

Chapter 4 ALCOHOLIC BEVERAGES

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Section 4.ED.010 Editor's note to Chapter 4

As to driving under influence of liquor, see § 20.76.010 of this Code. As to intoxication or drunkenness generally, see § 25.16.08.040. As to use, possession, etc., of controlled substances, see § 25.16.12.130.

Article 4.04 In General

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Section 4.04.00E Editor's note to Article 4.04

For state law as to alcoholic beverages generally, see NDCC, § 5-01-01 et seq. As to authority of city to regulate and license alcoholic beverages generally, see NDCC, §§ 5-02-09, 40-05-01.

Section 4.04.010 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section:

- (a) **Alcoholic Beverages.** Any liquid suitable for drinking by human beings which contains one-half of one percent or more of alcohol by volume and shall include, but is not necessarily limited to, any whiskey, rum, beer, hard cider and wine. It shall be presumed, for purposes of this chapter, that any such beverages contain more than one-half percent of alcohol by volume. For similar state law, see NDCC, § 5-01-01.
- (b) **Distilled spirits.** Distilled spirits means any alcoholic beverage that is not beer, wine, or sparkling wine.
- (c) **Distillery License.** A license issued to the owner or lessee of any domestic operation wherein the owner/operator of the distillery produces stilled spirits within the state of North Dakota in accordance with the provisions of N.D.C.C. § 5-01-19.
- (d) **Hotel or Motel License.** A license issued to the owner or lessee of any hotel or motel containing seventy-five or more rental units in one contiguous area.
- (e) **Licensed premises.** All areas or spaces where alcoholic beverages are sold, served or

dispensed as identified in the comprehensive site drawing required in the application for a license under this Chapter. The licensed premises must be located in one structure, and all portions of the licensed premises must be contiguous. Any licensee whose licensed premises was located in more than one noncontiguous building as of January 1, 2005 or more than on contiguous building as of February 1, 2016, may continue to operate in such building(s), provided that, if building(s) ceases to be a portion of the licensed premises at any time, the licensed premises thereafter must comply with the current definition of licensed premises.

- (f) **Lodge or Club.** Any corporation or association organized for civic, fraternal, social or business purposes or the promotion of sports, which has at least two hundred members at the time the license is applied for and was in existence at the time of the adoption of the Liquor Control Act of the state. The effective date of the adoption of the Liquor Control Act of the state is defined and determined to be December 3, 1936.
- (g) **Microbrewery License.** A license issued to the owner or lessee of any licensed premises which brews 10,000 barrels or less of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
- (h) **Minor.** A person under twenty-one years of age.
- (i) **Off-Sale.** The sale of intoxicating beverages in original packages for consumption off or away from the premises where sold.
- (j) **On-Sale.** The sale of any alcoholic drinks for consumption on the premises where sold. An on-sale license shall authorize the person named therein to conduct such sales at the place designated in such license and not elsewhere. An on-sale license issued pursuant to the provisions of this chapter shall permit off-sales of liquor under the terms and conditions set forth therein.
- (k) **On/off Sale License.** A license issued to the owner or lessee of an establishment, which shall authorize the person named therein to sell alcoholic beverages for consumption either on or off the premises on which it is sold.
- (l) **Person.** Any of the following: Any individual who is a bona fide resident and a citizen of the state; any domestic, private or municipal corporation organized and existing under the laws of the state; any limited liability company organized and existing under the laws of the state; and partnership, all of whose members are bona fide residents in and citizens of the state; or any lodge or club existing as defined in this section and maintaining its main lodge or club rooms within the city. No foreign corporation shall be considered a person for purposes of this chapter, nor shall any foreign corporation be entitled to a license under this chapter.
- (m) **Qualified alcoholic beverage licensee.** Unless the context otherwise indicates, means a commercial establishment that is licensed to engage in the sale of alcoholic beverages,

and which has paid and continues to pay the city Hospitality tax under section 35.125 of this Code. A commercial establishment licensed to engage in the sale of alcoholic beverages that is not required to pay the Hospitality tax may voluntarily pay the tax to become a qualified alcoholic beverage licensee. A commercial establishment shall be considered to have paid the tax upon its first payment of said tax to the State Tax Department. Failure to continuously pay the tax will void the remaining term of the permit and the licensee will be ineligible for reinstatement until it has continuously paid the tax for a period of 12 months. Said licensee, upon request of the City, shall provide sufficient proof of payment of the tax.

- (n) **Restaurant.** An establishment having sufficient dining areas, commercial kitchen and complete food service facilities to adequately serve its patrons, and for which gross sales of food are equal to or greater than gross sales of alcoholic beverages.
- (o) **Restaurant License.** A license issued to the owner or lessee of any restaurant.
- (p) **Retailer.** Any person engaged in the sale and distribution of alcoholic beverages of any type under any type of license, except a wholesale license.
- (q) **Sale and Sell.** Any transfer, exchange or barter in any manner or by any means whatsoever for an amount of money or its equivalent, including all sales made by any person, whether as principal proprietor, agent, servant or employee.
- (r) **Sunday opening permit.** A permit awarded to qualified alcoholic beverage licensees in accordance with Section 35.125 of this Code, which permits the licensee to open for business on Sundays.
(Ord. No. 396; Ord. No. 456, § 3-1; Ord. No. 701, § 1; Ord. No. 832, § 2; Ord. No. 1106, § 1; Ord. No. 1113, § 1; Ord. No. 1184 § 1; Ord. No. 1298 §1; Ord. No. 1327 §1; Ord. No. 1608 §1; Ord. No. 1654 §1)

Section 4.04.020 Territorial jurisdiction of chapter

This chapter shall apply to all territory within the corporate limits of the city and to such outlying, contiguous territory without the corporate limits within which this city may exercise police jurisdiction as defined by law. (Ord. No. 396.)

Section 4.04.030 Enforcement of chapter - REPEALED

This section was repealed with passage of Ordinance No. 1298 dated July 5, 2005.

Section 4.04.040 Minors--Employment by establishments having on-sale license

Any licensee who dispenses alcoholic beverages to a person under twenty-one years of age or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed is guilty of a class B misdemeanor, subject to the provisions of Article 25.16 of this Code. Any person under twenty-one years of age may remain:

- (a) in a restaurant where alcoholic beverages are being sold, if accompanied by a parent or legal guardian,
- (b) in a restaurant where that person is employed by the restaurant as a food waiter, waitress, or server, busboy or busgirl, provided that such person is at least eighteen years of age, and under the direct supervision of a person over twenty-one years of age, and such person is not engaged in the sale, dispensing, or consumption of alcoholic beverages,
- (c) in a restaurant where alcoholic beverages are being sold if the seating is separated from the area in which alcoholic beverages are opened or mixed,
- (d) in an area of a site where beer, wine or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 4.08.270,
- (e) any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing or consuming alcoholic beverages,
- (f) in any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age,
- (g) if the person is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages,
- (h) if the person is a law enforcement officer or other public official who enters the premises in the performance of official duty, or
- (i) if the person enters the premises for training, education, or research purposes under the supervision of a person twenty-one or more years of age with prior notification of the local licensing authority.

Ord. No. 396; Ord. No. 647, § 2; Ord. No. 987, § 1; Ord. No. 1188, § 1; Ord. No. 1298 § 3; Ord. No. 1642 § 1)

For state law as to employment of minor in restaurant where alcoholic beverages are being sold, see NDCC, § 5-02-06.

Section 4.04.050 Conduct on premises where sale permitted

Every person holding a license to sell alcoholic beverages shall be responsible for the conduct in his place of business and shall maintain order and sobriety in such place. (Ord. No. 396.)

Section 4.04.060 Nudity, seminudity and sexually explicit acts prohibited

(a) 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;
- (2) the pubes;
- (3) the cleavage between the buttocks; and

- (4) the genitals.
- (b) No person while upon or within premises licensed under this chapter shall perform or simulate acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or shall perform or simulate the touching, caressing or fondling of breasts, buttocks, anus or genitals.
- (c) Premises licensed under this chapter for the purposes of this section shall include any area or room under control of the licensee, or as to which he has the lawful right to assert control, whether control is exercised or not:
 - (1) in which or in any portion of which alcoholic beverages are stored, mixed, prepared, opened, served or consumed as an incident of the business operation of the licensee carried on pursuant to the license; or
 - (2) the interior of which his visible from an area or room described in subparagraph (1) but only while its interior is so visible.(Ord. No. 922, 1; Ord. No. 1298 §4.)

Section 4.04.070 Sale, consumption, etc. on streets, public ways, etc.

Unless authorized by Event Alcoholic Beverage Permit the sale, serving, possession, or consumption of any alcoholic beverage upon or across any street, alley or public way is hereby prohibited. A person who violates this section shall be guilty of an infraction and sentenced accordingly. (Ord. No. 396; Ord. No. 950, § 1; Ord. No. 1176, § 8; Ord. No. 1184 § 2.)

Section 4.04.080 Sale to certain persons

No licensee under this chapter nor any of his agents, servants or employees shall sell, serve or dispense in any manner any alcoholic beverage to any habitual drunkard, intoxicated person, incompetent person under guardianship or to any person under twenty-one years of age. No such licensee shall permit any of such persons to be furnished with any type of alcoholic beverage on the premises for which such license is granted.

Whosoever shall in any way procure or furnish any alcoholic beverage for the use of any person named in this section shall be deemed to have sold the same to such person and to have violated the terms and conditions of this section. (Ord. No. 3906.)

For similar state laws, see NDCC, § 5-01-09.

Section 4.04.090 Prohibited hours and days of sale

A person may not dispense or permit the consumption of alcoholic beverages on licensed premises between 1:00 A.M. and 11:00 A.M. on Sundays; between the hours of 1:00 A.M. and 8:00 A.M. on all other days of the week; on Christmas Day, or after 6:00 P.M. on Christmas Eve. In addition, a person may not provide off-sale after 1:00 A.M. on Thanksgiving Day. (Ord. No. 396; Ord. No. 425, § 1; Ord. No. 515, § 1; Ord. No. 987, § 2; Ord. No. 1020, § 1; Ord. No. 1075, § 1; Ord. No. 1088, § 1; Ord. No. 1298 § 5, Ord. No. 1594 § 1)

For state laws as to hours of sale, see NDCC, § 5-02-05.4.08.030

Section 4.04.100 Purchases on certain days

It shall be unlawful for any person to purchase or seek to purchase any beer, liquor or any form of alcoholic beverage within the city at any time or any day when such purchases are prohibited by state law. (Ord. No. 396; Ord. No. 425, § 2; Ord. No. 515, § 2.)

For state laws as to sale of alcoholic beverages on certain days, see IVDC, § 5-02-05.

Section 4.04.110 Drive-in and walk-up facilities

It is hereby declared to be unlawful on or after January 1, 1978, for any person holding any license for the sale of alcoholic beverages within the city to maintain or operate any walk-up or drive-in facility for the sale, dispensation or delivery of any alcoholic beverage. (Ord. No. 396; Ord. No. 701, § 3.)

Section 4.04.120 Toilet requirements for on-sale premises

The premises where any on-sale license is granted for the sale of any alcoholic beverages must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition. (Ord. No. 396.)

For state law as to authority of city to establish health standards for licensed premises, see NDCC, § 5-02-09.

Section 4.04.130 Sale of alcoholic beverages prohibited after certain hours

No alcoholic beverage licensee or any of his agents or employees shall allow any on-sale alcoholic beverages to be sold after 12:45 A.M. Sales of on-sale alcoholic beverages shall cease and be prohibited from and after 12:45 A.M. This restriction is additional to any restrictions and prohibitions now required by state law. (Ord. No. 711, § 1; Ord. No. 836, § 1; Ord. No. 987, § 3.)

Section 4.04.140 Credit sales - REPEALED

This section was repealed with Ordinance No. 1298 § 5 approved July 5, 2005.

Section 4.04.150 Side rooms, booths, etc., on premises where beverages are sold - REPEALED

This section was repealed with Ordinance No. 1298 § 7 approved July 5, 2005.

Section 4.04.160 Sale of beer in kegs; records and marking required

(a) A retail licensee selling beer in a container having a liquid capacity greater than six gallons (22.71 liters) shall place a distinctive symbol, notation or mark on the container which uniquely identifies him/her, and moreover, shall mark such container with a "registration" number or letters, or both, unique to that container. The paint or ink used to mark the containers or other manner of marking the containers must be approved by the attorney general.

(b) Whenever a retail licensee sells beer in a container with a liquid capacity greater than six gallons (22.71 liters), he/she shall record the date of sale and the name, address, driver's license number or number of other official state or military identification card of the person to whom the beer is sold, together with the signature, and registration number or letters of the container, or both. Such records must be retained for a period of no less than six months and must be kept on the licensed premises of the retail establishment where the sales are made.

(c) Each retail licensee shall register his or her unique identification symbol, notation or mark with the attorney general and shall permit any law enforcement officer to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.

(d) This section shall not apply to the sale of beer in a container by a retail licensee if the contents of the container are consumed on the licensed premises where the sale occurred. (Ord. No. 851, § 1; Ord. No. 987, § 4.)

Article 4.08 Licenses.

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- 4.08.040 Repealed by 1184**
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- 4.08.270 Event alcoholic beverage permit**
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Section 4.08.010 Eligible persons

No license shall be issued under the provisions of this Chapter to any applicant, except as follows:

- (1) If the applicant is an individual, such individual must be at least 21 years of age, a legal resident of the United States, a legal resident of the State of North Dakota, and must establish residency in Stark County within three months of the issuance of the license.
- (2) If the applicant is a partnership, all such partners must be at least 21 years of age, legal residents of the United States, legal residents of the State of North Dakota, and must establish residency in Stark County within three months of the issuance of the license.
- (3) If the applicant is a corporation or other limited liability entity, the designated manager of the licensed premises must be at least 21 years of age, a legal resident

of the United States, a legal resident of the State of North Dakota, and must establish residency in Stark County within three months of the issuance of the license. (Ord. No. 1492 §1)

Section 4.08.020 License Required

It shall be unlawful for any person to sell, exchange, dispose of or keep for sale any alcoholic beverage within the city without first obtaining a license for the sale thereof from the city. Persons violating this section shall be guilty of a Class A misdemeanor. (Ord. No. 396; Ord. No. 1298 § 9, Ord. No. 1492 §1)

For state law requiring both state and local licenses, see NDCC, § 5-02-01.

Section 4.08.030 License - Classes

The City may issue the following licenses for the retail sale of alcoholic beverages:

- (a) On/off-Sale licenses.
- (b) Lodge or club licenses.
- (c) Motel or hotel licenses.
- (d) Restaurant on-sale licenses.
- (e) Military club beer and wine licenses.
- (f) Microbrewery license.
- (g) Restaurant Beer and wine.
- (h) Beer only.
- (i) Beer and wine Concession License.
- (j) Distillery License.

(Ord. No. 396; Ord. No. 456, § 3-4; Ord. No. 832, § 1; Ord. No. 969, § 1; Ord. No. 1106, § 3; Ord. No. 1184 § 3; Ord. 1232 § 1; Ord. No. 1298 § 10, Ord. No. 1492 §1; Ord. No. 1589 §1; Ord. No. 1649 §; Ord. No. 1654 §2)

Section 4.08.060 License Requirements - Limitation on number; issuance generally; renewal

The Board of City Commissioners hereby finds that in order to ensure compliance by all licensees with all applicable federal, states, and city laws, ordinances, and regulations, and in order to adequately police establishments engaged in the retail sale of alcoholic beverages, and in order to promote the public welfare, it is necessary and proper to limit the number of certain classes of licenses, as provided herein, pursuant to the city's police powers and the authority granted by Title 5 of the North Dakota Century Code.

(a) On/Off Sales Licenses

As of December 31, 2012, a total of seventeen on/off sale licenses existed within the city limits of the City of Dickinson. No additional on/off sale licenses shall be granted; until the population of the city reaches an estimated twenty one thousand (21,000) people, at which time the City Commission may, but shall not be required to, grant an additional on/off sale license, as hereinafter provided.

The City Commission may grant an additional on/off sale license for each incremental population increase of three thousand people above 21,000 people, as

may be determined in the sole discretion of the City Commission from time to time, based upon annexations, household units, census projections, census results, or other methods of estimated population.

If additional licenses have been granted because of an increase in population, said licenses will be eliminated when the population falls below the population level that authorized the additional license. In addition, if the population of the city falls below twenty one thousand, one on/off sale license shall be eliminated from the number authorized under this section. However, said licenses shall not be eliminated until such time as a license is vacated.

Annexation of Pre-Existing License

Any on/off sale license which is added to the city by virtue of annexation shall automatically increase the number of on/off sale licenses available under subsection (a) of this section. Notwithstanding addition of on/off sale licenses added by annexation, the city may nevertheless add additional on/off sale licenses based upon the requisite population increases, as stated in subsection (a) of this section.

Addition of On/Off Sale License – Procedure for Granting.

In the event that the City Commission elects to grant an additional on/off sale license as provided in subsection (a) of this section, the City shall award the additional on/off sale license pursuant to a public bidding process. The City shall proceed as follows:

- 1) The City shall set a date for the receipt of sealed bids from interested parties, and a date and time for bid opening.
- 2) The City shall provide notice to the general public of its intent to grant an additional on/off sale license by sealed bids. Such notice shall be published in the official newspaper of the City at least fifteen (15) days prior to the deadline for receipt of bids. Notice shall further be given by such other means as the City Commission or City staff shall deem appropriate. The Board of City Commissioners may, in its sole discretion, establish a minimum bid amount, which shall be made known to any and all potential bidders.
- 3) Interested parties shall submit an application for an on/off sale license, together with the information required by Dickinson City Code 4.08070, or as may otherwise be required for City staff to determine the party's qualifications for a license. Interested parties shall further submit the non-refundable application fee set by the City. Parties failing to submit the required application, information, and application fee shall have their bids removed from consideration.
- 4) Interested parties shall further submit to the City a sealed bid for the additional on/off sale license.
- 5) City staff shall review the application and information submitted by all interested parties. Parties who are determined by City staff to be not qualified for a license shall have their bids removed from consideration.
- 6) Opening of sealed bids shall be held at the time and date set by the City. Parties shall have the opportunity to improve their written bids pursuant to an auction process.

- 7) City staff shall submit all final, qualified bids to the City Commission, together with a recommendation from City staff regarding the award of the bid.
 - 8) At its sole discretion, the City Commission may grant the additional on/off sale license to the highest responsible bidder.
 - 9) Upon grant of the on/off sale license from the City Commission, the successful party shall immediately pay the full bid price. If the successful party is unable to immediately pay the full bid price, the City Commission may offer the license to the next highest bidder or, in the Commission's sole discretion, decline to offer the license to any remaining bidder.
 - 10) The City reserves the right to reject any and all bids, to waive any informalities in the bidding process or any bid received, and to accept any bid which, in sole judgment of the City Commission, is in the City's best interest.
 - 11) The successful bidder shall have a period of one year from the date of granting of the additional on/off sale license in which to open and operate a business pursuant to the on/off sale license. The successful bidder may request, in writing, an extension from the City Administrator of up to 12 months in the event that extraordinary circumstances prevent the successful bidder from opening and operating a business pursuant to the additional on/off sale license within the initial time allotted. The City Administrator shall grant such extension if it is in the best interests of the public health, safety and welfare. Additional extensions may be granted in the sole discretion of the Board of City Commissioners upon a showing by the successful bidder of extraordinary circumstances preventing the successful bidder from opening and operating a business pursuant to the on/off sale license within the time allotted, and upon a showing of significant progress toward opening and operating a business pursuant to the on/off sale license. If a business is not opened and operated by the licensee within one year of its granting by the City Commission, or within such additional time as may be granted, in writing, the license shall revert back to the City, without refund or reimbursement to the licensee.
 - 12) The additional on/off sale license shall be non-transferable during the first year of its actual operation and sales.
- (b) Lodge or Club Licenses.
As of December 31, 2012, there were three lodge or club licenses in existence. None of them shall be transferable to any other owner. Any additional lodge or club license shall be granted only to organizations qualifying as a lodge or club, and then only in the discretion of the board of city commissioners. No electronic or mechanical gaming devices or games of chance shall be allowed upon the premises licensed hereunder in any area where minors are allowed to be present.
- (c) Motel or Hotel Licenses.
The City may grant an alcoholic beverage license for both on- and off-sale to any hotel or motel within the city limits which has seventy-five or more rental units or rooms.

(d) Restaurant On-Sale License.

The City may grant an alcoholic beverage license for on-sale only to any restaurant within the city limits. The restaurant shall have sufficient dining area and facilities to adequately serve its patrons, as well as the public generally. The restaurant may have a lounge area or waiting area lounge for patrons waiting to be seated for the purposes of serving alcoholic beverages in conjunction with its restaurant business. Permission for such area should be duly noted on the licensee's license. No electronic or mechanical gaming devices or games of chance shall be allowed upon the premises licensed hereunder in any area where minors are allowed to be present. Those receipts from the sales of alcoholic beverages hereunder shall not exceed fifty percent of the gross receipts from the sale of all food items and alcoholic beverages combined. All restaurant on-sale license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant certifying that gross food sales and liquor sales for the previous calendar year meet the requirements of this section. The Board of City Commissioners may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the Commission deems necessary.

All sales of alcoholic beverages by restaurant on-sale licensees must be separately receipted to the customer by cash register receipt and clearly identified as sales of liquor, beer or wine on all receipts. In order to qualify for an alcoholic beverage license under this provision, it is necessary that the dining area and other food service facilities be in operation and be open for business.

(e) Military Club Beer and Wine.

The City may grant beer and wine licenses to military clubs of the armed forces permitting beer sales and/or wine sales. For the purposes of this section and others pertaining thereto, "armed forces" shall mean the Army, Navy, Air Force, Marine Corps and Coast Guard of the United States of America. A license hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages. The beer and/or wine license hereunder shall be for the sale of beer and/or wine for consumption on the premises only, to military club members only, and no sales for consumption off the premises shall payable in the manner provided in section 4.08.080. A license hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this chapter.

(f) Microbrewery License.

Microbrewery License. The City may grant microbrewery licenses to a licensee to operate a microbrew pub and to sell beer on-sale and off-sale in accordance with the requirements and limitations of N.D.C.C. § 5-01-14. A microbrewery license will authorize the licensee to sell only beer which is brewed on the premises, and may be sold on-sale and off-sale. A microbrewery license shall not modify any of the restrictions or requirements on the licensee as the owner of any other alcoholic beverage license which may be held in addition to the microbrewery license. A licensee hereunder shall comply with all the laws of the state and remaining provisions of this Code, relating to the sale and dispensation of alcoholic beverages.

(g) Restaurant Beer and Wine.

The City may grant an alcoholic beverage license permitting on-sale restaurant beer sales and/or wine sales subject to the following restrictions and conditions:

- (1) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.
- (2) A licensee hereunder must be a restaurant as defined in this chapter.
- (3) The receipts from the sale of alcoholic beverages hereunder shall not exceed fifty percent of the gross receipts from the sale of all food items and alcoholic beverages combined. All restaurant beer and wine license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant certifying that gross food sales and liquor sales for the previous calendar year meet the requirements of this section. The Board of City Commissioners may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the Commission deems necessary.
- (4) The beer and wine license hereunder shall be for the sale of beer and wine for consumption on the premises only, and no sales for consumption off the premises shall be made.
- (5) A licensee hereunder may sell tap beer or beer in bottles, cans or similar packages. Wine may be sold by bottles for consumption on-premises.
- (6) Beer and wine shall be consumed at tables or booths only, and no beer shall be consumed at a counter or bar.
- (7) The license fee for restaurant beer and wine license shall be payable in the manner provided in section 4.08.080 of this Code.
- (8) Except as modified in this section, a license hereunder shall comply with and be subject to all the remaining provisions of this Code, including this chapter.

(h) Beer Only License.

The City may grant an alcoholic beverage license permitting sale of on-sale tap beer or beer in open bottles subject to the following restrictions and conditions:

- (1) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.
- (2) A licensee hereunder may sell tap beer or beer in opened bottles, cans or similar packages.
- (3) The license hereunder shall be for the sale of beer for consumption on the premises only, and no sales for consumption off the premises shall be made.
- (4) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

(i) Beer and Wine Concession License.

The City may grant an alcoholic beverage license permitting the sale of retail beer and wine to the operator(s) of the food and beverage concession(s) under contract with Dickinson Parks and Recreation District for concession services at Dakota Community Bank & Trust Ballpark - Astoria & Coke Fields, a Dickinson municipal ballpark (Ballpark). The license is nontransferable and may be held only by the operator(s) who have been awarded and currently hold a concession(s) contract, provided the contract permits the sale of beer and wine, and may be held only for the period of the operator's concession contract and shall terminate with the termination of that contract. This license is limited to on-sale service of beer and wine to patrons of the Ballpark. A licensee hereunder shall comply with all the laws of the state and remaining provisions of this Code, relating to the sale and dispensation of alcoholic beverages.

(j.) Distillery License.

A distillery license shall authorize the distilling of spirits and the limited on and off sale thereof in accordance with the requirements and limitations of N.D.C.C. § 5-01-19. A licensee hereunder shall comply with all the laws of the state and remaining provisions of this Code, relating to the sale and dispensation of alcoholic beverages.

(Ord. No. 396; Ord. No. 456, § 3-5; Ord. No. 701, § 4; Ord. No. 832, § 4; Ord. No. 969, § 2; Ord. No. 1012, § 1; Ord. No. 1106, § 4; Ord. No. 1113, § 2; Ord. No. 1164 § 1; Ord. No. 699 § 1; Ord. No. 706, § 1; Ord. No. 832, § 3; Ord. No. 1184 § 5; Ord. 1232 § 2 & 3; Ord. No. 1253 § 1; Ord. No. 1298 § 11; Ord. No. 1402 §1, Ord. No. 1492 §1; Ord. No. 1535 §1; Ord. No. 1589 §2; Ord. No. 1608 §2; Ord. No. 1649 §2; Ord. No. 1654 §3)

For state law as to local regulations of licensees including determining the number of licenses granted, see NDCC, § 5-02-09.

Section 4.08.070 License Applications

(a) Any person desiring to obtain a license for the retail sale of alcohol pursuant to this Chapter shall make and file an application for such license with the Board of City Commissioners. The application shall be made on a form approved by the Board and made available through the office of the City Administrator. In addition to information required on the application form, the Board, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

Every applicant shall be required, as a portion of the written application, to promise and agree to abide by and obey all applicable laws of the state and all applicable ordinances of the city so far as such laws or ordinances may be concerned with the operation of the licensed premises and any activities conducted thereon.

There shall also be incorporated on any such application the following consent which shall be signed by the applicant:

The applicant hereby does expressly consent that any person(s) duly authorized by the city of Dickinson may enter upon the premises described in this application at any reasonable hour of the day or night including all hours in which the establishment is occupied, and at such times they shall have free access to all portions of the property comprising the licensed premises for the purpose of inspecting such premises for any possible violations of laws of the state of North

Dakota or ordinances of the city of Dickinson regardless whether said laws pertain to the sales of alcoholic beverages. Such access shall be permitted without necessity of a search warrant.

(b) New Applicants. In addition to the provisions required of all applicants, all new applicants or those who previously have not been granted alcoholic beverage licenses by the city shall be required to furnish the following:

- (1) Such applicant shall furnish a complete statement of the type of business contemplated and give a comprehensive site drawing, including exact location(s) and extent of the area(s) in the building in which alcoholic beverages will be sold and/or served.
- (2) Each applicant shall cooperate to the fullest extent in obtaining a complete background investigation concerning any persons involved with the individual applicant or the applicant's organization.
- (3) The applicant, if an individual, shall show a history of the applicant's residency, employment and business ownership for five years immediately prior to the date of application. If the applicant is a partnership, this information shall be furnished for all the partners; and, if a corporation, or other limited liability entity, the amount of authorized capital, the amount paid in capital, whether such corporation is a subsidiary of any corporation, and, if so, the name of the parent corporation, the purposes for which the corporation was incorporated and the names and addresses of all officers, directors and managing agents and the names and addresses of all stockholders holding more than five percent of the capital stock of such corporation shall be furnished.
- (4) The applicant shall state the name and address of the legal title owner of the premises for which the license is sought, and if the license is sought for a person other than the owner of the premises, the terms and conditions of the lease under which the applicant holds the possession of such premises shall be stated insofar as the terms of the lease and the rental to be paid are concerned. The applicant shall, when required by the board of city commissioners, furnish to the board a copy of the lease under which he holds possession of the premises. If the license is sought by the owner of the premises, the application shall state the time when such applicant acquired title thereto.
- (5) The applicant shall state whether he has ever engaged in the sale or distribution of alcoholic beverages prior to the date of application, and, if so, the date and type of business and the place of each instance where such distribution was conducted shall be furnished.
- (6) It shall be stated whether during the five (5) years preceding the date of the Application, the applicant has ever had a license for the sale of alcoholic beverages revoked or canceled by any municipality, state or federal authority; and, if so, the date of cancellation, the place and authority canceling the same and the reasons for such cancellation shall be stated.
- (7) It shall be stated whether during the five (5) years preceding the date of the Application, the applicant has ever been convicted of a 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 or driving under the influence and, if so, the dates, names of places and courts in which such convictions were obtained.

- (8) The applicant shall state whether any person other than the applicant has any right, title or interest in the leasehold or in the furniture and fixtures or equipment of the premises for which the license is sought and, if so, the names and addresses of such person or persons together with a statement of the interest held shall be furnished.
- (9) It shall be stated whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any other person or to transfer to any other person the license obtained or to use the license for any other purpose other than the specific use of the applicant; and, if so, the names and addresses of such persons and the conditions of such agreements shall be stated.
- (10) The applicant shall state whether he has any interest whatsoever, directly or indirectly, in any other liquor or alcoholic beverage establishment, either wholesale or retail, within or without the state; and, if so, the names and addresses and details concerning such establishments shall be furnished.
- (11) The applicant shall state the classification of the license applied for, whether on/off-sale, lodge or club, restaurant on-sale, restaurant wine & beer, beer only, hotel/motel, military club beer and wine, or microbrewery license.
- (12) If the license is sought for a lodge or club, the date of the organization of the club and the number of the members therein as well as the purpose for which such club was organized shall be stated in full.

(Ord. No. 396; Ord. No. 456, § 3-6; Ord. No. 1184, § 6; Ord. No 1298 § 12; Ord. No. 1492 §1; Ord. No. 1589 § 3)

Section 4.08.075 License Renewals

Each year when the issuance of licenses is considered by the city commission, it shall first consider applications from persons holding existing licenses before considering any request for new applicants.

In considering whether or not to issue licenses to those previously licensed, the board of city commissioners will review and evaluate the past record of such licensees, including any violations of city ordinances and state law and the general manner in which the licensed premises has been conducted and managed, including the licensee's control of its licensed premises and the prevalence of bar fights, violence, or police calls necessary to control the licensed premises and other areas, such as parking lots surrounding or servicing the licensed premises.

The actual decision of whether or not a license should be issued under this chapter, whether it is to a previous licensee or to a new applicant, shall be made only in the discretion of the board of city commissioners and in accordance with the various requirements of this chapter. No licensee shall necessarily be entitled to an automatic renewal of his license.

In the event that the licensed establishment has been closed for six months or more during the previous calendar year, the Board of City Commissioners may, in its sole discretion, not renew such licensee.

In the event that a holder of an on/off sale license has failed to, or refrained from, opening or operating a business pursuant to such license for a period of more than six months in the preceding calendar year, the Board of City Commissioners shall not grant a renewal of the license. However, upon a showing of extraordinary circumstances, the holder of an on/off sale license may request, in writing, an extension of time in which to open and operate under such license. The City Administrator shall grant such an extension of time upon a showing by the licensee of a plan to open and operate under the license, and upon finding that an extension of time is in the best interests of the public health, safety and welfare. (Ord. No. 1298 § 13, Ord. No. 1492 § 1)

Section 4.08.080 Term; fees

All licenses under this chapter shall run for annual periods commencing January 1 of each year and terminating on December 31 of the same year. The license renewal application must be received and fees shall be paid prior to October 1. Failure to pay the license fees when due shall be cause for nonissuance of the license.

Annual license fees shall be set by resolution of the Board of City Commissioners, and included in the City Fee Schedule.

Each applicant for a new license, or a transfer of a license as described in 4.08.200 and 4.08.210, shall at the time of submission of the application for such issuance or transfer, pay (1) an application fee; and (2) an issuance fee or transfer fee as may be set by the Board of City Commissioners by resolution and incorporated into the City Fee Schedule.

(Ord. No. 396; Ord. No. 456, § 3-7; Ord. No. 557; Ord. No. 647, § 1; Ord. No. 701, § 5; Ord. No. 832, § 5; Ord. No. 1010, § 1; Ord. No. 1084, §1; Ord. No. 1106, § 5; Ord. No. 1184, §7; Ord. 1232 § 4; Ord. No. 1288 § 1; Ord. No. 1298 14; Ord. No. 1402 §2; Ord. No. 1635, §2)

For state law as to local license fees, see NDCC, § 5-02-03.

Section 4.08.090 Wholesale

Any person engaging in the sale at wholesale of beer or liquor in the city must first procure a license from the State Treasurer for the state of North Dakota. The city shall not issue wholesale beer or liquor licenses. (Ord. No. 396; Ord. No. 1106, § 6.)

Section 4.08.100 Licensee to be owner of business

No license provided for in this chapter shall be issued to any person engaged in business as a representative or agent of another. The license may be issued only to the person owning the business being conducted or to be conducted at the locations sought to be licensed.

Proof of ownership interest in the business conducted or to be conducted at the locations sought to be licensed, shall be the responsibility of the person making application for the license, and shall be shown to the reasonable satisfaction of the Board of City Commissioners. (Ord. No. 396; Ord. No. 1346 §1.)

Section 4.08.110 Premises near churches or schools

No license for the sale of alcoholic beverages shall be granted or issued under this chapter for any premises within three hundred feet of any church, public or parochial school or synagogue. In determining such distance, it shall be measured by the ordinary route of travel from the main entrance from such church, school or synagogue to the nearest entrance of such premises sought to be licensed. (Ord. No. 396; Ord. No. 1298 § 15)

Section 4.08.120 Number per person

Any one person may have an interest in no more than two on/off sale licenses for the sale of alcoholic beverages, whether such interest is acquired by direct ownership or indirect ownership of the business being conducted or to be conducted at the locations sought to be licensed.

An interest in an on/off sale license acquired by "indirect ownership" shall be deemed to exist whenever a person has any financial interest whatsoever in the business conducted or to be conducted at the location sought to be licensed, regardless of the amount of the financial interest, the percentage ownership of the business, or the corporate form in which the financial interest is held; provided, however, that in the event that an on/off sale license is granted to a publicly traded company, persons holding less than five percent of the total voting shares of such publicly traded company shall be deemed not to have an interest acquired by "indirect ownership".

An interest in an on/off sale license acquired by "indirect ownership" shall further be deemed to exist where, under the totality of the circumstances, in the sole discretion of the Board of City Commissioners, any two on/off sale licenses may be operated in conjunction with one another, due to familial relationships or other business interests held in common among persons holding or applying for a license, or having any interest therein.

This provision applies only to the on/off sale licenses governed by Section 4.08.060(a) of this Code. (Ord. No. 396; Ord. No. 1184, § 8; Ord. No. § 16; Ord. No. 1346 §2.)

Section 4.08.130 Identification number and record; display

Each license issued under the provisions of this chapter must be given an identification number, and a permanent record thereof must be kept by the city auditor showing the name and address of the licensee and a description of the place licensed. All licenses must be displayed at all times in a prominent place on the premises described in the application and license. (Ord. No. 396.)

Section 4.08.140 Issuance to certain persons prohibited--Minors or immoral persons - REPEALED

This section was repealed with Ordinance No. 1298, Section 17, approved July 5, 2005 (Ord. No. 396; Ord. No. 1298 § 17.)

Section 4.08.150 Restrictions on issuance to lodge or club

No license shall be issued to any lodge or club where sales of alcoholic beverages in such lodge or club are made for the profit of individuals and unless the profit made on the sale of such alcoholic beverage by such lodge or club is used for benevolent purposes.

Lodges and clubs are prohibited from advertising or displaying off-sale sales.
(Ord. No. 396; Ord. No. 1106, § 7; Ord. No. 1298 § 18.)

Section 4.08.170 Issuance or refusal generally

If an application for a license under this chapter is approved, the city administrator shall issue to the applicant a license showing the amount paid and for what location the license is authorized. Such license shall further state the class of license.

Any license provided for in this chapter shall be denied to any applicant who, in the discretion of the board of city commissioners, is a person of questionable character or for any other cause which would, in the opinion of the board, render the applicant or the premises to be licensed, improper or unfit or which would, in the board's opinion, make the granting of the license contrary to the best interests of this city and its citizens.

If a license becomes available, and there is more than one applicant, the City Commission may conduct an auction amongst all qualified applicants, and award the license to the successful bidder at said auction.

(Ord. No. 396; Ord. No. 1106, § 8; Ord. No. 1184, § 9; Ord. No. 1298 § 19.)

Section 4.08.180 Approval of applications by city commission

The city administrator shall submit each application for a license under this chapter to the board of city commissioners, who shall have whatever hearings they deem appropriate and who shall then act upon such application at the next meeting thereafter. Every new applicant for a license under this chapter shall be required to make a personal appearance before the board of commissioners. If the applicant is a partnership, such appearance shall be made by at least one of such partners, If the applicant is a limited partnership, limited liability partnership, or limited liability limited partnership, at least one general partner or managing partner shall appear. If the applicant is a limited liability company or a corporation, such appearance shall be made by the manager of the premises for which the application is made. (Ord. No. 396; Ord. No. 1184, § 10.)

Section 4.08.190 Majority vote by city commission required for issuance

No license shall be issued hereafter, whether it be a renewal of an old license or not, without the affirmative vote of a majority of all of the members of the board of city commissioners. (Ord. No. 396.)

Section 4.08.200 Change in location of licensed premises

No change of location of a licensed premises shall be permitted or considered unless the licensee shall first make a written application for such change to the city administrator clearly stating when and to what location the change is requested. Thereafter, the city administrator shall cause a public notice to be published in the official newspaper of the City one time at least fifteen days prior to a public meeting to be held by the City Commission for the purpose of reviewing the proposed change in location of licensed premises. Such an application for change of location may be granted only upon the majority vote of all of the members of the board of city commissioners.

(Ord. No. 396; Ord. No. 1298 § 20.)

Section 4.08.210 Transfer of Licenses

Licenses issued under the provisions of this Chapter shall be transferable to a qualified applicant with the approval of the Board of City Commissioners. The transferee shall file an application for license on the prescribed form, and a written request for transfer shall be filed with the City Administrator signed by both the transferor and the transferee. In addition to the regular annual fee for the license, the transferee shall further pay a transfer fee as may be set by the Board of city Commissioners by resolution and incorporated in to the City Fee Schedule. (Ord. No. 396; Ord. No. 1164 § 2; Ord. No. 1298 § 21; Ord. No. 1402 §3)

Section 4.08.220 Transfer of ownership of business - REPEALED

This section was repealed with Ordinance No. 1298 approved July 5, 2005 (Ord. No. 396; Ord. No. 1298 § 22.)

Section 4.08.230 Payment, proration and refund of fees

A license under this chapter shall not be issued until a check in the appropriate amount of the license fee payment is submitted to the City Administrator.

In the event that the license is issued after the expiration of a portion of the licensing year, the licensee shall then be granted a credit toward the payment of the fee for such year. The credit so granted shall bear the same relation to the annual license fee as does the period that the applicant was not in business to the annual licensing period.

If the application for a license is denied, the city administrator shall refund the fee deposited with him to the applicant upon demand. All license fees collected by the city administrator under this chapter shall be credited to the general fund of the city.

In the event of a sale or transfer of the licensed premises during the licensing period, January 1 through December 31, the annual license fee previously paid by the prior license holder is not refundable. (Ord. No. 396; Ord. No. 557; Ord. No. 1010, § 3; Ord. No. 1164, § 3; Ord. No. 1184, § 11.)

Section 4.08.240 Revocation and suspension by city commission

(a) Review of License. The Board of City Commissioners may review the status of any license issued pursuant to this Chapter, and take appropriate action against the licensee pursuant to this section.

(1) Suspension and Revocation for Cause. Any license issued pursuant to this chapter may be revoked or suspended for cause by the board of city commissioners, which cause may include, among other grounds, the following:

- a. When a licensee is adjudged bankrupt.
- b. When a licensee has made any false statement or statements in an application for the issuance of such license.
- c. When the licensee or, in the case of a corporation or other entity, shareholder, director, or manager of a licensee has been convicted of a violation of any felony crime under the laws of the United States or of any state.

- d. When the licensee or, in the case of a corporation or other entity, manager of a licensee ceases to be a legal, bona fide resident and citizen as required by this chapter to be eligible for a license.
- e. When the license or permit of the licensee from the United States government or from the state to sell alcoholic beverages at the location licensed has been terminated or has been revoked.
- f. When the business of the licensee at the location licensed has been conducted in violation of the health or sanitary regulations of the city or of the state.
- g. When the licensee, if an individual, or one of the partners if the licensee is a partnership, or one of the officers or managers if the licensee is a corporation, is convicted of drunkenness, disorderly conduct or a 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, distribution or possession of alcoholic beverages (including driving under the influence of intoxicating beverages or illegal drugs) or if an appeal is taken from such conviction, then when such conviction is sustained by the higher court or courts.
- h. When in the opinion of the board of city commissioners, the licensee has conducted his business or permitted his business to be conducted in a disorderly manner or in a manner that is dangerous or detrimental to the public welfare and morals.
- i. When the licensee, or an agent or employee of the licensee, violates any term or condition of the license or any provision of this Chapter.

(2) Server Training. Server training shall be available for licensees, together with their managers and employees. Server training shall mean training that has been approved by the Dickinson Police Chief and/or the City Administrator for managers and employees involved in selling alcoholic beverages at licensed liquor establishments, including restaurants. Persons successfully completing an approved class with a test score of at least 72% will receive a server training certificate card which will remain with that individual wherever employed. For new managers and employees not having previously received server training, there shall be a grace period of 90 days in which to successfully complete the approved class. The server training card must be renewed every three (3) years from the anniversary date as shown on the card.

(3) Penalty for Ordinance Violations. Any license issued pursuant to this Chapter may be suspended or revoked by the Board of City Commissioners for violating any of the provisions of this Chapter. Any licensee or agent or employee of a licensee who has violated any provisions of this Chapter shall be subject to the following penalties, in addition to possible license revocation:

- a. First Offense: (i) If the agent or employee of the licensee possesses a server training certificate card, or is within the 90-day grace period referenced in subsection (2), above, at the time of the violation by said agent or employee, the licensee will receive a written warning. (ii) If the agent or employee of the licensee does not possess a server training certificate card at the time of the violation by said agent or employee, the licensee will receive a written warning and a \$1,000.00 administrative penalty.

- b. Second Offense: \$2,000 administrative penalty, plus one day suspension of alcoholic beverage license.
- c. Third Offense: \$5,000 administrative penalty, plus a three-day suspension of alcoholic beverage license.
- d. Fourth Offense: Upon a fourth offense, the License Holder shall appear before the Commission for a determination of penalty which may include monetary fines of at least \$5,000, suspension of the license for a period of days to be determined by the Commission, or revocation of license.

The level of offenses shall be determined by reference to a 18-month period from the first offense by the licensee. By way of illustration, a second offense occurring more than 18 months after a first offense would then be deemed a first offense. Any offenses occurring prior to the effective date of this ordinance (April 18, 2005 - Ordinance No. 1296) shall not be considered an offense for purposes of this Section.

- (b) Suspensions--food sales. Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales only so that food sales, if applicable, may continue on the licensed premises.

- (c) Notice--public hearing. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the licensee. Upon written notification to the licensee by the City Administrator that a penalty is being sought under this section, the licensee may notify the City Administrator's office within ten (10) days of the date of such written notification and request a hearing on the proposed penalty. Failure to notify the City Administrator within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing.

A hearing shall be set before the Board of City Commissioners specifying the time and place of the hearing, and shall be served on the licensee in the same manner as provided by law for the service of a Summons in a civil action. No suspension hearing shall be held before the expiration of fifteen (15) days after the date of service of the notice. A record of any hearing shall be made by electronic recording device.

If, upon such hearing, it appears to a majority of the Board of City Commissioners that sufficient cause exists for the penalty sanctions, the Board of City Commissioners shall make its order in accordance with the provisions of this Chapter. The Board of City Commissioners shall further issue its findings, conclusions and order which shall be served upon the licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

- (d) No Refunds on Suspension. When any license is revoked or suspended for any reason, no portion of the license fee shall be returned to the licensee.
(Ord. No. 396; Ord. No. 1296 § 1; Ord. No. 1305 § 1; Ord. No. 1319 §1; Ord No. 1366 §1)

Section 4.08.250 Same--Effect on imposition of other penalties

The revocation or suspension of a license granted under this chapter shall not be considered as a penalty so as to bar any other penalty being enforced for such a violation. (Ord. No. 396.)

Section 4.08.270 Event alcoholic beverage permit

- (a) Authorization and Fee. The City Administrator may, by permit, authorize a qualified alcoholic beverage licensee to engage in the sale of alcoholic beverages at events, public dances, private groups, or parties, conventions or similar gatherings, shows, exhibitions, beer gardens, music festivals or similar event sponsored, operated or conducted in the expectation of a profit on such premises, including public buildings other than the licensed property identified with the primary license as may be designated by such permit. The fee for such local permit shall be set from time to time by action of the City Commission through the adoption of the City Fee Schedule and related resolution. Such permit shall not be valid for a period greater than ten consecutive days. A separate application must be submitted for each event for which a permit is sought.
- (b) Application for Permits. An alcoholic beverage licensee desiring to conduct an event as described in (a) above wherein alcoholic beverages will be sold, or to sell alcoholic beverages at an event as described in (a) above conducted by any other person who has been granted a local permit shall make an application for a permit to the City. The application shall set forth:
- (1) The name of the applicant;
 - (2) The time or period for which the permit is desired;
 - (3) The place where such event is to be conducted or held;
 - (4) Detailed drawing of area/location to be used and in the case of outdoor events, to include the area to be fenced, in order to define the site;
 - (5) Statement of one entrance, one exit;
 - (6) Verification that a person will be stationed at the entrance/exit at all times to check ID's;
 - (7) Verification that food items will be sold/served in an area separate from area where alcohol is sold.
- (c) The city may authorize persons under twenty-one years of age to remain in the area of the event, or portion thereof, where beer, wine or sparkling wine may be sold pursuant to the permit, subject to the following:
- (1) The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - (2) Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
 - (3) Subject to section 4.04.040, the area where persons under twenty-one years of age may remain may not be qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and
 - (4) No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.
- (d) Refusal and Revocation of Permit for Cause. The city administrator shall refuse to issue such permit and shall revoke a permit already issued, where it appears following inspections prior and during such event 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 of the laws of the state are being violated; or
 - (4) In the sole judgment of the City, 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.
- (e) State and Local Laws Apply. The sale or dispensation of alcoholic beverages pursuant to a permit issued under this section shall fully comply with all state laws and with the remaining provisions of this chapter which are consistent with the purposes and intent of this section.
- (f) Appeal of the City Administrator's Decision of Refusal or Revocation of Permit. The applicant may appeal a decision by the City Administrator to refuse to issue or to revoke a permit to the City Commission during the first regular commission meeting following the refusal or revocation decision unless the complaint is filed following the deadline for the order of business. In which case, the appeal will be scheduled during the next regular meeting. The appeal must be filed on a form provided by the City and signed by the applicant. (Ord. No. 720, § 1; Ord. No. 1088, § 2; Ord. No. 1155 § 1; Ord. No. 1184, § 12; Ord. No. 1188, § 2; Ord. No. 1298 § 23.)

Section 4.08.280 Sunday alcoholic beverage permit

- (a) Permit Authorized. A Sunday alcoholic beverage permit may be issued to a qualified alcoholic beverage licensee, licensed as a retail alcoholic beverage establishment under NDCC chapter 5.02 or to a publicly owned or operated facility which collect and submit the City hospitality tax as described in Section 35.125. The authority to issue a special permit rests solely in the discretion of the board of city commissioners.
- (b) Application for Permit. A Sunday alcoholic beverage permit may be granted only upon proper application to and approval by the board of city commissioners. The application for a Sunday alcoholic beverage permit must be made in writing.
- (c) Use of Sunday Alcoholic Beverage Permit. Under the permit, alcoholic beverages may be distributed between the hours of 11:00 A.M. on Sunday and 1:00 A.M. on Monday, unless otherwise prohibited by this Code. The general public may consume alcoholic beverages distributed under the authority of the permit. The establishment or facility shall enforce the requirements of this section and any other conditions established by the city commissioner under the permit.
- (d) Failure to continuously pay the Hospitality tax will void the remaining term of the Sunday permit and the licensee will be ineligible for a Sunday permit for the remainder of the term of the license.
- (e) Sunday Beer and Wine. Eating establishments which have a special restaurant beer and wine license pursuant to section 4.08.060 of this Code may obtain a Sunday alcoholic beverage permit by complying with all requirements of this section. Said permit shall be limited to serving beer and wine on Sundays, for consumption only in that part of the eating establishment habitually used for the serving of prepared meals, excluding any room that has a bar in it where

alcoholic beverages are mixed, opened or stored. Said permit may be withdrawn by action of the City Commission for failure to abide by the requirements of this section. (Ord. No. 1020, § 2; Ord. No. 1073, 1; Ord. No. 1084, § 2; Ord. No. 1088 § 3; Ord. No. 1184, § 13.)