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CHAPTER EIGHT

BUSINESS REGULATIONS AND LICENSES

ARTICLE 1 - General Provisions

8.0101 Licenses

Unless otherwise specifically provided, licenses and permits required for the carrying on of a business or trade within the City shall be applied for, issued, terminated and revoked according to the provisions of this article.

8.0102 Licenses - Application

Any person desiring a license or permit under any ordinance of the City shall make a written application to the City therefore upon application blanks furnished by the city auditor and shall file the same with the city auditor. The application shall state the purpose for which the license or permit is desired, for what length of time, the place where the business is to be carried on and the proposed sureties on any required bonds.

8.0103 Licenses - Granting

The city auditor shall receive applications for licenses and permits and grant the same in all cases where expressly authorized upon the terms and conditions specified by ordinance. If the city auditor is not authorized to grant any particular application for license or permit, the city auditor shall report such application to the next meeting of the City governing board for their action thereon.

8.0104 Licenses - Term

1. No license or permit shall be granted for a longer period than one (1) year.
2. All yearly licenses or permits shall commence on the first day of January in each year and expire on the last day of December in each year. All semi-annual licenses or permits shall commence on the first day of January and expire on the last day of June or commence on the first day of July and expire on the last day of December.
3. No license or permit shall be valid until signed and sealed nor shall any person be deemed licensed until a license shall be duly issued to that person.
4. Each license shall be dated the day of issuance thereof; but if the applicant or applicants shall have been acting without a license, the license shall commence with the date business commenced. If the business calls for a yearly license, then a license shall commence on the first day of January in the year for which the license shall be issued.
5. The date of issuance of the license, together with the time of commencing and expiration shall be given in the license and the license record.

8.0105 Licenses - Not Transferable

No license or permit shall be assignable or transferable except by permission of the City 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. The City may grant the continuance of the business licensed to any other portion of the City, such permission to be certified on the license by the city auditor. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. 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.

8.0106 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 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 that person's license may be revoked or forfeited in the discretion of the City 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 City governing body at any time for cause. "Cause" includes, but is not 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.

8.0107 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. Where badges representing permits or licenses are issued to be worn by an individual, such licensee shall wear such badge during the normal course of employment for which said badge was issued.

8.0108 Licenses - Short Term

No license, unless otherwise specified, shall be issued for a fractional part of the year, but shall relate back if taken out subsequent to the first day of January of each year.

8.0109 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" does not include any livestock or agricultural product. (Source: North Dakota Century Code section 51-04-01)

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.

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. (Source: North Dakota Century Code section 51-04-09)

8.0204 License - Application for

Applicants for license under this article, whether an individual, co-partnership or corporation, shall file with the city auditor a written sworn application signed by the applicant if an individual, by all partners if a partnership and by the president if a corporation, showing:

1. Applicant's name, present residence, present home address, present business address, and if a corporation, under the laws of what state the same is incorporated;
2. The name, present residence, present home address and present business address of the person or persons having the management or supervision of applicant's business during the time that it is proposed that it will be carried on in the City;
3. The residence, business address and type of business in which applicant has been engaged in the previous two (2) years;
4. The residence, business address and type of business in which the person having the management or supervision of applicant's business has been engaged in the previous two (2) years;
5. The place or places in the City, where it is proposed to carry on applicant's business, and the length of time during which it is proposed that said business shall be conducted;
6. The kind of business to be conducted;
7. The name and address of the auctioneer, if any, who will conduct the sale; and
8. A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the City, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or by sample; at auction, by direct sale or by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produces, and where such goods or products are located at the time the application is filed. (see North Dakota Century Code section 51-04-02)

8.0205 Bond

Before any license shall be issued to a transient merchant for engaging in business in this City, the applicant therefore shall file with the city auditor a bond running to the City in the sum of \$1,000 executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the State of North Dakota; said bond not to be revocable nor to terminate prior to passage of two years time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be cancelled has been given to the city auditor. The bond is to be approved by the city attorney, conditioned that the applicant shall comply fully with all of the provisions of the ordinances of the City and the statutes of the State of North Dakota, regulating and concerning the sale of goods, wares and merchandise. The bond must be conditioned to pay all judgments rendered against the applicant for any violation of city ordinances or state statutes, together with all judgments and costs that may be recovered against the applicant by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting business with the applicant, whether misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person.

8.0206 Service of Process

Before any license as herein provided shall be issued for engaging in business as a transient merchant, as herein defined, in this City, such applicant shall file with the city auditor an instrument nominating and appointing the city auditor as a true and lawful agent with full power and authority to acknowledge service or notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transacted under the license and the bond given as required by this article, or for the performance of the conditions of said bond or for any breach thereof. This instrument shall also contain recitals to the effect that the applicant for license consents and agrees that service of any notice or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served upon the person or persons applying for the license under this article, according to the law of this state or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the city auditor, as herein provided, the city auditor shall send to the licensee by registered mail, at the licensee's last known address, a copy of said process.

8.0207 Exhibiting License

The license issued under this article shall be posted conspicuously in the place of business named therein. In the event that such person or persons applying for a license shall desire to do business in more than one place within the City, separate licenses may be issued for each place of business and shall be posted conspicuously in each place of business.

8.0208 Transfer

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

8.0209 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. The city auditor shall deposit with the chief of police a record of each license number, together with the location within the City of the business licensed, to assist and promote such enforcement.

8.0210 Revocation

1. Any license issued pursuant to this article may be revoked by the City governing body 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 - Hawkers and Peddlers

8.0301 Definitions

The word "person" as used herein includes the singular and the plural and means and includes any person, firm or corporation, association, club, co-partnership or society or any other organization. The words "hawker" and "peddler" as used herein include any person, whether a resident of the City or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares or merchandise, offering and exposing the same for sale, or making sales and delivering articles to purchasers. The words "hawker" and "peddler" also include any person who, without traveling from place to place, shall sell or offer the same for sale from an automotive vehicle, railroad car or other vehicle or conveyance. One who solicits as a part of a scheme or design to evade the provisions of this article is deemed a hawker or peddler subject to the provisions of this article.

8.0302 License Required

It shall be unlawful for any person to engage in the business of hawker or peddler of any merchandise, article or thing without having first secured a transient merchant license as provided for under Section 8.0202.

ARTICLE 4 - Runners, Solicitors and Canvassers

8.0401 Definitions

A "runner," "canvasser" or "solicitor" is defined as any individual, whether resident of the City or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise,

personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future. The definition shall include any person who, for himself, or for another person, firm or corporation hires, leases, uses or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

8.0402 License Required

It shall be unlawful for any person to engage in the business of runners, solicitors and canvassers of any merchandise, article or thing without having first secured a transient merchant license as provided for under Section 8.0202.

ARTICLE 5 - Solicitation Without Invitation

(This article may be used when the City does not wish to permit and license hawkers, peddlers, runners, solicitors and canvassers as provided in Articles 3 and 4 and in lieu thereof.)

8.0501 Solicitation Without Invitation Prohibited

The practice of going in and upon private residences or privately owned property in the City by solicitors, peddlers, hawkers, itinerant merchants, transient vendors of merchandise, photographers and magazine and periodical subscription agents, not having been requested or invited to do so by the owner or owners, occupant or occupants of such private residences or private property, for the purpose of soliciting orders for the sale of goods, wares and merchandise or for the purpose of disposing of or peddling or hawking the same or for the purpose of soliciting subscriptions to magazines or periodicals or for the purpose of taking photographs is hereby declared to be a nuisance and unlawful.

8.0502 Enforcement

The chief of police and all police officers in the City are hereby required and directed to suppress the same and to abate any such nuisance as described in 8.0501.

ARTICLE 6 - Alcoholic Beverages

8.0601 Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOLIC BEVERAGE. Any liquid suitable for drinking by human beings, which contains .5% or more of alcohol by volume.

BEER. Any malt beverage containing more than .5% of alcohol by volume.

WINE. The alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than 24% alcohol by volume.

INTOXICATING LIQUOR and LIQUOR. Any alcoholic beverage except beer.

OFF-SALE. 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 off-sales at the place designated in the license and not elsewhere.

ON-SALE. The sale of alcoholic beverages to be taken from the original container in lesser amounts than therein contained and served to the patron and consumed upon the same and the premises in individual drinks or portions.

PACKAGE and ORIGINAL PACKAGE. 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 the package to the purchaser.

PERSON. Any individual, firm, corporation, association, club, co-partnership, society, or any other organization, and the city. PERSON shall include the singular and the plural.

RETAIL SALE. The sale of alcoholic beverages for use or consumption and not for resale.

RETAILER. Any person engaged in the sale and distribution of alcoholic beverages under any type of license set out, except a wholesale license.

SALE and SELL. All barbers, and all manners or means of furnishing of alcoholic beverages, including the selling, exchange, barter, disposition of and keeping for sale of alcoholic beverages.

8.0602 Exceptions

- A. This chapter shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.
- B. This chapter shall not be construed to apply to the following articles, when they are unfit for beverage purposes:
 - 1. Denatured alcohol produced and used pursuant to acts of Congress, and the regulations thereunder;
 - 2. Patent, proprietary, medical, pharmaceutical, antiseptic, and toilet preparations;
 - 3. Flavoring extracts, syrups, and food products;
 - 4. Scientific, chemical, and industrial products; nor to the manufacturer or sale of these articles containing alcohol.

LICENSING PROVISIONS

8.0603 Licenses Required

- A. Any person desiring to engage in the retail sale of alcoholic beverages must first procure a license from the governing body of the city as provided in this section. No person shall sell at retail within the city limits any alcoholic beverage without first having obtained a license therefor as provided in this section.
- B. There shall be six types of licenses:
 - 1. Off sale - beer and liquor;
 - 2. On sale - beer and liquor;
 - 3. On and off sale - beer and liquor;

4. On premises club license;
 5. A special permit and;
 6. Sunday license and permit.
- C. The term on premises club license shall mean the sale of alcoholic beverages to a person on the premises by a non-profit, fraternal, or service organization or lodge, club with a membership of over 25 persons at the time of the application. The license holder shall comply with the following rules and regulations in addition to all other rules and regulations specified in Chapter 9 of the City Ordinances of Pembina, North Dakota.
- a. The on premises club license shall be used only on the premises stated in the application unless a special permit is obtained from the city of Pembina, North Dakota.
- D. A special event permit.

The local governing body may, by special permit, authorize an alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events, public dances or music festivals on such licensed premises as may be designated by such permit. Such permits shall not be valid for a period greater than three consecutive days.

An alcoholic beverage licensee desiring to conduct a special event, public dance, music or festival wherein alcoholic beverages will be sold, or to sell alcoholic beverages as a special event, public dance, or music festival conducted by any other person who has been granted a permit to do so by the governing body, shall make an application for a special permit to do so to the governing body. The application shall set forth:

1. The name of the applicant.
2. The time or period for which the permit is desired; and
3. The place where such special event, public dance, or music festival is to be conducted or held.

The governing body of the city shall refuse to issue such permit, and shall revoke a permit already issued, where it appears that:

1. The permitted site is or is likely to become a public nuisance or detrimental to public morals;
2. Alcoholic beverages or controlled substances are being sold or given away except as provided by such permit;
3. Any of the ordinances of this city or the laws of the state of North Dakota are being violated; or
4. In the sole judgment of the governing body, protests to the issuing of such permit are made, either orally or in writing, by a sufficient number of the people living in the neighborhood of the site for which application for such permit is made to warrant refusal or revocation of such permit as being in the public interest.

8.0604 Terms of License

All licenses issued hereunder except for the special permit license shall be for a period of not more than one year and shall expire on June 30.

Where a license is granted for a period less than a year any subsequent renewal thereof must be for the full annual term.

If an application is made for a license hereunder during the licensed year for the unexpired portion of such year, the fee therefore shall be prorated and calculated monthly in fractions of 12 commencing on the first day of the month of the application therefore and continuing until the required full annual term renewal of said license.

8.0605 License Fees

A. The fee for licenses and permits as provided in this chapter shall be in such amount as, from time to time, maybe set by the city council of the city of Pembina, by resolution duly passed.

8.0606 Limitation on Numbers of Licenses

No more than one off sale beer and liquor licenses; no more than three on sale beer and liquor licenses; no more than two on sale and off sale beer and liquor licenses and; no more than four club licenses shall be granted by the City Council. Any license granted as provided in this chapter shall be granted only for one specified premises and shall not be transferable either to other persons or other premises.

8.0607 Compliance with Laws

A. Any applicant or licensee shall be required to conform fully to all of the laws regarding the sale of alcoholic beverages at retail within the state as well as all of the rules, regulations, laws and ordinances lawfully established for the purpose of regulating the sale of alcoholic beverages at retail, either state, local or federal. The City Council shall have the right at any time, for good cause shown, to revoke, cancel or suspend any license granted in this section, or for any reason believed by the City Council necessary for the lawful exercise of its police power. Said revocations, cancellations, or suspended license are to take effect immediately upon the issuance of the lawfully executed order of the City Council so revoking, canceling or suspending the license, as mentioned in this chapter. For this purpose, an order of the City Council revoking, canceling or suspending any license issued as provided in this chapter, shall be effective only after giving the licensee whose license is about to be revoked, cancelled or suspended, 15 days prior notice, in writing, of the City Council's anticipated action, and allowing the licensee opportunity present mitigating evidence on his behalf regarding the proposed revocation, cancellation, or suspension of the license. Any decision, by the City Council, regarding the revocation, cancellation, or suspension of a license hereunder shall be reviewable in the District Court having proper jurisdiction, if notice of the licensee's intention to invoke the jurisdiction of the District Court is filed with the District Court, and served on the city, within 15 days of written notification of the City Council's intention with regard to the revocation, cancellation, or suspension. No license fees paid prior to any cancellation, revocation, or suspension of the license, nor a pro-rated portion thereof, shall be returnable or refundable

B. Each applicant under the provisions of this chapter shall, before being granted his license, agree to conform to all of the provisions of this chapter, laws and regulations affecting the sale of alcoholic beverages at retail within the state as are now in effect or may hereinafter be passed, and the agreements shall be contained and set forth in the license granted any licensee.

8.0608 Qualifications for License

No retail license for the sale of alcoholic beverages in the city shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

A. The applicant, if an individual, must be a citizen of the United States and a bona fide resident of the state, for a period of at least 30 days prior to the application, and must thereafter during any subsequent period of licensing continue the bona fide residence, and further must be a person of good moral character.

B. If the applicant is a corporation, the manager of the licensed premises and the officers, directors and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the Secretary of State of the state.

C. If the applicant is a partnership or co-partnership, all of the members must be citizens of the United States and actual bona fide residents of the state for a period of at least 30 days prior to the date of application, as well as persons of good moral character.

D. The applicant or manager of the licensed establishment must not have been convicted of a felony.

E. The building in which the business is to be conducted must meet with all local and state requirements regarding sanitation and safety.

F. The applicant must own the premises for which a license is sought, or have a lease thereon for the full period for which this license is issued.

G. The applicant must not have been convicted of a violation of any federal or state law concerning the manufacture, possession or sale of alcoholic beverages, or have forfeited his bond to appear in a court of competent jurisdiction to answer charges for any violation.

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

I. If the applicant is a nonprofit lodge, club or service organization, the officers must be citizens of the United States, persons of good moral character, and residents of the county.

8.0609 Application for License

A. Any person desiring a license to sell alcoholic beverages at retail within the city as described in this chapter, shall make and present a written verified application to the City Council, filed with the City Auditor, containing the following information:

1. The name and address of the applicant; if the applicant is a partnership or co-partnership, the name and address and place of residence of each member of the partnership or 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 the place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a partnership or co-partnership, the same preceding information for each member of the partnership or co-partnership shall be required; and if the applicant is a corporation, the purpose for which the corporation was incorporated, and if the 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 the 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 the premises, the name and address of the owner of the premises together with a copy of the applicant's lease under which he holds possession of the 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, and the date the applicant first began to operate in the business.

7. Whether the applicant has ever had a retail alcoholic beverage license revoked, suspended or canceled by any municipal, state or federal authority, and if so, the date of the revocation, suspension or cancellation, the place and authority revoking, suspending or cancelling same, and the reasons for the revocation, suspension or cancellation, if any.
8. Whether the applicant has ever been convicted of a violation of any laws of the United States or any state or 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 places, and county in which the conviction were held.
9. Whether the applicant has ever been convicted of any crimes other than those stated in the foregoing division of this section, in this state or in any other state, or under the federal law, and if so, the date of the conviction, the name of the crime for which convicted, the amount and terms of sentence passed, and the court in which convicted.
10. The name, address and place of residence for a period of five years prior to the date of application of any person who will have charge, management or control of the establishment for which the license is sought.
11. Whether the applicant has any interest whatsoever, direct or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the state, and if so, the names and addresses of the establishments. This provision is meant to include the holder's capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, and within the borders of the United States.
12. The occupation which the applicant has followed during the past five years.
13. The names and addresses of at least three business references.
14. 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 the application is made, and if so, the type of business, and if an employee, the name and address of the employer.
15. The type or classification of license applied for.
16. If the application is for a club license or special permit the application must include the date of the organization, the number of members, the purposes for which organized, and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and wherever required by the city council of the city of Pembina a list of members belonging to such club or lodge.

- B. The City Council expressly shall reserve the right to waive the requirement of an answer to any one or all of the foregoing applications questions.

8.0610 Investigation of Fitness of Applicant

The Chief of Police or other person or officer as may be designated by the City Council shall, upon the filing of an application as provided in this chapter, investigate the facts as stated in the application and character, reputation and fitness of the applicant, and shall report his findings on the matters to the City Council prior to the granting of the application.

8.0611 Renewing and Transferability of License

No license granted in this chapter shall be transferable to other premises or persons than as shown on the license. Any renewal or application of a license for a portion of a year shall be construed as a full year. Any licensee

or applicant making application for license in any year, subsequent to June 30th in the license year, shall pay for the license the full licensing fee for the year.

8.0612 Termination and Revocation of Licenses

- A. Licenses issued pursuant to this chapter shall be deemed canceled and revoked and terminated upon the happening of any one or more of the following contingencies:
1. The death of the licensee; subject, however, to the provision that the spouse of any licensee who so dies shall, for the purpose of this section, be deemed to own the license in joint tenancy with right of survivorship, and may continue to operate the licensed premises of the deceased spouse during the currently licensed year. This provision shall not apply, however, if the premises are sold subsequent to the licensee's death;
 2. When the licensee ceases business at the location licensed;
 3. When the licensee be adjudged bankrupt;
 4. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this chapter; and
 5. When the license or permit of the licensee from the United States government or the state to sell alcoholic beverages at the location licensed to sell has been terminated or revoked.
- B. Licenses issued pursuant to this chapter may, in the discretion of the City Council, be either revoked or suspended for a period of time as deemed appropriate, upon any one or more of the following grounds:
1. When the licensee has been convicted of violating any of the provisions of this chapter;
 2. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the city; and
 3. When the licensee, if an individual, or one of the partners or co-partners, if the licensee if a partnership or co-partnership, or one of the officers or the manager, if the licensee be a corporation, be convicted in the municipal court of drunkenness or disorderly conduct, or if any appeal be taken from the conviction, then when the conviction be sustained by the higher court(s).
- C. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and the license may also be canceled and revoked or suspended at any time by the City Council for any cause deemed by the City Council to be sufficient cause as justified by reason of public health, safety or morals. The termination, suspension or revocation shall be subject only to review by the courts of competent jurisdiction of the state.
- D. 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.

8.0613 Posting of License

Any license issued to licensees shall at all times be posted in a conspicuous place in the premises in which the license has been issued.

REGULATION OF SALES

8.0614 Sale or Delivery Outside of Building Prohibited

It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer, or alcoholic beverages to make, cause or allow to be made, any sale or delivery outside of the building located on the licensed premises of beer, liquor, or other alcoholic beverages to any purchaser or prospective purchaser, provided, however, that this section shall not apply to deliveries made by a licensed wholesale dealer to a licensed retail dealer.

8.0615 Hours and Time of Sale

- A. No person shall dispense or permit the consumption of alcoholic beverages on a licensed premises after 2:00 a.m. on Sundays, before 8:00 a.m. on Mondays, or between the hours of 2:00 a.m. and 8:00 a.m. on all other days of the week, or shall dispense or permit the consumption on Thanksgiving Day, Christmas Day, or after 6:00 p.m. on Christmas Eve. It is further provided that all doors to any licensed premises must be closed and locked by 2:00 a.m., Tuesday through Sunday, and no licensee shall permit or allow or cause to be permitted or allowed, anyone to enter the licensed premises after the hour of 2:00 a.m. The licensee shall further be responsible for causing all persons, patrons, or customers to be out of the licensed premises by the hour of 2:00 a.m. on the above referenced days.
- B. Any person duly licensed under this chapter, in addition to the hours of sale set forth in division A of this section, and subject to restrictions thereof with regard to Christmas Eve, Christmas Day, and Thanksgiving Day, may dispense or permit the consumption of alcoholic beverages on licensed premises between the hours of 12:00 o'clock noon on Sunday to 2:00 o'clock a.m. Monday, after first obtaining a permit therefor from the City Council, which permit shall be issued, upon due application made, at a fee which may be from time to time set by resolution of the City Council.

8.0616 Dispensing Alcoholic Beverages to Minors Prohibited

No licensee or his employee, in business and engaged in the retail sale of alcoholic beverages within the city, shall any time sell, give, treat, or allow to be sold, given or treated, or otherwise furnish alcoholic beverages to any person under 21 years of age, nor permit any person under 21 years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed.

Cross-reference:

Offenses relating to alcoholic beverages and minors, see §§ 132.15 through 132.20

8.0617 Gambling Devices Prohibited

No cards, dice, punch boards or other gambling devices, or games of chance of any kind whatsoever, save and except those allowed under the provisions of the state Century Code and as authorized under the ordinances of the city, shall be permitted on the licensed premises.

8.0618 Penalty

Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not to exceed \$1,000 or by imprisonment not to exceed 30 days, or by both fine and imprisonment.

ARTICLE 7 - Shows, Carnivals and Circuses

8.0701 License Required

No person, firm, association or corporation shall exhibit or cause to be exhibited or assist in exhibiting any natural or artificial curiosity or conduct a circus, tent show, carnival or carnival show, continuous theatrical performance, or other like exhibition without first obtaining a license from the City.

8.0702 Fees for

The fees to secure license to conduct the exhibitions under Section 8.0701 shall be as follows:

Any show, carnival or circus - per day: \$50.00

In addition to the above fees, any show, carnival or circus granted a license shall deposit with the city auditor a cash deposit in the amount of \$500.00 guaranteeing that the premises upon which such show, carnival or circus is located shall be cleaned after the completion of such show, carnival or circus. Upon determination of the City that the same premises have been cleaned, the cash deposit shall be returned to the licensee. Provided, further, that in addition to such fees, an additional fee in an amount from \$100.00 to \$500.00, to be fixed by the City governing body, shall be paid at the time of obtaining the license to provide for fire and police protection in connection with such show, carnival or circus.

ARTICLE 8 - Validity

8.0801 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 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 9 – Games of Chance

8.0901 Definitions

1. “Adjusted Gross Proceeds” means gross proceeds less cash prizes or the price of merchandise prizes.
2. “Bingo” means that game of chance in which each participant receives one or more cards each of which is marked off into twenty-five squares arranged in five horizontal rows of five squares each and five vertical rows of five squares each. Each square is designated by number, letter, or combination of numbers and letters, no two cards being identical. The players cover squares as the operator of such game announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating squares. The winner of each game is the player or players first properly covering a predetermined and announced pattern of squares on a card being used by the player or players.
3. “Bingo Equipment” means the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designation to be covered and the objects used to cover them, the board or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo.
4. “Charitable Organization” means any nonprofit organization operated for the relief of poverty, distress, or other condition of public concern within this state, which has been so engaged within this state for two years.

5. "Civic and Service Club" means any branch, lodge, or chapter of a nonprofit national or state organization which is authorized by its written constitution, charter, articles or incorporation, or bylaws to engage in a civic or service purpose within this state, which shall have existed in this state for two years. "Civic and service club" shall also mean a similar local nonprofit organization, not affiliated with a state or national organization, which is recognized by resolution adopted by the governing body of the city in which the organization conducts its principal activities, or by the governing body of a county if such organization conducts its principal activities outside the limits of a city but within a county. Such club shall have existed in this state for two years.
6. "Distributor" means a person, firm, corporation, association, or organization which sells, markets, or otherwise distributes raffle tickets, bingo equipment or any other implements of gambling that may be used in the lawful conduct of games of chance under this ordinance to an organization licensed or authorized to conduct such games of change under this ordinance. "Distributor" does not include a resident printer who prints raffle tickets at the request of a licensed or authorized organization, and who sells or otherwise distributes such raffle tickets to such organization.
7. "Educational, Charitable, Patriotic, Fraternal, Religious, or other Public-spirited Uses" are: Uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint; fraternal uses specified by an organization's constitution, charter, or bylaws, not of direct benefit to the eligible organization or any member thereof; uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof; the erection or maintenance of public buildings or works; or uses otherwise lessening the burden of government. Such uses do not include the erection, acquisition, improvement, maintenance or repair of real, personal or mixed property unless it is used exclusively for one or more of the stated uses. Uses shall not include any activities consisting of attempts to influence legislation or participation in any political campaign on behalf of any candidate for public office. "Charitable Uses" include uses benefiting a definite number of persons who are victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is uncompensated by insurance, and uses benefiting a definite disease or injury, causing severe loss of income and incurring extraordinary medical expense which is uncompensated by insurance.
8. "Educational Organization" means any nonprofit public or private elementary or secondary school in this state which has been in existence for two years.
9. "Eligible Organization" means bona fide nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and other public-spirited organizations as defined by this ordinance, which may be licensed by the attorney general or authorized by the governing body of a city or county to conduct games or change under this ordinance.
10. "Entire Net Proceeds" means the adjusted gross proceeds less such expenses, charges, fees, and deductions as are specifically authorized under this ordinance.
11. "Fraternal Organization" means a nonprofit organization within this state, except for college and high school fraternities, which is a branch or lodge or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. Such organization shall have existed within this state for two years.
12. "Games of Chance" means a game, contest, scheme or device in which a person stakes or risks something of value for an opportunity to win something of value and in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestant or participant may also be a factor therein. For purposes of this ordinance, "games of chance" shall specifically mean and be limited to bingo, raffles, pull tabs, jars, and punchboards.
13. "Gross Proceeds" means all moneys collected or received from games of chance and admissions thereto.

14. "Jar" means a vessel containing a number of pull tabs from which a participant selects a particular pull tab after paying some consideration to an operator for the opportunity of making the selection.
15. "Member" means a person who has qualified for and been admitted to membership in an eligible organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement, and who pays regular monthly, annual, or other periodic dues or is a fully paid life member of the eligible organization. "Member" includes auxiliary members, but excludes social and honorary members.
16. "Other Public-spirited Organization" means a nonprofit organization recognized by the governing body of a city or county by resolution as public-spirited and eligible to conduct games of chance under this ordinance.
17. A "Pull Tab" is a single-folded or banded ticket or is a card, the face of which is initially covered by otherwise hidden from view to conceal a number, symbol, or set of symbols, a few of which numbers or symbols out of every set of pull tabs have been designated in advance and at random as prize winners, for which, for the opportunity to obtain each such folded or banded ticket or card, view the numbers or symbols thereon, and possibly obtain a prize-winning pull tab, a person pays some consideration to an operator.
18. "Punchboard" means a board or device containing a number of holes or receptacles of uniform size in which are placed mechanically and at random serially numbered slips of paper or other substance which may be punched or drawn from said hole or receptacle by any person desiring to do so, and which the public, upon payment of a consideration, may punch or draw such numbered slips of paper or other substance from such holes or receptacles and obtain an award if the number drawn corresponds to a winning number.
19. "Raffle" means a game of chance in which the prize or prizes, other than cash, are won by one or more of numerous persons buying chances. The winner is determined by drawing a number or numbers from a container holding numbers representative of all chances sold. The date of the drawing, the prize or prizes to be awarded, the name of the organization, the name of the licensing or authorizing authority, the license or authorizing resolution number, and the price of the chance shall be clearly printed on the raffle tickets which shall be numbered consecutively.
20. "Religious Organization" means any nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observances which has been so gathered or united in this state for two years.
21. "Veterans Organization" means any congressionally chartered organization within this state, or any branch or lodge or chapter of a nonprofit national or state organization within this state, the membership of which consists of individuals who were members of the armed services or forces of the United States. Such organization shall have been in existence in this state for two years.

8.0902 Organizations Eligible under this Ordinance – Use of Proceeds

Nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and public-spirited organizations, as those terms are defined by this ordinance, are eligible to conduct games of chance under the conditions of this ordinance. The entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this ordinance.

8.0903 City Approval Required

Any eligible organization not required to be licensed by the attorney general of the State of North Dakota, these being all eligible organizations which do not maintain a building for the use of its members and guests and offer meals or liquor or both as part of its operation, shall apply in writing to the governing body of the city for

permission to conduct games of chance at least thirty (30) days prior to each occasion, stating the particular game of chance, time, place, and educational, charitable, patriotic, fraternal, religious, or other public-spirited uses to which the proceeds will be devoted. The governing body may at its own discretion and upon application by an eligible organization grant permission for such games for specifically designated times, places, and uses, covering a period of one year. Fees for such permission or authorizations shall be in the amount of Ten and 00/100 (\$10.00) Dollars for one occasion, and in the amount of Twenty-five and 00/100 (\$25.00) Dollars for an authorization covering more than one occasion for a period up to and including one year. A copy of each resolution or permit granted by the city under this ordinance shall be sent to the attorney general not later than thirty (30) days after issuance.

The governing body shall have the power, on its own motion based on reasonable grounds or in written complaint, to suspend or revoke an authorization in accordance with Chapter 28-32 of the North Dakota Century Code for violation, by the authorized organization or any officer, director, agent, member, or employee of such organization, of this ordinance.

8.0904 Persons Permitted to Conduct Games of Chance – Premises – Equipment – Expenses – Compensation

1. No person, except a member of an eligible organization may hold, operate, or conduct any game of chance under this ordinance.
2. No person, except a member of an eligible organization or a member of an organization auxiliary to an eligible organization, may assist in the holding, operating, or conducting of any game of chance under this ordinance.
3. No item of expense shall be incurred or paid in connection with the holding, operating, or conducting of any game of chance held, operated, or conducted pursuant to this ordinance, except bona fide expenses in reasonable amounts as provided under Section 8. NO games of chance shall be conducted with any equipment other than equipment owned by or rented at a reasonable rate from an eligible organization.
4. The governing board of an eligible organization shall be primarily responsible for the proper utilization of the entire net proceeds of any game of chance held in accordance with this ordinance.
5. The premises where any game of chance is being held, operated, or conducted, or where it is intended that such game will be held, shall be open to inspection by representatives of the governing body authorizing games of chance, and by peace officers of the city, county or state.
6. When any merchandise prize is awarded in a game of chance, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash directly or indirectly.
7. Equipment, prizes, and supplies for games of chance shall not be purchased or sold at prices in excess of the usual price thereof.
8. The entire net proceeds derived from the holding of games of chance must be devoted within one year from the date such proceeds were earned to the uses permitted by this ordinance. Any organization desiring to hold the net proceeds of games of chance for a period longer than one year from the date such proceeds were earned must apply to the governing body for special permission, and upon good cause shown, the governing body may grant the request.
9. No person, firm, corporation, association, or organization convicted of a felony or a class A misdemeanor, or determined to have participated in organized crime or unlawful gambling, shall be permitted to sell, distribute, conduct, or assist in games of chance under this ordinance.

8.0905 Bingo Games – Method of Play

1. The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance, and all other characteristics which may include their selection. All objects or balls shall be present in the receptacle before each game is begun. All numbers announced shall be plainly and clearly audible or visible to all the players present. Where more than one room is used for any one game, the receptacle and the caller must be present in the room where the greatest number of players are present and all numbers announced shall be plainly audible or visible to the players in the other room or rooms. The card or sheet of the players shall be part of a deck, group, or series of cards or sheets, no two of which shall be alike. Such deck, group, or series shall not be so prepared or arranged as to prefer any card or sheet.
2. The particular arrangement of numbers required to be covered in order to win the bingo game and the prize shall be clearly and audibly or visibly described and announced to the players immediately before each game is begun.
3. Any player shall be entitled to call for a verification of all numbers drawn at the time a bingo winner is determined, and for verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence but if such member is also the caller, then in the immediate presence of an officer of the eligible organization.
4. No person who is not physically present on the premises where the bingo game is actually conducted shall be allowed to participate as a player in the game.
5. No person shall act as a caller or assistant to the caller in the conduct of any game of bingo unless such person is a member of the eligible organization conducting such game or a member of an organization auxiliary to the licensee.

8.0906 Punchboards and Jars – Sale of Chances

No person or organization engaged in the selling of chances from jars or punchboards under this ordinance shall discard the chances from any jar or punchboard once the contents of such jar or punchboard are offered for sale to eligible participants, unless all of the highest denomination of winners have been sold.

8.0907 Statement of Receipts – Expenses

1. All moneys collected or received from games of chance and admissions thereto, except cash prizes of less than One Hundred and 00/100 (\$100.00) Dollars paid immediately, shall be deposited in a special account of the eligible organization which shall contain only such money. Cash prizes of One Hundred and 00/100 (\$100.00) Dollars or more, the purchase prices of merchandise prizes, and all expenses for such games of chance shall be withdrawn from such account by consecutively numbered checks duly signed by a specified officer or officers of the eligible organization and payable to a specific person or organization. There shall also be written on the check the nature of the expense or prize for which the check is drawn. No check shall be drawn to “cash” or a fictitious payee.
2. No part of the net proceeds after they have been given over to another organization shall be used by the donee organization to pay any person for services rendered or materials purchased in connection with the conducting of games of chance by the donor organization.
3. No item of expense shall be incurred or paid in connection with holding, operating, or conducting any game of chance pursuant to this ordinance, except bona fide expenses of a reasonable amount actually and necessarily incurred and directly attributable only to the conduct of the games of chance, and shall not include overhead, capital costs, and general maintenance. Total expenses for games of chance shall not exceed one-third (1/3) of the total adjusted gross proceeds from each such occasion.
4. Expenses for games of chance shall be incurred only for the following purposes:

- (a) The purchase of necessary goods, wares and merchandise.
- (b) Payment for services rendered which are reasonably necessary for repair of equipment, and for operating or conducting games of chance.
- (c) For rent if the premises or equipment are rented, or for janitorial services if premises are not rented.
- (d) Accountant's fees.
- (e) License fees.
- (f) Utility expenses.
- (g) Taxes.

For purposes of this subsection, the following terms shall have the following meanings: “goods, wares and merchandise” mean bingo equipment, jars, pull tabs, punchboards, and raffle tickets as defined by Section 1, articles of a minor nature such as pencils, crayons, tickets, envelopes, paper clips, and coupons necessary to the conduct of games of chance; “services rendered” means repair to equipment, reasonable compensation to members for conducting games of chance, and to bookkeepers or accountants, not more than two in the aggregate, for services in preparing financial reports, and a reasonable amount for rental of premises, utilities, and for janitorial service.

8.0908 Examination of Books and Records

Representatives of the governing body of the city shall have the power to examine or cause to be examined the books and records of any eligible organization licensed or authorized to conduct games of chance under this ordinance so far as such books and records relate to any transaction connected with the holding, operating, and conducting of any game of chance.

8.0909 Form and Display of License

Each authorization required under this ordinance shall contain a statement of the name and address of the authorized eligible organization and such other information as the authorizing authority may designate.

Each license or resolution issued for the conduct of any game or games of chance shall be conspicuously displayed at the place where the same is to be conducted at all times during any game of chance and for at least thirty (30) minutes thereafter. The sale of a raffle ticket shall not require the display of the license or authorizing resolution.

8.0910 Penalty for Violation of Ordinance – Forfeiture of Authorization – Ineligibility for Two Years

Any person who knowingly makes a false statement in any application for an authorizing resolution or in any statement annexed thereto, or fails to keep sufficient books and records to substantiate the receipts, expenses, or uses resulting from games of chance conducted under this ordinance, or who falsifies any books or records so far as they relate to any transaction connected with the holding, operating and conducting of any game of chance, or who violates any of the provisions of this ordinance, or any term of an authorization shall be subject to a fine in the maximum amount of Five Hundred and 00/100 (\$500.00) Dollars, imprisonment for a period not to exceed thirty (30) days, or both. Any organization so doing shall be subject to a fine not to exceed the amount of Five Hundred and 00/100 (\$500.00) Dollars. If convicted, such organization or person shall forfeit any license and shall be ineligible to reapply for a license or authorization for two (2) years thereafter.

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 five hundred dollars (\$500.00). The court may, in addition thereto, revoke the permit or license 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.