

Chapter 5 - ALCOHOLIC BEVERAGES

Footnotes:

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Editor's note— Ord. No. 5372, § 1, adopted April 15, 2019, repealed Ch. 5 in its entirety and enacted new provisions to read as herein set out. Former Ch. 5, §§ 5-1—5-3, 5-5—5-11, 5-15—5-18.1, 5-20—5-35, 5-37—5-40, 5-42, 5-43, pertained to similar subject matter, and derived from Ord. No. 1852, § 1; Ord. No. 4970, § 1; Ord. No. 5001, § 1; Ord. No. 5018, §§ 1, 2; Ord. No. 5050, § 1; Ord. No. 5093, § 1; Ord. No. 5120, § 1; Ord. No. 5121, § 1; Ord. No. 5132, §§ 4, 5; Ord. No. 5147, § 1; Ord. No. 5148, § 1; Ord. No. 5149, § 1; Ord. No. 5150, § 1; Ord. No. 5170, § 1; Ord. No. 5181, § 1; Ord. No. 5186, §§ 1—5; Ord. No. 5252, § 1; Ord. No. 5301, § 1; Ord. No. 5335, §§ 9, 10; and Ord. No. 5345, § 1.

Cross reference— Delivery of alcoholic beverages to prisoners, § 27-7.

State Law reference— Alcoholic beverages, N.D.C.C., § 5-01-01 et seq.

ARTICLE I. - IN GENERAL

Sec. 5-1. - Definitions.

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

Alcoholic beverages shall mean any liquid suitable for drinking by human beings, which contains one-half (½) of one (1) per cent or more of alcohol by volume.

Beer shall mean any malt beverage containing more than one-half (½) of one (1) per cent of alcohol by volume.

Growler shall mean a professionally sanitized and sealed glass bottle with a capacity not to exceed sixty-four (64) ounces filled by a licensee or an employee of a licensee with beer from a keg procured or produced by the licensee in accordance with applicable laws.

Liquor shall mean any alcoholic beverage except beer.

Licensed premises shall mean the premises on which beer, liquor, or alcohol 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.

Lodge or *club* shall mean and include any corporation or association organized for civic, fraternal, social, or business purposes, or for the promotion of sports, which has at least two hundred (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 for 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.

Movie theater shall mean any establishment whose business building contains a square footage of at least seven thousand five hundred (7,500) square feet and fixed seating capacity for at least one hundred fifty (150) where motion pictures are screened regularly, and which premises meets building code requirements for said screenings.

Off-sale shall mean and include the sale of alcoholic beverages in the original package, or in a growler as defined in this section, for consumption off or away from the licensed premises where sold, including permitted deliveries.

On-sale shall mean and include the sale of alcoholic beverages for consumption on the licensed premises where sold.

Package and *original package* shall mean and include 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; provided, however, that the filling of a growler, as defined in this section, shall not constitute the breaking of a package under this definition.

Person shall mean and include persons, partnerships, unincorporated associations, and bodies corporate.

Private golf course shall mean a privately owned USGA approved golf course with at least nine (9) or more holes.

Restaurant shall mean a business which prepares and sells food and meals for consumption on the premises where sold, which is properly licensed or permitted for such activity by the appropriate public health authorities who have charge of such matters.

Sale shall mean and include 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, employee or corporation.

Sell at retail or *sale at retail* shall mean a sale to a consumer for use or consumption and not for the purpose of resale in any form.

Sparkling wine shall mean wine made effervescent with carbon dioxide.

Supper club shall mean an establishment or enterprise which primarily operates as a restaurant, which restaurant has the capacity to seat one hundred fifty (150) or more patrons at the same time, and which shall have, on an annual basis, gross sales of food that are at least equal to gross sales of alcoholic beverages which are consumed in the dining area. The seating capacity requirement set forth in the previous sentence shall not be applicable to an establishment or enterprise which primarily operates as a restaurant and is located in the Renaissance Zone as established by the City of Minot. If a licensee obtains a supper club license and the restaurant is located in the Renaissance Zone when the license is issued, but

the Renaissance Zone is subsequently altered so the restaurant is no longer in the Renaissance Zone, the one-hundred-fifty-seat requirement shall not be applicable, so long as the location of the restaurant remains the same and the licensee meets all other requirements of a supper club licensee.

Twenty-one years of age shall mean it is after 8:00 a.m. on the date twenty-one (21) years after a person's date of birth.

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

Wine shall mean 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 (24) per cent alcohol by volume.

(Ord. No. 5372, § 1; Ord. No. 5525, § 1)

Sec. 5-2. - Application of chapter.

This chapter is declared to be an exercise of the police power directly affecting and designed to promote the peace, safety, good order, health, and well-being of the people of this city. This chapter shall apply to all territory within the city and to such outlying contiguous territory without the corporate limits within which the city may exercise police jurisdiction as defined by law.

(Ord. No. 5372, § 1)

Sec. 5-3. - Open container and public consumption limited.

- (a) No owner, manager, or person having control of any public place shall serve, permit to be served, or permit any person to drink alcoholic beverages in such place, unless such place has been duly issued an on-sale or other appropriate license or special permit under this chapter.
- (b) No person shall mix, prepare, serve, or consume alcoholic beverages in any public place unless such place has been duly issued an on-sale or other appropriate license or special permit under this chapter.
- (c) No person shall possess an open container holding alcoholic beverages, including a growler with a broken seal, in any public place unless such place has been duly issued an on-sale or other appropriate license or special permit under this chapter.
- (d) The only exception to the provisions of this section is that alcohol may be served and/or consumed on a business premises during the hours of 8:00 a.m. and 10:00 p.m., however, no sale of alcohol shall occur on such business premises unless the business premises has been duly issued an on-sale or other appropriate license or special permit under this chapter.

- (e) For purposes of this section, "public place" shall mean an indoor or outdoor area, whether privately or publicly owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not, but not a place when used exclusively by one (1) or more individuals for a private gathering or other personal purpose.

(Ord. No. 5372, § 1)

Sec. 5-4. - Reserved.

Sec. 5-5. - Unlawful possession or use of alcoholic beverages.

- (a) Except as permitted in this section or by state law, no person under twenty-one (21) years of age shall manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of alcoholic beverages.
- (b) The elements of criminal scienter and the defenses to a charge under this section shall be as provided in state law with respect to the cognate offense established therein.
- (c) An individual who violates this section is guilty of an infraction.
 - (1) For a violation of section 5-5, the court also may sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under Section 50-06-44, N.D.C.C.
 - (2) For a second or subsequent violation of section 5-5, the court shall sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under Section 50-06-44, N.D.C.C.
 - (3) The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of health and human services for evaluation and appropriate counseling or treatment.
 - (4) An individual under twenty-one (21) years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one (21) years of age was in need of medical assistance due to alcohol consumption, provided the assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals who may be immune for any one (1) occurrence is five (5) individuals.

(Ord. No. 5372, § 1; Ord. No. 5638, § 1)

Editor's note— Ord. No. 5638, § 1, adopted Aug. 16, 2021, changed the title of § 5-5 from "Unlawful possession of alcoholic beverages" to read as herein set out.

Sec. 5-6. - Persons under twenty-one not to enter upon licensed premises; exceptions.

- (a) Except as otherwise provided in this chapter, or under state law, no person under the age of twenty-one (21) may enter any premises licensed for the sale of alcoholic beverages. An individual who violates this section is guilty of an infraction.
 - (1) For a violation of subsection 5-6(a), the court may sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under Section 50-06-44, N.D.C.C.
 - (2) For a second or subsequent violation of section 5-6(a), the court shall sentence a violator to an evidence-based alcohol and drug education program operated under the rules adopted by the department of human services under Section 50-06-44, N.D.C.C.
 - (3) The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of health and human services for evaluation and appropriate counseling or treatment.
 - (4) An individual under twenty-one (21) years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one (21) years of age was in need of medical assistance due to alcohol consumption, provided the assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals who may be immune for any one (1) occurrence is five (5) individuals.
- (b) No person in charge of a licensed premises shall permit any person under the age of twenty-one (21) to enter upon or to remain upon licensed premises within his control, subject to the following exceptions and any other exception provided in state law:
 - (1) A person under the age of twenty-one (21) years of age may remain in a restaurant if the restaurant is separated from the designated area in which alcoholic beverages are opened or mixed and if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area;
 - (2) A person under the age of twenty-one (21) years of age may remain in a restaurant if the person is employed by the restaurant as a food waiter, food waitress, busboy or busgirl under the direct supervision of an individual twenty-one (21) years of age or older, and does not engage in the sale, dispensing, delivery, or consumption of alcoholic beverages;
 - (3)

A person who is eighteen (18) years of age or older but under the age of twenty-one (21) when employed by a restaurant licensed to sell alcoholic beverages to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one (21) or more years of age, but such person may not be engaged in mixing, dispensing, or consuming alcoholic beverages;

- (4) A person who is under twenty-one (21) years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
- (5) A person who is under twenty-one (21) years of age may enter and remain on the licensed premises if the individual is a law enforcement officer or other public official who enters the licensed premises in the performance of official duty;
- (6) Notwithstanding any other ordinance or state statute to the contrary, a person under the age of twenty-one (21) cooperating with and under control of a law enforcement officer may enter a licensed premises for the purposes of a compliance check on whether the licensee is complying with the laws prohibiting the sale of alcoholic beverages to a person under twenty-one (21) years of age; and
- (7) A person who is under twenty-one (21) years of age may attend an event where alcoholic beverages are sold in accordance with the conditions of an event permit issued pursuant to section 5-40.
- (8) At the discretion of the owner of the licensed premises, an individual under twenty-one (21) years of age may be permitted to enter and remain in a restaurant where alcoholic beverages are being sold and in the area of the restaurant designated for the opening or mixing of alcoholic beverages if the individual:
 - i. Is accompanied by a parent or guardian;
 - ii. Is not seated at or within three feet [0.91 meters] of the bar counter; and
 - iii. Does not enter or remain in the designated area after 10:00 p.m.
- (c) The elements of criminal scienter and the defenses to a charge under this section shall be as provided in state law with respect to the cognate offenses established therein.
- (d) Nothing herein shall be construed to prohibit the consumption (as opposed to the sale) of alcoholic beverages in bowling centers under the following circumstances:
 - (1) The licensee owning or controlling the bowling center must approve to such consumption;
 - (2) There must be a designated area where beverages are purchased, served, and/or mixed and persons under twenty-one (21) years of age may not enter that designated area of the licensed premises;
- (3)

The designated area must be separated from the rest of the establishment by a permanent partition/barrier which is at least three (3) feet in height.

- (4) Alcoholic beverages purchased within the designated area may be consumed in the bowling area and concourse adjacent to the bowling area.

(Ord. No. 5372, § 1; Ord. No. 5638, § 2)

Sec. 5-6.1. - Misrepresentation of age.

No person shall misrepresent orally or in writing his own age or the age of any other person with the intent of causing another person to rely upon the misrepresentation, based on that reliance;

- (1) To deliver an alcoholic beverage to a person who is less than twenty-one (21) years of age; or
- (2) To allow a person who is less than twenty-one (21) years of age to enter or to remain on licensed premises under circumstances where it is unlawful for such person to do so.

Under this section, the person making the misrepresentation and the person sought to be benefitted by the misrepresentation may be but need not necessarily be one (1) and the same person.

(Ord. No. 5372, § 1)

Sec. 5-7. - Solicitation of drinks.

No person shall loiter on any premises licensed under this chapter for the consumption or sale of alcoholic beverages with the purpose of soliciting other persons to purchase alcoholic beverages for the solicitor. No licensee shall allow the presence of any person on the licensed premises who solicits persons to purchase the solicitor an alcoholic beverage.

(Ord. No. 5372, § 1)

Sec. 5-8. - Licensee to close at certain times.

- (a) No one shall dispense or permit the consumption of alcoholic beverages on a licensed premises between 2:00 a.m. and 8:00 a.m., on Christmas Day, or after 6:00 p.m. on Christmas Eve, or after 2:00 a.m. on Easter Day. In addition, a person may not provide off sale after 2:00 a.m. on Thanksgiving Day or between 2:00 a.m. and 8:00 a.m. on Sundays.
- (b) During such time of each day when, pursuant to subsection (a), the sale or consumption of alcoholic beverages is not allowed on licensed premises, it shall be unlawful for any person to enter upon or to remain on licensed premises, except for:
 - (1) The licensee;
 - (2)

Employees of the licensee and employees of a permitted gaming operation on the licensed premises while they are actively carrying on their duties with regard to the licensed business or gaming operation;

- (3) A bona fide independent contractor who has entered into a contract with the licensee to perform work on the licensed premises, while actively performing such contract; and
- (4) Persons who are on the licensed premises pursuant to a special permit issued by the city council (which permit may contain such limitations and conditions as the council deems appropriate to impose).

(Ord. No. 5372, § 1; Ord. No. 5427, § 1; Ord. No. 5638, § 3)

Sec. 5-9. - Wine tasting permitted.

A licensed off-sale retailer may permit the sampling of wine upon the licensed premises.

(Ord. No. 5372, § 1)

Sec. 5-10. - Retail delivery prohibited; exception.

It shall be unlawful for any licensed taxicab driver to make, or assist in the making of any deliveries of alcoholic beverages outside of a place of business licensed pursuant to this chapter, except when accompanied by the purchaser. Any licensed retailer, using a vehicle marked as prescribed in this section, may make deliveries of alcoholic beverages or beer. Such deliveries shall not be made during the last thirty (30) minutes the licensee is legally open for business. Any vehicle so used for making such deliveries shall have the name of the licensee painted or attached in contrasting color on the side of such delivery vehicle. Such letters shall not be less than two (2) inches high and of corresponding proportionate width. The retail licensee shall secure a receipt from the purchaser in accordance with the form prescribed by the police department. Such receipt will show:

- (1) The name of the licensee making the sale.
- (2) The name and age of the purchaser.
- (3) The name and age of the person making the delivery.
- (4) The date of the delivery and the quantity delivered.
- (5) The signature of the recipient of the beverage so sold and delivered.

It shall be the responsibility of the retail licensee to retain the above prescribed form and such receipts retained shall be open to inspection by the police department. The retail licensee shall be fully responsible for any and all deliveries made by and for the licensee.

(Ord. No. 5372, § 1)

Sec. 5-11. - Clubs and lodges prohibited from making off-sales, and from making deliveries of alcoholic beverages.

It shall be unlawful for any nationally organized or recognized fraternal order or club or any nationally organized and recognized servicemen's or veterans' organization holding a license from the city to sell any alcoholic beverage for off-sale purposes or, except as allowed pursuant to section 5-40(2) by way of a temporary permit, to make, or aid in the delivery of any alcoholic beverages outside its licensed premises.

(Ord. No. 5372, § 1)

Secs. 5-12—5-14. - Reserved.

ARTICLE II. - LICENSES

Sec. 5-15. - License required; exception.

- (a) No person shall engage in the sale of alcoholic beverages at retail within the city without first obtaining a license therefore.
- (b) The license shall allow the sale (and consumption, when applicable health code requirements are met) of alcoholic beverages only on the premises to which the license specifically relates (unless special permission to do otherwise is obtained as provided for elsewhere in the chapter).
- (c) No licensee shall be permitted to hold more than one (1) license under this article per premises unless it is specifically authorized in this chapter.
- (d) No license shall be required for a domestic winery owner or operator having a license from the state tax commissioner allowing the production of wine and only being present within the city to utilize special event permits issued by the state tax commissioner under Section 5-01-17, N.D.C.C., provided that the owner or operator presents the state tax commissioner permit to the city clerk and obtains a permit for each event from the city clerk in accordance with the procedure set forth in section 5-40 of the Code of Ordinances.

(Ord. No. 5372, § 1)

Sec. 5-16. - Classes of licenses; license fees; license restrictions; limitation on number of licenses.

(1) *Retail beer.*

- a. A retail beer license shall be for the on-sale and/or off-sale of beer.
- b. Fee. The fee for a retail beer license shall be six hundred twenty-five dollars (\$625.00) per year.
- c. A holder of a retail beer license on or before June 1, 1973 shall not convey nor transfer that license and submit application for another license in one (1) of the two (2) newly designated classes of licenses.

(2) *Retail liquor.*

- a. A retail liquor license shall be for the on-sale and/or off-sale of liquor, beer, and wine.
- b. Fee. The fee for a retail liquor license shall be three thousand one hundred twenty-five dollars (\$3,125.00) per year.
- c. A holder of a retail liquor license on or before June 1, 1973 shall not convey nor transfer that license and submit application for another license in one (1) of the two (2) newly designated classes of licenses.
- d. Limitation on number of licenses. The total number of retail liquor licenses in force in any one (1) year shall not exceed one (1) for each one thousand five hundred (1,500) persons, or major fraction thereof, of the total population of the city. The city council may issue such additional licenses as it deems warranted by the change in population. Before the official 2020 United States Census, this population of the city shall be determined by the most recent official federal, regular, or special census. After the official 2020 United States Census, this population of the city shall be determined by the most recent official federal, regular, or special census or by the annual official United States Census Bureau population estimate.

(3) *Retail beer and wine.*

- a. A retail beer and wine license shall be for the on-sale and/or off-sale of beer and/or wine.
- b. Fee. The fee for a retail beer and wine license shall be nine hundred fifty dollars (\$950.00).

(4) *Specialty restaurant wine sale.*

- a. A specialty restaurant wine sale license shall be for the sale of wine to be consumed on the licensed premises in conjunction with the sale of restaurant food.
- b. Fee. The fee for a specialty restaurant wine sale license shall be three hundred twenty-five dollars (\$325.00) per year.
- c. Restrictions.
 1. A specialty restaurant wine sale licensee is not permitted to sell wine for removal from the licensed premises, except as allowed pursuant to Section 5-02-13, N.D.C.C.
 2. A specialty restaurant wine sale licensee shall not serve or allow to be consumed any other alcoholic beverage on the licensed premises except beer as authorized under subsection (5)c.1.

(5) *Specialty restaurant beer sale.*

- a. A specialty restaurant beer sale license shall be for the sale of beer to be consumed on the licensed premises in conjunction with the sale of restaurant food.
- b. Fee. The fee for a specialty restaurant beer sale license shall be six hundred twenty-five dollars (\$625.00) per year.
- c. Restrictions.

1. A specialty restaurant beer sale licensee is permitted to sell wine only if a separate specialty restaurant wine sale license is obtained for an additional three hundred twenty-five dollars (\$325.00) per year.

(6) *Supper club.*

- a. A supper club license shall be for the on-sale of liquor, beer, and wine at an establishment defined as a supper club under section 5-1(17) of this Code.
- b. Fee. The fee for a supper club license shall be three thousand one hundred twenty-five dollars (\$3,125.00) per year.
- c. Restrictions.
 1. A supper club licensee shall have, on an annual basis, gross sales of food that are at least equal to gross sales of alcoholic beverages which are consumed in the dining area;
 2. A supper club licensee shall not sell or deliver alcoholic beverages for consumption off the licensed premises, except as allowed pursuant to Section 5-02-13, N.D.C.C. and section 5-40(2) by way of a temporary permit;
 3. A supper club licensee shall not create or maintain a distinctive portion of the licensed premises where for the most part only alcoholic beverages and snack items are served to and consumed by the patrons of the supper club;
 4. A supper club licensee shall not give away an alcoholic beverage if as a precondition to such gift it is necessary for the donee or any other person to purchase an alcoholic beverage other than the one (1) being given away; and
 5. A supper club licensee shall discontinue the sale and consumption of alcoholic beverages on the licensed premises within one (1) hour of the time the full kitchen is not in operation. During all other hours of the supper club, the full kitchen shall remain in operation for continuous food service.
- d. Verification of compliance requirement.
 1. To verify that the licensee meets the requirement of section 5-16(6)c.1., a supper club licensee shall file with the application for license renewal a statement by a certified public accountant indicating that he or she has examined and tested the books and records of the licensee and that licensee's food sales and alcoholic beverage sales for the previous year meet the requirements of section 5-16(6)c.1. At the option of the licensee, in lieu of a certified public accountant's statement, licensee may furnish to the city clerk a certified copy of the licensee's sales tax returns for the most recent twelve-month period prior to renewal.
 2. The city council may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the city council deems necessary.

3. The city council may also, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records.
- e. Limitation on number of licenses. There shall be no restriction on the number of supper club licenses.

(7) *Winery.*

- a. A winery license shall be for the on-sale and/or off-sale of wine produced by the winery on the licensed premises, in retail lots, and not for resale, in total quantities not to exceed twenty-five thousand (25,000) gallons in a calendar year. The sale of wine must occur on the licensed premises.
- b. Fee. The fee for a winery license shall be three hundred twenty-five dollars (\$325.00).
- c. Restrictions.
 1. A winery licensee must hold a license from the state tax commissioner allowing for the production of wine on the licensed premises.
 2. A winery licensee may offer complimentary samples of wine produced on the licensed premises provided that the size of each sample does not exceed two (2) fluid ounces per customer.
 3. A winery licensee may obtain and utilize special event permits issued by the state tax commissioner.

(8) *Hotel.*

- a. A hotel license shall be for the on-sale of liquor in a hotel in the city containing one hundred (100) or more rooms. A hotel license does not permit off-sale of alcoholic beverages, except to registered guests thereof.
 1. The one hundred (100) rooms requirement may be attained when two (2) or more separate buildings, each constituting a hotel, are located on one (1) parcel of real property described in one (1) legal description, or on separate parcels of real property which are immediately adjacent and contiguous to each other and where said parcels are owned by the same individual or organizational licensee pursuant to section 5-18, and the total number of rooms in the separate buildings does, in fact, accumulatively meet or exceed the minimum one-hundred-room requirement for issuance of a license under this section; if a license is attained under either of the latter exceptions, the license shall authorize the carrying on of activity pursuant to its authority only with regard to licensed premises at one (1) particular location in one (1) particular building.
- b. Fee. The fee for a hotel license shall be two thousand five hundred dollars (\$2,500.00) per year.

c. Restrictions.

1. A hotel licensee is not permitted to sell beer and/or wine without obtaining a separate license for six hundred twenty-five dollars (\$625.00).

(9) *Motel.*

- a. A motel license shall be for the on-sale of liquor in a motel in the city containing no less than fifty (50) units, and containing an operating restaurant as an integral part thereof which is larger in area than any part (or those parts cumulatively, if there is more than one (1) part) of the motel used solely for the consumption of alcoholic beverages, and which restaurant operates at least as many hours per day as does the alcoholic beverage service of the motel. A motel license does not permit off-sale of alcoholic beverages, except to registered guests thereof.

- b. Fee. The fee for a motel license shall be two thousand five hundred dollars (\$2,500.00) per year.

c. Restrictions.

1. A motel licensee is not permitted to sell beer and/or wine without obtaining a separate license for six hundred twenty-five dollars (\$625.00).

(10) *Fraternal order or club.*

- a. Fraternal order or club retail beer license.

1. A fraternal order or club retail beer license shall be for the on-sale of beer at any nationally organized and recognized fraternal order or club that was in existence at the time of the adoption of the North Dakota Liquor Control Act.
2. Fee. The fee for a fraternal order or club retail beer license shall be five hundred dollars (\$500.00) per year.
3. Restrictions.
 - i. A fraternal order or club licensee shall not sell any alcoholic beverage for off-sale purposes, except as allowed pursuant to section 5-40 of this Code.
4. Limitations on licenses. There is no limitation on the number of fraternal order or club retail beer licenses to be issued, nor should a license issued under this subsection go toward the number of permitted retail beer licenses permitted under subsection (1)d.

- b. Fraternal order or club retail liquor license.

1. A fraternal order or club retail liquor license shall be for the on-sale of liquor at a nationally organized and recognized fraternal order or club that was in existence at the time of the adoption of the North Dakota Liquor Control Act.
2. Fee. The fee for a fraternal order or club retail liquor license shall be two thousand dollars (\$2,000.00) per year.

3. Restrictions.

- i. A fraternal order or club retail liquor licensee shall not sell any alcoholic beverage for off-sale purposes, except as allowed pursuant to section 5-40 of this Code.
- ii. A fraternal order or club retail liquor licensee shall not sell beer without obtaining a fraternal order or club retail beer license.

4. Limitations on licenses. There is no limitation on the number of fraternal order or club retail liquor licenses to be issued, nor should a license issued under this subsection go toward the number of permitted retail liquor licenses permitted under subsection (2)e.

(11) *Serviceman's or veteran's organization.*

a. Serviceman's or veteran's organization retail beer license.

1. A serviceman's or veteran's organization retail beer license shall be for the on-sale of beer at a nationally organized and recognized serviceman's or veteran's organization which is under the control and supervision of a national organization and officers.
2. Fee. The fee for a serviceman's or veteran's organization retail beer license shall be five hundred dollars (\$500.00) per year.
3. Restrictions.
 - i. A serviceman's or veteran's organization licensee shall not sell any alcoholic beverage for off-sale purposes, except as allowed pursuant to section 5-40 of this Code.
4. Limitations on licenses. There is no limitation on the number of serviceman's or veteran's organization retail beer licenses to be issued, nor should a license issued under this subsection go toward the number of permitted retail beer licenses permitted under subsection (1)d.

b. Serviceman's or veteran's organization retail liquor license.

1. A serviceman's or veteran's organization retail liquor license shall be for the on-sale of liquor at a nationally organized and recognized serviceman's or veteran's organization which is under the control and supervision of a national organization and officers.
2. Fee. The fee for a serviceman's or veteran's organization retail liquor license shall be two thousand dollars (\$2,000.00) per year.
3. Restrictions.
 - i. A serviceman's or veteran's organization retail liquor licensee shall not sell any alcoholic beverage for off-sale purposes, except as allowed pursuant to section 5-40 of this Code.
 - ii. A serviceman's or veteran's organization retail liquor licensee shall not sell beer without obtaining a serviceman's or veteran's organization retail beer license.

4.

Limitations on licenses. There is no limitation on the number of serviceman's or veteran's organization retail liquor licenses to be issued, nor should a license issued under this subsection go toward the number of permitted retail liquor licenses permitted under subsection (2)e.

(12) *MAYSA.*

- a. The MAYSA license is a restricted license to any person or corporation authorized by the Minot Park District board of commissioners for the sale of beer and/or wine at the MAYSA Arena.
- b. Fee. The fee for the MAYSA license is nine hundred forty-seven dollars and fifty cents (\$947.50) per year.
- c. Restrictions.
 1. The MAYSA license is not transferrable, and, in the event the operator shall cease to do business, any license issued under this section shall promptly terminate and the license shall revert to the city as an unissued license to be held by the city and available for any subsequent operator of the MAYSA Arena.
 2. The sale and consumption of beer and/or wine shall be limited to a room at the MAYSA Arena designated by the Minot Park District board of commissioners and MAYSA Arena management.
 3. The Minot Park District board of commissioners, by special permission, may allow the sale and consumption of beer and/or wine in the confines of the facility.
 4. No beer and/or wine products shall be advertised on the licensed premises by means of an exterior display or sign or by means of an illuminated display sign.
 5. No off-sale of alcoholic beverages is permitted.

(13) *Airport terminal restaurant.*

- a. The airport terminal restaurant license is for the on-sale of liquor, beer, and wine for the operator of any restaurant located in the terminal building of the Minot International Airport.
- b. Fee. The fee for the airport terminal restaurant license shall be three thousand one hundred twenty-five dollars (\$3,125.00) per year.
- c. Premises. A recipient of the airport terminal restaurant license shall be allowed to serve alcoholic beverages only in the area identified as the restaurant within the Minot International Airport.
- d. Restrictions.
 1. An airport terminal restaurant licensee shall operate a restaurant on the licensee's premises and shall have, on an annual basis, gross sales of food that are at least equal to gross sales of alcoholic beverages which are consumed in the dining area.
 - 2.

The airport terminal restaurant license is not transferrable and, in the event the operator of the restaurant shall cease to do business at the Minot International Airport, any license issued under this section shall promptly terminate and the license shall revert to the city as an unissued license to be held by the city and available for any subsequent restaurant operator who may lease the restaurant located in the terminal building of the Minot International Airport.

e. Verification of compliance requirement.

1. To verify that the licensee meets the requirement of subsection (13)d.1., an airport terminal restaurant licensee shall file with the application for license renewal a statement by a certified public accountant indicating that he or she has examined and tested the books and records of the licensee and that the licensee's food sales and alcoholic beverage sales for the previous year meet the requirements of subsection (13)d.1. At the option of the licensee, in lieu of a certified public accountant's statement, licensee may furnish to the city clerk a certified copy of the licensee's sales tax returns for the most recent twelve-month period prior to renewal.
2. The city council may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the city council deems necessary.
3. The city council may also, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records.

(14) *Souris Valley Golf Course.*

- a. The Souris Valley Golf Course license is a restricted license to any person or corporation authorized by the Minot Park District board of commissioners for the sale of beer and/or wine at the Souris Valley Golf Course.
- b. Fee. The fee for the Souris Valley Golf Course license is nine hundred forty-seven dollars and fifty cents (\$947.50) per year.
- c. Restrictions.
 1. The Souris Valley Golf Course license is not transferrable, and, in the event the operator shall cease to do business, any license issued under this section shall promptly terminate and the license shall revert to the city as an unissued license to be held by the city and available for any subsequent operator of the Souris Valley Golf Course.
 2. The sale and consumption of beer and/or wine shall be limited to the main floor and porch of the structure on Souris Valley Golf Course generally known as the "Men's and Women's Clubhouse," the "Pro Shop," and/or the "19th Hole."
 3. The Minot Park District board of commissioners, by special permission, may allow the sale and consumption of beer and/or wine elsewhere on the golf course under such terms and conditions as they establish in the grant of permission.

4. No beer and/or wine products shall be advertised on the licensed premises by means of an exterior display or sign or by means of an illuminated display sign.
5. No off-sale of alcoholic beverages is permitted.

(15) *North Dakota National Guard.*

- a. The North Dakota National Guard license is a special license for the sale and consumption of alcoholic beverages for only five (5) hours per month, with the hours to be specifically determined in advance by the local commander of the National Guard, at the armory ("licensed premises"), which is permanently leased to the North Dakota National Guard.
- b. Fee. The fee for the North Dakota National Guard license is twenty-five dollars (\$25.00) per year.
- c. Restrictions.
 1. Only members of the North Dakota National Guard, members of their immediate family, and guests invited by members of the North Dakota National Guard shall be permitted to purchase and consume alcoholic beverages upon the licensed premises.
 2. No alcoholic beverages may be sold off-base.
 3. The licensee shall observe all restrictions binding upon other licensees such as, for example, the restrictions with respect to closing hours, the delivery of alcoholic beverages to persons under twenty-one (21) years of age and the entry of persons under twenty-one (21) years of age upon licensed premises.

(16) *Private golf course.*

- a. The private golf course license shall be for the on-sale of liquor, beer, and wine by an operator of the food and beverage concession at a private golf course.
- b. Fee. The fee for a private golf course license shall be three thousand one hundred twenty-five dollars (\$3,125.00) per year.
- c. Premises. A recipient of a private golf course license shall be allowed to serve alcoholic beverages only in areas which are specifically identified as the licensee's licensed premises. This shall not include the parking lot or the golf course itself, except as permitted in subsection (16)c.1.
 1. The private golf course licensed premises shall extend to allow service of alcoholic beverages on the golf course itself from one (1) location or one (1) mobile cart for a nine-hole golf course or from two (2) locations or two (2) mobile carts for an eighteen-hole golf course. No additional license is required for the sale of alcoholic beverages from a location or cart permitted under this provision.
- d. Restrictions.
 - 1.

A private golf course licensee shall operate a restaurant on the licensee's licensed premises and shall have, on an annual basis, gross sales of food that are at least equal to gross sales of alcoholic beverages which are consumed in the dining area;

2. The private golf course license is not transferrable and may be held only by the operator of the private golf course concession and shall terminate with the termination of the contract or lease of the concession;
 3. A private golf course licensee shall not sell or deliver alcoholic beverages for consumption off the licensed premises, except as allowed pursuant to Section 5-02-13, N.D.C.C. and section 5-40(2) by way of a temporary permit;
 4. A private golf course licensee shall not create or maintain a distinctive portion of the licensed premises where for the most part only alcoholic beverages and snack items are served to and consumed by the patrons of the private golf course, other than the specific locations or carts on the golf course pursuant to subsection (16)c.1.;
 5. A private golf course licensee shall not sell the same alcoholic beverage or unit or measure of alcoholic beverage at differing prices during the course of any one (1) day; and
 6. A private golf course licensee shall not give away an alcoholic beverage if as a precondition to such gift it is necessary for the donee or any other person to purchase an alcoholic beverage other than the one (1) being given away.
- e. Verification of compliance requirement.
1. To verify that the licensee meets the requirement of subsection (16)d.1., a private golf course licensee shall file with the application for license renewal a statement by a certified public accountant indicating that he or she has examined and tested the books and records of the licensee and that the licensee's food sales and alcoholic beverage sales for the previous year meet the requirements of subsection (16)d.1. At the option of the licensee, in lieu of a certified public accountant's statement, licensee may furnish to the city clerk a certified copy of the licensee's sales tax returns for the most recent 12-month period prior to renewal.
 2. The city council may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the city council deems necessary.
 3. The city council may also, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records.
- f. Limitation on number of licenses. There shall be no restriction on the number of private golf course licenses.

(17) *Minot State University (MSU).*

a.

The MSU license shall be for the on-sale of liquor, beer, and wine by the person or entity holding a concessions contract at MSU.

- b. Fee. The fee for the MSU license shall be three thousand one hundred twenty-five dollars (\$3,125.00) per year.
- c. Premises. A recipient of the MSU license shall be allowed to serve alcoholic beverages only in areas which are specifically identified as the licensee's licensed premises. Those areas shall be limited to Herb Parker Stadium and the MSU Dome. One (1) license shall cover both locations described in the previous sentence.
- d. Restrictions.
 - 1. The MSU license is not transferrable and may be held only by the operator of the MSU concession and shall terminate with the termination of the contract or lease of the concession;
 - 2. An MSU licensee shall limit the sale and consumption of alcoholic beverages on the licensed premises to events authorized by MSU's president;
 - 3. An MSU licensee shall not sell or deliver alcoholic beverages for consumption off the licensed premises;
 - 4. An MSU licensee shall not sell alcoholic beverages after the completion of any event being held at either the Herb Parker Stadium or MSU Dome;
 - 5. An MSU licensee shall ensure that alcoholic beverages are sold and dispensed by a person legally employed by the licensee or an authorized agent of the licensee; and
 - 6. An MSU licensee shall provide, upon request from the city council, special measures which have been or will be implemented, generally or for a particular event, to control or restrict the consumption of alcoholic beverages.
- e. Limitation on number of licenses. The city council may issue one (1) MSU license.

(18) *Movie theater.*

- a. The movie theater license shall be for the on-sale of liquor, beer, and wine by the licensee at a movie theater.
- b. Fee. The fee for a movie theater license shall be three thousand one hundred twenty-five dollars (\$3,125.00) per year.
- c. Premises. A recipient of a movie theater license shall be allowed to serve alcoholic beverages in areas which are specifically identified as the licensee's licensed premises and as permitted by the State of North Dakota retail alcoholic beverage license. The licensed premises for a movie theater license shall include a designated alcohol service area.
- d. Restrictions.
 - 1.

A movie theater licensee shall operate a restaurant on the licensee's licensed premises and shall have, on an annual basis, gross sales of food that are at least equal to gross sales of alcoholic beverages which are consumed on the licensed premises;

2. A movie theater licensee shall not sell or deliver alcoholic beverages for consumption off the licensed premises, except as allowed pursuant to Section 5-02-13, N.D.C.C. and section 5-40 by way of a temporary permit;
 3. A movie theater licensee shall not create or maintain a distinctive portion of the licensed premises where for the most part only alcoholic beverages and snack items are served to and consumed by the patrons of the movie theater;
 4. A movie theater licensee shall not give away an alcoholic beverage if as a precondition to such gift it is necessary for the donee or any other person to purchase an alcoholic beverage other than the one (1) being given away;
 5. The purpose of a movie theater license is to allow for the sale of alcoholic beverages as an adjunct to the operation of the movie theater and not that of operating a full-time liquor establishment. The purchase of a movie theater admission ticket is required for the purchase of an alcoholic beverage;
 6. A movie theater licensee shall not serve or deliver more than one (1) alcoholic beverage to a customer at one (1) time; and
 7. A movie theater licensee shall only sell or allow consumption of alcoholic beverages on the licensed premises in compliance with section 5-8 and shall be additionally limited as set forth herein:
 - i. A movie theater licensee may not sell alcoholic beverages more than ninety (90) minutes prior to a scheduled movie screening and must immediately cease selling alcoholic beverages at the conclusion of the last movie screening and remove all attendees from the licensed premises.
- e. Verification of compliance requirement.
1. To verify that the licensee meets the requirement of subsection (18)d.1., a movie theater licensee shall file with the application for license renewal a statement by a certified public accountant indicating that he or she has examined and tested the books and records of the licensee and that the licensee's food sales and alcoholic beverage sales for the previous year meet the requirements of subsection (18)d.1. At the option of the licensee, in lieu of a certified public accountant's statement, licensee may furnish to the city clerk a certified copy of the licensee's sales tax returns for the most recent twelve-month period prior to renewal.
 2. The city council may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the city council deems necessary.

3. The city council may also, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records.

f. Limitation on number of licenses. There shall be no restriction on the number of movie theater licenses.

(Ord. No. 5372, § 1; Ord. No. 5525, § 2)

Sec. 5-17. - Additional requirements for restaurants serving individuals under twenty-one.

- (a) If any licensee's premises includes a restaurant and the licensee allows persons under twenty-one (21) to enter the licensed premises, the licensee must comply with the following restrictions:
- (1) The restaurant shall be separated from the designated area in which alcoholic beverages are opened or mixed; and
 - (2) Gross sales of food shall be at least equal to gross sales of alcoholic beverages which are consumed in the dining area. To verify this provision, a licensee operating a restaurant in which individuals under twenty-one (21) years of age remain, shall file with the application for license renewal a statement by a certified public accountant indicating that he or she has examined and tested the books and records of the licensee and that the licensee's previous year's gross sales from the sale of food are equal to or exceed the gross sales from the sale of alcoholic beverages in the dining room. At the option of the licensee, in lieu of a certified public accountant's statement, licensee may furnish to the city clerk a certified copy of the licensee's sales tax returns for the most recent twelve-month period prior to renewal. The city council may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the city council deems necessary. The city council may also, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records.
- (b) In the event that any licensee for a licensed premises which includes a restaurant does not comply with the restrictions in subsection (a), the licensee shall suspend persons under the age of twenty-one (21) from entering the establishment.

(Ord. No. 5372, § 1; Ord. No. 5638, § 4)

Sec. 5-18. - Application.

No license may be issued under this chapter unless the applicant files a sworn application, accompanied by the required annual fee, showing the following qualifications and providing the following information:

- (1) The type of license being applied for.
- (2)

The street address and legal description of the premises sought to be licensed accompanied by a clear and understandable floor plan of the premises to be licensed.

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

(4) If the applicant is:

a. A corporation, then:

1. The manager of the licensed premises and the officer and directors must be legal residents of the United States and persons of good moral character; and
2. The shareholders:
 - i. Who are individuals, must be legal residents of the United States and of good moral character; and
 - ii. Which are organizations, must meet the requirements of this section for applicants that are organizations.
 - iii. 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:
 - i. Who are individuals, must be legal residents of the United States and of good moral character; and
 - ii. Which are organizations must meet the requirements of this section for applicants that are organizations.
 - iii. 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:
 - i. Who are individuals, must be legal residents of the United States and of good moral character; and
 - ii. Which are organizations, must meet the requirements of this section for applicants that are organizations.
 - iii. 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.

2. The partners:

- i. Who are individuals, must be legal residents of the United States and of good moral character; and
- ii. 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.
- 2. The general partners and limited partners:
 - i. Who are individuals, must be legal residents of the United States and of good moral character; and
 - ii. Which are organizations, must meet the requirements of this section for applicants that are organizations.
 - iii. Limited liability partnership applicants must first be properly registered with the secretary of state.

- (5) Any agreements or understandings to obtain an alcoholic beverage license for any other person, partnership, or corporation must be indicated on the application.
- (6) Any other interest that the applicant may have, either directly or indirectly, in any other liquor establishment in or out of the state must be indicated upon the sworn application.
- (7) If applicant is buying an existing business, application must include a copy of purchase agreement.
- (8) If applicant is leasing an existing business, application must include a copy of lease agreement.
- (9) The city may require the applicant to set forth such other information in the application as necessary to enable it to determine if a license should be granted.

(Ord. No. 5372, § 1)

Sec. 5-18.1. - Disqualifying circumstances.

The circumstances described hereafter disqualify an applicant for a license under this chapter:

- (1) The applicant or manager must not have been convicted of an offense determined by the attorney general 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, N.D.C.C.

- (2) The applicant may not have any financial interest in any wholesale alcoholic beverage business.

(Ord. No. 5372, § 1)

Sec. 5-19. - Reserved.

Sec. 5-20. - Only licensee to operate under license.

The authority conveyed by a license issued under this chapter extends only to the named licensee and not to the lease or assignee or transferee of the licensee, except as provided in section 5-31 pertaining to transfers.

(Ord. No. 5372, § 1)

Sec. 5-21. - Premises ineligible for license.

No license required by this article shall be granted for any premises within two hundred (200) feet of a building occupied exclusively as a school, church, synagogue, or other place of worship; the measurement to be taken in a straight line from the center of the nearest entrance to the building used for such school, church, synagogue, or other place of worship to the center of the nearest entrance of the premises to be licensed. This section shall not apply when the retailer is a club or lodge having a membership of two hundred (200) members or more and was in existence on or before November 3, 1936. This section shall not apply if the licensed premises preexisted the school, church, synagogue, or other place of worship.

(Ord. No. 5372, § 1)

Sec. 5-22. - Reserved.

Sec. 5-23. - License term.

- (a) The term of a license issued pursuant to this article shall commence at 12:00 a.m. of July 1, 2019, if the license is a renewal license, or at the date and time of its issuance after July 1, 2019, if the license is an initial license, and shall expire 11:59 p.m. on December 31, 2020.
 - (1) Because the license fees described in section 5-17 are for a one-year period, the annual license fee plus one-half ($\frac{1}{2}$) of an annual license fee shall be required for the term described in subsection (a).
 - (2) The annual fee for an initial license may be pro-rated monthly if the initial license is issued for a term less than the term described in subsection (a).
 - (3) No refund will be given if a license is not used for the entire license term.

(b)

Beginning at 12:00 a.m. on January 1, 2021, the term of a license shall commence at 12:00 a.m. on January 1, if the license is a renewal license, or at the date and time of its issuance if the license is an initial license, and shall expire at 11:59 p.m. of the following thirty-first of December. Notwithstanding the fact that an initial license may be issued for a term of less than one (1) year, the license fee shall not be reduced or pro-rated. No refund will be given if a license is not used for the entire license term.

(Ord. No. 5372, § 1)

Sec. 5-24. - Refund or fee upon denial; exception.

If the application for a license provided for in this article is denied, the city clerk shall return to the applicant the amount deposited by the applicant, unless otherwise indicated under this article.

(Ord. No. 5372, § 1)

Sec. 5-25. - City clerk to submit application to the city council; approval.

- (a) The city clerk shall submit the application for a new license or the application for the renewal of an existing license to the city council for its consideration within forty-five (45) days of receipt of all application materials required under section 5-18, including but not limited to the annual license fee.
- (b) Every application for a license required by this article shall be approved by the city council before the license shall be issued.

(Ord. No. 5372, § 1)

Sec. 5-26. - Investigation of applicant.

The chief of police shall investigate the truthfulness of the information provided and the truthfulness of the representations of fact made in the application submitted pursuant to section 5-18.

(Ord. No. 5372, § 1)

Sec. 5-27. - Premises requirements.

- (a) No license shall be issued unless the premises to be licensed conforms to all applicable sanitary, safety and health requirements as certified by the appropriate public officials.
- (b) Licensed premises which extend out-of-doors must meet the following requirements in respect to the portion located out-of-doors (hereafter called the "outdoors"):
 - (1) The outdoors must be contiguous with the rest of the licensed premises (hereafter called the "indoors").

(2)

The periphery of the outdoors - to the extent not adjoining the indoors - must be enclosed with a wall or fence that is at least thirty-six (36) inches in height and said wall or fence may include a gate that can be used for entering or exiting the outdoors.

- (c) The requirements of subsection (b) shall not apply to licensees holding an outdoor dining license, however, permit holders shall meet all requirements provided under chapter 28, article VII, division 2 of this Code.

(Ord. No. 5372, § 1; Ord. No. 5740, § 2)

Sec. 5-28. - Inspection of licensed premises.

- (a) Prior to acting upon any application received for a liquor or beer license, a transfer of location of any such existing license, or an application for a renewal of any existing liquor or beer license, it shall be the policy of the city council to require a complete inspection of the building or plans, when new construction, where the proposed business is to be conducted, or is being conducted, whichever is applicable.
- (b) As applications for a transfer of location of an existing beer or liquor license, or application for a new liquor or beer license, or application for renewal of existing liquor or beer licenses are received at the office of the city clerk, such application shall be immediately referred to the building official and fire marshall as to the proposed site location and structure thereon, where a structure exists upon the site, who shall then fully and completely examine the proposed structure on the stated location. The building official and fire marshall shall, in their discretion, require such other city inspectors as he deems necessary to join with him in the examination of the structures described in the application, to determine the general condition of the structure upon such site, including the soundness of the building, the availability of light, air, general sanitation facilities and such other items as are normally considered in determining general safety of a structure.
- (c) Upon completion of his report, the building official and fire marshall shall make a written report to the city council, including in such report any reports prepared by other city inspectors at the request of the building inspector, and in such written report he shall state all findings as to the general condition of the structure on the proposed site with regard to light, air, structural soundness, general sanitation and other items as may be required in the opinion of the building official.
- (d) The building official and fire marshall shall attach to the written report his opinion as to the sufficiency of the structure for the purpose sought to be carried on therein, and his recommendation as to whether or not in his opinion the structure is suitable for the carrying on of a business involving a dispensing of alcoholic beverages.
- (e)

Upon the receipt by the city council of those reports which by way of ordinance or resolution are required to be submitted to it as part of the application process for a retail alcoholic beverage license the city council shall determine whether the license shall issue or not. In so doing it shall consider the reports and it may consider (i) statements made before it at the council meeting wherein the matter is taken up, (ii) any other information publicly presented to it at the meeting by the city staff, or by aldermen, or by any other person, and (iii) such other matters of which a court could take judicial notice. The applicant shall have the right to make an argument or plea to the council, or both, and he shall have the additional right to comment upon the matters presented to the council and those matters which the council indicates it will take notice of. In reaching its decision as to whether the license should issue the council reserves the right to consider whether the design, physical condition, and location of the proposed premises, and the proposed method of operation by the licensee, are consistent with the health, safety, general welfare, morals, comfort, good order, and peace and quiet of the general public or of those persons who work, live, transact business or participate in recreation in the vicinity of the premises sought to be licensed.

- (f) No license shall be issued or transferred by the city council, including any renewal licenses, for any establishment utilized for the sale of alcoholic beverages unless the building in which the business is carried on has been inspected in accordance with the terms of this section.
- (g) The licensed premises and the records of the licensee shall be available to the police department for immediate inspection whenever the licensed premises are open for public patronage and the licensed premises shall be available to the police department for immediate inspection at any other time when there are persons on the licensed premises.

(Ord. No. 5372, § 1)

Sec. 5-29. - Issuance when approved.

If the application for a license by this article is approved by the city council, the city clerk shall issue to the applicant a receipt showing the date and amount paid and by whom and for what location, and what class of license has been granted him, which shall constitute the license.

(Ord. No. 5372, § 1)

Sec. 5-30. - Identification number.

Each license issued pursuant to this article must be given an identification number and a permanent record thereof must be kept by the city clerk, showing the name and address of the licensee and the legal description of the place licensed.

(Ord. No. 5372, § 1)

Sec. 5-31. - License to constitute a defeasible property right, transfer or other change in status, operation, or form of license, fee for approval of same.

- (a) A licensee under this chapter shall enjoy a defeasible property right in the license. It is defeasible in the sense that it may be revoked by the city "for cause" without compensation to the licensee as provided in section 5-32 of this Code. Subject to that reservation of rights in the city, the licensee may sell, pledge, grant or retain a security interest in, give away in a will, or otherwise deal with the license.
- (b) No transaction affecting a license, including a transfer (whether full or partial), lease, grant or retention of a security interest, or other change in its status, operation, or form (hereafter a "license amendment"), is binding on the city until application for the license amendment has been filed by the licensee or other interested person with the city clerk and approved by the city council. However, as provided hereafter, the chief of police has the power to approve a license amendment for a temporary period of time, and if the chief does so it has the same force and effect as an approval by the city council during such temporary period of time.
- (c) The license amendment application shall include the information required in section 5-18 and a detailed description of any consideration received in exchange for the license transfer.
- (d) Before being submitted to the city council for its decision thereon, a license amendment application shall be forwarded to the chief of police for such investigation and such recommendation to the council concerning its merits as the chief believes is warranted or advisable under the circumstances. Moreover, if the license amendment application relates to the physical characteristics of the licensed premises it shall likewise be forwarded to the building official for the same purpose.
- (e) The chief of police shall have the authority to approve a license amendment application for a period of time not to exceed forty (40) consecutive days upon a showing satisfactory to the chief of pressing circumstances requiring action before the city council can take under consideration and act upon a license amendment application in the ordinary course of its business, as when, for example, a licensee dies or a secured party or lien holder forecloses on its security interest in a license. However, the chief or the council itself may revoke or suspend provisional approval given under this subsection, provided that reasonable notice of such contemplated action is first provided to the affected party or parties.
- (f) In the absence of provisional or final approval of a transfer as provided for in subsections (b) and (e), no person other than the named licensee may rely on the grant of the license as a defense to prosecution or a civil action brought under this chapter or otherwise provided in law for an offense or cause of action involving the sale of alcoholic beverages without a license.
- (g) No license amendment application may be acted upon until the applicant has paid a non-refundable application-review fee of two hundred fifty dollars (\$250.00).

Sec. 5-32. - Suspension or revocation of a license.

- (a) The city council shall have the power to suspend or revoke any license issued under the authority of this chapter for any of the following reasons:
 - (1) The licensee violates the laws of this state or of any of the provisions of this chapter.
 - (2) The licensee willfully makes a false statement or a misrepresentation as to a material fact in the application for the issuance or transfer of the license.
 - (3) The licensee knowingly permits the occurrence of a pattern or practice of disorderly or immoral acts upon the licensed premises.
 - (4) The licensee does not conduct the activity for which the license was issued at the licensed premises for a period of twelve (12) consecutive months.
 - (5) The licensee or its manager or both no longer meet the requirements of section 5-18 for the issuance of the license.
 - (6) The licensee does not hold a necessary permit or license issued by another governmental entity, which license or permit is required by that governmental entity as a precondition to the carrying on by the license of the activity authorized by the City of Minot license.
- (b) No license shall be suspended or revoked without providing the licensee with notice and an opportunity for hearing before the city council with regard to the suspension or revocation of the license. The city clerk shall provide the licensee with written notice of the date, time, and place of the hearing. The notice shall inform the licensee that its license may be suspended or revoked and it shall set forth the factual allegations which form the basis for doing so under this section. The city clerk may provide notice by mailing a copy thereof to the licensee's last known address as indicated in the licensee's most recent application filed with the clerk under this chapter. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.
- (c) If the licensee does not appear at the hearing provided for in subsection (b), or if he does not dispute them, the factual allegations in the complaint shall be deemed to be admitted. Otherwise the city shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.
- (d) If the licensee requests that the originally scheduled hearing date be continued the city council shall grant a continuance to a time mutually convenient to the licensee and the city council, but the city council shall have the discretion to suspend the license from the date for which the hearing was originally scheduled to the date of the continued hearing.
- (e) The decision of the city council shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review.
- (f)

The Minot Police Department will be responsible for conducting compliance checks to determine whether the licensees are in compliance with the provisions of subsection (a)(1). If (1) the licensee admits a violation occurred, (2) fails to appear at the scheduled hearing relating to the alleged violation, or (3) the city council determines a violation under subsection (a)(1) occurred after a hearing, the licensee is subject to the following penalties, in addition to any other civil or criminal penalties a licensee may be subject to for violation of any provision of state or local law:

First violation: Letter of warning

Second violation: Business closed for three (3) consecutive days

Third violation: Business closed for seven (7) consecutive days

Fourth violation: Business closed for thirty (30) consecutive days

Fifth violation: Business liquor license recommended to be revoked

The penalties described above shall be for violations that occur within a period of twenty-four (24) months. The twenty-four-month time period commences to run and is calculated from the first offense by the licensee.

(g) The Minot Police Department will be responsible for monitoring compliance with the provisions of subsections (a)(2)—(6). If (1) the licensee admits a violation occurred, (2) fails to appear at the scheduled hearing relating to the alleged violation, or (3) the city council determines a violation under subsections (a)(2)—(6) occurred after a hearing, the licensee is subject to suspension or revocation, as determined by the city council, in addition to any other civil or criminal penalties a licensee may be subject to for a violation of subsections (a)(2)—(6).

(Ord. No. 5372, § 1)

Sec. 5-33. - No refund of fee when license is revoked.

When a license issued pursuant to this article is terminated or revoked for cause, the licensee or those claiming under him, shall not be entitled to any return of any portion of the license fee previously paid to the city.

(Ord. No. 5372, § 1)

Sec. 5-34. - No license to be issued until five years after revocation.

Where a license for any premises licensed pursuant to this article has been revoked, no license shall thereafter be issued to the licensee for a period of five (5) years after revocation.

(Ord. No. 5372, § 1)

Sec. 5-35. - Exceptions to the limitations as to the number of licenses.

- (a) If because of a growth in the population of the city or because of the revocation or voluntary surrender of a license, or because any of the numerical limitation formulas under section 5-16 are amended, there becomes available for issuance a license under the authority of this chapter, and if it appears to the city council that it is reasonably likely that more than one (1) person might be interested in obtaining the license, given the then current market demand in the city for licenses of that type, the city shall advertise the availability of the license for a reasonable period of time and shall auction the license off openly or through sealed written bids to the highest bidder. The successful bidder must qualify under section 5-18 in order to obtain a license. The city may set a minimum auction or bid price and/or other conditions of the auction or bid which shall be stated in the advertisement. If more than one (1) license of a particular class has been available for issuance consistent with the numerical limitations under section 5-16 for a period of three (3) months without an application having been made for a license of that class, there shall arise a rebuttable presumption that the market demand for licenses of that class does not exceed the number of licenses of that class available for issuance.
- (b) A license shall authorize the carrying on of activity pursuant to its authority only with regard to licensed premises at one (1) particular location except to the extent allowed under section 5-18. However, this subsection shall not be construed as prohibiting the periodic expansion and contraction of licensed premises at a particular location as the occasion demands, such as when, for example, a motel licensee dispenses alcoholic beverages at a public assembly room within the motel during a convention or other special activity, when otherwise such room is not ordinarily used for the service or consumption of alcoholic beverages.
- (c) When the city annexes territory which contains an establishment which was licensed by the county to sell alcoholic beverages at retail immediately prior to the annexation, the city will issue to its owner a city license to sell alcoholic beverages, without regard to subsection (a) and even though one (1) of the numerical limitations on licensed imposed by section 5-16 is exceeded, or a prior condition or excess licenses under that section is aggravated as a result of the issuance of the license under this section. Unless the city council lays down a special rule at the time of annexation whereby the new city license shall carry the same restrictions and terms as the old county license, the new city license issued under this subsection shall be as similar to the prior county license as may be obtained under the then existing categories of city licenses. A license issued under this subsection shall thereafter be counted as one (1) of the licenses subject to the numerical limitation imposed by section 5-16, so that, for example, if the issuance of a license under this subsection causes one (1) of the numerical limitations imposed by section 5-16 to be exceeded, the license issued under this subsection will be counted against future population growth in determining when an additional license is available for issuance under the formula set forth in section 5-16. It is the intent to this subsection that no county licensee shall lose a license

to sell alcoholic beverages simply because the licensee is annexed to the city, but that city licenses which have county license ancestors over a period of time shall be treated the same as all other licenses for purposes of section 5-16 numerical limitations. This subsection shall apply retroactively as well as prospectively, except that as a one-time exception it shall not be construed to bar the issuance of any additional licenses which became available under section 5-16 after January 1, 1990, and before January 1, 1992, under the ordinance then in effect.

(Ord. No. 5653, § 1)

Sec. 5-36. - Reserved.

Sec. 5-37. - Adequate parking.

At the time of erection, conversion or expansion of a structure to be used for a retail liquor or beer business, there shall be provided and thereafter maintained off-street parking facilities to accommodate the motor vehicles used by the occupants, customers, clientele and employees of said retail business. Such off-street parking spaces shall be used exclusively for off-street parking purposes. Off-street parking and loading spaces shall be provided in accordance with the requirements for specific uses set forth in chapter 23 of the City of Minot Zoning Ordinance, Ordinance No. 1149, as amended.

(Ord. No. 5372, § 1)

Sec. 5-38. - Sale of alcoholic beverages at municipal auditorium and armory complex by licensed liquor dealers.

The holder of a current liquor or beer license of the city may sell and dispense alcoholic beverages at the municipal auditorium and armory complex of the city provided that:

- (1) Permission is granted in the same manner as provided in section 5-40(b).
- (2) The licensee accepts all responsibilities and liabilities for enforcement of City of Minot and North Dakota State Liquor laws regarding the dispensing of alcoholic beverages during the times of the special permission.
- (3) Twenty (20) per cent of the gross sales of alcoholic beverages at the auditorium/armory are paid to the city immediately upon expiration of the permit.

(Ord. No. 5372, § 1)

Sec. 5-39. - Dispensing of alcoholic beverages at private party held at municipal auditorium or armory.

Any lessee of the municipal auditorium or armory may dispense alcoholic beverages, at a private party or gathering, provided that there is no charge for the alcoholic beverages, provided that all of the laws of the City of Minot and State of North Dakota regarding dispensation of alcoholic beverages are fully complied

with and provided that responsibility and liability for compliance with these laws are fully assumed by the lessee.

(Ord. No. 5372, § 1)

Sec. 5-40. - Special permits; fees.

- (a) A permit issued pursuant to Section 5-02-01.1, N.D.C.C. to allow a licensee to operate at premises other than the licensed premises to which the license relates, shall be issued administratively by the city clerk upon the following terms and conditions:
 - (1) The payment by the applicant of a nonrefundable fee of twenty-five dollars (\$25.00).
 - (2) The submission of an application to the city clerk, at least seven (7) days prior to the event (not including the day of the event), by the applicant, with any information required by the city clerk and a brief narrative explaining:
 - a. The nature of the occasion for the permit (e.g., wedding dance, trade show or promotion, etc.); and
 - b. The steps which will be undertaken by the permittee to restrict the sale to, and consumption of, alcoholic beverages by person under twenty-one (21) years of age at such occasion.
 - (3) The written approval by the chief of police of the issuance of the permit. The chief of police may police the event(s) covered by the special permit. The chief of police may determine the number, if any, of police officers or licensed private security officers needed to police the event(s). If the chief of police determines police officer or licensed private security officers are needed to police the event(s), the licensee shall hire the required number of off-duty police officers or licensed private security officers to police the event(s). If the licensee retains off-duty police officers to police the event(s), the written approval for the special permit shall be contingent on the licensee paying the Minot Police Department the expense of any off-duty police officer required for the proper policing of the event(s) prior to the event(s) occurrence. No special event(s) shall be permitted to proceed unless the required number of police officers or licensed private security officers are present.
 - (4) A permit issued pursuant to this subsection may not be used for the off-sale of alcoholic beverages.
 - (5) The city council may authorize an individual under twenty-one (21) years of age to attend the special event, but may not authorize the consumption or possession of an alcoholic beverage by an individual under twenty-one (21) years of age.

Each month the chief of police shall submit a report to the city council concerning the permits allowed and the permits denied under this subsection subsequent to the last prior such report. Applications, whether granted or not, shall be retained by the city clerk for no less than three (3) years.

(Ord. No. 5372, § 1; Ord. No. 5427, § 2; Ord. No. 5638, § 5)

Sec. 5-41. - Reserved.

Sec. 5-42. - Sale of beer in kegs; records and marking required.

- (a) A retail licensee selling beer in a container having a liquid capacity greater than two (2) gallons shall place a distinctive symbol, notation or mark on the container which uniquely identifies him, and, moreover, shall mark such container in such a manner, and maintain such business records, that in the event the container is returned to him he can establish the following information with respect to his most recent sale involving the container within the last six (6) months, to-wit: The date of the sale and the name, address, driver's license and social security number of the person to whom it was sold.
- (b) Each retail licensee shall register his unique identification symbol, notation or mark with the chief of police and shall provide the chief of police with such information gathered pursuant to subsection (a) as the chief from time to time may require.
- (c) This section shall not apply to the sale of containers by a retail licensee if he intends and requires that the contents of the container will be consumed on the licensed premises where the sale occurs.

(Ord. No. 5372, § 1)

Sec. 5-43. - Nudity, seminudity and sexually explicit acts prohibited.

- (a) No person who is within or upon premises which are licensed under this chapter shall knowingly omit to cover securely with an opaque covering the following portions of his or her anatomy:
 - (1) The nipples;
 - (2) The pubes;
 - (3) The cleavage between the buttocks; and
 - (4) The genitals.

However, item (1) above, pertaining to the nipples, shall apply to females only.

- (b) No person while upon or within premises licensed under this chapter shall perform or simulate acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or shall perform or simulate the touching, caressing or fondling of breasts, buttocks, anus or genitals.
- (c) Premises licensed under this chapter for the purposes of this section shall include any area or room under control of the licensee, or as to which he has the lawful right to assert control, whether control is exercised or not:
 - (1)

In which or in any portion of which alcoholic beverages are stored, mixed, prepared, opened, served or consumed as an incident of the business operation of the licensee carried on pursuant to the license; or

- (2) The interior of which is visible from an area or room described in subparagraph (1) but only while its interior is so visible.

(Ord. No. 5372, § 1)