

TITLE 5

BUSINESS REGULATIONS

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CHAPTER 5-01 ALCOHOLIC BEVERAGES

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

1. "Alcoholic beverages" means any liquid intended for drinking by humans which contains one-half of one percent or more of alcohol by volume which is fit or intended for use for beverage purposes.

2. "Beer" means any alcoholic beverage that is of the alcoholic content provided by the laws of the state in defining the word "beer".

3. "Food", for the purposes of the license classes in this chapter which require a specific food/alcohol split, means food items that are prepared in a kitchen with at least an indoor grill and that are served at a tabletop. Fresh popcorn or prepackaged snacks or candy are not considered food for the purposes of this section.

4. "Growler" means a glass bottle not to exceed 64 ounces that is filled with beer by a licensee or an employee of a licensee with beer from a keg. The sale of growlers, in compliance with this Chapter, is authorized only for class D, E and O licensees approved to sell alcoholic beverages both on-sale and off-sale. The filling of growlers by means of tapped keg shall not constitute the breaking of a package as defined in this Chapter. Growlers may only be filled from kegs procured by the licensee from a duly licensed wholesaler or produced by the licensee pursuant to applicable laws. Only professionally sanitized and sealed Growlers may be filled and made available for retail sale. The sale of a filled growler shall be considered off-sale. A growler with a broken seal shall be considered an open container for the purposes of City Ordinance 6-07-07.

5. "Licensed premises" means the premises on which alcoholic beverages are normally sold or dispensed and shall be delineated by diagram or blueprint which shall be included with the license application or the license renewal application. Licensed premises includes all areas where alcoholic beverages are routinely stored, displayed, opened or mixed, and all lounges, bars and restaurants where alcoholic beverages are dispensed. Meeting rooms, banquet rooms, the Event Center arena, or other rooms not part of the licensed premises may be leased and designated by groups or Individuals for events such as receptions,

banquets, Event Center events, or similar events at which alcoholic beverages may be consumed provided that the licensee does not open, mix or dispense alcoholic beverages in those areas not licensed.

6. "Licensee" means the person to whom a license has been issued under the provisions of this chapter.

7. "Liquor" means any alcoholic beverage other than beer.

8. "Lodge" or "club" means any corporation or association organized for civic, fraternal, social or business purposes, or for the promotion of sports, which has at least 200 members at the time a license is applied for pursuant to this chapter, and was in existence at the time of the adoption of the Liquor Control Act of the state. For the purposes of this section, the date of the adoption of the Liquor Control Act of the state shall be November 3, 1936.

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.

10. "On-sale" means the sale of alcoholic beverages for consumption only on the premises where sold except that nothing in this section shall prohibit any person from taking and consuming a lawfully purchased on-sale alcoholic beverage from one licensed premises to another licensed premises located contiguously in the same building

11. "Packages" and "original package" means any container or receptacle holding alcoholic beverages which is corked or sealed by the manufacturer and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.

12. "Person" means persons, partnerships, other unincorporated associations and corporations.

13. "Sale" means any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration,

and includes all sales made by any person, whether principal proprietor, agent, servant or employee.

14. "Sell at retail" or "sale at retail" means a sale to a consumer for use or consumption and not for the purpose of resale in any form.

15. "Transfer" means any assignment, sale, exchange or other conveyance of any license issued pursuant to the provisions of this chapter. A transfer is deemed to have occurred upon the assignment, sale, exchange or other conveyance of fifty percent or more of the interest in a partnership or stock in a corporation, whether such assignment, sale, exchange or other conveyance occurred in one single transaction or multiple transactions. However, the term "transfer" does not apply to the following described conveyances:

a. When an individual holding a license issued pursuant to the provisions of this chapter dies, and, upon application to the Board of City Commissioners by the personal representative of the decedent, the license is transferred to another person.

b. When any corporation holding a license issued pursuant to the provisions of this chapter voluntarily dissolves and a license is issued to any individual shareholder in the corporation who held said stock at the time of the issuance or last renewal of the license and whose application is approved by the holders owning a majority of the outstanding shares of stock in the corporation prior to the time of dissolution; provided, however, that such shareholder is subject to all the requirements of this article relating to the application for a license and to the qualifications of a licensee.

c. When an individual licensee transfers a license to a corporation in which the licensee is the owner of at least a majority of the outstanding shares of stock in the corporation; provided, however, that such licensee may not permit his stock ownership in the transferee corporation to fall below the majority of the outstanding stock in the corporation without the prior approval of the board of commissioners and reapplication for license by the transferee corporation. The transferee corporation is subject to all the requirements of this chapter relating to the application for a license and the qualifications of a licensee.

d. When a corporate or partnership licensee transfers a license to another corporation or partnership having substantially the same partners or stockholders; provided, however, that such transferee corporation or partnership is subject to all the requirements of this chapter relating to the application for a license and the qualifications of a licensee.

e. When an individual licensee transfers a license to a blood relative of the first degree, as defined by the North Dakota Century Code, or to a grandchild of the individual licensee if the grandchild's parents are deceased. For purposes of this subsection only, conveyance of shares of stock in a corporate licensee are not a "transfer" if the person seeking to convey shares of stock owns at least a majority of the outstanding shares of stock in the corporation.

f. When a majority of the Board of City Commissioners adopts a resolution and declares the conveyance not to be a "transfer" for the purposes of this ordinance.

16. "Wholesaler" means any person engaged in the sale and distribution of liquor or beer at wholesale to persons holding a retail license for the sale and distribution of alcohol and alcoholic beverages within the state or in interstate commerce.

17. "Wine" means 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 twenty-four percent alcohol by volume.

*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)*

5-01-02. License Required.

1. A person may not sell at retail within the city limits of Bismarck any alcoholic beverages without first having obtained a license therefor as herein provided. This section does not apply to public carriers engaged in interstate commerce or to a person licensed by the state as a domestic winery under NDCC Section 5-01-17 or a brewer taproom licensed under NDCC Section 5-01-21 whose facility is located outside the City but who obtains a special permit under this chapter for an event to be held within the City.

2. A license may not be issued to any person engaged in business as the representative or agent of another. A license may be issued only to the owner or owners of the business being conducted at the location sought to be licensed.

3. The requirements of this chapter which apply to the licensee also apply to the individual designated in the license application as the individual responsible for compliance with city ordinances.

4. The individual to be responsible for compliance with all city ordinances who is named in the license application must be the owner if the license is an individual, a partner or manager if the licensee is a partnership or other unincorporated association, and an officer of the corporation or manager if the licensee is a corporation.

5. A domestic winery may conduct eight trade shows, conventions, festivals or similar events each year in the city without obtaining a retail liquor license from the city subject to the following exceptions:

a. The domestic winery is licensed by the state tax commissioner pursuant to NDCC Section 5-01-17.

b. The event is approved by the state tax commissioner.

c. Each domestic winery shall be allowed eight events each year.

d. The domestic winery and the event are in compliance with all of the provisions of NDCC Section 5-01-17.

6. A licensee with a brewer taproom license issued by the state and not licensed by the City may conduct special events within the City for up to 20 days per year without obtaining a liquor license from the City, subject to the following:

a. The brewer taproom is licensed by the state tax commissioner pursuant to NDCC Section 5-01-21.

b. The event is approved by the state tax commissioner.

c. Each brewer taproom shall be allowed up to 20 event days per each year.

d. The brewer taproom and the event are in compliance with all of the provisions of NDCC Section 5-01-21.

e. The brewer taproom obtains a special permit for each event from the City.

Reference: N.D.C.C. 5-02-01 (1985 Supp.)

(Ord. 5353, 09-14-04; Ord. 6003, 09-24-13; Ord. 6293, 11-28-17)

5-01-03. License Term and Fee Proration.

1. All licenses issued are for a period of not more than one year and expire on July 31 following the date of issuance. When a license is granted for a period of less than a year any subsequent renewal must be made for the full annual term.

2. When an application is made for a new retail alcoholic beverage license, permitting the retail sales of alcoholic beverages during the license year for the unexpired portion of such year, the fees therefor are computed on a monthly pro-rata basis of the unexpired term of the license period commencing as of the first of the month in which the license is effective.

(Ord. 4693, 06-13-95)

5-01-04. Classes of Retail Licenses.

1. The board hereby finds that in order to ensure compliance by all licensees with all applicable federal, state and city laws, ordinances and regulations, and in order to adequately police all licensed establishments and to promote the public welfare, it is necessary and proper to limit the number of licenses issued pursuant to the city's police powers and authority granted by Title 5 of the N.D.C.C.

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

a. **Class A.**

1. **Class A.** To any nationally organized fraternal order or club that was in existence at the time of the adoption of the state liquor control act or any nationally organized service men's or veteran's organization which is under the control and supervision of a national organization of officers, subject to the following:

(a) The license is for on-sale only, and no off-sale permitted.

(b) Alcoholic beverages may be sold or served only to members, associate members and bona fide quests, and only at a particular licensed location. As used in this section, "bona fide quest" means any person accompanied by a member of the club or lodge or other person invited by a member of the club or lodge.

(c) The licensee is subject to all laws and ordinances otherwise applicable to persons holding a liquor license under the provisions of this title.

2. **Class A-2.** To any nationally organized fraternal order or club that was in existence at the time of the adoption of the state liquor control act or any nationally organized service men's or veteran's organization which is under the control and supervision of a national organization of officers, subject to the following:

(a) The license is for on-sale only, and no off-sale permitted.

(b) Alcoholic beverages may be sold or served only to members, associate members and bona fide quests, and only at a particular licensed location. As used in this section, "bona fide quest" means any person accompanied by a member of the club or lodge or other person invited by a member of the club or lodge.

(c) The licensee is subject to all laws and ordinances otherwise applicable to persons holding a liquor license under the provisions of this title.

(d) The licensee may be open for business for no more than ten hours per month.

b. **Class B.** To the operator of the beverage concession at the airport terminal building. The license may not be transferred and must be held only by the operator who has been awarded the concession, and be held only for the period of the operator's concession and shall terminate with the termination of the concession contract or lease. The license fees

therefor shall be paid to the airport fund. A Class "B" license shall authorize the licensee to sell "on-sale" or off-sale.

c. **Hotel or Motel.**

1. **Class C.** To a hotel or motel that provides at least one hundred rooms for transient guests with continuous service and dining facilities with a seating capacity of at least fifty seats as a part of the hotel or motel operations and a full menu normally provided by a restaurant, and maintained and open seven days a week. The fifty seats for dining facilities are in addition to seating facilities for customers for the liquor facilities. A Class "C" license authorizes the licensee to sell "on-sale" only, however, this restriction does not preclude customary room service to registered guests of the licensee.

2. **Class C-2.** To a hotel or motel that provides at least forty-five rooms for transient guests, to provide on-sale or complementary alcoholic beverages to registered customers and their guests in their rooms or in a common room designated for that purpose. The value of the alcoholic beverages sold shall not exceed the value of the alcoholic beverages given to or otherwise provided to registered customers and their guests. Any alcoholic beverage sold or provided under this license shall not be mixed or dispensed in the direct view of a minor.

d. **Class D.** To any applicant for the sale at retail of alcoholic beverages other than applicants in other classifications. The total number of Class D licenses issued in any year may not exceed twenty-four, plus one additional license for each 2,500 people in excess of 60,000 people, as shown by the most recent official estimated census. New Class D licenses or Class D licenses revoked or not renewed may be issued only pursuant to section 5-01-06. A Class D licensee that does not have an "on-sale" location may be issued a special permit under Section 5-01-13 to sell alcoholic beverages "on-sale" at special locations as designated in the permit.

e. **Class E.** To any applicant for the sale at retail of beer only. The total number of Class E licenses issued in any year may not exceed sixteen

plus one additional license for each 2,500 people in excess of 60,000 people, as shown by the most recent official estimated census. New Class E licenses or Class E licenses revoked or not renewed may be issued only pursuant to section 5-01-06.

f. **Class F.** To any restaurant applicant for a food and beverage license to sell at retail, subject to the following:

Class F-1 - Alcoholic beverages.

Class F-2 - Beer and wine only.

Class F-3 - Beer only.

(1) Gross sales of alcoholic beverages may not be greater than 45 percent of total gross sales of food and alcoholic beverages. All Class F license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant retained by the licensee 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 Class F 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.

(2) The restaurant serves, at a tabletop, food that is prepared in a kitchen with at least an indoor grill.

(3) The license is for on-sale only, and off-sale is not permitted. A cessation of business at a licensed location for a period of ninety days or longer shall constitute cause to revoke such license pursuant to section 5-01-09.

(4) Once a license has been established at a particular location, the license may not be transferred to another location.

(5) The licensee may not sponsor or permit public dances or public dancing. Minors are

allowed on the licensed premises only as permitted by NDCC Section 5-02-06.

(6) Seating capacity. The minimum seating capacity required on the premises for a Class F license, including seasonal seating, is:

- a) Class F-1 - 150
- b) Class F-2 - 80
- c) Class F-3 - 80

g. **Class G** - A license to sell at retail alcoholic beverages may be issued to the operator of the food and beverage concession at the Bismarck Municipal Country Club under lease from the park district of the City of Bismarck. The license is nontransferable and may be held only by the operator who has been awarded and currently holds the concession, and may be held only for the period of the operator's concession and shall terminate with the termination of the contract or lease of the concession. This license is limited to on-sale service of alcoholic beverages to private groups at the Bismarck Municipal Country Club who have rented the dining room facilities for social or business use not open to the public at large and restricted to a particular organization or group, temporary or private.

h. **Class H** - Food and beverage licenses for liquor, wine and beer for commercial passenger vessels on the Missouri River, not engaged in interstate commerce, subject to the following restrictions and conditions:

(1) The vessel docks and boards passengers at a location within the jurisdictional limits of the City of Bismarck.

(2) The vessel has a minimum seating capacity for 80 persons.

(3) Sale or service of alcoholic beverages is limited to "on-sale" only to passengers on the vessel. Passengers may not be permitted to remove alcoholic beverages from the vessel.

(4) The vessel and its operation are in compliance with all applicable laws and regulations concerning health, fire and safety.

(5) Gross sales of food are at least equal to gross sales of alcoholic beverages. The food/alcoholic beverage sales ratio is subject to the verification requirements of section 5-01-04(f)(1).

(6) Persons under the age of twenty-one may be permitted on the vessel in accordance with section 5-02-06 of the N.D.C.C., provided the area where persons under the age of 21 are permitted is separate from the room where alcoholic beverages are opened or mixed.

(7) Temporary bars may be set up and sale or alcoholic permitted to passengers anywhere on the vessel at times when persons under the age of 21 are not permitted on the vessel.

i. **Class I** - To any restaurant applicant for a food and beverage license to sell at retail, subject to the following:

Class I-1 - Alcoholic beverages.

Class I-2 - Beer and wine only.

Class I-3 - Beer only.

(1) Gross sales of alcoholic beverages may not be greater than 30% of total gross sales. All Class I license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant retained by the licensee certifying that gross food sales and gross 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 Class I 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.

(2) The license is for on-sale only, and no off-sale is permitted.

(3) The restaurant serves, at a tabletop, food that is prepared in a kitchen with at least an indoor grill.

(4) Once a license has been established at a particular location, the license may not be transferred to another location.

(5) The licensee may not permit public dances or dancing of any kind. Minors are allowed on the licensed premises only as permitted by NDCC Section 5-02-06.

(6) Alcoholic beverages may be sold or served only during such times that full menu service is available.

(7) For a Class I-1 that has a minimum seating capacity of 100 seats, gross sales of alcoholic beverages may not be greater than 40 percent of total gross sales of food and alcoholic beverages.

j. **Class J.** To a non-profit organization operating a club or establishment located on property which is owned by or leased to the state or federal government for military purposes subject to the following:

(1) The license is for on-sale only, and no off-sale permitted.

(2) Alcoholic beverages may be sold or served only to persons on active duty with the armed forces of the United States or its allies, members of the military forces of the State of North Dakota or any other state, and invited guests.

(3) The licensee is subject to all laws and ordinances otherwise applicable to persons holding a liquor license under the provisions of this Title.

(4) The licensee may be open for business for no more than fifteen hours per month.

k. **Class K.** A license permitting the sale of beer and wine at the Bismarck Civic Center may be issued subject to the following conditions:

(1) The license may be issued to a non-profit corporation established for purposes of acquiring and holding title to property for use as the Bismarck Civic Center or to sponsor and promote programs, shows, events and activities at the Civic Center, or similar purposes; and, net revenue from the sale of beer and wine under the license may be used only for such purposes.

(2) The license is for on-sale only at events at which the sale of beer and wine is approved by the Civic Center manager and board of city commissioners.

(3) Consumption of beer and wine is not permitted at the Bismarck Civic Center except in areas licensed or designated for that purpose.

(4) Notwithstanding section 5-01-07, a license application and site location hearing is not required prior to approval of the license.

1. **Class L.** A license to sell retail beer and wine may be issued to the operator(s) of the food and beverage concession(s) at the Riverwood Golf Course, the Tom O'Leary Golf Course (VFW Sports Center) and the Bismarck Municipal Ballpark under lease from the Bismarck Park District. The license is nontransferable and may be held only by the operator(s) who has been awarded and currently holds the concession(s), and may be held only for the period of the operator's concession and shall terminate with the termination of the contract or lease of the concession(s). This license is limited to on-sale service of beer and wine to patrons of the Riverwood Golf Course, the Tom O'Leary Golf Course (VFW Sports Center) and the Bismarck Municipal Ballpark, and, with an event permit, the patrons of Pebble Creek Golf Course.

m. **Class M.** A license to sell catered retail beer, wine and liquor on-sale only, may be issued subject to the following conditions:

(1) The licensee shall not be permitted to provide on-sale alcoholic beverages at a site owned, leased or operated by the licensee.

(2) The licensee may operate a "cash" bar at up to twenty (20) catered events per license year. For the purposes of this section, a cash

bar is a bar in which alcoholic beverages are sold to individual customers at the catered event.

(3) The licensee must obtain and keep in effect off-premises alcohol liability insurance and provide the City proof of insurance with its license application.

(4) Gross sales of alcoholic beverages may not be greater than 40 percent of the total gross sales of food and alcoholic beverages. All Class M 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 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.

(5) A licensee shall obtain an event permit pursuant to Ordinance 5-01-13 for each catered event. An application for an event permit must indicate whether or not the event will have a cash bar.

(6) A Class M license may only be transferred to a person or entity purchasing the licensee's catering business.

n. **Class N.** A class N license shall authorize the licensee to operate a domestic winery and to sell wine produced on the premises by the licensee "on" and "off-sale", and to sell winemaking supplies and related services, subject to the following restrictions and conditions:

(1) A Class N license may be issued only to a domestic winery owner or operator who obtains a license from the State Tax Commissioner allowing the production of wine.

(2) A Class N license will authorize the licensee to sell, on the winery premises, wine produced by that winery on the premises at on-sale or off-sale, in retail lots, and not for resale, in total

quantities not in excess of 10,000 gallons in a calendar year. In the absence of another appropriate license, sales or delivery of off-sale or on-sale wine, beer or any other alcoholic beverage produced off the premises shall not be permitted.

(3) A Class N license will authorize the licensee to utilize special event permits issued by the State Tax Commissioner.

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

o. **Class O.** A Class O license shall authorize the licensee to operate a microbrewery and to sell beer produced on the premises by the licensee "on" and "off-sale", and to sell beer making supplies and related services, subject to the following restrictions and conditions:

(1) A Class O license may be issued only to a microbrewery owner or operator who obtains a microbrew pub license pursuant to NDCC Section 5-01-14 or a brewer taproom license pursuant to NDCC Section 5-01-21 from the State Tax Commissioner allowing for the production of beer.

(2) A Class O license will authorize the licensee to sell, on the microbrewery premises, beer produced by that microbrewery on the premises at on-sale or off-sale, in retail lots of not less than 5 ounces or more than 5.16 gallons. A microbrewery licensed as a microbrew pub under NDCC Section 5-01-14 may produce no more than ten thousand barrels of malt beverages annually. A microbrewery licensed as a brewer taproom under NDCC Section 5-01-21 may produce no more than twenty-five thousand barrels of malt beverages annually and may sell beer wholesale as allowed by that section in containers of not more than 5.16 gallons. A microbrewery may utilize ingredients not produced by the microbrewery in brewing its beer.

(3) A Class O licensee that holds a microbrew pub licensed pursuant to NDCC Section 5-01-14 may sell beer produced off of the premises, on-sale only.

(4) A Class O licensee that holds a brewer taproom license pursuant to NDCC Section 5-01-21 may be issued a special permit under Section 5-01-13 to sell alcoholic beverages "on-sale" at special locations as designated in the permit.

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

(6) A Class O licensee who is licensed by the state as a brewer taproom under NDCC Section 5-01-21 and obtains a special event permit under NDCC Section 5-01-21(3) from the state tax commissioner may give free samples of its beer and sell its beer by the glass or in closed containers, at a designated trade show, convention, festival, or a similar event approved by the tax commissioner.

p. **Class P** - To any applicant for a food and beverage license to sell at retail, subject to the following:

(1) Gross sales of alcoholic beverages may not be greater than 45% of total gross sales of food and alcohol. All Class P license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant retained by the licensee certifying that gross food sales and gross 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 Class P licensees must be separately receipted to the customer by cash register receipt and clearly

identified as sales of alcoholic beverages on all receipts.

(2) The license is for on-sale only, and no off-sale is permitted. This license is limited to on-sale service of alcoholic beverages at the licensee's facility to private groups who have rented the facility for social or business use. A cessation of business at the licensed location for a period of ninety days or longer shall constitute cause to revoke such license pursuant to section 5-01-09.

(3) Once a license has been established at a particular location, the license may not be transferred to another location. A class P license is not eligible for an event permit under Section 5-01-13. A licensee holding a class P license may also hold a class M (catering) license but must keep separate records for all off-site food and alcohol sales under the class M license.

(4) Alcoholic beverages may be sold or served only at an event where food is also served.

q. **Class Q.** To any applicant for the sale at retail of "on-sale" and "off-sale", wine only. Class Q licenses shall be issued at the discretion of the City Commission and shall have an initial issuance fee of \$3000. New Class Q licenses or Class Q licenses that have been revoked or not renewed may be issued only by the City. A Class Q license is subject to the following conditions:

(1) The license is for on-sale and off-sale, wine only.

(2) Gross sales of alcoholic beverages may not be greater than 30 percent of the total gross sales all other items at retail and alcoholic beverages. All Class Q 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 other retail 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.

(3) A Class Q license may be transferred to another location with the same ownership with city commission approval pursuant to Ordinance 5-01-07. A Class Q license may not be transferred to another owner.

(4) A cessation of business at a licensed location for a period of ninety days or longer shall constitute cause to revoke or non-renew a Class Q license. A revoked or non-renewed license will return to the City and is subject to reissuance in the same manner as a new Class Q license.

(5) The licensee may not sponsor or permit public dances or public dancing.

(6) The maximum total permitted square footage for a Class Q licensed premises for on-sale and off-sale operations is 500 square feet. No more than 100 square feet of the licensed premises may be dedicated to off-sale display. The maximum square footage for the remainder of the retail space is 2000 square feet. Multiple Class Q licenses may not be combined to create a larger licensed premises.

(7) No minors may enter or remain on the licensed premises except as permitted pursuant to N.D.C.C. Section 5-02-06. The licensed premises dedicated to off-sale display must be separated from other areas open to minors.

(8) A Class Q licensee must sell wine both on and off-sale. In conjunction with other retail sales, a Class Q licensee must sell food prepared on the premises for consumption on the premises.

(9) The maximum number of seats for the on-sale portion of the licensed premises is 25.

(10) A Class Q license may not sell wine before 8AM Monday through Saturday and 11AM on Sunday and must cease wine sales by 9PM each day.

(11) A Class Q licensee may not be issued a special permit under Section 5-01-13.

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

r. **Class R.** To a commercial airline operating out of the Bismarck Municipal Airport for service of alcoholic beverages in aircraft owned or operated by the licensee while on property owned by the City of Bismarck, subject to the following:

(1) The license is for on-sale only, and no off-sale permitted.

(2) Alcoholic beverages may be sold or served only to passengers of the airline in the aircraft while located at the Bismarck Municipal Airport.

(3) A Class R licensee may not be issued a special permit under Section 5-01-13.

(4) Passengers may not be permitted to remove alcoholic beverages from the aircraft.

(5) The licensee is subject to all laws and ordinances otherwise applicable to persons holding a liquor license under the provisions of this Title.

s. **Class S.** To an applicant for the sale of beer only, subject to the following:

(1) Gross sales of beer may not be greater than 40 percent of total gross sales on the premises. All Class S license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant retained by the licensee certifying that gross food and arcade or game sales and beer 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 beer by Class S licensees must and clearly identified as beer on all receipts.

(2) "Total gross sales" on the premises shall include only food served on the premises, beer and charges paid by the patrons for the usage of arcades or games on the premises.

(3) The license is for on-sale only, and off-sale is not permitted. A cessation of business at a licensed location for a period of ninety days or longer shall constitute cause to revoke such license pursuant to Section 5-01-09.

(4) Once a license has been established at a particular location, the license may not be transferred to another location.

(5) The licensee may not sponsor or permit public dances or public dancing. Minors are not allowed on any portion of the licensed premises on any day that beer is available for sale.

(6) A licensee may not obtain an event permit pursuant to Ordinance 5-01-13.

t. **Class T.** To an applicant for the sale of "on-sale" only beer, wine and liquor, subject to the following conditions:

(1) The applicant must be a residential community providing full-time residential housing predominately for individuals over the age of 62, such as a continuing care retirement center, assisted living facility or senior living community.

(2) The dispensing of alcohol is only to residents, bona fide guests of residents or potential residents on the licensed premises.

(3) The license is for "on-sale" only, and "off-sale" is not permitted. A cessation of business at a licensed location for a period of ninety days or longer shall constitute cause to revoke such license pursuant to Section 5-01-09.

(4) Once a license has been established at a particular location, the license may not be transferred to another location.

(5) The licensee may not sponsor or permit public dances or public dancing at a time when alcoholic beverages are being dispensed or

consumed. Minors cannot have view of the location where alcoholic beverages are dispensed.

(6) A licensee may not obtain an event permit pursuant to Section 5-01-13, except on real property owned in the name of the licensee.

(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)

5-01-05. License Qualifications.

1. A license may not be issued or transferred under this chapter except to persons possessing the following qualifications:

a. Applicant, if an individual, must be a legal resident of the United States and a resident of the State of North Dakota and be a person of good moral character.

b. If applicant is a partnership or a corporation, the manager of the licensed premises must be a resident of the State of North Dakota and a person of good moral character and the partners or officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must be properly registered with the Secretary of State. The manager must possess all of the qualifications required of an applicant.

c. Applicant cannot have had revoked, in the previous five years, any license for the sale of alcoholic beverages.

d. Applicant must be the owner or lessee of the licensed premises during the entire period licensed.

e. The building in which the business is conducted must meet all local and state requirements regarding sanitation and safety.

f. Property taxes for the building in which the licensed premises are located may not be delinquent.

2. A license may not be issued to an applicant if the applicant or manager has been convicted of any of the

following offenses within the previous five years, and it is determined that the applicant or manager has not been rehabilitated within the meaning of section 12.1-33-02.1, N.D.C.C., or that the offense has a direct bearing on the person's ability to serve the public in the liquor business:

- a. Any felony.
- b. Any offense involving the manufacture, sale, distribution or possession for sale or distribution of alcoholic beverages.
- c. Any offense involving the sale of drugs or felony possession of drugs.
- d. Prostitution.
- e. Obscenity.
- f. Two or more convictions for driving under the influence or actual physical control.
- g. Any other offense determined by the Board of City Commissioners to have a direct bearing on the applicant's or manager's ability to serve the public as an alcoholic beverage retailer.

In the application of this section, it shall be presumed that a violation of paragraphs 2(b), (c), (d), (e) or (f) has a direct bearing on the person's ability to serve the public.

Reference: NDCC Sec. 5-02-02 (1985 Supp.)

5-01-06. License Application.

1. Applications for licenses issued pursuant to this chapter must be submitted on an application form provided by the city, under oath, and set forth all information as may be required to determine qualifications. Applications not completed in full as required or not accompanied by the required fee must be rejected.

2. All applications for a new license or to transfer a license to a new location must be accompanied by a non-refundable application fee of \$200.00. All applications for a new license also must be accompanied by the required annual license fee, which must be refunded if the application is not approved.

3. Applications to renew a license for a second or subsequent year and required annual license fee, which shall be refunded if the application is not approved, must

be filed with the office of city administration no later than July 1. An application fee is not required for applications for a second or subsequent year.

4. Applications to renew a license filed after July 1 but prior to August 1 may be considered and approved by the Board of City Commissioners upon payment of a late fee of \$50.00 and, if it is necessary to schedule a special meeting to do so, reasonable costs of the special meeting as determined by the board. Such costs must be pro-rated among the applicants if more than one late application is approved at a special meeting.

5. If an application for a license renewal is not filed and approved prior to August 1, the licensee must cease business after July 31, and may apply for a new license, if available, pursuant to this section.

6. Applications for a new Class D or E license or a license that has been revoked or not renewed must be accompanied by a sealed envelope containing a bid which would be paid to the city in the event the application is approved. The license may be awarded only to the qualified applicant that submits the highest bid.

7. The Board of City Commissioners may issue additional Class D and E licenses based upon the city population as determined by the most recent U. S. Census Bureau census in accordance with the formula established in section 5-01-04. Upon determination that an additional license(s) is available, and that it should be issued, the city shall place a four inch column display advertisement in the official city newspaper at least 15 days prior to the deadline for receipt of bids. The Board may set a minimum bid or other conditions of the bid which shall be stated in the advertisement.

(Ord. 4175, 9-01-87; Ord. 4523, 06-22-93; Ord. 4729, 09-26-95; Ord. 5848, 10-11-11; Ord. 5888, 06-26-12)

5-01-07. Hearing to Approve License Application and Site Location.

1. A new license may not be issued and an existing license may not be transferred to any person to engage in the sale of any alcoholic beverages within the city, without approval by the Board of City Commissioners. All applications for site approval must be approved by the Board of City Commissioners. Any person issued a new license or receiving a transferred license must begin operations within one year of the date of license issuance or transfer unless a longer time is approved by the Board of City Commissioners.

2. A public hearing on an application for a new license, for a transfer of an existing license or for a site location approval must be held by the Board of City Commissioners. Public notice of the hearing must be published in the official city newspaper two times, seven days apart, the first publication being at least ten days prior to the hearing date.

3. At the hearing the Board of City Commissioners shall determine if the proposed site for the licensed business is consistent with the following:

a. Public convenience and necessity.

b. No proposed site may be within 300 feet from the nearest lot line point of any church, public or parochial school, public library, hospital, college or university building used for academic purposes, unless, in the case of a Class F, Class I, or Class E off-sale license, the entity(s) affected by the above limitation consents to the issuance of the license.

c. Except in the central business district, Class D and E site locations must be a minimum of 300 feet from similarly licensed premises, to be measured upon a straight line drawn directly between the nearest primary public accesses onto the licensed liquor premises. The line may not pass through obstructions but shall follow the public right-of-way around them as nearly as possible.

In the central business district, Class D and E site locations must be a minimum of 100 feet from similarly licensed premises, as measured above. In no case shall there be approved more than two class D or E site locations on one side of the street of any block. The "central business district" for purposes of this section is that area bounded by Second Street on the west, Seventh Street on the east, Rosser Avenue on the north and the Burlington Northern tracks on the south.

d. The Board may also consider:

1. The effect that the proposed siting may have on traffic movements in the area;

2. The number and nature of sites already existing in the area;

3. The general nature, character, age and condition of the development adjacent to the proposed site;

4. The proximity of the proposed site to residential areas, regardless of zoning.

e. Compliance of proposed site with applicable building code requirements.

f. Compliance of proposed site with applicable health and sanitation ordinance.

g. Compliance of proposed site with applicable zoning regulations.

4. A holder of a liquor license may not operate more than one entity under a single license except when specifically allowed by the license unless:

a. The license held is a Class A or C license and the licensed areas are contained in one building.

b. The license held is a Class D license and there is one "on" and one "off" sale in the same building, internal access between the premises is available, both areas are under the same ownership, and Ordinance Number 5-01-07 is observed.

c. If the license held is a Class E, and the "on" and "off" sale locations are contiguous. "Contiguous" shall mean locations that are in a building or buildings that are not separated by any physical structure such as a fence, retaining wall or another unlicensed building and are within 250 feet of each other.

A licensee may not rent or lease the use of the license to any other party.

5. A license application must be approved upon determination of the board that the applicant meets the requirements of this chapter.

(Ord. 4178, 9-15-87; Ord. 4225, 8-30-88; Ord. 4307, 12-19-89; Ord. 4343, 9-25-90; Ord. 4349, 11-20-90; Ord. 4450, 07-07-92; Ord. 4484, 02-16-93; Ord. 5313, 04-13-04; Ord. 5375, 12-14-04; Ord. 6001, 09-10-13)

5-01-08. Record of Licenses. Each license must be given an identification number and a permanent record thereof must be kept by the city license officer showing the name and address of the licensee and the legal description of the place licensed.

5-01-09. Grounds for Revocation or Suspension of Licenses.

Licenses issued under the provisions of this chapter may be revoked, or suspended temporarily for any one or more of the following reasons:

1. The death of the licensee, unless upon application to the board by the personal representative of the deceased, the board consents to the carrying on of such business by the personal representative.

2. When the licensee is convicted of violating any of the provisions of this chapter.

3. When the licensee ceases to be a bona fide legal resident and citizen of the state as required.

4. When the license or permit of the licensee from the state is suspended or revoked.

5. When the licensee is convicted of a crime or crimes such that the licensee would not, pursuant to Section 5-01-05, be qualified to be issued a license.

6. When the business of the licensee at the location licensed is conducted in violation of the health and sanitary regulations or other ordinances of the city.

7. When the licensee ceases to meet any of the qualifications required for issuance of a license.

8. When the licensee permits drunken, inebriate or disorderly persons to frequent the place of business.

9. When the licensee fails to pay when due property taxes or license fees.

10. Subject to Section 5-01-07(1), when the licensee does not conduct operations under a license for a period of one year: from the time of cessation of operations under a license; from the time of the granting of a new license; or from the time of approval of a transfer of an existing license. For the purposes of this chapter, operations under a license will be deemed to have started or restarted after 90 consecutive days of operations.

11. When the licensee violates Section 5-01-30 more than one time at any one location and the illegal sales by the clerks employed by the licensee upon which the violations of Section 5-01-30 are based occurred within a 12-month period.

The causes enumerated above are not exclusive and the Board of City Commissioners retains and reserves the right to suspend or revoke the license for any cause which it may deem sufficient.

(Ord. 4188, 1-05-88; Ord. 5313, 04-13-04; Ord. 5461, 09-27-05)

5-01-10. Hearing for Revocation or Suspension.

1. Before any license may be revoked or suspended for cause, the board shall notify the licensee of the proposed action and the right to a hearing on the action. The notice shall specify the action proposed to be taken, the reason for it, the time and place of the hearing, and the right of the licensee to appear. The notice must be mailed to the licensee by certified return receipt mail not less than five days nor more than fifteen days before the hearing. A record of the hearing must be made as specified by section 5-02-10, N.D.C.C.

2. If after the hearing the Board finds the violation charged has been proved by the evidence, the Board shall issue Findings of Fact, Conclusions and Order, which shall be served on the licensee. The order is appealable to the district court as specified in Chapter 28-32, N.D.C.C. The order is stayed while the appeal is pending.

Reference: N.D.C.C. 5-02-10; N.D.C.C. 5-02-11 (1975)

5-01-11. Posting of Licenses. All licenses issued pursuant to this chapter must be posted in a conspicuous place on the premises for which issued.

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:

1. **Class A** - A Class A license may not be transferred to another person. It may be transferred to a new location only if the fraternal order or club is moved to that location.

2. **Class B** - A Class B license may not be transferred to another person or to a new location other than the airport terminal.

3. **Class C** - A Class C license may be transferred to another person only if that person has purchased or entered into an agreement to purchase the hotel or motel. It may not be transferred to a new location.

4. **Class D** - A Class D license may be transferred to another person only with the prior approval of the board of city commissioners.

5. **Class E** - A Class E license may be transferred to another person only with the prior approval of the board of city commissioners.

6. **Class F** - A Class F 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.

7. **Class G** - A Class G license may not be transferred to another person or to a new location other than the Municipal Country Club.

8. **Class H** - A Class H license may be transferred to another person only if that person has purchased or entered into an agreement to purchase the passenger vessel. It may not be transferred to a new location other than the passenger vessel and the location where the vessel docks and boards passengers.

9. **Class I** - A Class I 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.

10. **Class J** - A Class J license may not be transferred to a new entity or location.

11. **Class K** - A Class K license may not be transferred to a new entity or location.

12. **Class L** - A Class L license may not be transferred and may be held only by the person or entity holding the lease with the Bismarck Parks and Recreation District for the Riverwood or Tom O'Leary Golf Courses.

13. **Class M** - A Class M license may be transferred to another person or entity only if that person or entity has purchased or has entered into an agreement to purchase the catering business.

14. **Class N** - A Class N 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 except by the current owner.

15. **Class O** A Class O license may be transferred to another person only if that person has purchased or entered into an agreement to purchase the microbrewery. It may not be transferred to a new location.

16. **Class P** - A Class P 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.

17. **Class Q** - A Class Q license may be transferred to another person only if the ownership has not changed. It may not be transferred to a new owner or owners.

18. **Class R** - A Class R license may not be transferred to a new location or entity.

19. **Class S** - A Class S 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.

20. **Class T** A Class T 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)

5-01-13. Event Permits to Sell at Designated Locations.

1. Pursuant to N.D.C.C. 5-02-01.1, the City Administrator, acting under the authority of the Board of City Commissioners, may by special permit authorize a licensee to engage in the "on-sale" of alcoholic beverages at events on licensed premises designated by the permit. Except for events at the Bismarck Event Center, the permit shall not be valid for a period of greater than fourteen days. The City Administrator may issue up to 14 permits from one application if the application covers a reoccurring event for consecutive days at one location. For events at the Event Center conducted by the City's liquor vendor, the City Administrator may issue one permit for multiple events for up to one month. For the purposes of this section, the Event Center shall include the Arena, the Exhibit Hall and the Belle Mehus Auditorium.

2. An application for a special permit must be filed by a licensee in the office of City Administration. The application shall contain the name of the licensee, the type of event for which the permit is desired, the specific location at which the event will take place including a

diagram of the area to be licensed, and the dates and times for which the permit is desired. Before approval by the City Administrator, the application must first be approved by the Chief of Police. The Board of City Commissioners may establish rules to regulate and restrict the operation of event permits. If the City Administrator denies the application for a special permit, the denial may be appealed to the Board of City Commissioners.

3. The licensee is responsible for posting, at all entrances and exits, a sign informing the public of the general content of N.D.C.C. Section 5-01-08 and City of Bismarck ordinance 6-07-07.

4. Applications submitted pursuant to this section must be submitted at least 7 days prior to the first day of the event.

5. A fee of \$30.00 must be paid at the time the application is filed. If the application is for more than one permit for a reoccurring event for consecutive days at one location, the fee shall be \$120. For an application by the City's liquor vendor at the Event Center, the fee shall be \$100 per one-month for each event permit. Applications for a special permit submitted less than 7 days prior to the first day of the event may be considered and approved upon payment of a late fee of \$30.00.

Reference: N.D.C.C. 5-02-01.1

6. The permit may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization is subject to the following conditions:

a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;

b. 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;

c. Subject to NDCC Section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the licensee's state and local alcoholic beverage licenses issued pursuant to NDCC Section 5-02-01 and City Ordinance 5-01-06; and

d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

(Ord. 4174, 9-15-87; Ord. 4381, 6-18-91; Ord. 4524, 07-06-93; Ord. 4720, 08-22-95; Ord. 4980, 05-25-99; Ord. 5397, 03-22-05; Ord. 6026, 01-28-14; Ord. 6112, 04-28-15; Ord. 6252, 04-25-17 Ord. 6324, 05-22-18)

5-01-14. On-Sale Sunday Licenses. Section 5-01-14 relating to On-Sale Sunday Licenses is hereby repealed.

Reference: N.D.C.C. 5-02-05.1

(Ord. 4269, 06-27-89; Ord. 4381, 06-18-91; Ord. 4525, 07-06-93; Ord. 4548, 08-31-93; Ord. 4719, 08-22-95; Ord. 5810, 03-08-11; Ord. 6026, 01-28-14; Ord. 6252, 04-25-17)

5-01-14.1. Off-Sale Sunday Licenses. Section 5-01-14.1 relating to Off-Sale Sunday Licenses is hereby repealed.

(Ord. 5810, 03-08-11; Ord. 6252, 4-25-17)

5-01-15. Inspections. By making application under this chapter the applicant shall agree to inspections by the police department at any time during normal business hours, or at any other time if there is reasonable suspicion of unlawful activity.

5-01-16. Business Hour. A person may not sell or dispense or permit the sale, dispensation or consumption of alcoholic beverages on licensed premises at any time when prohibited by state law. All drinks, glasses and beverage containers must be collected and emptied or disposed of as soon as practicable at 1:00 a.m. or immediately thereafter.

Reference: N.D.C.C. 5-02-05 (1985 Supp.)

5-01-17. Obligation of Licensee. Every licensee may keep a book on the licensed premises in which the licensee and employees shall require any person whose age is in question, who has shown documentary proof of age, to sign the book. Such book must show the date of the purchase, the identification used in making the purchase and the appropriate number of such identification, the address of the purchaser, and the purchaser's signature.

Reference: N.D.C.C. 5-01-08.1

(Ord. No. 4156, 6-23-87)

5-01-18. Persons Under Twenty-one Years of Age. A person may not sell or dispense alcoholic beverages to any person under the age of twenty-one. A licensee or employee or agent may not permit any person under twenty-one years of age to remain on licensed premises except as permitted pursuant to Section 5-02-06, N.D.C.C.

Reference: N.D.C.C. 5-02-06 (1985 Supp.)

5-01-19. Misrepresentation of Age and Presumption of Licensee's Innocence. The establishment of the following facts by a person making a sale of alcoholic beverages to a person not

of legal age constitutes prima facie evidence of innocence and is a defense to any prosecution therefore:

1. That the purchaser falsely represented in writing, and supported with other documentary proof, that he or she was of legal age to purchase alcoholic beverages.

2. That the appearance of such purchaser was such than an ordinary and prudent person would believe him or her to be of legal age to purchase alcoholic beverages.

3. That the sale was made in good faith and in reliance upon the written representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

Reference: N.D.C.C. 5-01-08.2 (1975)

5-01-20. Enclosed Booths and Access to Licensed Premises.

A non-sale licensee may not construct, place or maintain in any closed booth, and all booths within licensed premises must be open and readily accessible, and a booth may not have any screen, curtain, partition or blind or obstruction of any kind preventing a clear view into the booth from the main room or aisle of the licensed premises.

5-01-21. Purchases of Alcoholic Beverages From Wholesalers and Records Thereof.

A licensee may not purchase, have or possess any alcoholic beverage unless purchased from a wholesaler duly licensed under the laws of the state and invoiced to the licensed premise identified on the license issued therefor. Each licensee shall keep on file all invoices covering purchases of alcoholic beverages showing the name and license number of the wholesaler and the name of the entity that issued the wholesale license. Such records must be retained in possession of the licensee and at all times shall be open to inspection by any police officer or peace officer of the state.

5-01-22. Delivery Prohibited. Class D and E off-sale licensees only may deliver or cause to be delivered alcoholic beverages outside the licensed premises, provided:

1. The delivery is to a purchaser's motor vehicle within the immediate vicinity of the licensed premises.

2. Delivery is to the original purchaser, provided that the purchase is made on the licensed premises beforehand and delivery is restricted to the city at times when sale of alcoholic beverages are permitted.

5-01-23. Sales by Club or Lodge.

1. Persons with a Class A license may sell or dispense alcoholic beverages only to members, associate members and bona fide guests.

2. As used in this section, "bona fide guest" means any person accompanied by a member of that club or lodge or other person invited by a member of the club or lodge.

5-01-24. Solicitation of Drinks. A person may not frequent or loiter in any licensed premises for the purpose of soliciting drinks.

5-01-25. Drive-up Sales Prohibited. It is unlawful to sell or dispense alcoholic beverages through or by means of a drive-up window or otherwise to persons in automobiles.

5-01-26. Bottle Clubs Prohibited. A person may not permit customers to bring their own alcoholic beverages, or sell soft drinks, mix or ice for customers to mix their own drinks, on licensed premises or any business open to the public, or any private club.

5-01-27. Entertainment.

1. Appearances, entertainment or performances of any type consisting of or containing any nude performer or nude dancer, or topless female performer or topless female dancer are prohibited on licensed premises.

a. A "nude performer" or "nude dancer" means any person who performs, or appears in attire such that any portion of the pubic area, anus, vulva or genitals is exposed to view or not covered with an opaque material.

b. "Topless female performer" or "topless female dancer" means any female who performs, or appears in attire such that any portion of her breasts below the top of the areola is exposed to view or not covered with an opaque material.

2. Performances commonly referred to as "strip-tease", or any performance involving the removal of clothing, garments or any costume are prohibited on licensed premises. Such prohibition does not include the removal of headgear or footwear or the incidental removal of a tie, suitcoat, sportcoat, jacket, sweater or similar outer garments. Incidental removal means the removal of a garment or article of clothing which is not a part of the act or performance.

3. Performances which contain any form of dancing, other than incidental movement or choreography of singers or musicians made in connection with singing or playing of musical instruments, are prohibited on licensed premises.

5-01-28. Sale of Beer in Kegs.

1. Any retail licensee who sells beer in a container with a liquid capacity greater than six gallons shall place a distinctive symbol, notation or mark unique to the seller on the container and also shall mark the 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 chief of police.

2. Whenever a retail licensee sells beer in a container with a liquid capacity greater than six gallons he shall record the date of sale and the name, address and 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 and/or letters of the container. 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.

3. Each retail licensee shall register his unique identification symbol, notation or mark with the chief of police and shall permit any police 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.

4. This section does 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.

Reference: N.D.C.C. 5-02-07.2 (1985 Supp.)

5-01-29. Fees. Annual fees for licenses issued pursuant to this chapter shall be established by the Board of City Commissioners.

Reference: N.D.C.C. 5-02-03 (1985 Supp. Ord. 6258, 06-13-17)

(Ord. 4124, 1-13-87; Ord. 4147, 4-28-87; Ord. 4179, 9-29-87); Ord. No. 4216, 7-19-88; Ord. 4389, 7-30-91; Ord. 4621, 07-05-94; Ord. 4656, 12-20-94; Ord. 4709, 07-25-95; Ord. 4731, 09-26-95; Ord. 4939, 08-25-98; Ord. 5454, 08-23-05; Ord. 5826, 06-14-11; Ord. 5999, 08-27-13; Ord. 6005, 09-24-13; Ord. 6025, 01-14-14; Ord. 6026, 01-28-14; Ord. 6097, 01-13-15; Ord. 6252, 04-25-17; Ord. 6294, 12-12-17; Ord. 6379, 05-28-19)

5-01-30. Alcohol Sales to Minors, Civil Penalty.

1. Purpose. The City of Bismarck has

recognized that illegal alcohol purchase and use by minors is a significant problem within the city. This section is intended to reduce the illegal purchases of alcohol by minors and to reduce the accessibility of alcohol to minors.

2. Violations. A fine may be imposed on a licensee engaged in the sale of alcohol at retail when any employee of the licensee is convicted of a violation of City Ordinance 5-01-18.

a. Hearing. A violation of this section shall be civil in nature and the Municipal Court is granted the authority to hear cases under this section. Upon notification of a violation of this section the City shall file a complaint with the Municipal Court. Upon the filing of the complaint, the Court shall notify the licensee of the complaint and of the time and place of a hearing to be held concerning the matter. The notice shall specify the reason for the hearing, the time and place for the hearing and the right of the licensee to appear at the hearing. The notice must be mailed to the licensee at least ten days prior to the hearing. A record of the hearing shall be made by electronic recording device. The City shall establish a violation or violations of this section by offering certified copies of relevant judgments of conviction from the Municipal Court and the Municipal Court may take judicial notice of these records.

b. Defenses. A licensee charged with a violation of this section who is a member participant in good standing of the BARS Program or another City approved compliance program and who has purchased or purchases and uses an approved age/ID card verification device, may assert such membership and equipment ownership and use as an affirmative defense and upon proof of membership in good standing and equipment ownership, be entitled to a dismissal of the complaint. This affirmative defense may be asserted only one time for each license and only for the first violation after the effective date of this ordinance.

c. If after the hearing the Municipal Judge finds that the violation charged has occurred as proven by a preponderance of the evidence, the Municipal Judge may assess a fine of up to \$1000. The Municipal Court may suspend all or part of any fine imposed upon a showing by the licensee that it has attempted to train its employees on the prevention of the sale of alcohol to persons under 21 years of age. The Municipal Court shall issue its Findings and Order which shall be served on the licensee. The decision of the Municipal Court shall be final.

(Ord. 5461, 09-27-05)

CHAPTER 5-02 ADVERTISING

5-02-01. Definitions. For purposes of this chapter the following words have the meanings respectively ascribed to them:

1. Handbill. Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature.

2. Newspaper. Any newspaper of general circulation as defined by general law, any newspaper duly entered with the post office department of the United States, in accordance with federal statute or regulation, or any newspaper filed and recorded with any recording officer as provided by general law; and, any periodical or current magazine regularly published with not less than four issues per year, and sold to the public; or, any other copyrighted material.

5-02-02. Posting of Handbills, Posters and Placards.

1. A person may not without first obtaining the consent of the owner or occupant, paste, stick, nail or post handbills, placards or posters, or make, print or mark any word, letter or advertisement of any kind upon any private house, store or other building, or upon any fence, wall, railing, telephone or electric light pole, or other private property.

2. A person may not paste, stick, nail or mark any work, character or letter or advertisement upon any public building, bridge, fence, railing or sidewalk or any other property of another within the city except in compliance with the requirements of law in posting of legal notices.

The posting of any sign, handbill, poster or placard upon or within the public right-of-way is expressly prohibited.

3. A person may not deposit or place any handbill in or upon any vehicle.

5-02-03. Exemption; Limitation.

1. The provisions of this chapter do not apply to the distribution of mail by the United States, nor to newspapers, except that newspapers must be placed on private property either in a special container or box, hung from the door knob or placed inside a screen door in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

2. Publishers of newspapers that are delivered free and unsolicited must cease delivery upon request of any resident.

(Ord. 4825, 02-25-97)

5-02-04. Delivery Prohibited.

1. A person may not throw, deposit or distribute any handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on such premises a sign bearing the words: "No Trespassing", "No Peddlers or Agents", "No Advertisement", or "No Soliciting", or any similar notice, indicating that the occupants of such premises do not wish to have their right of privacy disturbed, or to have any handbills left upon such premises.

2. It is unlawful for any person to throw or deposit any handbill in or upon any private premises which is apparently uninhabited or vacant.

5-02-05. Delivery Procedure. Handbills delivered to private inhabited premises may be delivered only by:

1. Handing the handbill directly to the owner or occupant; or,

2. Placing the handbill on the premises in such a manner so as to prevent the handbill from being blown about the premises, sidewalks, streets or other public places.

5-02-06. Persons Liable. This chapter applies to the persons responsible for the publication and/or circulation of materials covered by this chapter and their agents.

CHAPTER 5-03 AMUSEMENTS

5-03-01. Use of Streets. It is unlawful for any person to play any game, sport or amusement, upon any public right-of-way of the city, except as permitted by the Board of City Commissioners.

5-03-02. Amusements for Which License is Required. A person may not conduct, operate or maintain the following activities without first obtaining a license from the city:

1. Public dance, as that word is defined by N.D.C.C. Section 53-02-01.
2. Any circus, menagerie, or similar event.

5-03-03. Licenses. All licenses required by this chapter must be obtained from the city auditor.

5-03-04. License fees. License fees are as follows:

1. Public dance.
 - a. One dance - \$10.00.
 - b. Annual license - \$100.00.
2. Shows, circuses, carnivals - \$100.00 per day.

5-03-05. Civic Center Exception. The provisions of this chapter relating to permits and fees for shows, circuses and carnivals do not apply to the civic center.

5-03-06. Hours of Operation for Public Dances. A public dance, other than a dance marathon conducted for charitable purposes, may not open before 8:00 a.m. nor remain open to the public later than 1:00 a.m. on any day.
(Ord. 4240, 1-27-89)

5-03-07. Policing of Dances, Music Festivals or Public Concerts. A public dance or public dancing place or hall may not be conducted, maintained or operated unless the same is policed as provided by Section 53-02-08, N.D.C.C. A music festival or public concert, as defined by N.D.C.C. 53-02-01 shall be policed as provided in N.D.C.C. 53-02-08. The cost of the policing, as determined by the chief of police, must be paid by the applicant at the time of the license application or, at the discretion of the chief of police, a cash bond in a reasonable amount may be posted, which shall be refunded upon payment of costs of policing following the event.
(Ord. 4246, 3-14-89)

5-03-08. Liability Insurance or Bond. A person may not conduct, operate, manage or sponsor any Ferris Wheel, merry-go-round or other amusement ride operated for hire, or for the purpose of promoting or advertising any trade or business, without first filing with the city auditor a bond indemnifying the public against damages sustained by reason of operation of the ride, or certificate of liability insurance, in the amount of at least \$500,000.00. Such bond or certificate of insurance is subject to approval by the city attorney. This section applies to all persons, whether or not such persons are exempted from any other provision of this Code.

CHAPTER 5-04 AUCTIONS

5-04-01. Definitions. For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them:

Auction. A public sale of merchandise, new or used, which is sold to the highest bidder.

Auction market. An auction barn or premises in which auction sales are routinely held.

5-04-02. Scope of Chapter. The provisions of this chapter do not apply to auction sales conducted by trustees or referees in bankruptcy, executors, administrators, receivers or other public officers acting under judicial process, to the sale of real property at auction nor to auctions conducted by the City of Bismarck.
(Ord. 4247, 3-14-89)

5-04-03. Areas Where Auction is Prohibited. It is unlawful for any person to conduct an auction sale of goods, wares or merchandise or property of any kind on any of the streets, sidewalk or public property of the city.

5-04-04. Screening. Any outside storage area for an auction market must be screened by a well-painted, solid fence at least six feet in height and not more than eight feet.

CHAPTER 5-05 TAXICABS

5-05-01. Definitions. For purposes of this chapter the following words have the meanings ascribed herein:

1. Taxicab means a motor vehicle regularly engaged in the business of carrying passengers for hire, with a seating capacity of thirteen persons or less and not operating on a fixed route.

2. Passenger means any person engaging a taxicab under the terms of this chapter.

(Source: NDCC Sec.4-05-01(27); 40-07-07 et. seq.)

5-05-02. Scope of Service.

1. All persons engaged in the taxicab business in the city, operating under the provisions of this chapter, must render an overall service to the public desiring to use taxicabs. Licensees shall maintain twenty-four hours a day service for the purpose of receiving calls and dispatching cabs. They shall answer all calls received for services inside the corporate limits of the city as soon as they can do so and if services cannot be rendered within a reasonable time they must then notify the prospective passengers how long it will be before the call can be answered and give the reason for delay. Any licensee who refuses to accept a call in the corporate limits of this city at any time when the licensee has an available cab or cabs, or who fails or refuses to give overall service, is in violation of this chapter.

2. Any licensee under this chapter shall have at least one (1) operable accessible vehicle in its fleet and in service at all times and operated by a driver "trained to proficiency" in assisting passengers with a disability. Any licensee under this chapter shall have at least one driver trained to proficiency for each accessible vehicle in its fleet. If a person holds more than one (1) license under this chapter, at least one (1) operable accessible vehicle is required for each license. A license issued under this chapter may be suspended or revoked if the licensee fails to comply with this requirement. Any taxicab licensee renewing a license in December 2017 shall meet this requirement by July 1, 2018 and shall provide proof of their ownership and use of an accessible taxicab. Any taxicab licensee applying for a new license after January 1, 2018 shall meet this requirement immediately. Notwithstanding the provisions of this paragraph, any taxicab licensee whose fleet is limited to one taxicab shall comply with this paragraph at such time as it changes or replaces that taxicab or adds one or more taxicabs to its fleet. For the purposes of this paragraph:

a. "Accessible vehicle" means a taxicab that includes a ramp and other features to allow a wheelchair user to board safely and independently, if able to do so, and to ride safely. Such features shall comply with the relevant laws including the U.S. Department of Transportation regulations implementing the Americans with Disabilities Act contained in 49 C.F.R. § 38.23.

b. "Wheelchair" shall mean a mobility aid belonging to any class of three (3) or more wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

c. "Trained to proficiency" means a taxi driver who drives an accessible taxicab and who is trained and able to assist a mobility impaired passenger and safely utilize the accessible features of the accessible taxicab including:

1. How to use and maintain accessibility features and equipment in accessible vehicles.

2. Proper securement of mobility devices.

3. A sensitive and appropriate interaction with passengers with disabilities and a working understanding of the requirements of the ADA.

d. An additional fee or fare cannot be charged for the use of an accessible taxi or for serving persons with disabilities. A licensee may not charge a fee for an attendant acting on behalf of and traveling with a passenger with disabilities.

(Ord. 5721, 05-26-09; Ord. 6280, 08-22-17)

5-05-03. License Required and Term Thereof.

1. A person may not operate or permit a taxicab owned or controlled by him to be operated as a vehicle for hire upon the streets of the city without obtaining a license pursuant to this chapter.

2. Licenses granted under this chapter expire at the expiration of one year from the date of issuance unless renewed in accordance with the provisions of this chapter or unless sooner revoked.

3. Restrictions as to passenger capacity for each motor vehicle used as a taxicab shall be stated on the license.

(Ord. 5721, 05-26-09)

5-05-04. Application and Fee. An applicant for a new taxicab license shall file a sworn written application signed by the applicant, if an individual, all partners if a partnership, or the president and secretary if a corporation or limited liability company, with an application fee of \$100.00. The application must contain the following information:

1. The name and address of the applicant;
2. The experience of the applicant in the transportation of passengers.
3. The number of vehicles to be operated or controlled by the applicant and the location of proposed depots and terminals.
4. The color scheme or insignia to be used to designate the motor vehicle or motor vehicles of the applicant.
5. The make and model and serial number of each motor vehicle for which license is sought and the number of passengers that can be carried.
6. A rate schedule showing all proposed rates, fees, and charges.

An application to renew a taxicab license for a second or subsequent year must be made to city administration at least 30 days before the expiration date of the current license and is not subject to a public hearing. An application for a taxicab license renewal shall be accompanied by the appropriate vehicle renewal fee, which shall be refunded if the renewal is denied by the City Commission.

(Ord. 5721, 05-26-09; Ord. 6101, 01-27-15)

5-05-05. Public Hearing and Issuance of License.

1. Upon the filing of an application for a new taxicab license the Board of City Commissioners shall fix a time and place for a public hearing thereon. Notice of the hearing must be given to the applicant.

2. If the Board of City Commissioners finds that the applicant is fit, willing, and able to perform taxicab services and to conform to the provisions of this chapter, the board shall direct the city administrator to issue a license stating the name and address of the applicant, the number and capacity of motor vehicles authorized under the license and the date of issuance; otherwise the application shall be denied.

3. In making the above findings, the Board of City Commissioners shall take into consideration the character, experience, and responsibility of the applicant as well as the suitability of the applicant's equipment.

(Ord. 5721, 05-26-09; Ord. 6101, 01-27-15)

5-05-06. Indemnity Bond or Liability Insurance. A license may not be issued under the provisions of this chapter or continued in operation unless there is in full force and effect liability insurance for each vehicle authorized in the amount of \$500,000.00 for bodily injury or property damage to any one person and in the amount of \$1,000,000.00 for injuries or property damage to more than one person which are sustained in the same accident. The liability insurance policy must be issued by an insurance company authorized to do business in this state. The insurance policy must contain a provision that the company knows of this provision of this Code, and issues it pursuant to the terms of this chapter and that no cancellation shall be valid unless thirty days written notice in advance is given by registered mail to the city administrator.
(Ord. 5721, 05-26-09)

5-05-07. Passenger Capacity Limitation. It is unlawful for any licensee to carry passengers in excess of the number specified for that motor vehicle in the license.
(Ord. 5721, 05-26-09)

5-05-08. Taxicab Meters. Every taxicab must be equipped with a taximeter of a make, construction and operation satisfactory to the chief of police, and have a lighted dial in plain view to passengers which registers the fare for each trip. Taximeters must be factory sealed and certified by the manufacturer to be accurate. Before being used for the charging of fares, taximeters must be certified as to accuracy, and sealed before use. The police department may inspect and test a taximeter at any time.

Any taximeter which is the subject of a complaint must be placed out of service until it is re-certified by the manufacturer or a qualified service provider. No person may tamper with or break the seal of a taximeter for any purpose. No taxicab may be operated in the city if the seal of the taximeter has been broken until the taximeter is re-inspected by the manufacturer or a qualified service provider and resealed. No person may operate any taxicab without a sealed operating taximeter in compliance with this chapter.
(Ord. 5721, 05-26-09)

5-05-09. Taxicab Fares and Uniformity.

1. Rates of fare:

a. All applicants or licensees must annually file a statement or schedule listing all fairs, multiple loading charges, flat rate charges for certain specified routes, and any other information

necessary to clarify rates to be charged with the city administrator prior to the operation of taxicabs.

b. Any passenger has the option of electing payment by the taximeter rate or by the hourly rate. If a passenger engages a taxicab at the hourly rate the taximeter may not be used.

c. When a taxicab is in service, which includes waiting time other than when hired at the hourly rate, a flag or indicator on the taximeter must be lowered setting the taximeter in operation at the time the passenger(s) enters the taxicab and must be raised, which stops the taximeter, when the taxicab is halted to discharge such passenger(s). Waiting time includes the following:

1) Time beginning three minutes after arrival at a place in which the taxicab has been called and while it is not in motion.

2) The time consumed by delays in traffic or elsewhere.

3) The time consumed while standing at the direction of the passenger. The passenger may not be charged for any inefficiency of the driver of the taxicab or for arrival of the taxicab at the place of call prior to the appointed time.

d. Any licensee may operate a taxicab car pool service.

2. A licensee's rates must be uniform throughout the city.

(Ord. 5721, 05-26-09)

5-05-10. Taxicab Stands. The Board of City Commissioners may designate the places where taxicabs licensed under this chapter are permitted to stand while awaiting employment.

(Ord. 5721, 05-26-09)

5-05-11. Motor Vehicle Safety Inspections and Maintenance. Prior to the use and operation of any motor vehicle as a taxicab under the provisions of this chapter, the vehicle must be thoroughly examined and inspected by a certified mechanic and found to provide safe transportation and to comply with state and city laws. Every motor vehicle used as a taxicab must be inspected at least semi-annually by a certified mechanic to insure the continued maintenance of safe operating conditions. Every motor vehicle operating under this chapter must be kept in a clean and sanitary condition. A report of every required

inspection must be kept on file and furnished to the chief of police upon request. The police department may inspect any taxicab for compliance with this section.

(Ord. 5721, 05-26-09)

5-05-12. Restrictions on Alcoholic Beverages in Taxicabs.

A person other than passengers may not possess an alcoholic beverage in a taxicab within the city limits.

(Ord. 5721, 05-26-09)

5-05-13. Suspension and Revocation. Any license issued pursuant to this chapter may be revoked or suspended by the Board of City Commissioners for any violation of any provision of this chapter, city ordinance, or state law.

Prior to a license being revoked or suspended, a hearing must be held by the board. The licensee must be given at least five days' notice of the time and place for the hearing. The notice must specify the action proposed to be taken, the reason for it, and the licensee's right to appear. The notice must be mailed to the licensee by mail or personally served not less than eight days before the hearing.

If after the hearing the Board concludes that the violation charged has been proved, it may either revoke the license or suspend the license for a period not exceeding sixty days.

(Ord. 5721, 05-26-09)

5-05-14. Substitution and Retirement of Vehicles. If a licensee sells or disposes of a motor vehicle licensed as a taxicab, the license issued for such taxicab may be transferred to another motor vehicle without charge upon application, and upon the furnishing of satisfactory evidence of required insurance coverage. If the licensee desires to retire a motor vehicle licensed as a taxicab from active service, the licensee may reinstate such motor vehicle at some future time during the year for which originally licensed, without the payment of an additional fee and provided satisfactory evidence that the motor vehicle is covered by insurance.

(Ord. 5721, 05-26-09)

5-05-15. Vehicle Identification. Every licensee shall fix the number of the license, in figures at least four inches high and three inches wide and in distinctive, contrasting colors to the color of the vehicle, on the two sides and rear of the vehicle prior to its use as a taxicab. The number must be plain and distinct at all times when the taxicab is in use. Upon the expiration or cancellation of the taxicab license, the licensee shall immediately remove the number from the motor vehicle. The motor vehicle may not be used with that number on the vehicle.

(Ord. 5721, 05-26-09)

5-05-16. Taxicab Driver's License. A person may not operate a taxicab for hire upon the streets of the city and no person who owns or controls a taxicab may permit it to be so driven, unless the driver has a taxicab driver's license issued annually under the provisions of this chapter.

5-05-17. Taxicab Driver's License Application. Any person desiring to obtain a taxicab driver's license required by the provisions of this chapter must make application on forms to be provided by the city. The application must state the name, date of birth, driver's license number, and place of residence of the applicant, and any other information that may be required by the city and shall be signed and verified by the applicant.

At the time of the submission of the application, the City may require the applicant to furnish a fingerprint card prepared by the police department showing the fingerprints of the applicant and the applicant shall provide a photograph taken by or under the supervision of the police department. The fingerprint card, if required, and photograph must be retained by the police department in its regular fingerprint and photograph file.

Each application must be accompanied by a certificate from a physician that the applicant has no disease or infirmity which may make the applicant an unsafe or unsatisfactory driver or otherwise threaten the health and safety of the passengers.
(Ord. 5492, 03-28-06; Ord. 5721, 05-26-09)

5-05-18. Taxicab Driver's License Restrictions. A license may not be issued to any person under the age of eighteen years or to any person convicted of any felony within the previous five years whether or not sentencing is deferred, or of driving while under the influence, being in actual physical control of a motor vehicle while under the influence, reckless driving, leaving the scene of an accident, duty upon striking, or obedience to police officer or firemen within the previous three years, to any person whose driving record shows that he or she is not a safe and prudent driver if the Board of City Commissioners determines that the person has not been rehabilitated within the meaning of NDCC Section 12.1-33-02.1, to a person required to register as a sexual offender pursuant to NDCC Section 12.1-32-15. An applicant for a taxicab driver's license must be a person of good character, integrity, and honesty whose prior activities, criminal record, including arrest record or pending criminal cases, reputation, habits, and associations do not indicate a threat to the public interest or to the safety or security of the citizens utilizing taxi services. A license may not be issued to a person whose prior conduct indicates a threat to the safety of other persons. If the City Commission makes a finding that the person has been rehabilitated, the above conditions may be waived but any

license so issued shall be temporary until the above conditions are met.

(Ord. 4530, 06-22-93; Ord. 5149, 01-08-02; Ord. 5721, 05-26-09; Ord. 5986, 07-23-13; Ord. 6021, 12-17-13)

5-05-19. Examination. Before any application for a license required by this chapter is finally passed upon by the chief of police, the applicant must show that he or she has a current motor vehicle operator's permit issued by the state of North Dakota.

(Ord. 4679, 04-25-95; Ord. 5800, 01-25-11)

5-05-20. Investigation of Taxicab Driver's License and Approval of Application.

1. The police department shall conduct an investigation of each applicant for a taxicab driver's license and a report of the investigation and a copy of the traffic and police record of the applicant, if any, shall be attached to the application for the consideration of the chief of police.

2. The chief of police shall issue or deny the license within a reasonable time of receipt of the application. Written notice of issuance or denial must be mailed to the applicant at the address listed as current on the application. In the case of a denial, the notice shall contain a statement of the facts upon which the denial is based and notification of the right to appeal to the Board of City Commissioners.

5-05-21. Appeal.

1. Denial of a license is subject to an appeal to the Board of City Commissioners upon written notice of appeal filed within ten days of receipt of the letter of denial from the chief of police. If no appeal is filed within the time specified the chief of police's action is final.

2. Upon receipt of a notice of appeal, the city administrator shall set a date for a hearing before the Board within twenty days of receipt of the notice of the appeal. Notice of the time and place for the hearing must be served upon the applicant personally or by registered mail at least five business days before the hearing.

(Ord. 5721, 05-26-09)

5-05-22. Display of License. Every taxicab driver licensed under this chapter shall post the taxicab driver's license in such a place as to be in full view of all passengers while such driver is operating a taxicab.

(Ord. 5721, 05-26-09)

5-05-23. Fees. Fees are as follows:

1. Taxicab company;
 - a. Initial application, \$100.00 plus \$25.00 for each motor vehicle licensed.
 - b. Renewal, for each motor vehicle licensed, \$25.00.
2. Driver:
 - a. New, \$20.00.
 - b. Renewal, \$10.00.

(Ord. 4678, 04-25-95; Ord. 5721, 05-26-09)

5-05-24. Reciprocity with Mandan. A taxicab business licensed to do business by the City of Mandan and a taxicab driver licensed to drive taxicabs by the City of Mandan may provide taxicab services in the city of Bismarck so long as the business license and the driver's licenses are issued in conformance with the provisions of this chapter. A taxicab business must be licensed in the city where it is located.

(Ord. 5721, 05-26-09)

CHAPTER 5-06 PAWNBROKERS, JUNK DEALERS AND SECONDHAND DEALERS

5-06-01. Declaration of Purpose and Intent. The board finds that pawn shops or businesses that deal in second-hand goods or valuables provide a convenient means by which thieves or those who deal in stolen goods may dispose of such property. In order to discourage transactions in stolen goods and other unauthorized transactions, and to assist in the recovery of stolen goods and identification of those who sell stolen goods or engage in other unauthorized transactions, the board finds that it is necessary to license such businesses, and to require that certain records be kept, and that police officers be authorized to inspect such records.

Reference: N.D.C.C. 40-05-01(53)

5-06-02. Definitions. As used in this chapter:

1. "Junk dealer" means any person who maintains a store, shop or place of business where purchases are made of used metals, rags, bottles, bones or scrap of any kind, nature or description for the purpose of resale either at retail or otherwise.
2. "Pawnbroker" means any person who:

a. Loans money on deposit or pledge of personal property, or other valuable things.

b. Deals in the purchase of personal property or other valuable thing, on condition of selling the same back again at a stipulated price.

c. Loans money, secured by personal property, taking possession of the property or any part thereof.

3. "Secondhand dealer" means any person, including antique dealers and jewelers, who makes purchases of used articles such as, but not limited to, automobile parts and accessories, electronic equipment, electronic appliances, furniture, kitchenware, music, dvds, videos, games, sporting goods, exercise equipment, clothing, jewelry, precious metals, coins with a market value more than the face value, collectibles, and glass or chinaware for the purpose of resale or remanufacture for resale, either at retail or otherwise and either in its original condition or in a different form.

(Ord. 5658, 04-08-08)

5-06-03. Exceptions. This chapter does not apply to:

1. Any person who principally engages in the sale of new goods who, incident to the sale of new goods, accepts for trade-in previously owned or secondhand goods or who re-purchases goods from the same person who purchased those goods at the same store, shop or place of business, provided he or she does not otherwise engage in a business defined in this chapter.

2. Any person who purchases goods at a rummage sale, garage sale, yard sale or flea market who does not otherwise engage in a business defined in this chapter.

3. Any person who purchases aluminum containers, glass, paper products, or other items for the purpose of recycling or for re-sale for recycling, who does not otherwise engage in a business defined in this chapter.

4. Any federally licensed firearms dealer required by federal laws or regulations to maintain records substantially equivalent to records required pursuant to this chapter relating to purchases of firearms, provided such records are open to inspection by any law enforcement officer and he or she does not otherwise engage in a business defined in this chapter.

5. A bona fide investment brokerage firm, as defined by the Internal Revenue Service, which firm does not otherwise engage in a business defined by this chapter.

(Ord. 5658, 04-08-08)

5-06-04. License Required. A person, firm, partnership or corporation may not conduct the business of pawnbroker, secondhand dealer or junk dealer without having first obtained the appropriate license to do so. A license shall be valid from January 1 through December 31 each year.

(Ord. 5658, 04-08-08)

5-06-05. Fees. The annual fee for a license issued pursuant to this chapter is due before December 15 of each year and is as follows:

Pawnbroker	\$75.00
Junk Dealer	\$50.00
Second Hand Dealer	\$25.00

(Ord. 4660, 01-24-95; Ord. 5658, 04-08-08)

5-06-06. Record of Goods.

1. Any person who operates a pawnshop in the City as defined in this chapter must keep a record of each and every purchase or loan made by the pawnshop, containing the name and address, date of birth of the seller or pledger, written consent of a parent or legal guardian if the seller or pledger is less than eighteen years of age, the date, the article sold or pledged, the make, model, serial number and color, amount for which pledged, and date of forfeiture and sale, a driver's license number or other identifying information of the person by whom sold or left in pledge, and the ultimate disposition of the property sold or pledged. The records must be legible and no record may be destroyed or rendered illegible by any alteration or correction. Records must be retained for two years and freely exhibited to any city police officer conducting an inspection authorized by this Chapter upon demand during usual business hours.

2. Any person who operates as a junk dealer in the City as defined in this chapter must keep a record of each and every purchase made by the junk dealer containing the name, address and date of birth of the seller, the written consent of a parent or legal guardian if the seller is less than eighteen years of age, the date, the article purchased and the make, model, serial number, color or an accurate description of the article, the amount paid and the intended disposition of the article. The junk dealer must require any seller to provide identification in the form of a drivers license or other reasonable identification. The

records must be legible and no record may be destroyed or rendered illegible by any alteration or correction. Records must be retained for two years and freely exhibited to any city police officer conducting an inspection authorized by this Chapter upon demand during usual business hours.

3. Any person who operates as a second hand dealer in the City as defined in this chapter must keep a record of each and every purchase made by the second hand dealer containing the name, address and date of birth of the seller, the written consent of a parent or legal guardian if the seller is less than eighteen years of age, the date, the article purchased and the make, model, serial number, color or an accurate description of the article, the amount paid and the intended disposition of the article. The second hand dealer must require any seller to provide identification in the form of a drivers license or other reasonable identification. The records must be legible and no record may be destroyed or rendered illegible by any alteration or correction. Records must be retained for two years and freely exhibited to any city police officer conducting an inspection authorized by this Chapter upon demand during usual business hours.

(Ord. 4353, 1-02-91; Ord. 5658, 04-08-08)

5-06-07. Sale of Unredeemed Pledges. At the time of a pledge, the pawnbroker and the person making the pledge shall agree in writing to a specific time for redemption of the pledge. The sale of unredeemed pledges may be made at any time after the time for redemption of the pledge has expired. Such sale shall work a complete forfeiture of the right of redemption by the original owner, and the proceeds thereof is absolutely the property of the pawnbroker.

(Ord. 5658, 04-08-08)

5-06-08. Purchase From Minors Prohibited. A person who engages in a business defined in this chapter or agent or employee may not loan money to any person under the age of eighteen or purchase any merchandise, goods or property from a minor without the written consent of the parents or guardian of that person.

(Ord. 5658, 04-08-08)

5-06-09. Junkyard; Nuisance Prohibited. A junkyard must at all times be kept and maintained in a sanitary condition, and the keeping of any goods, wares and merchandise of any kind, or property which tends to annoy, injure or endanger the comfort, repose, health or safety of others, or in any way renders other persons insecure in life, or the use of property, is hereby declared a nuisance and is prohibited.

(Ord. 5658, 04-08-08)

5-06-10. Police Department to Maintain List of Stolen Goods. The Bismarck Police Department will maintain a list of stolen goods and will respond to inquiries of persons licensed under this chapter. This list will be kept current and updated daily insofar as is practicable.
(Ord. 5658, 04-08-08)

5-06-11. Information to be Used For Official Purposes Only. Information obtained by police officers from records required to be kept pursuant to this chapter may be used for official purposes only.
(Ord. 5658, 04-08-08)

5-06-12. Authorized Inspections. The police department is authorized and required to establish a policy setting guidelines regulating the nature and frequency of inspections authorized by this chapter. The policy must provide that regular and periodic unannounced inspections of the records of the licensed businesses, sufficient to ascertain compliance with this chapter, must be conducted at least on an annual basis. The policy shall also provide that additional inspections may be authorized by the chief of police or his/her designates, but only if there is reason to believe that property of a kind that is commonly purchased at the licensed businesses has been stolen or unlawfully traded or sold.
(Ord. 5658, 04-08-08)

5-06-13. Revocation of Licenses.

1. Licenses issued under the provisions of this chapter may be revoked by the Board of City Commissioners after notice and hearing, for any of the following causes:

- a. Fraud, misrepresentation or false statement contained in the application for a license.
- b. Fraud, misrepresentation or false statement made in the course of carrying on business.
- c. Any violation of this chapter.
- d. Conviction of any crime involving theft or dishonesty.
- e. Conducting the business 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 the hearing for revocation must be given in writing, setting forth specifically the grounds of

complaint and the time and place of hearing. Such notice must be mailed, registered mail, to the licensee at least five days prior to the date set for hearing.

(Ord. 4345, 11-06-90; Ord. 5658, 04-08-08)

CHAPTER 5-07 DOOR-TO-DOOR SALES AND SOLICITATION

5-07-01. Declaration of Purpose and Intent. The Board of City Commissioners finds and declares that for the safety, privacy and protection of residents of the community and for the preservation of the rights of people conducting protected speech, it is necessary and proper that certain door-to-door solicitations in residential areas be regulated and that permissible sales or solicitations be restricted to daylight or early evening hours.

(Ord. 5196, 08-13-02; Ord. 5401, 04-12-05)

5-07-02. Door-to-Door Sales Regulated. The practice of going door-to-door at private residences without being requested or invited to do so for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services is allowed only as permitted by this chapter.

(Ord. 5196, 08-13-02; Ord. 5401, 04-12-05)

5-07-03. Door to Door Sales; Permit Required; Application. Any person or organization desiring to engage in door-to-door sales in residential areas for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services, may do so provided they comply with the provisions of this chapter and obtain a permit to do so by filing an application with the Office of City Administration. The application must be on a form provided by the City and contain the following:

1. Applicant's name, current local address, current permanent address, current business address, and current telephone number.

2. A general description of the Applicant's business including the goods, wares, merchandise, magazines, periodicals or personal services that will be sold in the City.

3. Applicant's residential and business addresses for the prior two-year period, if different from the present residence and addresses.

4. The name, address and contact information of the organization the applicant represents or by whom they are employed. If an individual, the name and contact information of his/her supervisor.

5. If the applicant is a business and the application is for multiple sales persons, a complete listing of the name, local address and telephone number of each sales person that will conduct sales in the City must be provided.

6. The application must include a copy of the applicant's North Dakota sales tax permit and if applicable, a copy of the applicant's transient merchant license.

7. An individual applicant must present a government or tribal issued photo identification with the submission of an application.

8. Such other information as is required by the City.

An applicant for a door to door sales permit must be a person of good character, integrity, honesty whose prior activities, criminal record, including arrest record or pending criminal cases, reputation, habits, and associations do not pose a threat to the public interest of this state or to safety or security of the citizens in their homes. A permit may not be issued to a person whose prior conduct indicates a threat to the safety of other persons. The City may conduct a back-round check on any applicant for a door to door sales permit. A person who is required to register as a sexual offender pursuant to NDCC Section 12.1-32-15 may not be granted a door to door sales permit.

A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government under circumstances which indicate the person poses a threat to the public interest, or has pled guilty to or been found guilty of a felony violation of NDCC Chapter 12.1-06.1, 12.1-11, 12.1-20, 12.1-22, 12.1-23 or an offense of other states or the federal government equivalent to the offenses defined in these chapters may not be granted a door to door sales permit for five years from the date of conviction, release from incarceration, end of a period of suspension or deferral, or expiration of parole or probation, whichever is the latest.

A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of NDCC Chapter 12.1-06.1, 12.1-11, 12.1-20, 12.1-22, or 12.23, or an offense of other states, the federal government, or a municipality equivalent to these offenses may not be issued a door to door sales permit for two years from the date of

conviction, release from incarceration, end of a period of suspension or deferral, or expiration of parole or probation, whichever is the latest.

A permit may not be issued to an applicant unless the applicant has obtained a transient merchant license from the Attorney General pursuant to NDCC Chapter 51-04, if required, or the applicant has obtained a statement from the Attorney General that a transient merchant license is not required.

City Administration shall issue or deny door to door sales permit within a reasonable time of receipt of the application. Written notice of a denial must be mailed to the applicant at the address listed as current on the application. The notice shall contain a statement of the facts upon which the denial is based.

Denial of a door to door sales permit is subject to an appeal to the Board of City Commissioners upon written notice of appeal filed within 10 days of receipt of the notice of denial. If no appeal is filed within the time specified the action shall be final.

Upon receipt of a notice of appeal, the Board shall set a date for a hearing within 15 days of receipt of the notice of the appeal. Notice of the time and place for the hearing must be served upon the applicant personally or by certified mail at least five days before the hearing. The Board shall hear such testimony and other evidence as it deems necessary and expedient, and thereupon make its findings and decision, which shall be final.

(Ord. 5471, 12-13-05; Ord. 5964, 05-13-13; Ord. 6052, 05-27-14)

5-07-04. Issuance of Permit and Terms Thereof.

1. Upon approval of the application, the City Administrator or police department shall issue a permit to the applicant.

2. The permit is to be in the form of an identification badge and must be worn and be visible at all times by the applicant when selling. The identification badge shall contain a current photograph of the applicant issued by the police department. An identification badge must be issued to each employee or agent of the applicant that will engage in sales.

3. The permit must have a number on it which shall also be placed on the applicant's application file. The permit or permits must also contain the name of the applicant and the name of the sales person. Each sales person shall wear a permit in a visible manner during all

sales activities.

4. The permit shall be issued for a period of one year. The fee for the permit required under this section shall be as determined from time to time by the Board of City Commissioners, shall be kept on file in the office of the City Administrator, and posted on the City's website, and must be paid before the issuance of any permit.

(Ord. 6052, 05-27-14)

5-07-05. Revocation of Permits.

1. Permits issued under the provisions of this chapter may be revoked by the Board of City Commissioners after notice and hearing, for any of the following causes:

a. Fraud, misrepresentation or false statement contained in the application for a permit.

b. Fraud, misrepresentation or false statement made in the course of carrying on business.

c. Any violation of this chapter.

d. Conviction of any crime involving theft or dishonesty.

e. Conducting the business 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 the hearing for revocation must be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice must be mailed, registered mail, to the address of the licensee as contained in the application, at least five days prior to the date of the hearing.

(Ord. 5401, 04-12-05)

5-07-06. Sales or Solicitations Without a Permit. Any person or organization desiring to engage in door-to-door solicitation in residential areas for the purpose of soliciting charitable or religious contributions, the sale of religious articles or publications or the sale of other articles if the proceeds are used for charitable or religious purposes, persons soliciting for or in support of any non-profit organization or public interest, political candidates, or persons campaigning for or against a political candidate or issue may do so without a permit providing they comply with the provisions of this chapter.

(Ord. 5196, 08-13-02; Ord. 5401, 04-12-05)

5-07-07. Hours of Sales Solicitation. Door-to-door sales or solicitation allowed pursuant to this chapter are permitted only between the hours of 9:00 a.m. and 5:30 p.m. and between the hours of 7:00 p.m. and 9:00 p.m., daily.
(Ord. 5196, 08-13-02; Ord. 5401, 04-12-05)

5-07-08. Locations Where Solicitation Prohibited. Notwithstanding the sales or solicitations allowed under this chapter, no person may solicit or sell at any private residence, business or establishment if there is placed on the premises in an observable location, a sign at least 10 square inches in size bearing the words "No Trespassing", "No Soliciting", or similar notice.
(Ord. 4279, 08-08-89; Ord. 5196, 08-13-02; Ord. 5401, 04-12-05)

CHAPTER 5-08 SURFACE AMBULANCE SERVICE

5-08-01. Declaration of Purpose and Intent. The Board of City Commissioners finds that the public interest is served by required high standards for ambulance services. In order to ensure the maintenance of high standards, the board finds it necessary and desirable to regulate ambulance services.

5-08-02. Definition of Surface Ambulance Service. As used in this chapter, the term "surface ambulance service" means the transportation of a person for hire, who is incapacitated to any extent during such transportation.

5-08-03. License Required. No person may operate any surface ambulance service within the City of Bismarck unless the operator of the service is licensed by the City of Bismarck and has satisfied all licensing requirements of the State of North Dakota.

5-08-04. License Application. Each applicant for an ambulance service license in the City of Bismarck or for the expansion or alteration of an existing ambulance service license shall apply to the city auditor on a form provided by the city auditor that contains the following information:

1. The full name and address of the applicant; and if a partnership, the name and address of each partner; and if a corporation, the names and addresses of the officers and the board of directors and the name of the general manager of the applicant's ambulance service.

2. The address of the principal place of business of the applicant.

3. A resume of the experience, if any, of the applicant in the operation of a surface ambulance service.

4. A detailed statement of the type of surface ambulance service that the applicant proposes to operate in the City of Bismarck.

5. A detailed list of vehicles, equipment and number of employees expected to be utilized by the applicant.

6. A certified copy of the ambulance service license of the applicant that has been issued by the State of North Dakota pursuant to Chapter 23-27, N.D.C.C.

7. A detailed statement indicating why the applicant believes that the public convenience and necessity require the issuance of an additional surface ambulance service license; and why the service to be provided by the applicant will serve the public convenience and necessity.

8. The education, training, experience and other qualifications of the applicant, its agents and employees.

9. Such other information as the City may require.

5-08-05. Review by Health Officer - Hearing on Application. Upon receipt of an application, the city health officer shall review the application. The health officer is authorized to require additional information that is necessary to provide adequate information concerning the nature and extent of the proposed ambulance service to be provided by the applicant. Upon completion of the investigation the health officer shall make a recommendation to the board as to whether or not the application should be granted. The recommendation must be in writing and contain reasons supporting the recommendation.

Upon receipt of the report and recommendation of the city health officer, the board will promptly set a public hearing to be held before the board to consider the application and the recommendations of the public health officer. A notice of the hearing must be published at the applicant's expense in the legal newspaper of the City of Bismarck at least ten days prior to the date set for hearing. The notice shall state that any interested person may appear at the hearing and will be given the opportunity to be heard, and to present oral and written evidence for or against the granting of the application.

Within thirty days of the conclusion of the hearing, the board shall grant or deny the application. The board, in making its decision, shall give consideration to the following factors:

1. Information contained in the application of the applicant.
2. The report and recommendation of the public health officer.
3. The recommendations or comments of medical personnel within the City of Bismarck.
4. The evidence presented at the hearing.
5. The duplication, if any, of ambulance services that would result from the granting of the license.
6. Whether the benefit accruing to the public health and welfare would outweigh the costs associated with providing the service.
7. Whether the issuance of such license would result in the deterioration of existing ambulance services.

5-08-06. License Regulations.

1. Any change in the licensed ambulance service, including discontinuance of any service or reduction in the number of vehicles or personnel, is subject to the approval of the board.
2. Transfer of a surface ambulance services license is prohibited.

5-08-07. Advanced Life Support Services. Each licensed ambulance service must maintain at least two advanced life support ambulances in service at all times.

5-08-08. Suspension and Revocation. Upon the giving of the notice hereinafter required, an ambulance service license may be suspended or revoked at any time by the Board of City Commissioners for cause, which includes: The violation of any provision of this ordinance or the violation of any provision of Chapter 23-27 of the North Dakota Century Code or of any amendment thereto, or of any ordinance of the city relating to the use or operation of motor vehicles, or of any regulation promulgated by the State Health Council. The revocation or suspension may be for the entire license period or any portion thereof. When an ambulance service license is suspended or revoked it is the duty of the city auditor immediately to notify the licensee to cease operation of the ambulance service. The licensee must be given not less than five days' notice of a hearing, by certified or registered mail with a written statement of the complaint made or the charges. Upon hearing

duly had by the board, it may either revoke the license or suspend the license for a specified period of time not exceeding sixty days.

5-08-09. Restrictions on Hospitals. Because of the danger that undue and unreasonable preferences of particular hospitals pose to the public, no person that operates a hospital in the city may: (1) allow any licensed ambulance operator to use any hospital facilities unless all licensed ambulance operators are offered the same privileges on the same terms; or (2) directly or indirectly offer or give any consideration to any ambulance operator to induce the operator to bring patients to such hospital.

5-08-10. Not Applicable to Operators Outside City Limits. The provisions of this chapter do not apply to an operator of a surface ambulance service not located in the city that transports patients to or from locations outside the city; however, no operator may transport patients from one location within the city to another location within the city unless that operator is licensed by the city.

5-08-11. Fares. Any charges or fares imposed by any licensed operator must be reasonable and uniform. A schedule of fares must be filed annually with the license fee and a revised schedule filed whenever fares are amended. An operator may not charge or collect any fare in excess of that schedule.

5-08-12. City May Provide Services. Pursuant to Section 23-12-08, N.D.C.C., the board may establish, maintain, contract for or otherwise provide ambulance services, provided that such services meet the minimum standards set forth in this chapter, and adopt such rules or regulations as may be necessary to regulate such services, including regulation of fares.

5-08-13. Penalty. Any person who violates this ordinance may, upon conviction thereof, be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed thirty days, or by both such fine and imprisonment.

5-08-14. Fees. Any party granted a license under this section shall pay a one-time fee of \$500.00. Each applicant for a new license must also pay a non-refundable application fee of \$100.00.

(Ord. 4239, 1-31-89)

CHAPTER 5-09 LICENSE OFFICER; FEES

5-09-01. License Officer. The city auditor shall act as the city's license officer and shall exercise all of the powers granted by law necessary to execute these duties.

5-09-02. Fees. Fees may be established by ordinance, or, if no fee has been established by ordinance, the license officer may establish a reasonable fee. Fees must be uniform for all licenses or permits within a particular class or category, and a schedule of fees must be on file in the city auditor's office. The license officer is expressly delegated the authority to establish fees not otherwise established by ordinance, and has the responsibility to do so.

CHAPTER 5-10 SUNDAY CLOSING LAW

5-10-01. Sunday Opening of Grocery Stores. Pursuant to N.D.C.C. 12.1-30-03(30), food stores shall be allowed to have not more than one hundred employees working in the store at one time on a Sunday.
(Ord. 4277, 7-25-89)

CHAPTER 5-11 TOBACCO

5-11-01. Purpose. The City of Bismarck has recognized that illegal tobacco purchase and use by minors is a significant problem within the city. This section is intended to reduce the illegal purchases of tobacco products by minors and to reduce the accessibility of tobacco products to minors.
(Ord. 5017, 11-23-99)

5-11-02. Authority to Sell. No person, firm, business or other entity may directly or indirectly or by means of device, offer or dispose of or give away any tobacco product, including but not limited to, cigarettes, cigarette papers, cigars, chew, snuff, tobacco or an electronic smoking device without:

1. A North Dakota State Tobacco Dealers License issued pursuant to NDCC Chapter 57-36.
2. The authority to sell tobacco products at retail as granted by the City of Bismarck.

An employee acting on behalf of his/her employer, shall have the same license and authority with regard to tobacco products as the employer. As used in this chapter, "tobacco" or "tobacco product" are defined as any product that contains tobacco, is derived from tobacco or contains nicotine or other similar substances, that is intended for human consumption, or is likely to be consumed, whether smoked, heated, inhaled, chewed, absorbed, dissolved, or ingested by another means. The term "Tobacco Product" includes E-cigarettes and other electronic smoking devices, pipes and rolling papers, but does not include any product approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose. For the purposes of this Chapter, "Electronic smoking

device" means any electronic product or oral device, such as one composed of a heating element, battery or electronic circuit, or both, that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.]. A "person or business" means any individual, business, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
(Ord. 5017, 11-23-99; Ord. 6164, 10-27-15)

5-11-03. Grant of Authority. The City of Bismarck does hereby grant the authority to sell tobacco products or electronic smoking devices at retail, to persons or businesses who have a North Dakota State Tobacco Dealers License under NDCC Chapter 57-36. The authority to sell granted by this section may be suspended or revoked as provided in this chapter. No mobile vendor, person or business may sell or deliver tobacco products from a mobile vendor vehicle or a push cart, as defined in Chapter 10-05.1, or from a motor vehicle or trailer, or from any other temporary facility moved from place to place to conduct sales.
(Ord. 5017, 11-23-99; Ord. 6164, 10-27-15; Ord. 6285, 9-26-17)

5-11-04. Violations. A fine may be imposed on a person or business engaged in the sale of tobacco products or electronic smoking devices at retail when any employee of the person or business is convicted of a violation of City Ordinance 6-07-01(1).

1. Hearing. A violation of this section shall be civil in nature and the Municipal Court is granted the authority to hear cases under this section. Upon notification of a violation of this section the City shall file a complaint with the Municipal Court. Upon the filing of the complaint, the Court shall notify the person or business of the complaint and of the time and place of a hearing to be held concerning the matter. The notice shall specify the reason for the hearing, the time and place for the hearing and the right of the person or business to appear at the hearing. The notice must be mailed to the person or business at least ten days prior to the hearing. A record of the hearing shall be made by electronic recording device. The City shall establish a violation or violations of this section by offering certified copies of relevant judgments of conviction from the Municipal Court and the Municipal Court may take judicial notice of these

records.

2. Defenses. A person or business charged with a violation of this section who is a member participant in good standing of Compliance Plus or other Commission approved compliance program may assert such membership as an affirmative defense and upon proof of membership in good standing be entitled to a dismissal of the complaint. This affirmative defense may be asserted only one time for each license or location. This affirmative defense shall be for only those violations occurring within one year from the effective date of this section.

3. If after the hearing the Municipal Judge finds that the violation charged has occurred as proven by a preponderance of the evidence, the Municipal Judge may assess a fine of up to \$1000. The Municipal Court may suspend all or part of any fine imposed upon a showing by the person or business that it has attempted to train its employees on the prevention of the sale of tobacco products and electronic smoking devices to persons under 18 years of age. The Municipal Court shall issue its Findings and Order which shall be served on the person or business. The decision of the Municipal Court shall be final.

(Ord. 5017, 11-23-99; Ord. 5157, 02-26-02; Ord. 6164, 10-27-15)

5-11-05. Grounds for Suspension or Revocation of Authority to Sell. The authority to sell tobacco products or electronic smoking devices granted by this Chapter may be revoked or suspended temporarily by the Board of City Commissioners if the person or business violates Section 5-11-04 more than one time at any one location and the illegal sales by the clerks employed by the person or business upon which the violations of Section 5-11-04 are based occurred within a 24 month period.

1. Hearing for Revocation or Suspension. Before the authority to sell tobacco products or electronic smoking devices may be revoked or suspended for cause, the Board shall notify the person or business of the proposed action and the right to a hearing on the action. The notice shall specify the action proposed to be taken, the reason for it, the time and place of the hearing, and the right of the person or business to appear and present evidence or testimony on it's behalf. The notice must be mailed to the person or business by certified return receipt mail not less than five days nor more than fifteen days before the hearing.

2. If after the hearing the Board of City Commissioners finds that the violations did occur, the Board may give a warning, suspend the authority to sell, or revoke the authority to sell as it deems appropriate. The

Board shall issue Findings of Fact, Conclusions and Order, which shall be served on the person or business. The decision of the Board is final.

(Ord. 5017, 11-23-99; Ord. 6164, 10-27-15)

CHAPTER 5-12 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

5-12-01. Purpose. This ordinance is enacted to regulate smoking in public places and places of employment in order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air.

(Ord. 5463, 10-11-05)

5-12-02. Definitions. The following definitions shall apply in the interpretation and enforcement of this Ordinance.

(1) "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages.

(2) "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.

(3) "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name or descriptor.

(4) "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.

(5) "Employer" means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political

subdivisions that employs the services of one or more individuals.

(6) "Enclosed area" means all space between a floor and a ceiling that has thirty-three percent or more of the surface area of its perimeter bounded by opened or closed walls, windows or doorways. A wall includes any physical barrier regardless of whether it is open or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.

(7) "Health care facility" means any office or institution providing health care services or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Some examples of health care facilities include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics, nursing homes; homes for the aging or chronically ill; nursing, basic, long-term or assisted living facilities; laboratories; and offices of any medical professional licensed under title 43 of the North Dakota Century Code, including all specialties and subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within health care facilities, and any mobile or temporary health care facilities.

(8) "Health care services" means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological and pharmaceutical services.

(9) "Place of employment" means an area under the control of a public or private employer, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.

(10) "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01; child care and adult

day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; fraternal orders and private clubs; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; bars and nightclubs; restaurants, retail food production and marketing establishments; retail service establishments; retail stores including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; pool halls; video arcades, health clubs, spas, limousines, elevators, restaurants including outdoor service areas, public restrooms, shopping malls, service stations, truckstops; sports arenas; theaters and waiting rooms.

(11) "Publicly owned building, vehicle or office" means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.

(12) "Restaurant" includes every building, or other structure or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served. Some examples of restaurants include coffee shops, cafeterias, sandwich stands, private and public school cafeterias, kitchens and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

(13) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or

professional businesses.

(14) "Smoking" means inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter.

(15) "Sports arena" means an indoor or outdoor place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. Some examples of sports arenas include sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789, 09-28-10 was referred 04-19-11; Ord. 5781 referral failed 04-19-11; Ord. 5936, 01-08-13)

5-12-03. Smoking Restrictions - Exceptions - Retaliation Application.

(1) In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke free air, smoking is prohibited in all enclosed areas of:

- a. Public places; and
- b. Places of employment.

(2) Smoking is prohibited within twenty feet of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.

(3) The following areas are exempt from the provisions of Section 5-12-03(1) and (2):

a. Private residences, except those residences used as a child care, adult day care or health care facility subject to licensure by the department of human services.

b. Outdoor areas of places of employment, except those listed in subsection 2.

c. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employees other than the owner-operator.

(4) Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.

(5) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this subsection shall be an offense.

(6) This chapter may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(7) Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789, 09-28-10 was referred 04-19-11; Ord. 5781 referral failed 04-19-11; Ord. 5936, 01-08-13)

5-12-04. Responsibility of Proprietors. The owner, operator, manager or other person in control of a public place or place of employment where smoking is prohibited by this chapter shall:

(1) Clearly and conspicuously post no smoking signs or the international no smoking symbol in that place.

(2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.

(3) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this chapter at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.

(4) Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises.

(5) By the effective date of this section, communicate to all existing employees and to all prospective employees upon their application for employment that smoking is prohibited in that place.

(6) For places under his or her control, direct a person who is smoking in violation of this section to extinguish the product being smoked. If the person does not stop smoking, the owner, operator, manager or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, operator, manager, or employee shall immediately report the violation to an enforcement agency identified in this section. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, operator, manager or employee shall not constitute a violation of the section by the owner, operator, manager, or employee.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789, 09-28-10 was referred 04-19-11; Ord. 5781 referral failed 04-19-11; Ord. 5936, 01-18-13)

5-12-05. Penalty. Violations of this chapter may be reported to the Bismarck Police Department.

(1) An individual who smokes in an area in which smoking is prohibited under the provisions of this ordinance is guilty of an infraction punishable by a fine not exceeding fifty dollars.

(2) Except as otherwise provided in section 5-12-03(5), an owner or a person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with section 5-12-03 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.

(3) In addition to the fines established by this section, violation of this chapter by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(4) Violations of this chapter are declared to be a public nuisance that may be abated by restraining order, preliminary or permanent injunction or other means provided by law.

(5) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

(Ord. 5463, 10-11-05; Ord. 5781, 8-24-10 shall take effect at 1:00 a.m. on November 1, 2010; Ord. 5789, 09-28-10 was referred 04-19-11; Ord. 5781 referral failed 04-19-11; Ord. 5936, 01-08-13)