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CHAPTER SEVEN
BUSINESS REGULATIONS AND LICENSES

ARTICLE 1 - General Provisions

7.0101 Licenses

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

7.0102 Licenses - Application

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

7.0103 Licenses - Granting

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

7.0104 Licenses - Term

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

7.0105 Licenses - Not Transferable

No license or permit shall be assignable or transferable except by permission of the City Council. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. The City may grant the continuance of the business licensed to any other portion of the City, such permission to be certified on the license by the City Auditor. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of this article shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

7.0106 Licenses - Revocation

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

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

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

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

7.0107 Licenses - Posting of

All licenses and permits issued by the City for the operation of any business establishment, trade or any part of the operation thereof, shall be posted in a conspicuous place in the main business establishment. Where badges representing permits or licenses are issued to be worn by an individual, such licensee shall wear such badge during the normal course of employment for which said badge was issued.

7.0108 Licenses - Short Term

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

7.0109 Licenses - Enforcement

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

ARTICLE 2 - Transient Merchants

7.0201 Definitions

For the purpose of this article:

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

7.0202 License Required

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

7.0202.1 Exceptions

No license shall be required of local nonprofit groups including but not limited to all churches in Ellendale, Boy Scouts, Girl Scouts, Booster Clubs, O.P.E.R.A. Inc, Ellendale Area Arts Council, Lion's Club, Red Cross, Historical Society, Local Fundraisers that support projects in the City of Ellendale, ND. Yard or Rummage Sales conducted by residences of the city held on their own property. Vendors participating in the Dickey County Fair while located on the fairgrounds or any other event within the city as approved by resolution of the City Council.

7.0203 License Fee

The license fee to be required of all transient merchants for the transaction of such business within the City is hereby fixed at the sum of \$25.00, subject to change by resolution of the City Council, per day for each and every day during which any such transient merchants shall

transact business in the City. (Source: North Dakota Century Code Section 51-04-09)

7.0204 License - Application for

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

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

7.0205 Bond

If a complaint is lodged to the City against any transient merchant, the applicant therefore shall file with the City Auditor a bond running to the City in the sum of \$1,000 executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the State of North Dakota; said bond not to be revocable nor to terminate prior to passage of two years time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be cancelled has been given to the City Auditor. The bond is to be approved by the City attorney, conditioned that the applicant shall comply fully with all of the provisions of the ordinances of the City and the statutes of the State of North Dakota, regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against the applicant for any violation of said ordinances or statutes, together with all judgments

and costs that may be recovered against him by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting business with the applicant, whether misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person.

7.0206 Service of Process

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

7.0207 Exhibiting License

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

7.0208 Transfer

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

7.0209 Enforcement by Police

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

7.0210 Revocation

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

- a. Any fraud, misrepresentation or false statement contained in the application for license;
 - b. Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
 - c. Any violation of this article;
 - d. Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
 - e. Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
2. Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.

7.0211 Expiration of License

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

ARTICLE 3 - Hawkers and Peddlers

7.0301 Definitions

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

7.0302 License Required

It shall be unlawful for any person to engage in the business of hawker or peddler of any merchandise, article or thing without having first secured a license therefore.

7.0303 Exceptions

No license shall be required for peddling, vending or marketing farm products raised in

the State of North Dakota, fish, vegetables, fruits, nuts, cake, candy, ice cream or other light products, refreshments or food vendors.

7.0304 License - Application for

Applicants for license under this article must file with the City Auditor a sworn application in writing, which shall give the following information:

1. Name, age and sex of the applicant;
2. Address (legal and local);
3. A brief description of the nature of the business and the goods to be sold;
4. If employed, the name and address of the employer, together with credentials establishing the exact relationship;
5. The length of time for which the right to do business is desired;
6. If a vehicle is to be used, a description of the same, together with license number; and
7. A statement as to whether or not the applicant has been convicted of any crimes, misdemeanors or violations of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore.

7.0305 Fees

The license fee to be required of all hawkers and peddlers for the transaction of business within the City shall be in the sum of \$25.00 per day, subject to change by resolution of the City Council, for each day or portion of the day which any such hawker or peddler shall transact business in the City.

7.0306 Exhibition of License

Hawkers and peddlers are required to exhibit their licenses at the request of any citizen.

7.0307 Transfer

No license issued under the provisions of this article shall be transferred or used at any time by any person other than the one to whom it was issued.

7.0308 Use of Streets

No hawker or peddler shall have any exclusive right to any location in the public streets nor shall any be permitted to a stationary location nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

7.0309 Enforcement

It shall be the duty of any police officer of this City to require any person seen hawking or peddling, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this article against any person found to be violating the same.

7.0310 Revocation

1. Licenses issued under the provisions of this article may be revoked by the City Council after notice and hearing for any of the following causes:
 - a. Fraud, misrepresentation or false statement contained in the application for license;
 - b. Fraud, misrepresentation or false statement made in the course of carrying on his business;
 - c. Any violation of this article;
 - d. Conviction of any crime or misdemeanor involving moral turpitude;
 - e. Conducting the business of hawking or peddling in an unlawful manner or in such a manner as to constitute a breach of peace or constitute a menace to the health, safety or general welfare of the public.
2. Notice of a hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.

ARTICLE 4 - Alcoholic Beverages

WE, THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH DAKOTA, do hereby amend Chapter 7 by amending section Article 4 to read as follows:

ARTICLE 4 - Alcoholic Beverages

7.0401 Definitions

For the purpose of this article:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.
4. "Bottle or can" means any container, regardless of the material from which made, having a capacity less than a bulk container for use for the sale of malt beverages at retail.

5. "Direct shipper" means a person that is licensed by the commissioner and ships or causes to be shipped alcoholic beverages directly into this state to a consumer for the consumer's personal use and not for resale.
6. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
7. "In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.
8. "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic beverages to a consumer without first having the alcoholic beverage delivered through a wholesaler licensed in this state.
9. "Licensed logistics shipper" means a person that provides fulfillment house services, including warehousing, packaging, distribution, order processing, or shipment of alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed alcohol carrier.
10. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
11. "Liquor" means any alcoholic beverage except beer.
12. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
13. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
14. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises or serves beer produced or manufactured on the premises for purposes of sampling the beer.
15. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
16. "Sparkling wine" means wine made effervescent with carbon dioxide.
17. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
18. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.
19. "Twenty-one years of age" means it is after eight a.m. on the date twenty-one

years after a person's date of birth.

20. "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.

7.0402 Exceptions

1. This article shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.

2. This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:

- a. Denatured alcohol produced and used pursuant to Acts of Congress and the regulations thereunder.
- b. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
- c. Flavoring extracts, syrups and food products.
- d. Scientific, chemical and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

7.0403 License Required

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

7.0404 Licenses - Classes of - Fees (Source: North Dakota Century Code Section 5-02-03) Unless otherwise specified any license issued is an on-sale and off-sale license. Each class of license has a semi-annual fee payable in advance on the 1st day of July and on the 1st day of January of each year and shall be as follows:

Class	Semi-annual Fee	Annual Amount
Beer only	\$100.00	\$200.00
Beer and Wine only	\$250.00	\$500.00
Liquor only	\$900.00	\$1,800.00
Full Alcohol	\$1,000.00	\$2,000.00

A Sunday permit is not required and a licensee may sell only those beverages as authorized by its regular license on Sundays during the hours permitted by State Law and as limited by the City Council regarding closing times.

7.0405 Licenses - Terms of

1. All licenses issued hereunder shall expire semi-annually each year; that is, it being intended that licenses shall be applied for and issued semi-annually on the 1st day of July and on the 1st day of January each year, and no license for the retail sale of intoxicating liquors shall be issued at a lesser fee than that charged and provided for as hereinafter set forth.

2. No license shall be issued to any person at any time for less than the full amount of the annual license fee as hereinbefore provided regardless of the date of the issuance of such license and any fraction or portion of a six-month period from the date of issuance and for the expiration shall be considered as a full six months for the purpose of fixing the fee for such license.

7.0406 License - Qualifications for:

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

1. The applicant, other than an organization, must be a legal resident of the United States and be a person of good moral character.

2. If applicant is:

a. A corporation, then:

(1) The manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and

(2) The shareholders:

(a) Who are individuals, must be legal residents of the United States and of good moral character; and

(b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

(3) Corporate applicants must first be properly registered with the Secretary of State.

b. A limited liability company, then:

(1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.

(2) The members:

(a) Who are individuals, must be legal residents of the United States and of good moral character; and

(b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

(3) The applicant must first be properly registered with the Secretary of State.

c. A limited partnership, then:

(1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.

(2) The general partners and limited partners:

(a) If individuals, must be legal residents of the United States and of good moral character; and

(b) If organizations, must meet the requirements of this section for applicants that are organizations.

(3) The applicant must first be properly registered with the secretary of state.

d. A general partnership, then:

(1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and

(2) The partners:

(a) Who are individuals, must be legal residents of the United States and of good moral character; and

(b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

e. A limited liability partnership, then:

(1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and

(2) The partners:

(a) Who are individuals, must be legal residents of the United States and of good moral character; and

(b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

(3) Limited liability partnership applicants must first be properly registered with the Secretary of State.

3. The applicant or manager must not have been convicted of an offense determined by the attorney general or the city council to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer, or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.

4. The applicant may not have any financial interest in any wholesale alcoholic beverage business.

5. The building in which business is to be conducted must meet local and state requirements regarding sanitation and safety.

6. The taxes on property for which application for license is made must not be delinquent.

7. The applicant may be required, if so requested by the city council, to set forth such other information in the application is necessary to enable the city council to determine if a license should be granted.

7.0407 Application for License

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

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

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

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

4. The date on which the applicant acquired title to the premises sought to be

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

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

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

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

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

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

10. Whether the applicant has ever been convicted of any other crime than stated in subsections (8) and (9) hereof, in this state or any other state, or under any federal law, and if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passed and the court in which convicted.

11. The name and address and the place of residence for a period of one year prior to the date of application of any person who will have charge, management or control of the establishment for which license is sought.

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

13. Whether the applicant has any interest whatsoever directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State of North Dakota, and if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, within the borders of the United States.

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

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

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

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

18. The classification of license applied for.

19. If the applicant is a lodge or a club, the date of organization, the number of member, the purpose for which organized and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the City Council a list of the members belonging to such lodge or club. No license shall be issued to any club or lodge where sales of alcoholic beverages in such club or lodge are made for the profit of any individual and unless such profits made on the sale of such alcoholic beverages by such club or lodge are used for benevolent purposes only.

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

7.0408 License - Application Fitness

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

7.0409 License - Location of

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

1. The convenience of police regulations.
2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
5. Any protests of neighboring property owners or occupants.
6. Zoning regulations.
7. Proposed on- or off-sale or both licensee.
8. Interference with or proximity to residential property.
9. Interference with neighboring property.
10. Suitability of premises for sale of beer, liquor or alcoholic beverages.

11. Public convenience and necessity.

7.0410 License - Granting

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

7.0411 License - Limit to One Applicant; Number of Licenses

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

The number of licenses which may be issued for the retail sale of intoxicating liquor in the City of Ellendale shall be and the same is hereby limited to ten (10) on-sale and off-sale combined licenses. This section shall not be construed to permit ten (10) on-sale and ten (10) offsale licenses, and instead shall be construed to limit licenses to a total number of ten (10) licenses, whether they be on-sale or off-sale or combined. Any bottle shop that sells alcoholic beverages but does not serve such beverages for on-site consumption in accordance with State law shall be limited to off-sale activities. The City Council in its discretion and in the event of cancellation or termination of licenses reducing the number of licenses below ten (10) licenses, may refuse to issue additional licenses in the event it deems that a sufficient number have been issued.

7.0412 License - Posting of

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

7.0413 License - Transfer of

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

7.0414 License Fees - Disposition of

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

7.0415 Hours and Time of Sale – Penalty

Anyone licensed by the City Council to sell alcoholic beverages may not dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and twelve noon on Sundays, between the hours of two a.m. and eight a.m. on all other days of the week, or on Christmas Day or after six p.m. on Christmas Eve. In addition, a person may not provide off sale after two a.m. on Thanksgiving Day. Every licensed liquor establishment within the city limits of Ellendale shall flash the lights of its place of business at 1:45 a.m. each day as a warning that in 15 minutes the licensed premises will be closed. By 2:00 a.m., every licensed liquor

establishment shall clear its premises of all persons except employees and shall lock all doors to the premises and shall turn out all lights thereon, except such a night light as is approved by the city. Such night light shall burn from 2:00 a.m. until daylight of the following day. Owners of each licensed liquor establishment and its employees shall leave the place of business or premises by no later than 2:30 a.m. Only the owner or one (1) of its employees, but not both, may enter the licensed premises at any time for the purpose of reasonable maintenance or cleaning of the premises. The purpose of this subsection is that such premises shall be wholly vacant during the closed period, except as provided in this subsection. Anyone who dispenses, sells or permits the consumption of alcoholic beverages in violation of this section, or who furnishes false or misleading information in applying for a permit is guilty of a Class A Misdemeanor, which is punishable by a fine of up to \$3,000.00 and may result in revocation of an establishment's city liquor license. (Source: North Dakota Century Code Section 5-02-05).

7.0416 Sunday Sale of Liquor

Anyone licensed by the City Council to sell alcoholic beverages may do so under that license during the hours from twelve noon on Sundays to 2:00 A.M. on Mondays. Every licensed liquor establishment within the city limits of Ellendale shall flash the lights of its place of business at 1:45 a.m. on Mondays as a warning that in 15 minutes the licensed premises will be closed. By 2:00 a.m., every licensed liquor establishment shall clear its premises of all persons except employees and shall lock all doors to the premises and shall turn out all lights thereon, except such a night light as is approved by the city. Such night light shall burn from 2:00 a.m. until daylight of the following day. Owners of each licensed liquor establishment and its employees shall leave the place of business or premises by no later than 2:30 a.m. Only the owner or one (1) of its employees, but not both, may enter the licensed premises at any time for the purpose of reasonable maintenance or cleaning of the premises. The purpose of this subsection is that such premises shall be wholly vacant during the closed period, except as provided in this subsection. Anyone who dispenses, sells or permits the consumption of alcoholic beverages in violation of this section, or who furnishes false or misleading information in applying for a permit is guilty of a Class A Misdemeanor, which is punishable by a fine of up to \$3,000.00 and may result in revocation of an establishment's city liquor license. (Source: North Dakota Century Code Section 5-02-05).

7.0417 Licensee's Responsibility

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

7.0418 Gambling Prohibited - Exceptions

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board or any other machine or device of similar nature. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder, and such license shall be revoked upon conviction of any such violation. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting permit issued by the City Council or license issued by the State of North Dakota. Any eligible organization not required to be licensed by the Attorney General in the State of North Dakota, these being all eligible organizations which do not maintain a building for the use of its members and guests and offer meals or liquor or both as part of its operation shall

apply in writing to the governing body of the city for permission to conduct games of chance at least 30 days prior to each occasion, stating the particular game of chance, time, place, and educational, charitable, patriotic, fraternal, religious, or other public comparable uses to which the proceeds will be devoted. The governing body may at its own discretion, and upon application by an eligible organization grant permission for such games for specifically designated times, places, and uses covering a period of one year. Fees for such permission or authorization shall be in the amount of \$10 for one occasion, and in the amount of \$25 for an authorization covering more than one occasion for a period up to and including one year. A copy of each resolution or permit granted by the city under this ordinance shall be sent to the Attorney General not later than 30 days after issuance. Those establishments which are subject to Class A or Class B games of chance licenses by the State of North Dakota shall be required to submit a license fee to the City of Ellendale, not to exceed \$100. Amount of said fee to be set by the City Council of Ellendale. All games of chance site whether Class A or Class B shall be subject to approval by the City Council of Ellendale.

7.0419 Sales Prohibited - Persons

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

7.0420 Minors in Licensed Premises

No licensee shall permit any person under twenty-one (21) years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except that a person under twenty-one (21) years of age may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian. (Source: North Dakota Century Code Section 5-02-06)

7.0421 Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises a licensee, his agent or employee may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this article.

7.0422 Event Alcoholic Beverage Permit

(a) Authorization and Fee. The City Council may, by permit, authorize a qualified alcoholic beverage licensee to engage in the sale of alcoholic beverages at events, public dances, private groups, or parties, conventions or similar gatherings, shows, exhibitions, beer gardens, music festivals or similar event sponsored, operated or conducted in the expectation of a profit on such premises, including public buildings and may include the licensed property identified with the primary license as may be designated by such permit. The fee for such local permit shall be set from time to time by action of the City Council. Such permit shall not be valid for a period greater than ten consecutive days. A separate application must be submitted for each event for which a permit is sought.

(b) Application for Permits. An alcoholic beverage licensee desiring to conduct an event as described in (a) above wherein alcoholic beverages will be sold, or to

sell alcoholic beverages at an event as described in (a) above conducted by any other person who has been granted a local permit shall make an application for a permit to the City. The application shall set forth:

- (1) The name of the applicant;
 - (2) The time or period for which the permit is desired;
 - (3) The place where such event is to be conducted or held;
 - (4) A detailed drawing of area/location to be used and in the case of outdoor events, to include the area to be fenced, in order to define the site;
 - (5) Statement of one entrance, one exit;
 - (6) Verification that a person will be stationed at the entrance/exit at all times to check ID's;
 - (7) Verification that food items will be sold/served in an area separate from area where alcoholic beverages are sold.
- (c) The city may authorize persons under twenty-one years of age to remain in the area of the event, or portion thereof, where beer or wine may be sold pursuant to the permit, subject to the following:
- (1) The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - (2) Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer or wine;
 - (3) The area where persons under twenty-one years of age may remain may not be qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and
 - (4) No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.
- (d) Refusal and Revocation of Permit for Cause. The City Council shall refuse to issue such permit and shall revoke a permit already issued, where it appears following inspections prior and during such event that:
- (1) The permitted site is or is likely to become a public nuisance or detrimental to public morals;
 - (2) Alcoholic beverages or controlled substances are being sold or given away except as provided by such permit;
 - (3) Any of the ordinances of this city or of the laws of the state are being violated; or
 - (4) In the sole judgment of the City, protests to the issuing of such permit are

made, either orally or in writing, by a sufficient number of the people living in the neighborhood of the site for which application for such permit is made to warrant refusal or revocation of such permit as being in the public interest.

(e) State and Local Laws Apply. The sale or dispensation of alcoholic beverages pursuant to a permit issued under this section shall fully comply with all state laws and with the remaining provisions of this chapter which are consistent with the purposes and intent of this section.

(f) Except as provided herein, the sale or consumption of alcoholic beverages upon or across any street, alley or public way is prohibited.

7.0422.1 Domestic Beer, Wine & Spirits Special Events Permit

(a) The City Council of Ellendale may by special permit authorize any entity or person licensed as a North Dakota Domestic Winery as defined under NDCC § 5-01-17 or licensed as a Domestic Distillery as defined under NDCC § 5-01-19 or licensed as a Brewer Taproom as defined under NDCC § 5-01-21 to engage in the sale of the type of alcohol legally produced by such Winery, Distillery or Brewer, respectively, at a special event designated by the permit. The fee for such special permit shall be set from time to time by action of the City Council and is payable at the time the application is submitted. This permit is not valid for a period greater than three consecutive days. The City Council of Ellendale has the right to reregulate and restrict the operation of a special event permit.

(b) Application for permit: A North Dakota Domestic Winery, Domestic Distiller or Domestic Brewer desiring to obtain a special events permit must do so by submitting an application to the City Council no later than the last city council meeting scheduled prior to the special event. The application shall set forth the following in addition to any other information requested by the City Council:

- (1) Name of applicant;
- (2) The time period for which permit is desired;
- (3) The name of the event;
- (4) The place where such event is to be held and the location;
- (5) Agree to comply with all state and local laws by showing proof of:
 - (a) The necessary License from the State Tax Commissioner
 - (b) Registration with the U.S. Food and Drug Administration;
 - (c) North Dakota Sales and Use Tax Permit;
 - (d) Retail License obtained from the Attorney General's Office;
 - (e) Special events permit from the State Tax Commissioner allowing them to sell at no more than twenty special events (twenty days for a Brewer) per year;

(6) The applicant must agree to comply with all state laws; and

(7) The application must specify the area all sales and taste samples will be confined to and agree to confine all sales and samples within that

confined area.

(c) The City may, in its sole discretion and after review of an approved application, grant the special events permit to an entity or person to sell wine produced by a domestic winery, and shall restrict said winery to do so only in the area described in the application which may include the streets and or public ways in the City of Ellendale. The special permit only allows sale of the alcoholic product permitted by the permit by the glass or in closed containers at the designated trade show, convention, festival or similar event approved by the state tax commissioner and only if in full compliance with applicable state law. Taste samples may be given if given in full compliance with state laws (See for example NDCC § 5-01-21(2)(e) – complimentary samples of beer may not be in an amount exceeding sixteen ounces per patron).

7.0423 Premises, Equipment of

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

7.0424 Closed or Screened Areas

No premises licensed for on-sale of alcoholic beverages shall contain any side rooms, closed booths or other screened enclosures nor shall any screen, partition, curtain, blind or obstruction of any kind prevent a clear view at all times of all parts of the interior of the premises licensed. All booths located in such premises shall open directly into the main part of said premises and shall be accessible from the aisles therein.

7.0425 Purchase from Licensed Wholesaler

No licensee hereunder shall purchase, have or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the State of North Dakota pursuant to the provisions of Title 5 of the North Dakota Century Code. Each licensee hereunder shall keep on file all invoices covering purchases by him of such alcoholic beverages showing the name and license number of the wholesaler. Such records shall be retained in the possession of the licensee and shall be at all times open to inspection by any police officer or peace officer of the State of North Dakota.

7.0426 Toilets Required

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

7.0427 Nudity, Seminudity and Sexually Explicit Acts

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

- a. the nipples;
- b. the pubes;
- c. the cleavage between the buttocks; and
- d. the genitals.

However, item (a) above, pertaining to the nipples, shall apply to females only.

2. No person while upon or within premises licensed under this chapter shall perform or simulate acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or shall perform or simulate the touching, caressing or fondling of breasts, buttocks, anus or genitals.

3. Premises licensed under this chapter for the purposes of this section shall include any area or room under control of the licensee, or as to which he has the lawful right to assert control, whether control is exercised or not in which or in any portion of which alcoholic beverages are stored, mixed, prepared, opened, served or consumed as an incident of the business operation of the licensee carried on pursuant to the license.

7.0428 Deliveries - Off Licensed Premises

1. It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer or alcoholic beverages to make, or cause to be made any deliveries outside of the licensed place of business of beer, liquor or other alcoholic beverages to any purchaser or prospective purchaser.

2. It shall be unlawful for any person, firm or corporation to deliver by foot, carrier or motor carrier, any beer, liquor or alcoholic beverage to any person within the City limits provided however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.

7.0429 Signs, Advertising and Display

No licensee hereunder shall be permitted to display in his show windows any bottles, packages or other containers showing the liquor kept on said premises for sale or for any other purpose. No advertising in any form by circulars delivered from house to house or placed in any motor vehicle or public place or in any other publication which has circulation throughout the City other than a newspaper shall be permitted. And provided further, that this section shall not be construed as prohibiting advertising which conforms to this section or the listing of names of duly licensed retail liquor dealers in the classified advertising section or the alphabetical listing sections of telephone directories or City directories furnished or delivered to subscribers or otherwise by the publishers thereof.

7.0430 Termination or Revocation of Licenses

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

- a. The death of the licensee unless upon application to the City Council by personal representative of the decedent, the City Council shall consent to the carrying on of the business by the personal representative.
- b. When the licensee ceases business at the location licensed, unless a new location has been approved.
- c. When the licensee be adjudged bankrupt.
- d. When the licensee has been convicted of the violation of any provision of this article, or of the laws of the State of North Dakota pertaining to alcoholic beverages or of a felony under the laws of the United States, the State of North Dakota or of any other state of the United States.

- e. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.
- f. When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the location licensed has been terminated or been revoked.
- g. When the licensee ceases to be a legal bona fide resident and citizen of the State of North Dakota.

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

- a. When the licensee has been convicted of violating any of the provisions of this article.
- b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the City.
- c. When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager if the licensee be a corporation, be convicted in the municipal court of the City of drunkenness or disorderly conduct, or if any appeal be taken from such conviction then when such conviction be sustained by the higher court or courts.

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

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

7.0431 Penalties

Any person, firm, corporation or association violating any of the provisions of this article shall upon conviction thereof, be subject to a fine of not to exceed one thousand dollars (\$1,000.00), and in addition to such fine, all powers, right and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with Section 7.0430 of this article.

ARTICLE 5 - Shows, Carnivals and Circuses

7.0501 License Required

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

7.0502 Fees for

The fees to secure license to conduct the exhibitions mentioned in the foregoing section shall be as follows:

Any carnival, per day.....\$15.00

Any circus, per day.....\$15.00

In addition to the above fees, any carnival or circus granted a license shall deposit with the City Auditor cash bond in the amount of \$100.00 guaranteeing that the premises upon which such carnival or circus is located shall be cleaned after the showing of such carnival or circus to the satisfaction of the City engineer and upon certification of the City engineer to the City Auditor or if the City has no City engineer upon determination of the City Auditor that the same has been done said cash deposit shall be returned to the licensee. Provided, further, that in addition to such fees, an additional fee in an amount from \$50.00 to \$250.00, to be fixed by the City Council, shall be paid at the time of obtaining license to provide for fire and police protection and additional policing in connection with the showing of such carnival or circus.

ARTICLE 6 - Validity

7.0601 Validity

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

ARTICLE 7 - Penalty

7.0701 Penalty

Any person, firm, corporation or association violating any of the terms, articles or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be punished by a fine as set forth in Section 1.0104 herein. The court shall have the power to suspend such sentence and to revoke the suspension thereof. The court may, in addition thereto, revoke the permit of such violator, or terminate or revoke all powers, rights and privileges given by any license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation thereof.