.m. and eight o'clock a.m. on all other days of the week or who so dispenses or permits such consumption after two o'clock a.m. on Thanksgiving Day, on Christmas Day, or after six o'clock p.m. on Christmas Eve is guilty of an offense. Anyone licensed by the City governing body to sell alcoholic beverages may apply to the City governing body for a permit to sell alcoholic beverages under that license during the hours from twelve noon on Sundays to two o'clock a.m. on Mondays. The authority for issuing the permit rests solely with the City governing body. The fee for this permit shall be set by resolution of the City governing body. Any licensee wishing to dispense or permit the consumption of alcoholic beverages between the hours of twelve noon on Sunday and two o'clock a.m. on Monday may apply for a Sunday alcoholic beverage permit from the City governing body. The fee for the permit is five dollars for each Sunday the licensee is allowed to sell alcoholic beverages.

8.0816 Licensee's Responsibility

Every licensee is hereby made responsible for the conduct of his place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person nor shall any intoxicated person be permitted to remain upon the premises.

8.0817 Special Event Permit

The governing board of the City may grant special permit for the on sale only of alcoholic beverages, as authorized by Section 5-02-01.1 NDCC and amendments thereto. Fee for said permit shall be \$25.00.

8.0818 Sunday Alcoholic Beverage Permit - Penalty

Anyone licensed by the City governing body to sell alcoholic beverages may apply to the City governing body for a permit to sell alcoholic beverages under that license during the hours from twelve noon on Sundays to one a.m. on Mondays. The authority for issuing the permit rests solely with the City governing body. The fee for this permit shall be set by resolution of the City governing body.

Anyone who dispenses, sells or permits the consumption of alcoholic beverages in violation of this ordinance, or who furnishes false or misleading information in applying for a permit is guilty of an offense which is punishable by a fine of up to \$500.00.

8.0819 Gambling Prohibited - Exceptions

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board or any other machine or device of similar nature, nor shall gambling whether by cards, dice or otherwise, of any nature, be permitted upon the licensed premises. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder, and such license shall be revoked upon conviction of any such violation. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting permit issued by the City governing body or license issued by the State of North Dakota.

8.0820 Cashing Certain Checks Prohibited

No licensee hereunder shall cash any bank check, voucher, order or document of any kind drawn by a county welfare board or any state or federal agency in payment for wages made for work done on any so-called work relief project, or for relief purposes, which by its terms authorizes or permits any person presenting such bank check, voucher, order or document to receive payment of money.

8.0821 Sales Prohibited - Persons

No licensee, his agent or employee shall sell any alcoholic beverages to a person under twenty-one (21) years of age, a habitual drunkard, an incompetent or an intoxicated person.

8.0822 Minors in Licensed Premises

No licensee shall permit any person under twenty-one (21) years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except that a person under twenty-one (21) years of age may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian.

8.0823 Age Identification

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 a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this article.

8.0824 Street Sales Prohibited

The sale or consumption of alcoholic beverages upon or across any street, alley or public way is prohibited, except pursuant to a special event permit as set out in Section 8.0717 herein.

8.0825 Premises, Equipment of

Premises licensed hereunder for on-sale alcoholic beverages shall be equipped with tables, chairs, booths and stools in a sufficient number to accommodate reasonably the patrons.

8.0826 Purchase from Licensed Wholesaler

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. Each licensee hereunder shall keep on file all invoices covering purchases by him of such alcoholic beverages showing the name and license number of the wholesaler. Such records shall be retained in the possession of the licensee and shall be at all times open to inspection by any police officer or peace officer of the State of North Dakota.

8.0827 Toilets Required

Premises where an on-sale license is granted must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and kept in a clean and sanitary condition. The on-sale license may be revoked when the foregoing requirements, or any other health ordinance or regulation, are not at all times strictly observed.

8.0828 Deliveries - Off Licensed Premises

1. It shall be unlawful for any person, firm 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 purchaser or prospective purchaser.

2. 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.

8.0829 Termination or Revocation of Licenses

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

- A. The death of the licensee unless upon application to the governing body by personal representative of the decedent, the governing body shall consent to the carrying on of the business by the personal representative.
- B. When the licensee ceases business at the location licensed, unless a new location has been approved.
- C. When the licensee be adjudged bankrupt.

- D. When the licensee 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.
- E. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.
- F. 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 or been revoked.
- G. When the licensee ceases to be a legal bona fide resident and citizen of the State of North Dakota.
- H. When the licensee has made any false statement(s) in his application for license.

2. License issued pursuant to this ordinance may, in the discretion of the governing body, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:

- A. When the licensee has been convicted of violating any of the provisions of this article.
- B. 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.
- C. When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager if the licensee be a corporation, be convicted in the municipal court of the City of drunkenness or disorderly conduct, or if any appeal be taken from such conviction then when such conviction be sustained by the higher court or courts.

3. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and such license may also be cancelled and revoked or suspended at any time by the governing body for any cause deemed by said governing body to be sufficient cause and justified by reason of public health or public morals. Such termination shall be subject only to review by the courts of the State of North Dakota.

4. Upon a proper complaint being filed with the mayor or City Auditor charging any licensee under this title with the violation of the terms of this title, a notice shall be prepared and signed by the City Auditor and served upon such licensee personally in the manner provided by law for the service of summons, in an action, which notice shall notify such licensee that such complaint has been filed against him, and stating the substance of the charges contained in such complaint and notifying the licensee that he has the right to appear before the City Council on a date any such hearing the City Council may in its discretion if it finds sufficient evidence of the violation charged, cancel or suspend the license of any such licensee.

5. When any license is terminated or revoked for cause, or the licensee voluntarily ceases his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

#### 8.0830 Penalties

Any person, firm, corporation or association violating any of the provisions of this article shall upon conviction thereof, be subject to a fine of not to exceed five hundred dollars (\$500.00), or to imprisonment of not to exceed thirty (30) days; or in the discretion of the court to both such fine and imprisonment; and in addition to both such fine and imprisonment all powers, right and privileges given by

any license granted under the terms of this article may be terminated or revoked in accordance with Section 8.0829 of this article.

#### ARTICLE 9 - Validity

##### 8.0901 Validity

If any section, part, article or provision of this chapter or the application thereof to any person, firm, corporation or association or to any circumstances shall be held to be invalid for any cause whatsoever, the remainder of this ordinance or the application to persons, firms, corporations or circumstances other than those as to which it is held to be invalid, shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

#### ARTICLE 10 - Penalty

##### 8.1001 Penalty

Any person, firm, corporation or association violating any of the terms, articles or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment in the discretion of the court. The court shall have the power to suspend such sentence and to revoke the suspension thereof. The court may, in addition thereto, revoke the permit of such violator, or terminate or revoke all powers, rights and privileges given by any license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation thereof.