



City Attorney

DATE: February 25, 2021

FROM: Janelle Combs, City Attorney

ITEM: Ordinance 6446 regarding Domestic Distillery and Off-Sale provision

REQUEST

Consider introduction and call for a public hearing on Ordinance 6446 to amend Ordinances 5-01-01, 5-01-04 and 5-01-12 regarding Domestic Distillery and Off-Sale.

Please place this item on the 3/9/2021 City Commission meeting agenda.

BACKGROUND INFORMATION

With the request for zoning changes to allow a domestic distillery within the City of Bismarck, there is an additional need to add an alcohol license. Under North Dakota state law, domestic distilleries are licensed through the State Tax Commissioner; however, there is a conflict with our liquor licenses for them to sell at retail. This addition of a Class U liquor license is similar to the microbrewery and domestic winery licenses currently in the Code that allows retail sale of their products within the City.

In addition, when adding this new license, it was discovered that the off-sale provisions in a portion of the Code did not match what the remainder of the Code provided. As such, specific notice in that section was removed so that information is more easily found within each license category.

RECOMMENDED CITY COMMISSION ACTION

First reading and introduction of Ordinance 6446 and call for a public hearing.

STAFF CONTACT INFORMATION

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CITY OF BISMARCK
Ordinance No. 6446

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND AND RE-ENACT 5-01-01, 5-01-04, AND 5-01-12 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.) BY ADDING SECTIONS RELATING TO DOMESTIC DISTILLERY AND CLARIFYING THE STATE LICENSE OFF-SALE PROVISIONS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 5-01-01 of Definitions is hereby amended and re-enacted as follows:

5-01-01. Definitions. For purposes of this chapter the following words and phrases have the meanings respectively ascribed herein:

* * * * *

9. "Off-sale" means the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold. A licensee with an off-sale license only, however, may periodically provide complimentary samples of alcoholic beverages for promotional purposes, to be consumed on the premises. Whenever any alcoholic beverages or food are served to be consumed "on premises" the licensee shall comply with all ordinances relating to the service of food. ~~Off-sale is restricted to businesses with a class "A," "D," "E," or "O" license.~~

Reference: N.D.C.C. 5-01-01 (1985 Supp.) (Ord. 4252, 4-25-89; Ord. 5931, 11-13-12; Ord. 6189, 2-9-16; Ord. 6293 11-28-17)

Section 2. Amendment. Section 5-01-04 of Classes of Retail Licenses is hereby amended and re-enacted as follows:

5-01-04. Classes of Retail Licenses.

* * * * *

2. Licenses for the retail sale of liquor or the retail sale of spirits are divided into the following classes for the purpose of determining the number of licenses to be issued and outstanding:

* * * * *

u. Class U. A Class U license shall authorize the licensee to operate a domestic distillery and to sell spirits produced on the premises by the licensee and spirits produced by other North Dakota licensed domestic distilleries "on-sale" and "off-sale", subject to the following restrictions and conditions:

(1) A Class U license may be issued only to a domestic distillery owner or operator who obtains a domestic distillery license pursuant to NDCC Section 5-01-19 from the State Tax Commissioner allowing for the production of spirits.

(2) A Class U license will authorize the licensee to sell, on the domestic distillery premises, spirits produced by that domestic distillery on the premises and spirits produced by other North Dakota licensed domestic distilleries at on-sale or off-sale, in the amounts listed by state and federal law.

(3) The Class U license shall be governed by all the provisions of this chapter generally applicable to all license classifications.

(4) A Class U licensee who is licensed by the state as a domestic distillery under NDCC Section 5-01-19 and obtains a special

event permit under NDCC Section 5-01-19 from the State Tax Commissioner may give free samples of its spirits and sell its spirits by the glass or in closed containers, as allowed by the State Tax Commissioner.

(Ord. 4116, Sec. 1, 12-2-86; Ord. 4120, Sec. 1, 12-16-86; Ord. 4124, Sec. 1, 1-13-87; Ord. 4148, 5-12-87; Ord. 4179, 9-29-87; Ord. 4193, 2-2-88; Ord. 4211, 7-19-88; Ord. 4253, 4-25-89; Ord. 4380, 6-18-91; Ord. 4430, 3-31-92; Ord. 4596, 04-12-94; Ord. 4618, 6-21-94; Ord. 4657, 12-20-94; Ord. 4705, 07-11-95; Ord. 4725, 09-26-95; Ord. 4938, 08-25-98; Ord. 5141, 11-13-01; Ord. 5152, 01-08-02; Ord. 5454, 08-23-05; Ord. 5513, 06-13-06; Ord. 5600, 05-08-07; Ord. 5821, 05-24-11; Ord. 5839, 07-12-11; Ord. 5848, 10-11-11; Ord. 5860, 02-28-12; Ord. 5985, 07-09-13; Ord. 5991, 08-27-13; Ord. 5998, 08-27-13; Ord. 6005, 09-24-13; Ord. 6025, 01-14-14; Ord. 6053, 05-27-14; Ord. 6096, 12-23-14; Ord. 6097, 1-13-15; Ord. 6189, 2-9-16; Ord. 6242, 1-10-17; Ord. 6252, 4-25-17; Ord. 6258, 06-13-17; 6286, 9-26-17; Ord. 6293, 11-28-17; Ord. 6294, 12-12-17; Ord. 6379, 05-28-19)

Section 3. Amendment. Section 5-01-12 of Transfer Restricted is hereby amended and re-enacted as follows:

5-01-12. Transfer Restricted. A license may not be transferred except in accord with this section. Licenses may be transferred, with the prior approval of the Board of City Commissioners, only as follows:

* * * * *

21. Class U A Class U license may be transferred to another person only if that person has purchased or entered into an agreement to purchase that establishment. It may not be transferred to a new location.

(Ord. 4708, 07-25-95; Ord. 5826, 06-14-11; Ord. 6005, 09-24-13; Ord. 6025, 01-14-14; Ord. 6097, 01-13-15; Ord. 6294, 12-12-17; Ord. 6379, 05-28-19)

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect following final passage, adoption and publication.