

TITLE X.

BUSINESS LICENSES AND REGULATIONS

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## CHAPTER 10-01

### ALCOHOLIC BEVERAGES

Source: Ord. 621, Sec. 1 (2002); Ord 862, Sec. 1 (2010); Ord. 1037, Sec. 1 (2015);  
Ord. 1119, Sec. 1 (2019)

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10-0101. AUTHORITY. Pursuant to Chapter 40-05.1 of the North Dakota Century Code (N.D.C.C.) and the Home Rule Charter of the City of West Fargo, the City of West Fargo has the authority to provide for the public health, safety, and morals of the City of West Fargo by regulating the sale and consumption of alcoholic beverages. The City of West Fargo hereby implements the above described powers through the enactment of this ordinance and, to the extent permitted by North Dakota law, this ordinance supplements Chapter 5-02 of the N.D.C.C., as may be amended from time to time.

10-0102. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

1. "Agent" means a person or entity acting on behalf of the license holder or an employee of the license holder.
2. "Alcoholic Beverages" means any liquid intended for drinking by human beings which contains one-half of one percent or more of alcohol by volume.
3. "Applicant" means a person who completes the license application, may or may not be owner or licensee.
4. "Beer" means any malt beverage containing more than one-half of one percent of alcohol by volume.
5. "City" means the City of West Fargo.
6. "City Commission" means the Board of City Commissioners of the City of West Fargo, North Dakota.
7. "Club" or "lodge" means any corporation or association organized for civic, fraternal, social, or business purposes, or for the promotion of sports. Said club or lodge shall have at least one hundred (100) members at the time of the license application and have been in existence for twenty (20) years prior to the time of application for the license; if not it must be a local organization which is a subsidiary of and chartered by a national organization which has had a bona fide existence for more than twenty (20) years. Alcoholic beverages may

be sold or served only to members, associate members, and bona fide guests. "Bona fide guests" means any person accompanied by a member of the club or lodge or other person authorized by the club or lodge to be on the premises.

8. "Incompetent" means someone under a guardianship whom has been judged legally incompetent.
9. "Indoors" means within a fully-enclosed building.
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. "Licensee" means the person or entity to whom a license has been issued under the provisions of this chapter.
12. "Liquor" means an alcoholic beverage, except beer.
13. "Obviously intoxicated" means the person's obvious intoxication be reasonably discernible or evident to a person of ordinary experience.
14. "Off Sale" means sale of alcoholic beverages in original packages for the consumption off or away from the premises where sold. This provision does not prohibit the licensee from dispensing and the customer from consuming a free sample as defined by the laws of this state.
15. "On Sale" means the sale of alcoholic beverages for consumption only on the Licensed Premises where sold.
16. "Outdoors" means an area outside a fully-enclosed building.
17. "Owner" means the individual or entity that holds title to an establishment.
18. "Package" and "Original Package" means a container or receptacle holding alcoholic beverages, when such container or receptacle is corked or sealed by the manufacturer thereof, and when the cork or seal has not been removed or broken prior to the sale of such package to the purchaser.

19. "Person(s)" means an individual, firm, corporation, association, club, partnership, society, or other organization.
20. "Public Facilities or Properties" means any real property or structures owned by any political subdivision.
21. "Recreational Establishment" means an establishment whose building contains games such as billiards, pool, video games, pinball machines, or similar devices that take up at least twenty-five percent (25%) of the square footage of the building. Bowling alleys are not a recreational establishment.
22. "Resident Manager" means a person who operates the establishment on a day-to-day basis. This person must be a legal resident of the United States, at least twenty-one (21) years of age, and reside within seventy-five (75) miles of the city limits of West Fargo.
23. "Retail business" means a business actively engaged in the sale of goods and/or services to an individual consumer in relatively small quantities for his or her personal use or consumption rather than for resale. This definition includes retail businesses providing exercise classes, manicures and pedicures, and other types of services.
24. "Sale" and "sell" means manners or means of furnishing of alcoholic beverages, including the selling, exchange for services, disposition of, and keeping for sale or exchange of such alcoholic beverages.
25. "Special event permit" means a permit issued pursuant to Section 10-0129 to engage in the sale of alcoholic beverages at events not exceeding forty-eight (48) hours in duration and as designated in the special event permit.
26. "Wholesaler" means any person engaged in the sale and distribution of alcoholic beverages at wholesale to persons holding a retail license for the sale and distribution of alcoholic beverages within the State of North Dakota or in interstate commerce.
27. "Wine" means the alcoholic beverage obtained by a fermentation of agricultural products containing natural or added sugar, or such beverage fortified with brandy

and containing not more than twenty-four percent (24%) alcohol by volume.

10-0103. LIQUOR CONTROL BOARD ESTABLISHED. There is hereby established a five (5) member Liquor Control Board comprised of the City Administrator, Chief of Police, Code Enforcement Official, and two (2) City Commission members appointed by the City Commission. The Liquor Control Board shall be vested with the authority and jurisdiction to review, approve, or deny applications for liquor licenses as provided in this chapter. The Liquor Control Board shall also be vested with the authority to impose fines for liquor license violations and to revoke or suspend any liquor licenses. The City Commission may also appoint up to two (2) non-voting advisors to the Liquor Control Board, who must be residents of the City.

Any decision by the Liquor Control Board may be appealed to the City Commission by filing a Notice of Appeal with the Liquor Control Board within fourteen (14) days of its decision. The Notice of Appeal must state the factual and legal basis for an appeal of the Liquor Control Board's decision.

10-0104. LICENSE REQUIRED. A person may not sell, dispense, serve, exchange, or keep for sale alcoholic beverages without first having obtained a license pursuant to the provisions of this chapter and posting said license in a conspicuous place or premises. This section does not apply to a nonprofit organization that sells alcoholic beverages as part of a fundraising activity. As used in this subsection, fundraising activity includes an auction, raffle, or other prize contest for which consideration is given. If the alcoholic beverage is sold as part of a fundraising event, the sale may not be for consumption at that event. The requirement to obtain and hold a valid license applies to any and all transactions involving the sale or exchange of alcohol.

10-0105. LICENSES - REGULATIONS AS TO CLASSES - FEES.

1. Licenses authorizing the sale of alcoholic beverages within the City are divided into the following classes; the fees for each class are payable at the time of application for the license and the amount for each license will be set by resolution of the City Commission, which resolution shall be on file with the City Administrator:
  - (a) Wholesaler's License.
  - (b) Retail Bar On and Off Sale Liquor, Wine and Beer License.
  - (c) Retail Bar On Sale Liquor, Wine and Beer License.

- (d) Retail Liquor Store Off Sale Liquor, Wine and Beer License.
  - (e) Restaurant On and Off Sale Liquor, Wine and Beer License.
  - (f) Restaurant On Sale Liquor, Wine and Beer License.
  - (g) Retail Club or Lodge On Sale Liquor, Wine and Beer License.
  - (h) Retail Convenience/Grocery Store Off Sale Liquor, Wine and Beer License.
  - (i) Retail Business On-Sale Wine and Beer License.
  - (j) Public Facilities License.
2. The licenses for the sale of alcoholic beverages set out above will be in effect for a period of one (1) year commencing July 1 of each year and terminating June 30 of the following year. If an application is made for a license during the licensing year, the license that is granted is only for the unexpired portion of such year ending June 30, at which time an application for renewal of the license must be made. The license fee for a partial year is prorated so that it equals one-twelfth (1/12<sup>th</sup>) of the licensing fee set out above times the number of months the license will be in effect. The entire license fee for the portion of the year is paid at the time of the issuance of the license. Provided, that if a transfer of a license will occur within sixty (60) days after July 1, the current license holder and intended transferee can file a joint application for a new license along with the required annual fee. The current licensee will receive a new license effective July 1, and upon written confirmation within sixty (60) days of July 1, the City Administrator issues a new license to the transferee without the need of further license fees.
3. If an application is for a new liquor license, or a transfer of a license, not a renewal of an existing license, in addition to the annual license fee set forth above, an initial application fee, payable to the City of West Fargo, must accompany the license application fee. The amount of the initial application fee is twenty-five percent (25%) of the annual license fee set out above for the license or licenses for which application is being made. Such initial application fee will not be refunded, whether or not a license is granted by the City, and the initial application fee will not be prorated, even if the

initial application is for a portion of a year. Provided, that if a transfer of a license is to a person who already holds a beer or liquor license in the City, or to an entity whose owners, shareholders, or partners have all had background checks by the West Fargo Police Department, the City Administrator may waive the initial application fee.

4. A license holder or Applicant for a premises that includes a restaurant and that allows persons under twenty-one (21) years of age to enter the premises, is required to file with the City 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 gross revenue from the sale of food is equal to or exceeds the gross revenue from the sale of alcoholic beverages in the dining area. At the option of the licensee, in lieu of a certified public accountant's statement, licensee may request from the State Tax Commissioner's Office and furnish to the City Administrator's office a certified copy of licensee's sales tax returns for the most recent 12-month period prior to renewal. Notwithstanding furnishing of such sales tax returns, the City may, in its discretion, require the licensee to comply with the requirement that a statement by a certified public accountant be furnished as aforesaid. Costs incurred in connection with the requirements of this section are the sole responsibility of the licensee. The City 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. In the event that the results of an independent investigation by the City results in a determination that sale of food does not equal or exceed the sale of beverages in the dining area, the licensee is required to pay costs of such investigation, and the licensee will have to suspend persons under the age of twenty-one (21) from entering the establishment. Notwithstanding the foregoing section, any person applying for a new, or converting to a, restaurant liquor on and off premises license or restaurant liquor on premises license will have a period of six (6) months, or until the next license renewal period, to establish that the Applicant's gross revenue from the sale of food is equal to or exceeds the gross revenue from the sale of alcoholic beverages.
  
5. A wholesaler's license may be issued to persons eligible under the terms of the laws of the State of North Dakota, or amendments thereto, who are engaged in the business of selling alcoholic beverages to licensed retail dealers or



in interstate commerce only, provided, that no license will be granted to wholesalers who directly or indirectly own or control, or have financial interest in the ownership, control, or operation of a licensed retail on sale and/or off sale business.

6. A license must include a complete and accurate listing of Applicant's key personnel, including but not limited to, the owner(s), the Resident Manager, and/or Chief Financial Officer.

10-0106. APPLICATION FOR LIQUOR LICENSE. A person desiring to apply for a liquor license, whether a new application or application for renewal, from the City must submit such request on the forms provided by the City. The Liquor Control Board has the right to deny, approve, conditionally approve, or conditionally deny an application for a liquor license. All applications, whether for a new or renewed liquor license, must be filed with the City Administrator and comply with the following:

1. Any person applying for a license under the provisions of this section must submit a detailed floor plan of the areas which will constitute the Licensed Premises.
2. In addition to the information supplied on the application form, the Liquor Control Board may require such other information as necessary in determining whether a license should be issued to the Applicant.
3. In the case of a renewal of the license, such application must be submitted at least forty-five (45) days prior to the expiration date of the license.
4. The application shall be made on a form made available through the office of the City Administrator. In addition to the information supplied on the application form, the Liquor Control Board may require such other information as they deem necessary in determining whether or not a license should be issued to the Applicant.
5. If a license is granted, the licensee must inform the City Administrator in writing within thirty (30) days of any changes in the facts supplied to the City in the application previously submitted, including but not limited to, changes in key personnel identified in the application.

10-0107. INVESTIGATION OF APPLICANT. The Chief of Police, or his/her authorized representative, will investigate the facts stated in the application and the character, reputation, and fitness of the Applicant, Resident Manager, key personnel, and

owner(s) and shall report on said matters to the Liquor Control Board.

10-0108. LICENSE - QUALIFICATIONS. A retail license for the sale of alcoholic beverages shall not be issued to an Applicant unless the following requirements are met:

1. State Requirements. The requirements of N.D.C.C. Sections 5-02-02(1), (2), (4), (6), and (7) are met.
2. Residence Requirement.
  - (a) If Applicant is an individual, the Applicant must reside within seventy-five (75) miles of the city limits of West Fargo.
  - (b) If Applicant is a form of a partnership, a partner or partners owning at least fifty percent (50%) of the partnership must reside within seventy-five (75) miles of the city limits of the City of West Fargo.
  - (c) If Applicant is a form of a corporation, it must have a Resident Manager who is designated in the license application as the registered agent of the corporation, who must reside within seventy-five (75) miles of the city limits of the City.

If the Applicant, or Resident Manager, does not have a legal and bona fide residence as required above at the time at which the application is submitted, a license may be granted to such an Applicant upon the condition that the Applicant satisfies the above residence requirement within three (3) months after the approval of the license. Failure to provide this documentation within the above time line will result in the automatic suspension of the license.

3. Age. The Applicant, partners, officers, directors, shareholders holding more than five percent (5%) of the outstanding stock of the corporation, and the Resident Manager must be at least twenty-one (21) years of age.
4. Fitness. The Applicant, its Resident Manager, partners, key personnel, and/or shareholders, must be deemed by the Liquor Control Board to be persons of good moral character. Any relevant business history will be a factor considered by the Liquor Control Board. Good moral character is determined by the Liquor Control Board. In making that evaluation, the Liquor Control Board will

consider, among other factors, whether the person or entity has been convicted or pled guilty of the following offenses within the previous five (5) years:

- a) A felony;
  - b) Any offense involving the manufacture, sale, or distribution, or possession for sale or distribution of alcoholic beverages;
  - c) An offense involving the sale of drugs or felony possession of drugs;
  - d) Prostitution;
  - e) Obscenity; or
  - f) Other offenses determined by the Liquor Control Board to have a direct bearing on the Applicant's or manager's ability to serve the public as an alcoholic beverage retailer.
5. Financial Standards. The Liquor Control Board may also evaluate the following civil actions and/or matters to determine if an Applicant is deemed to have good moral character:
- a) unsatisfied judgments within the last five (5) years;
  - b) unpaid bills within the last five (5) years;
  - c) bankruptcy within the last five (5) years; and
  - d) a finding of civil liability regarding serving alcohol to minors, over serving of patrons, or other related business activities resulting in a finding of negligence by a state or federal court of competent jurisdiction within the last five (5) years.
6. Owner of Business. A license will not be issued to a person as the representative or agent of another, and the license will be issued only to the owner or owners of the business being conducted at the location sought to be licensed.
7. Taxes. A license will not be issued, transferred, or renewed for any location in which the real property taxes are delinquent and unpaid.

8. In the event that the Liquor Control Board determines the applicant does not meet the requirements set forth in sub-sections 1 through 7 of this section, it shall deny the applicant's application.

10-0109. SERVER TRAINING REQUIRED. A qualified alcoholic beverage licensee, or Applicant, under the provisions of this chapter, is required to send managers and employees involved in the sale or serving of alcoholic beverages at said licensed establishment to a server training course, as approved by the West Fargo Police Department.

- a. Persons successfully completing the approved class will receive a "server training certificate card," which remains with said individual wherever employed. The "server training certificate card" is not required to be in said person's possession during hours of employment, at a licensed establishment, provided the card can be produced within twenty-four (24) hours.
- b. The "server training certificate card" must be renewed every three (3) years.
- c. New establishments are required, within ninety (90) days of opening, to provide the City with a roster of managers and employees depicting first name, last name, date of birth, date of hire, and server training card expiration date.
- d. Recently hired managers and employees not having in their possession a current "server training certificate card" must, within ninety (90) days of the employment start date, successfully complete an approved server training class.
- e. Existing licensees are required to submit along with the license renewal applications, a complete roster of managers and employees involved in the sale or serving of alcoholic beverages. Said roster is to include first name, last name, date of birth, date of hire, and server training card expiration date.
- f. All license holders must maintain a minimum of eighty percent (80%) of their serving staff as having completed the server training course. Failure to maintain 80% compliance under this section at any time will result in temporary

suspension or permanent termination of the licensee's liquor license.

Failure to comply with the above-referenced requirements may result in the delay of the liquor license renewal and/or suspension of said license until date of compliance.

10-0110. LIABILITY INSURANCE REQUIRED OF LICENSEES. A person licensed under the authority of this chapter, other than wholesalers, must provide the City Administrator, not later than thirty (30) days after a license is issued, proof of liability and liquor liability insurance (Dram Shop). Such insurance must provide liquor liability insurance coverage of at least One Hundred Thousand Dollars (\$100,000) per person and per occurrence, and liability insurance coverage of One Hundred Thousand Dollars (\$100,000) per person and Five Hundred Thousand Dollars (\$500,000) per occurrence. The adequacy of such insurance is determined by the Liquor Control Board.

10-0111. ISSUANCE, RENEWAL, AND TRANSFER OF LICENSES.

1. Applicants applying for a new license must execute a pre-approval review form ("Form A") made available through the office of the City Administrator. Upon completion of Form A, City staff will review to ensure the application is completed properly and present Form A to the Liquor Control Board for its approval, conditional approval, or denial.
2. Upon approval or conditional approval, the Applicant must execute a post-approval form ("Form B") made available through the office of the City Administrator. Upon completion of Form B, City staff will review to ensure the application is completed properly. Once Form B has been reviewed by the respective parties with the necessary attachments, including certificate of insurance and site plan, the City Administrator or his/her authorized representative shall approve, conditionally approve, or deny the application.
3. Applications for renewal or change of venue must execute a liquor license renewal form ("Form C") made available through the office of the City Administrator. Upon completion of Form C, City staff will review to ensure the application is completed properly and present Form C to the Liquor Control Board for its approval, conditional approval, or denial.

4. If the application is for a new license or a relocation of an existing license, then notice that the Applicant has applied for a license to sell alcoholic beverages at a place designated in the application, and that the application will be acted upon by the Liquor Control Board on a certain day and time, will be published in a newspaper in the City at least ten (10) days before the date set for the hearing on the application. Such notice is signed by the City Administrator, and the expense of its publication, in addition to the license fee, must be paid by the Applicant before publication.
5. A new license, or a relocation of a license to a new location, will not be issued unless and until the Applicant has proven, to the satisfaction of the Liquor Control Board, that the following conditions have been met. These conditions do not apply to license renewals:
  - a. The Licensed Premises has a minimum of one thousand square feet (1,000 sq./ft.) of space available and devoted to the business. The measurement of one thousand square feet (1,000 sq./ft.) will be based on the exterior measurements of the building in which the premise is located, not including carports, parking areas, drive-throughs, outdoor patios, or similar exterior features to the premise. If the building is not a separate building, but has a common wall with one (1) or more other businesses, the measurement will be from the center of the common wall.
  - b. The Licensed Premise has a separate entrance or entrances from other businesses and has no interior connection by which customers may move directly from another business to the Licensed Premises. This restriction will not apply to eating establishments, motels, or hotels that apply for a liquor license as part of their operation, or off sale licenses.

Additional factors that may be considered in the granting of a new license:

- a. The proximity of other businesses licensed to sell alcoholic beverages.
- b. Protests of neighboring property owners or occupants.
- c. Interference with neighboring properties.

- d. Suitability of premises for sale of alcoholic beverages.
- e. Recommendations and reports of appropriate City officials, including the Chief of Police, Chief of the Fire Department, Building Inspector, Health Officer, and their authorized representatives.
- f. Zoning regulations.
- g. Proximity of schools, religious institutions, public facilities or properties, or buildings used by and for minors.

10-0112. LICENSE FEES -DISPOSITION OF FEES. License fees collected by the City Administrator will be credited to the general fund of the City.

10-0113. POSTING OF LICENSE. The certificate of license issued to a licensee must be posted in a conspicuous place within the public portion of the premises for which the license has been issued.

10-0114. LICENSES - TERMINATION, SUSPENSION, AND REVOCATION. A license issued under the provisions of this chapter, unless otherwise specifically provided, terminates on June 30 following the date of issuance; provided however, that licenses issued under the provisions of this chapter may, under certain circumstances, terminate automatically, or be terminated, suspended, or revoked by the Liquor Control Board.

1. A license issued under the provisions of this chapter automatically terminates:
  - (a) Upon the death of the licensee unless, upon application to the Liquor Control Board by the personal representative of the decedent, the Liquor Control Board consents to the continuation of such business by the personal representative. Said application must be submitted to the Liquor Control Board within thirty (30) days of the licensee's death.
  - (b) When the licensee ceases business at the Licensed Premises. Business is deemed to have ceased when no sale of alcoholic beverages occurs on the Licensed Premises for a period of at least thirty (30) consecutive business days. However, upon written

request of the licensee, the Liquor Control Board at its discretion may grant a period of up to sixty (60) additional days before business is deemed to have ceased.

- (c) When the license or permit of the licensee issued by the United States Government, the State of North Dakota, or any other government entity to sell alcoholic beverages at the Licensed Premises has been terminated, uspended, or revoked.
2. The Liquor Control Board may, in its discretion, suspend or revoke for cause license issued under the provisions of this chapter. The grounds for suspension or revocation may include the following:
- (a) An individual licensee, one (1) of the partners in a partnership licensee, one (1) of the officers in a corporation licensee, or an individual designated in the application as Resident Manager of the licensed business is convicted of violating provision(s) of this chapter.
  - (b) An individual licensee, one (1) of the partners in a partnership licensee, one (1) of the officers, directors, or shareholders in a corporation licensee, or an individual designated in the application as Resident Manager of the licensed business is convicted of a state or federal felony.
  - (c) The business of the licensee, at the location licensed, is conducted in such a manner as to be in violation of the health, sanitary, or other regulations or ordinances of the City of West Fargo.
  - (d) The licensee, having been given a conditional license pursuant to Section 10-0108 because of failure to meet the residence requirements of this chapter, fails to have the required residency within the three (3) month period.
  - (e) If the licensee, or Resident Manager, ceases to meet the residence requirements of Section 10-0108.
  - (f) The licensee has made a false statement in his/her application for a license.



- (g) If the licensee fails to notify the City Administrator, in writing, within thirty (30) days of a change in the facts supplied to the City in the application for a license.
  - (h) If the establishment does not pass its fire safety inspection and fails to correct the violations within thirty (30) days of said inspection.
3. The grounds enumerated in Subsection 2 of this section are not deemed to be exclusive, and a license issued under the provisions of this chapter may be suspended or revoked by the Liquor Control Board for other reasons deemed by the Liquor Control Board to be sufficient in order to promote the public health, safety, morals, and general welfare of the people of the City. When a license is suspended or revoked by the Liquor Control Board pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid will be returned to the licensee or to anyone claiming under or through him.

10-0115. ADMINISTRATIVE HEARING/WAIVER. Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this chapter may file with the City Attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the City Attorney sets the matter for hearing not later than the next regular meeting of the Liquor Control Board. A copy of this affidavit and notice of hearing must be mailed to the licensee by registered mail not less than five (5) days before such hearing.

1. The City Attorney will notify the licensee of the reason for the hearing, and specify the time and place of the hearing. The notice, and affidavits filed in support of the suspension or revocation, are served in the same manner as provided by law with the service of the summons in the civil action, or by certified mail.
2. A record of the hearing must be made by the use of an electronic recording device, or otherwise. If after such hearing, the Liquor Control Board determines that sufficient cause exists for the suspension or revocation of the license issued pursuant to the provisions of this chapter, the Liquor Control Board may make its order for immediate suspension or revocation of the license.
3. If after such hearing the Liquor Control Board finds the violations charged in the affidavit have been proved by

the evidence, an order must be served on the licensee revoking or suspending the licensee's license for a period of time. Such action may be appealed to the City Commission, who will hear and decide the appeal. The City Commission may affirm, modify, or deny the appeal by issuing a written decision. The appeal to the City Commission must be commenced by following the procedure set forth in Section 10-0103. The decision of the City Commission may be appealed to the district court by following the appeal procedure set forth in chapter N.D.C.C. § 28-34-01, except that the order revoking or suspending the license is inoperative while the appeal is pending. (N.D.C.C. § 05-02-11).

10-0116. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION REGARDING SALE OF ALCOHOLIC BEVERAGES TO A MINOR IF LICENSEE HAS BEEN CERTIFIED BY AN APPROVED TRAINING PROGRAM. If the violation relates to the sale of alcoholic beverages to minors by a licensee, if licensee has been certified by an approved training program, or by licensee's employees, the following administrative suspensions or revocations are imposed by the Liquor Control Board:

1. The first violation subjects licensee to a written warning and a twelve (12) month Probationary Period.
2. The second violation within the Probationary Period subjects licensee to a two hundred fifty dollar (\$250) administrative fine.
3. The third violation within the Probationary Period subjects licensee to a five hundred dollar (\$500) administrative fine and a three (3)-day suspension of the license.
4. Subsequent violations within the Probationary Period subject licensee to a thirty (30)-day license suspension.
5. If sale of liquor products occurs on licensee's premises during a period of suspension, the license will be suspended for the full Probationary Period.
6. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one (1) offense during any twenty-four (24)-hour day.
7. The Probationary Period is a period of twelve (12) months for a violation that is not within any period of probation already established by a violation of this

section, which twelve (12) months is defined as commencing on the date of the said first offense and extends for twelve (12) consecutive months thereafter. If a subsequent offense occurs within the twelve (12)-month period, the probationary period for such subsequent offense extends for either the same twelve (12) consecutive months from the date of the first offense, as described above, or for a period of six (6) months from the date of the subsequent offense, whichever period would expire later.

10-0117. LOCATION OF LICENSED ALCOHOLIC BEVERAGE ESTABLISHMENTS.

1. An alcoholic beverage license will not be issued for a building, room, or place within one hundred fifty (150) feet of any religious institution, or public or parochial school grounds. The distance to be measured in a straight line from the building in which said school or religious institution is conducted to the principal public entrance of the place to be licensed, except in case of a religious institution where the governing body thereof gives the licensee written permission to locate within the said prescribed limits, and such written permission is approved and filed with the Liquor Control Board. The foregoing does not apply to lodges and clubs as defined herein.
2. A license to sell liquor under the provisions of this chapter does not entitle the holder thereof to carry on such business at more than one (1) location under any one (1) license, and each license will contain the legal description of the place where the holder thereof operates such business.
3. A license to sell alcoholic beverages will not be issued to an Applicant unless part of the lot on which the Licensed Premises is located is within three hundred (300) feet of the right-of-way of Main Avenue East and West, Sheyenne Street, 9<sup>th</sup> Street East and Northeast, 13th Avenue East and West, 32nd Avenue East and West, 52nd Avenue East and West, Beaton Drive East and West, Veteran's Boulevard, Christianson Drive, 21<sup>st</sup> Avenue West, or Bluestem Drive East between 31<sup>st</sup> and 32<sup>nd</sup> Avenues East and between 23<sup>rd</sup> and 26<sup>th</sup> Avenues East, and, if a major portion of the lot does not directly abut one (1) of the designated streets, that it has direct (but not necessarily exclusive) access to one (1) of the designated streets.
4. Any person applying for a license pursuant to this Chapter may request a variance from the Liquor Control

Board for a variance to locate the proposed Licensed Premises outside of the areas set forth in Section 3 of this Section. Any application for a variance pursuant to this Section shall include the following information: (1) the proposed location, (2) the proposed location's proximity to schools, religious institutions, and residential areas, (3) the reason why a variance is sought, and (4) any other information requested by the Liquor Control Board.

5. All licensed establishment location determinations are subject to the discretion of the Liquor Control Board.

10-0118. SALE OF ALCOHOLIC BEVERAGES IN GAS STATIONS, GROCERY STORES, AND CONVENIENCE STORES. Before a retail off sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the area to be licensed for the sale of alcoholic beverages must be clearly set out in a blueprint or diagram. The area licensed for the sale of alcoholic beverages must be separated from the non-licensed portion of the business by a wall designed to allow sales personnel to serve customers and make sales in both the licensed and unlicensed portions of the premises, and that may allow customers in either portion of the premises access to the other portion. Purchases of alcohol must be made in the area licensed for the sale of alcoholic beverages.

10-0119. HOURS OF SALE - PROHIBITION OF SALES ON HOLIDAYS.

1. A person may not dispense or permit the consumption of alcoholic beverages on a Licensed Premises between two o'clock (2:00) a.m. and eleven o'clock (11:00) a.m. on Sundays, between the hours of two o'clock (2:00) a.m. and eight o'clock (8:00) a.m. all other days of the week, or on Christmas Day, or after six o'clock (6:00) p.m. on Christmas Eve. In addition, a person may not provide off sale after two o'clock (2:00) a.m. on Thanksgiving Day or between two o'clock (2:00) a.m. and noon on Sunday.
2. Nothing in this section may be construed as permitting the sale or dispensing of intoxicating liquor when such sales are prohibited by state or federal law.

10-0120. RESTRICTIONS ON SALE, SERVICE, OR DISPENSING OF ALCOHOLIC BEVERAGES.

1. A licensee, his agent or employee, must not sell, serve, or dispense alcoholic beverages to a person under

twenty-one (21) years of age; a licensee, his agent, or employee, must not permit a person under twenty-one (21) years of age to be furnished with an alcoholic beverage upon the Licensed Premises.

2. A licensee, his agent or employee must not sell, serve, or dispense, nor permit to be furnished with an alcoholic beverage upon the Licensed Premises, an obviously intoxicated person or a person under guardianship, after written notice of such guardianship by the legal guardian and during the continuance of such guardianship.
3. A person under twenty-one (21) years of age is not permitted to enter a room of a Licensed Premises in which alcoholic beverages are sold, served, or dispensed. Persons under the age of twenty-one (21) years cannot be employed in any room or rooms on a Licensed Premises which alcoholic beverages are sold on-sale, except as provided in Subsections 4, 5, and 6 of this section.
4. A person under twenty-one (21) years of age may enter and remain in a restaurant where alcoholic beverages are sold until eleven o'clock (11:00) p.m. if the restaurant is separated from the 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, or if the person is employed by the restaurant as a food waiter, food waitress, busboy or busgirl, and is under the supervision of someone twenty-one (21) years of age or older, and does not engage in the sale, dispensing, delivery, or consumption of alcoholic beverages; provided, that a person who is between eighteen (18) and twenty-one (21) years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one (21) or more years of age. For purposes of this section, the term "separated" means that the area in which alcoholic beverages are opened or mixed is separated by a counter top at least forty-two inches (42") tall. Persons under twenty-one (21) years of age may not sit at the counter top directly adjacent to the mixing or opening of alcoholic beverages, unless they are employed by the licensee.
5. A law enforcement officer, or person cooperating with and under the control of such law enforcement officer, under twenty-one (21) years of age may enter premises where

alcoholic beverages are sold, dispensed, or consumed in the performance of an official duty.

6. An establishment where alcoholic beverages are sold may employ persons from eighteen (18) to twenty-one (21) years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one (21) years of age.
7. A person under twenty-one (21) years of age may remain in the area of an event where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 10-0129 hereof.
8. If a licensee owns or operates a Recreational Establishment which is open to persons under twenty-one (21) years of age, the licensee must designate, in its license application, an area to be used solely in its recreational capacity by persons under twenty-one (21) years of age. Such licensee must not permit the sale, service, dispensing, or consumption of alcoholic beverages in such designated area, and such licensee must not permit persons under twenty-one (21) years of age to enter an area not so designated. The designated area must be separated from the rest of the establishment.
9. If a licensee owns or operates a bowling alley 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 premises. The designated area must be separated from the rest of the establishment. Alcoholic beverages purchased within the designated area may be consumed in the bowling alley area and concourse adjacent to the bowling alley. For purposes of this section, the term "separated" means that the area in which alcoholic beverages are opened or mixed is separated by a counter top at least forty-two inches (42") tall. Persons under twenty-one (21) years of age may not sit at the counter top directly adjacent to the mixing or opening of alcoholic beverages, unless they are employed by the licensee.
10. An off-premise liquor or beer licensee must not permit the opening or consumption of alcoholic beverages upon the Licensed Premises; provided, however, the licensee may permit the sampling of alcoholic beverages upon the Licensed Premises without charge to the consumer. For purposes of this section, the term "sampling" means the

distribution of a limited portion of an alcoholic product sold at an establishment, to a group of customers. Full bottles or cans cannot be distributed to customers and no mixing of drinks is allowed.

11. Notwithstanding other ordinances or state statutes to the contrary, a person under twenty-one (21) years of age 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 minor.

10-0121. DELIVERY OF ALCOHOLIC BEVERAGES. A licensed retail alcoholic beverage dealer, the officers, employees, or agents in the City must not deliver or cause to be delivered to a customer outside of the Licensed Premises, alcohol or alcoholic beverages sold under the terms and provisions of this chapter.

10-0122. PURCHASE TO BE FROM LICENSED WHOLESALER. A licensee cannot purchase, have, or possess any alcohol or alcoholic beverages as defined by the laws of the State of North Dakota unless the licensee has purchased the same from a wholesaler duly licensed pursuant to the provisions of the laws of the State of North Dakota.

10-0123. LICENSED PREMISES - REQUIREMENTS.

1. An on-sale retail premise licensed for the sale of alcoholic beverages must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition.
2. A licensee of an off sale liquor license which has a drive-up window for service must provide sufficient lighting so as to remove traffic hazards that might arise as a result of the drive-up window and provide for motor vehicle ingress and egress to and from said facility without impeding, hampering, delaying, or jeopardizing the safe flow of motor vehicle traffic.
3. An on-sale bar retail premise licensed for the sale of alcoholic beverages, which does not have gross sales of food greater than gross sales of alcoholic beverages in the separate dining area, which has premises that extend out-of-doors (hereinafter the "outdoors"), must meet the following requirements:

- a. The outdoors must be contiguous with the rest of the Licensed Premises (hereafter called "indoors").
  - b. The periphery of the outdoors must be enclosed with a wall, fence, or dense plantings maintained at a minimum height of at least forty-two inches (42") so as to clearly define the boundary of the Licensed Premises and to prevent ingress/egress to the outdoor premises.
  - c. Any holder of an on-sale bar retail license may request permission from the City Police Department to temporarily expand its "outdoor" area for temporary outdoor events by submitting Form D to the City. Any request submitted pursuant to this section must include a description of the outdoor area to be extended, the duration of the event, and the security to be provided at the outdoor event.
4. An on-sale retail premise licensed for the sale of alcoholic beverages in which gross sales of food are greater than gross sales of alcoholic beverages in the separate dining area, which has premises that extend outdoors must meet the following requirements:
- a. The outdoors must be contiguous with the rest of the Licensed Premises.
  - b. The periphery of the outdoors must be clearly defined with a wall, fence, or plantings, or combination thereof so as to clearly define the boundary of the Licensed Premises and permit the licensee to monitor patron activity.
  - c. Any holder of an on-sale retail premises license may request permission from the City Police Department to temporarily expand its "outdoor" area for temporary outdoor events by submitting Form D to the City. Any request submitted pursuant to this section must include a description of the outdoor area to be extended, the duration of the event, and the security to be provided at the outdoor event.

10-0124. INSPECTION OF LICENSED PREMISES TO BE ALLOWED. The licensee accepts the license privileged upon the condition, which need not elsewhere be expressed, that any member of the Liquor



Control Board, the City Administrator, the Fire Department Chief, the Chief of Police, officers of the North Dakota Department of Health, or authorized representatives of the aforementioned departments may, at any time, enter upon the premises licensed for the purpose of police inspection, or to determine whether the premises are being conducted in compliance with City ordinances and/or North Dakota law. Failure to comply with this section shall be grounds for immediate suspension or revocation of a liquor license.

10-0125. CABARET LICENSE.

1. DEFINITIONS.

(a) Entertainment means all forms and types of performing or entertaining of patrons on Licensed Premises whether such entertainment is provided by means of live performances or audio and/or video presentations, whether remote or prerecorded; provided, however, that entertainment shall not be deemed to include the use of any regularly broadcast television or radio programs, or coin-operated music machines.

(b) Live performance means a person who for consideration, monetary or otherwise, performs in person on a licensed premise as a singer, musician, dancer, comedian, model, or any other type of entertainer.

2. A licensee under this chapter may not permit entertainment for more than one (1) day a week without first having obtained a cabaret license as hereinafter provided.

3. The license fee for cabaret license will be set by resolution of the City Commission.

4. The license fee is for a period of one (1) year from July 1 to June 30, payable in advance at the time of the issuance of the licensee and thereafter, on or before June 10 of each subsequent year for renewal.

5. The application for cabaret license is made by the licensee on forms provided by the City Administrator's office. The granting of a cabaret license is subject to

the approval of the Liquor Control Board and may be suspended or revoked in conformance with procedures established under Section 10-0114.

6. Live performances are not permitted on a licensed premise which involve the removal of clothing, garments, or other costume. Such prohibition does not include the removal of headwear or footwear; or the incidental removal of a tie, suit coat, sport coat, jacket, sweater, or similar outer garment. Incidental removal for purposes of this section means the removal of a garment or article of clothing which is not a part of the act or performance. This restriction applies to all Licensed Premises whether or not they have a cabaret license.
7. Entertainment on a licensed premise must not contain:
  - (a) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or sexual acts which are prohibited by law.
  - (b) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus, or genitals.
  - (c) The actual or simulated displaying of the pubic hair, anus, vulva or genitals; or the nipples of a female. This restriction applies to Licensed Premises whether or not they have a cabaret license.
8. A licensee has the duty and responsibility to make available for inspection by a member of the West Fargo Police Department an identification card, such as a driver's license, containing a photograph and the age of entertainers or performers on the Licensed Premises. The licensee may not permit a person to make a live performance on the Licensed Premises if the licensee is not able to obtain the required identification from the performer.

10-0126. APPLICATION OF CHAPTER. This chapter applies to territory within the corporate limits of the City and, as permitted by state law, to such outlying contiguous territory without the

corporate limits within which the City may exercise police jurisdiction, as defined by law.

10-0127. PENALTY. Any person, firm or corporation found to be in violation of any of the provisions of this chapter is guilty of a class B misdemeanor, unless the penalty is provided for elsewhere. Provisions of Section 1-0807 also apply. Such a penalty is in addition to the authority of the Liquor Control Board to suspend or revoke a license pursuant to Section 10-0114.

10-0128. SEVERABILITY CLAUSE. If a section, subsection, sentence, or clause of this chapter is held to be unconstitutional, such decision will not affect the validity of the remaining portions of the ordinance.

10-0129. SPECIAL PERMITS FOR SALE OF ALCOHOLIC BEVERAGES.

1. Authorization. The Liquor Control Board has the authority to issue special permits for the sale of alcoholic beverages when authorized to do so by state law as provided in N.D.C.C. § 5-02-01.1, or other state statutes now in effect, or as amended, or enacted in the future which provides authority for cities to issue special permits for the sale of alcoholic beverages.
2. Limitation On Number of Special Permits. The Liquor Control Board shall not issue more than ten (10) special permits to the same Applicant during any calendar year.
3. Limitation On Duration of Special Permits. The Liquor Control Board shall not issue a special event permit for longer than a forty-eight (48) hour period.
4. Licenses and Special Conditions. A person or entity seeking a permit as authorized by paragraph 1 of this section must apply to the Liquor Control Board for such a permit. The City, in granting such a permit, has the authority to put additional conditions on the license over and above the conditions and requirements provided under state law, if the Liquor Control Board deems it desirable.
5. License Fee. The City, by resolution, may provide a schedule for fees for such special permits, such fees may not exceed the maximum permitted by state law.

6. Restrictions on License. A special permit given pursuant to this section is subject to the provisions of Chapter 10-01, except where such provisions are in conflict with the provisions of state law authorizing special permits.
7. Revocation of License. The special licenses authorized by this section may be suspended or revoked by the City for violations of the terms of this section, as well as other provisions of Chapter 10-01. In addition, violation of the provisions of this section also subjects a violator to suspension or revocation of any other licenses for the sale of alcoholic beverages issued by the City pursuant to Section 10-0114.
8. Authorization to Enter. The City may authorize persons under twenty-one (21) years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
  - a. The area where persons under twenty-one (21) years of age may remain must be specifically set forth in the permit;
  - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one (21) years of age may deliver and sell beer, wine, or sparkling wine;
  - c. Subject to Section 10-0120, the area where persons under twenty-one (21) years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent Licensed Premises as shown on the alcoholic beverage license issued pursuant to this chapter; and
  - d. A person under twenty-one (21) years of age within the area described in the permit may not consume, possess, or receive alcoholic beverages.

10-0130. REGISTRATION OF BEER IN KEGS REQUIRED PRIOR TO SALE.

1. A retail alcoholic beverage licensee who sells beer in a container with a liquid capacity greater than six (6)

gallons [22.71 liters] must place the licensee's state retail alcoholic beverage license number on the container and also must mark the container with a "registration" number or letters, or both, unique to that container. The paint or ink used to mark the containers or other manner of marking the containers must be approved by the attorney general.

2. Whenever a retail alcoholic beverage licensee sells beer in a container with a liquid capacity greater than six (6) gallons [22.71 liters], he or she must record the date of sale and the name, address, and driver's license number or number of other official state or military identification card of the person to whom the beer is sold, together with the signature, and registration number, or letters of the container, or both. Such records must be retained for a period of no less than six (6) months and must be kept on the Licensed Premises of the retail establishment where the sales are made.
3. A retail alcoholic beverage licensee must permit law enforcement officers to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.
4. This section does not apply to the sale of beer in a container by a retail alcoholic beverage licensee if the contents of the container are consumed on the Licensed Premises where the sale occurred.

10-0131. RESERVED FOR FUTURE USE.

10-0132. PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES RESTRICTED.

1. A person may not consume alcoholic beverages upon streets, avenues, alleys, sidewalks, stairways, thoroughfares, or other public property in an area zoned commercial within the City, nor in or upon the parking areas of private shopping centers, hotels, motels, licensed liquor establishments, restaurants, clubs, religious institutions, or similar establishments, unless such areas have been designated as part of an on-sale licensed premise, or granted a special event permit under Section 10-0129, or granted a permit by the Liquor Control Board for a special event.

10-0133. BOTTLE CLUBS PROHIBITED. It is unlawful to operate an establishment, other than a motel or hotel, whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises. Such prohibition does not prohibit restaurants from charging a corking fee to a customer who brings his/her own wine to the restaurant.

10-0134. REMOVAL OF WINE FROM RESTAURANT. If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent (30%) of the gross sales of alcoholic beverages that are consumed on the premises may permit an individual purchasing the bottle to remove the bottle when leaving the Licensed Premises if the licensee reseals the bottle with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.

Source: Ord. 1142, Sec. 2 (2019)

10-0135. SALE OF ALCOHOLIC BEVERAGES IN EXCHANGE FOR GOODS PROHIBITED. It is unlawful for a licensee engaged in the retail sale of alcoholic beverages to accept goods, chattels, or other tangible personal property, other than money, checks, legal tender, negotiable instruments, or other evidences of debt, in exchange for alcoholic beverages.

10-0136. POWDERED ALCOHOL PRODUCTS PROHIBITED. It is unlawful to sell, offer to sell, purchase, offer to purchase, possess, or consume a powdered alcohol product, unless permitted by state law.

10-0137. SALE OF WINE AND BEER IN RETAIL BUSINESS ESTABLISHMENTS. Before a retail on-premises wine and beer license may be issued to a person whose retail business to be licensed is located in a building that is primarily a retail business establishment, the following conditions must be met:

1. The area to be licensed for the sale of wine and beer must be clearly set out in a blueprint or diagram of the retail establishment.
2. The area licensed for the sale of wine and beer must be separated from the non-licensed portion of the business by a wall designed to allow sales personnel to serve

customers and make sales in the licensed and unlicensed portions of the premises, and that may allow customers in either portion of the premises access to the other portion.

3. No person under 21 years of age shall be permitted to enter any room of a Licensed Premises in which alcoholic beverages are sold, served, or dispensed, except as permitted under section 10-0120 or N.D.C.C. § 5-02-06.
4. Purchases of wine and beer must be made in the area licensed for the sale of wine and beer.
5. Gross sales of wine and beer may not be greater than thirty percent (30%) of the total gross sales of all other items sold at retail.
6. All holders of a retail on-premises wine and beer license in a retail establishment will file, with the application for license renewal, a statement certifying gross retail sales and wine and beer sales for the previous calendar year. The Liquor Control Board may require certification of any statement by a certified public accountant, retained by the licensee.
7. The retail portion of the establishment must be operational and open during regular business hours. The retail establishment must be open for business for wine and beer to be sold, dispensed, or consumed.
8. The maximum number of seats for the Licensed Premises may not exceed twenty-five (25) individuals.
9. The square footage of the Licensed Premises shall not exceed twenty-five percent (25%) of the total square footage of the retail establishment.

CHAPTER 10-02

GAMBLING

SECTIONS:

- 10-0201. Games of Chance.
- 10-0202. Application for Local Gambling License or Site Authorization.
- 10-0203. Limitation on Site Authorizations.
- 10-0204. Limitation on Hours and Participation of Games of Chance.
- 10-0205. Availability of Records.

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10-0201. GAMES OF CHANCE. Notwithstanding any other provision of the ordinances of the City of West Fargo to the contrary, it shall not be unlawful to play or conduct games of chance pursuant to Chapter 53-06.1 of the North Dakota Century Code, as that chapter may be amended from time to time, and any implementing rules and regulations of the Attorney General and guidelines established by the City of West Fargo by ordinance or resolution.

10-0202. APPLICATION FOR LOCAL GAMBLING LICENSE OR SITE AUTHORIZATION. No person or entity shall conduct a game of chance as defined in Section 10-0201 without first having obtained a license or site approval as required by state law. Applications for local gaming licenses, or applications for site approval shall be made to the City Auditor of the City of West Fargo. No site authorization nor gambling license shall be granted by the City of West Fargo unless the applicant follows the procedures and pays the fees as set by the City by resolution, which resolution shall be on file with the City Auditor.

10-0203. LIMITATION ON SITE AUTHORIZATIONS. No site authorization for pull tabs, jars, punch boards, twenty-one, or sports pools shall be granted by the City except to premises having an on-sale liquor license from the City of West Fargo. This section shall not repeal site authorizations in effect on the date this ordinance is adopted, nor shall it apply to renewals of site authorizations in effect on the date this ordinance is adopted. Provided, however, that the renewal of site authorizations which would otherwise be prohibited by this section may not expand the type of gambling to be conducted at the site, nor the maximum



number of black jack tables to be used at the site over the types of gambling and number of tables permitted by the site authorization in effect on the date of the adoption of this ordinance.

10-0204. LIMITATION ON HOURS AND PARTICIPATION OF GAMES OF CHANCE. A person under 21 years of age may not participate in the games of pull tabs, jars, punch boards, twenty-one, or sports pools. No games of chance shall be conducted in licensed liquor premises, or at premises for which site authorizations have been granted by the City of West Fargo other than during the hours when alcoholic beverages may be dispensed in accordance with the applicable regulations of the State of North Dakota and the City of West Fargo.

10-0205. AVAILABILITY OF RECORDS. The person or entity obtaining the site authorization shall make available to the City and/or the North Dakota Attorney General's office for inspection and audit any and all records relating to the expenses, proceeds, and distribution of the proceeds from the authorized site. Failure to do so upon reasonable notice shall be grounds for suspension or revocation of the site authorization.

CHAPTER 10-03

[Source: Ord. 693, Sec. 1 (2003)]

PAWNBROKERS

SECTIONS:

- 10-0301 Purpose.
- 10-0302 Definitions.
- 10-0303 Fixed premises and license required.
- 10-0304 License and renewal.
- 10-0305 Bond.
- 10-0306 Fee for license.
- 10-0307 Investigation fee.
- 10-0308 Effective period, renewal and suspension or revocation.
- 10-0309 Acts prohibited by minors.
- 10-0310 Required records.
- 10-0311 Daily reports to police.
- 10-0312 Receipt required.
- 10-0313 Redemption period.
- 10-0314 Holding period.
- 10-0315 Articles available for inspection.
- 10-0316 Police order to hold property.
- 10-0317 Label required.
- 10-0318 Motor vehicle title pawn transactions; special provisions.
- 10-0319 Prohibited acts.
- 10-0320 Reporting of sales.
- 10-0321 Penalty.

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10-0301. PURPOSE. The City Commission recognizes the need to regulate pawnbrokers to provide the ability to identify stolen property presented to pawn shops and to identify those responsible for committing property crimes. The commission also determines the need to provide a basic level of consumer protection through a comprehensive pawnbroker ordinance.

To help the police department better regulate future pawn businesses, decrease and stabilize regulatory costs, and improve identification of criminal activities through the timely collection and sharing of transaction information, this chapter also implements and establishes the required use of the LEADS system or, at the discretion of the Chief of Police, the Automated Pawn System.

10-0302. DEFINITIONS.

1. "Licensee" shall mean all pawnbrokers required to be licensed by this chapter.

2. "Pawnbroker" shall mean any person who:

- A. Loans money on deposit or pledge of personal property, or other valuable thing;
- B. Deals in the purchasing of personal property or other valuable thing, on condition of selling the same back again at a stipulated price; or
- C. Loans money, secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged.
- D. To the extent that a pawnbroker's business includes buying personal property previously used, rented or leased, or selling it on consignment, the provisions of this chapter shall be applicable.

3. "Person" shall mean any individual, partnership, corporation or association or any other legal entity, or any agent or employee thereof.

4. "Regulated transaction" shall include all purchases, loans, pawns, trades or consignments made by a pawnbroker.

5. "Reportable transaction" shall include every transaction conducted by a pawnbroker in which merchandise is received through a pawn, purchase, consignment or trade, or for which a unique transaction number or identifier is generated by their point-of-sale software, is reportable except:

- A. The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker must maintain a record of such purchase or consignment which describes each item.
- B. Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

10-0303. FIXED PREMISES AND LICENSE REQUIRED. No person shall engage in business as a pawnbroker unless said person has a fixed premises where said business is conducted, either on a continuing basis or from time to time, and unless said person has first obtained a license to engage in that business at that premises. A separate license is required for each place of business. The City may issue more than one license to a person if the person complies with the requirements of the chapter. A license issued under this chapter shall be prominently displayed at the licensed premises during hours when such premises is open for business. If, during the effective period of a license issued under this chapter a licensee changes the location of the licensed premises within the City, such licensee shall inform the City Auditor and the Chief of Police of such change of location and shall have the new premises to be licensed noted on the license. There shall be no additional fee charged for changing the location of the licensed premises. The operation of a business as a pawnbroker without a license as required by this section shall be a class B misdemeanor.

10-0304. LICENSE AND RENEWAL.

1. Any person desiring to obtain, renew or transfer a license shall make and file an application for such license with the commission. The application shall be made on a form approved by the Chief of Police and made available through the office of the City Auditor. In addition to the information required on the application form, the commission, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

2. The holder of a license issued pursuant to the provisions of this ordinance who desires to renew said license for another license year, shall not be required to make and file a new application under this section but shall make and file a renewal application under the provisions of this section which shall require the payment of the renewal fee and shall include an affidavit indicating the current name and address of the licensee, and if said licensee is a corporation, the names and addresses of the resident manager, all corporate officers, and all shareholders holding more than 5% of the outstanding stock of the corporation, and such other information as the City may require. The renewal application and affidavit shall be on a form to be prescribed by the Chief of Police made available through the City Auditor's office.

3. The application for a new license or renewal of a license shall require that the applicant agrees to provide the police department with the records required by Section 10-0311 in a

format, including electronically transmitted digital data, as required by the police department.

4. The Chief of Police, or his designee, shall investigate the facts stated in the application filed with the Commission and shall report the results of the investigation to the Commission prior to the hearing on said application. Said investigation and report shall include the character, reputation, fitness of the applicant to hold a license, any other pertinent information and the recommendation of the Chief of Police, or his designee, as to whether or not such license should be granted. In addition, the Commission may request and consider such other recommendations and reports of other city officials.

5. Any pawnbroker as defined under Section 10-0302.2.D. shall not be required to purchase a separate license as a second-hand or precious metals dealer.

10-0305. BOND. Before a license will be issued or renewed, every applicant must submit a five thousand dollar (\$5,000.00) bond on the forms provided by the Auditor's office, with sufficient sureties to be approved by the Auditor's office. All bonds must be conditioned that the principal will observe all laws in relation to pawnbrokers and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's hand through the principal's business under this chapter, or in lieu thereof, will pay the reasonable value in money to the person. This language shall not be construed to apply to items the principal has legally disposed of under the requirements of this ordinance. The bond shall contain a provision that no bond may be canceled except upon thirty (30) days written notice to the Chief of Police.

Alternately, a licensee may provide proof to the Auditor's office of a separate dedicated account with a balance of \$5,000.

10-0306. FEE FOR LICENSE AND APPLICATION FEE. The fee for issuance of a license to engage in business as a pawnbroker shall be in such amount as shall be established by resolution of the Board of City Commissioners.

10-0307. INVESTIGATION FEE. The fee for the investigation of an initial application or renewal for a license to engage in business as a pawnbroker shall be paid to the City Auditor at the time an application is submitted. The amount of the investigation fee shall be established by resolution of the Board of City Commissioners.

10-0308. EFFECTIVE PERIOD, DENIAL, RENEWAL AND SUSPENSION OR REVOCATION. A license issued under this chapter shall be valid and effective until December 31 of the year for which the license applies. Every license issued under the provisions of this chapter shall be issued upon the understanding that such license may be revoked or suspended by the Board of City Commissioners at any time for good cause, for failure to comply with any provision of this chapter, or by any fraud, misrepresentation bribery, or false statements in the application, investigation, securing or renewing a license, or the conviction of a license holder of a violation of this chapter or any criminal conviction related to theft of property or any felony conviction. Notice of such revocation or suspension must be sent to the licensee by certified mail addressed to the licensee at the address set forth in the application. The Chief of Police shall be notified of the revocation or suspension of any license. The licensee may appeal a revocation or suspension to the Board of City Commissioners and request a public hearing on such revocation or suspension. If a person or entity has a pawnbroker's license in effect at the adoption of this ordinance, and is operating a business under the license, the current license shall stay in effect, but the licensee must comply with all the terms of this ordinance. If an entity has a license but is not operating a business under that license at the adoption of this ordinance, the license holder must reapply for a license, but the prior fee paid for the old license shall be applied to the new license fee. Upon expiration of a license already in effect at the time of the adoption of this ordinance, an application for a new license must be made, not a renewal.

10-0309. ACTS PROHIBITED BY MINORS. No person under the age of 18 years shall pawn, sell or otherwise initiate a reportable transaction with any person licensed to do business under this chapter nor may any licensee receive be involved in any reportable transaction from a person under the age of 18 years. No person under the age of 18 years shall represent to any person licensed under the provisions of this chapter, that he is 18 years of age or over.

10-0310. REQUIRED RECORDS. At the time of any reportable transaction other than renewals, extensions or redemptions, every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the Chief of Police. Such record shall specifically include:

1. A complete and accurate description of each item including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item.

2. The purchase price, amount of money loaned upon, or pledged.

3. The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

4. Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.

5. Full name, current residence address and phone number, date of birth and accurate description of the person from whom the item of the property was received including sex, height, weight, race, color of eyes and color of hair.

6. The identification number and state of issue of a current state photo driver's license or state photo identification card.

7. The signature of the person identified in the transaction.

8. Renewals, extensions and redemptions. For renewals, extensions and redemptions, the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction.

9. Inspection of records. Transaction records must at all reasonable times be open to inspection by the police department during the licensee's business hours. Data entries shall be retained for at least three (3) years from the date of transaction.

10-0311. DAILY REPORTS TO POLICE. Licensees must submit every reportable transaction to the police department daily in the following manner:

Licensees must provide to the police department all information required in Section 10-0310 (1) through (7) and other required information, by transferring it from their computer to the LEADS system or, in the discretion of the Chief of Police, the Automated Pawn System, or both. If the Chief of Police elects to require use of the Automated Pawn System, the Chief of Police must give license holders 90 days' notice of such requirement. All required records must be transmitted completely and accurately each day in accordance with the standards and procedures established by the issuing authority. If a licensee is unable to successfully transfer the required information to LEADS, or the Automated Pawn System, if

applicable, the licensee must provide the police department printed copies of all reportable transactions, by 12:00 the next business day. The licensee must make all reasonable efforts to correct the problem as soon as possible.

Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day since the problem existed.

10-0312. RECEIPT REQUIRED. Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three (3) years. The receipt must include the information identified in Section 10-0310 (1) through (7) RECORDS REQUIRED.

10-0313. REDEMPTION PERIOD. Any person pledging, pawning or depositing an item for security must have a minimum of sixty (60) days from the date of that transaction to redeem the item before it may be forfeited and sold. During the sixty (60) day period, items may not be removed from the licensed location.

10-0314. HOLDING PERIOD. Any item purchased by a licensee and defined in Section 10-0302.5 must not be sold or otherwise transferred for thirty (30) days from the date of the transaction.

10-0315. ARTICLES AVAILABLE FOR INSPECTION. All property received by a pawnbroker in a reportable transaction shall be made available for inspection by City police officers during reasonable business hours.

10-0316. POLICE ORDER TO HOLD PROPERTY.

1. Investigative hold. Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, whichever comes first.

2. Order to hold. Whenever the Chief of Police, or the Chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold shall expire ninety (90) days from the date it is



placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.

3. Order to confiscate. If an item is identified as stolen or evidence in a criminal case, the Chief or Chief's designee may:

- A. Physically confiscate and remove it from the shop, pursuant to a written order from the Chief or the Chief's designee; or
- B. Place the item on hold or extend the hold as provided in section b, and leave it in the shop.

When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

When an order to hold/confiscate is no longer necessary, the Chief of Police, or Chief's designee shall so notify the licensee.

10-0317. LABEL REQUIRED. Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the police department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

10-0318. MOTOR VEHICLE TITLE PAWN TRANSACTIONS; SPECIAL PROVISIONS. In addition to the other requirements of this chapter, a pawnbroker who holds a title to a motor vehicle (to the extent permissible under North Dakota state law) as part of a pawn transaction shall:

1. Be licensed as a used motor vehicle dealer under the North Dakota Century Code and post such license on the pawnshop premises.

2. Verify that there are no liens or encumbrances against the motor vehicle with the department of motor vehicles.

10-0319. PROHIBITED ACTS:

1. No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a

valid State of North Dakota identification card, or current valid photo driver's license or identification card issued by the state or providence of residency of the person from whom the item was received.

2. No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.

3. No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own; nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another has a security interest; with any licensee.

4. No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification, or the identification of another; to any licensee.

10-0320. REPORTING OF SALES. In addition to the reporting requirements set out elsewhere in this Chapter, the licensee, on all sales by licensee to a third party of items over \$500, must record the name, address and telephone number of the buyer and retain such record for a period of 24 months.

10-0321. PENALTY. Any person, firm or corporation violating the terms of this chapter, except as provided in Section 10-0303, shall upon conviction thereof, be guilty of an infraction, and punished by a fine not to exceed \$750 or such other amount as permitted under state law, the court to have power to suspend said sentence and to revoke the suspension thereof.

Source: Ord. 961, Sec. 3 (2013)

CHAPTER 10-03A

[Source: Ord. 692, Sec. 1 (2003)]

SECONDHAND GOODS DEALERS

Section:

- 10-03A01 Purpose.
- 10-03A02 Definitions.
- 10-03A03 Fixed premises and license required.
- 10-03A04 License and renewal.
- 10-03A05 Bond.
- 10-03A06 Fee for license.
- 10-03A07 Investigation fee.
- 10-03A08 Effective period, renewal and suspension or revocation.
- 10-03A09 Acts prohibited by minors.
- 10-03A10 Required records.
- 10-03A11 Daily reports to police.
- 10-03A12 Receipt required.
- 10-03A13 Holding period.
- 10-03A14 Articles available for inspection.
- 10-03A15 Police order to hold property.
- 10-03A16 Label required.
- 10-03A17 Prohibited acts.
- 10-03A18 RESERVED FOR FUTURE USE.

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10-03A01. PURPOSE. The city commission recognizes the need to regulate secondhand dealers to provide the ability to identify stolen property that may be presented to secondhand shops and to identify those responsible for committing property crimes. The commission also determines the need to provide a basic level of consumer protection through a comprehensive ordinance.

To help the police department better regulate secondhand businesses, decrease and stabilize regulatory costs, and improve identification of criminal activities through the timely collection and sharing of transaction information, this chapter also implements and establishes the required use of the LEADS system or, at the discretion of the Chief of Police, the Automated Pawn System.

10-03A02. DEFINITIONS. (Source: Ord. 1035, Sec. 1 (2015))

1. Licensee" shall mean all secondhand dealers required to be licensed by this chapter.

2. "Secondhand dealer" shall mean:

A. Any person, firm, or corporation other than a pawnbroker or dealer in precious metals and gems who purchase, collects, trades, sells, or deals in secondhand goods including, but not limited to: business machines, tape recorders and tapes, compact discs, radio transmitters and receivers, computer hardware, computer software, electronic games and their components, musical instruments, cameras and accessories, power tools, sporting goods, stereos, stereo equipment, tools and tool boxes, television sets, weapons, bicycles, radios microwave ovens, household furniture, appliances and jewelry.

B. Exemptions: any person --

- (1) dealing exclusively in the resale of new and/or used automobiles;
- (2) involved in the casual and occasional sales of used household goods by the owner to the public, if the seller is not engaged for profit in the business of selling goods of that nature; this category includes those sales commonly referred to as "garage sales";
- (3) operating a junkyard for wrecked automobiles;
- (4) conducting sales of secondhand goods at stores or events sponsored by nonprofit corporations or associations or fraternal or religious organizations;
- (5) dealing exclusively in the resale of secondhand books or magazines;
- (6) conducting the auction of goods by a licensed auctioneer;
- (7) operating a bona fide antique, used furniture or used clothing store.

3. "Person" shall mean any individual, partnership, corporation or association or any other legal entity, or any agent or employee thereof.

4. "Regulated transaction" shall include all purchases, trades or consignments made by a secondhand dealer.

5. "Reportable transaction" - all regulated transactions except:

- A. The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the secondhand dealer must maintain a record of such purchase or consignment which describes each item.

10-03A03. FIXED PREMISES AND LICENSE REQUIRED. No person shall engage in business as a secondhand dealer unless said person has a fixed premises where said business is conducted, either on a continuing basis or from time to time, and unless said person has first obtained a license to engage in that business at that premises. A separate license is required for each place of business. The city may issue more than one license to a person if the person complies with the requirements of the chapter. A license issued under this chapter shall be prominently displayed at the licensed premises during hours when such premises is open for business. If, during the effective period of a license issued under this chapter, a licensee changes the location of the licensed premises within the city, such licensee shall inform the City Auditor and the Chief of Police of such change of location and shall have the new premises to be licensed noted on the license. There shall be no additional fee charged for changing the location of the licensed premises. The operation of a business as a secondhand dealer without a license as required by this section shall be a class B misdemeanor.

10-03A04. LICENSE AND RENEWAL. Any person desiring to obtain, renew or transfer a license shall make and file an application for such license with the commission. The application shall be made on a form approved by the Chief of Police and made available through the office of the City Auditor. In addition to the information required on the application form, the commission, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

The holder of an existing license issued pursuant to the provisions of this chapter who desires to renew said license for another license year, shall not be required to make and file a new application under this section but shall make and file a renewal application under the provisions of this section which shall require the payment of the renewal fee and shall include an affidavit indicating the current name and address of the licensee, and if said licensee is a corporation, the names and addresses of

the resident manager, all corporate officers, and all shareholders holding more than 5% of the outstanding stock of the corporation, and such other information as the city may require. The renewal application and affidavit shall be on a form to be prescribed by the Chief of Police made available through the City Auditor's office.

The application for a new license or renewal of a license shall require that the applicant agrees to provide the police department with the records required by §10-0310A in a format, including electronically transmitted digital data, as required by the police department.

The Chief of Police shall investigate the facts stated in the application filed with the commission and shall report the results of the investigation to the commission prior to the hearing on said application. Said investigation and report shall include the character, reputation, fitness of the applicant to hold a license, any other pertinent information and the recommendation of the Chief of Police as to whether or not such license should be granted. In addition, the commission may request and consider such other recommendations and reports of other city officials.

10-03A05. BOND. Before a license will be issued or renewed, every applicant must submit a five thousand dollar (\$5,000.00) bond on the forms provided by the Auditor's office, with sufficient sureties to be approved by the Auditor's office. All bonds must be conditioned that the principal will observe all laws in relation to secondhand dealers and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's hand through the principal's business under this chapter, or in lieu thereof, will pay the reasonable value in money to the person. This language shall not be construed to apply to items the principal has legally disposed of under the requirements of the ordinance. The bond shall contain a provision that no bond may be canceled except upon thirty (30) days written notice to the Chief of Police.

Alternately, a licensee may provide proof to the Auditor's office of a separate dedicated account with a balance of \$5,000.

10-03A06. FEE FOR LICENSE AND APPLICATION FEE. The fee for issuance of a license to engage in business as a secondhand dealer shall be in such amount as shall be established by resolution of the Board of City Commissioners.

10-03A07. INVESTIGATION FEE. The fee for the investigation of an initial application or renewal for a license to engage in

business as a secondhand dealer shall be paid to the City Auditor at the time an application is submitted. The amount of the investigation fee shall be established by resolution of the Board of City Commissioners.

10-03A08. EFFECTIVE PERIOD, DENIAL, RENEWAL AND SUSPENSION OR REVOCATION. A license issued under this chapter shall be valid and effective until December 31 of the year for which the license applies. Every license issued under the provisions of this chapter shall be issued upon the understanding that such license may be revoked or suspended by the Board of City Commissioners at any time for good cause, for failure to comply with any provision of this chapter, or by any fraud, misrepresentation bribery, or false statements in the application, investigation, securing or renewing a license, or the conviction of a license holder of a violation of this chapter or any criminal conviction related to theft of property regulations or any felony conviction. Notice of such revocation or suspension must be sent to the licensee by certified mail addressed to the licensee at the address set forth in the application. The Chief of Police shall be notified of the revocation or suspension of any license. The licensee may appeal a revocation or suspension to the Board of City Commissioners and request a public hearing on such revocation or suspension.

10-03A09. ACTS PROHIBITED BY MINORS. No person under the age of 18 years shall sell or otherwise initiate a reportable transaction with any person licensed to do business under this chapter nor may any licensee participate in a reportable transaction with a person under the age of 18 years. No person under the age of 18 years shall represent to any person licensed under the provisions of this chapter that he is 18 years of age or over.

10-03A10. REQUIRED RECORDS. At the time of any reportable transaction every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the Chief of Police. Such record shall specifically include:

1. A complete and accurate description of each item including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item.
2. The purchase price.
3. Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric

transaction identifier that distinguishes it from all other transactions in the licensee's records.

4. Full name, current residence address and phone number, date of birth and accurate description of the person from whom the item of the property was received including sex, height, weight, race, color of eyes and color of hair.
5. The identification number and state of issue of a current state photo driver's license or state identification.
6. The signature of the person identified in the transaction.
7. Inspection of records. Transaction records must at all reasonable times be open to inspection by the police department during the licensee's business hours. Data entries shall be retained for at least three (3) years from the date of transaction.

10-03A11. DAILY REPORTS TO POLICE. Licensees must submit every reportable transaction to the police department daily in the following manner:

1. Licensees must provide to the police department all information required in §10-03A10 (A) through (E) and other required information, by transferring it from their computer to the LEADS system or, at the discretion of the Chief of Police, the Automated Pawn System. All required records must be transmitted completely and accurately each day in accordance with the standards and procedures established by the issuing authority. If a licensee is unable to successfully transfer the required information to LEADS or, at the discretion of the Chief of Police, the Automated Pawn System, the licensee must provide the police department printed copies of all reportable transactions by 12:00 the next business day. The licensee must make all reasonable efforts to correct the problem as soon as possible.
2. Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day since the problem existed.

10-03A12. RECEIPT REQUIRED. Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three (3) years. The



receipt must include the information (A) through (F) identified in §10-03A10.

10-03A13. HOLDING PERIOD. Any item purchased by a licensee and defined in §10-03A02 (5) must not be sold or otherwise transferred for fourteen (14) days from the date of the transaction.

10-03A14. ARTICLES AVAILABLE FOR INSPECTION. All personal property, other valuable things, precious metals or precious gems purchased by a secondhand dealer in a reportable transaction shall be made available for inspection by city police officers during reasonable business hours.

10-03A15. POLICE ORDER TO HOLD PROPERTY.

1. Investigative hold. Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, whichever comes first.
2. Order to hold. Whenever the Chief of Police, or the Chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold shall expire ninety (90) days from the date it is placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.
3. Order to confiscate. If an item is identified as stolen or evidence in a criminal case, the Chief or Chief's designee may:
  - A. Physically confiscate and remove it from the shop, pursuant to a written order from the Chief or the Chief's designee, or
  - B. Place the item on hold or extend the hold as provided in subsection B above, and leave it in the shop.

When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

When an order to hold/confiscate is no longer necessary, the Chief of Police, or Chief's designee shall so notify the licensee.

10-03A16. LABEL REQUIRED. Licensees must attach a label to every item at the time it is purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records.

10-03A17. PROHIBITED ACTS:

1. No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a valid State of North Dakota identification card, or current valid photo driver's license or identification card issued by the state or providence of residency of the person from whom the item was received.
2. No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.
3. No person may sell or consign any article of property not their own; nor shall any person sell or consign the property of another, whether with permission or without; nor shall any person sell or consign any article of property in which another has a security interest; with any licensee.
4. No person seeking to sell or consign any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification, or the identification of another; to any licensee.

10-03A18. RESERVED FOR FUTURE USE.

(Repealed by Ord. 961, Sec. 11 (2013))

CHAPTER 10-04

RESERVED FOR FUTURE USE

Sunday Opening - Food Stores - Repealed by Ord. 1142, Sec. 21, 2019

CHAPTER 10-05

CITY LODGING TAX

(Source: Ord. 763, Sec. 1, 2005; Ord. 1121, Sec. 1, 2019)

SECTIONS:

- 10-0501. Definitions
- 10-0502. Tax on Gross Receipts
- 10-0503. Collection of Tax
- 10-0504. Tax Receipts - Utilization
- 10-0505. Budget
- 10-0507. Failure to Comply - Penalty

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10-0501. DEFINITIONS.

1. "Gross receipts" shall mean receipts of retailers for the leasing or renting, for periods of less than 30 consecutive calendar days or one month, of hotel, motel, or tourist court accommodations within the corporate limits of the City of West Fargo.
2. "Retailer" shall mean any person, firm or corporation in the business of leasing or renting hotel, motel or tourist court accommodations for periods of 30 or less consecutive calendar days or one month.
3. "Visitor's Promotion Fund" shall be comprised of the funds created by collection of the 2% tax pursuant to Section 40-57.3-01 of the North Dakota Century Code, less any amount which may be retained by the state for the collection of such tax.
4. "Visitor's Promotion Capital Construction Fund" shall be comprised of the funds created by collection of the 1% tax pursuant to Section 40-57.3-01.1 of the North Dakota Century Code, less any amount which may be retained by the state for the collection of such tax.

10-0502. TAX ON GROSS RECEIPTS. A tax of 2% pursuant to Section 40-57.3-01 of the North Dakota Century Code is hereby imposed upon gross receipts as defined herein. A tax of 1% pursuant to Section 40-57.3-01.1 of the North Dakota Century Code is hereby imposed upon gross receipts as defined herein. Said tax shall be in addition to the state sales tax on retail accommodations provided in Chapter 57-39.2 of the North Dakota Century Code.

10-0503. COLLECTION OF TAX. The tax hereby imposed shall be due and payable at the same time the retailer is required to file

a return under Chapter 57-39.2 of the North Dakota Century Code, and shall be collected and administered by the City of West Fargo under its Home Rule Charter in accordance with the provisions of state law. The City may retain up to 3% of the total amount collected for administrative costs.

10-0504. TAX RECEIPTS - UTILIZATION.

1. Visitor's Promotion Fund. There is hereby created a fund to be known as the Visitor's Promotion Fund, and all taxes collected pursuant to the 2% tax pursuant to Section 40-57.3-01 of the North Dakota Century Code, less costs of administration as provided herein, shall be placed in this fund and utilized for the purpose to promote, encourage and attract visitors to come to the City of West Fargo and use the travel and tourism facilities within the City.
2. Visitor's Promotion Capital Construction Fund. There is hereby created a fund to be known as the Visitor's Promotion Capital Construction Fund, and all taxes collected pursuant to the 1% tax pursuant to Section 40-57.3-01.1 of the North Dakota Century Code, less costs of administration as provided herein, shall be placed in this fund and utilized for the purpose of tourism or the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion.
3. Fargo-Moorhead Convention and Visitors Bureau. After the effective date of this ordinance, all new gross receipts shall be collected and administered by the Fargo-Moorhead Convention and Visitors Bureau pursuant to an agreement with the City of West Fargo. The members of the Board of Directors of the Fargo-Moorhead Convention and Visitors Bureau shall receive no compensation payable from the Visitor's Promotion Fund, or Visitor's Promotion Capital Construction Fund, except reimbursement for necessary expenses.

10-0505. BUDGET. The operating budget for the Fargo-Moorhead Convention and Visitors Bureau will be established annually by the board of directors of the Fargo-Moorhead Convention and Visitors Bureau and thereafter submitted to the board of city commissioners for its approval.

10-0506. FAILURE TO COMPLY - PENALTY. The penalties and liabilities provided in Sections 57-39.2-18 and 57-39.2-18.1 of the North Dakota Century Code shall apply to the filing of returns and the administration of the taxes imposed under this ordinance.

CHAPTER 10-06

TOBACCO PRODUCT LICENSING

Source: Ord. 997, Sec. 1 (2014)

SECTIONS:

- 10-0601. Definitions.
- 10-0602. License Required.
- 10-0603. Prohibited Sales.
- 10-0604. Administrative Remedies.

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10-0601. DEFINITIONS. (Source: Ord. 1041, Sec. 4 (2015))

1. E-CIGARETTE, ELECTRONIC CIGARETTE, OR ELECTRONIC SMOKING DEVICE. Any electronic oral device, such as one composed of a heating element, battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe, or under any other product, name or descriptor. E-cigarette also includes any component part of such a product whether or not sold separately. E-cigarette does not include any product approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.
2. INDIVIDUALLY-PACKAGED TOBACCO PRODUCTS. Any package containing only one individually-wrapped tobacco product. This definition includes, but is not limited to, single packs of cigarettes, single bags of tobacco product for rolling, and individual cans of tobacco product for chewing or sniffing.
3. PROBATIONARY PERIOD. A period of 12 months for a violation which is not within any period of probation already established by a violation of any of this section, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period, the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of 6 months from the date of the subsequent offense, whichever period would expire later. For purposes of this section, an offense is deemed to have occurred when the offense is committed, and not the date of judgment or conviction.

4. SELF-SERVICE MERCHANDISING. Any open display of tobacco products to which the public has access without the intervention of an employee of the retail establishment.
5. TOBACCO PRODUCTS. Any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, e-cigarette, electronic cigarette, or an electronic smoking device. Tobacco product also includes e-cigarettes and other electronic smoking devices, pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
6. VENDING MACHINE. Any mechanical, electric, or electronic device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products.
7. TOBACCO USE. The use of any Tobacco Product in any form. Tobacco Use includes, but is not limited to, smoking, heating, inhaling, chewing, absorbing, dissolving or ingesting any Tobacco Product.
8. SMOKING. Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe or hookah, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette.

10-0602. LICENSE REQUIRED. No person or entity shall directly or indirectly, or by means of any device, keep for retail sale, sell at retail, or otherwise dispense any tobacco products within the City of West Fargo without a City of West Fargo tobacco product dealer's license. Any person or entity that has a state license for the sale of tobacco products issued pursuant to Chapter 57-36 of the North Dakota Century Code shall automatically be deemed to have a license issued by the City of West Fargo for the sale of tobacco products without the need for an application to the City or any action of the City of West Fargo. As long as the person or entity has a state license issued under Chapter 57-36 for the sale of tobacco products, they shall be deemed to have a license from the City of West Fargo for the sale of tobacco products, unless and until the City license is suspended or revoked pursuant to this chapter. There shall be no fee for the municipal license.

10-0603. PROHIBITED SALES.

1. No person or entity shall sell, offer for sale, give away or deliver any tobacco product to any person under the age of eighteen (18) years.
2. No person shall sell or dispense any tobacco product through the use of a vending machine except as follows:
  - a. A vending machine may be used to dispense tobacco products in an area within a factory, business, office or other place not open to the general public or to which persons under eighteen (18) years of age are not generally permitted access.
  - b. A vending machine may be used to dispense tobacco products on the premises of a licensed on-sale or off-sale intoxicating liquor establishment, including club licenses. Provided, however, that if an on-sale licensed premises is also a restaurant, a vending machine located in a portion of the premises in which minors are allowed must be operable only by activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of tokens provided by an employee of the establishment before each sale.
3. No person shall sell or dispense any tobacco product through the use of self-service merchandising methods or displays.

10-0604. ADMINISTRATIVE REMEDIES.

1. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION. Any violation of the City's regulations relating to the issuance of a tobacco products' license or of any conditions/restrictions attached to the issuance of such license shall be cause for the imposition of an administrative fine, license suspension, and/or license revocation.

If the violation relates to the sale of tobacco products to minors by a licensee or licensee's employees, the following administrative suspensions, or revocations shall be imposed:

- a. The first such violation shall subject licensee to a written warning.
- b. The second violation within the probationary period shall subject licensee to a 3-day suspension of the license.
- c. The third violation within the probationary period shall subject licensee to a 10-day suspension of the license.



- d. Subsequent violations within the probationary period shall subject licensee to a 30-day license suspension.
  - e. If any sale of tobacco products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full probationary period.
  - f. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one offense during any 24-hour day.
2. ADMINISTRATIVE HEARING/WAIVER. Upon receipt of information indicating that a license violation has occurred, the Police Chief or his designee shall send a license violation notice to licensee by certified mail. The license violation notice shall indicate the nature of the violation and whether such violation will result in an administrative fine, license suspension, or license revocation.
- If the proposed disposition includes a license suspension, revocation, or fine, the notice shall also indicate that licensee has the option of requesting a hearing before the City Commission prior to the license suspension, revocation, or imposition of fine, or waiving such hearing and accepting the disposition described in the license violation notice. The licensee shall file a written request for a hearing within ten (10) days of the date specified in the license violation notice, or licensee shall be deemed to have waived its right to a hearing. Upon receipt of a hearing request, the Police Chief or his designee shall schedule a hearing before the City Commission at the earliest opportunity and shall send a hearing notice to licensee by certified mail.
3. CLERK PENALTIES. Any employee of a license holder who is in violation of the restriction attached to a tobacco product license shall be subject to an administrative fine of Fifty and no/100 Dollars (\$50.00).

CHAPTER 10-07

Repealed by Ordinance No. 1072, Sec. 1 (2017)

**RESERVED FOR FUTURE USE.**

CHAPTER 10-08

Repealed by Ordinance No. 1103, Sec. 1 (2017)

**RESERVED FOR FUTURE USE**

(Source: Ord. 696, Sec. 1 [2003])

CHAPTER 10-09

(Source: Ord. 696, Sec. 1 [2003])

DEAD ANIMALS, BONES, CARCASSES, FURS, AND HIDES

Section:

- 10-0901. Dead animals, bones, carcasses not to be brought in or stored in City--Exception.
- 10-0902. Requirements of warehouse or storage room where carcasses kept.
- 10-0903. Trucks containing carcasses--Standing on streets over four hours prohibited.
- 10-0904. Trucks containing carcasses--Unloading restrictions.
- 10-0905. Skinning or storing in authorized warehouse required.
- 10-0906. Commercial enterprises to abide by regulations.
- 10-0907. Time during which dead animals and carcasses may be kept.
- 10-0908. Storage and skinning not permitted when prohibited by zoning ordinances.
- 10-0909. Flushing and cleaning floor required.
- 10-0910. Hides and furs not to be cured or stored outside of buildings.
- 10-0911. "Bones" defined--Storage.
- 10-0912. Hide and fur houses or business of storing or skinning animals as public nuisance.
- 10-0913. Repeal of conflicting ordinances.
- 10-0914. Penalty for violation of Chapter.

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10-0901. DEAD ANIMALS, BONES, CARCASSES NOT TO BE BROUGHT IN OR STORED IN CITY--EXCEPTION. No person, firm, or corporation shall bring into or store within the City any dead animals, bones, or carcasses of dead animals other than such as are suitable and intended for human consumption except in accordance with the provisions listed in this article.

10-0902. REQUIREMENTS OF WAREHOUSE OR STORAGE ROOM WHERE CARCASSES KEPT. No person, firm, or corporation shall be permitted to bring in, keep, or store carcasses of dead animals in the City unless such person, firm, or corporation shall have first provided a warehouse or storage room therefor, which said storage room or warehouse shall be constructed with a concrete floor and finished in such a manner as to make it impervious to moisture, said floor is to be so constructed as to slope from all parts thereof toward a drain or opening in such floor, and such opening or drain must be connected with a sanitary sewer system of the City in a manner and according to the regulations and ordinances of this City governing

connections with sanitary sewers. No carcasses shall be at any time stored or kept in or upon any premises in the City other than in such warehouse or storage room so constructed, except that frozen carcasses may be temporarily stored in any fully enclosed room in a warehouse containing a storage room constructed in the manner herein provided, or in any connecting warehouse not equipped with a concrete floor and drain, and any frozen carcasses so stored shall be removed therefrom while they are in a frozen condition. A warehouse or storage room shall, in addition to said construction, be fully enclosed on all sides and covered by a roof and shall be accessible for the delivery of such carcasses or bones through an entrance not opening through or across any street or sidewalk in the City, and provided further, that such storage room or warehouse shall be equipped with ventilators constructed so as to open through the roof or top of said building and no opening or access to said building shall at any time be left or kept so as to permit odors from such storage rooms or warehouse to escape through or across any street or sidewalk in the City, and such storage room or warehouse shall at all times be kept in a clean and sanitary condition.

10-0903. TRUCKS CONTAINING CARCASSES--STANDING ON STREETS OVER FOUR HOURS PROHIBITED. No person, firm, or corporation shall permit any trucks, wagons, or other conveyances containing the bodies or carcasses of dead animals other than those animals suitable or intended for human consumption to remain standing on any street, alley or other public way in the City for a period of more than four hours.

10-0904. TRUCKS CONTAINING CARCASSES--UNLOADING RESTRICTIONS. All trucks, wagons or other conveyances containing the bodies or carcasses of dead animals, not suitable or intended for human consumption, shall be unloaded within four hours after the arrival of such truck, wagon, or other conveyance in the City in the warehouse as defined in Section 10-0902, and no such animals or carcasses shall be unloaded across or over any street or sidewalk.

10-0905. SKINNING OR STORING IN AUTHORIZED WAREHOUSE REQUIRED. No person, firm, or corporation shall store or skin any dead animal within the City unless such storage or skinning is done within the warehouse as defined in Section 10-0902, and the carcasses of animals skinned shall not be piled on the ground or on any wooden, tile, or other form of floor except a concrete floor as hereinbefore defined and described in this article.

10-0906. COMMERCIAL ENTERPRISES TO ABIDE BY REGULATIONS. No person, firm, or corporation, while operating a commercial enterprise in the City, shall skin or permit the skinning of dead animals in the City unless such skinning is done in a warehouse and on a floor constructed as defined in Section 10-0902.

10-0907. TIME DURING WHICH DEAD ANIMALS AND CARCASSES MAY BE KEPT. Bodies of dead animals intended for skinning may be kept as hereinbefore provided and before skinning so long as such bodies are solidly frozen and not longer. Frozen bodies may be removed from the place where stored to the place where the skinning is carried on and kept in such skinning room a sufficient length of time to thaw such bodies sufficiently for skinning, and after such animals have been skinned the carcasses thereof shall be removed outside of the corporate limits of the City within 48 hours.

10-0908. STORAGE AND SKINNING NOT PERMITTED WHEN PROHIBITED BY ZONING ORDINANCES. No storage or skinning of dead animals shall be permitted in any portion of the City where such storage and skinning is prohibited by the zoning ordinances of the City, and the storage of either dead animals before skinning or carcasses of skinned animals outside of the buildings hereinbefore described is prohibited.

10-0909. FLUSHING AND CLEANING FLOOR REQUIRED. The floor of a warehouse used for skinning or piling of skinned carcasses of dead animals shall be cleaned at least each day by flushing the same thoroughly with water and such floor shall be thoroughly cleaned.

10-0910. HIDES AND FURS NOT TO BE CURED OR STORED OUTSIDE OF BUILDINGS. No person, firm, or corporation shall place outside of any buildings any hide, fur, skin, or other portion of the body of any animal for the purpose of storing, drying, or curing the same, and all drying, curing of hides, skins and furs, and any other portion of the body of any animal shall be done inside of a building or warehouse and no such hides, skins, or furs, or other portions of the bodies of dead animals shall be stored outside of a building or warehouse.

10-0911. "BONES" DEFINED--STORAGE. The word "bones" as used in this article is defined to mean such bones of animals as are clean and free from all flesh, skin, or hair, and the keeping of bones to which are attached any flesh, skin, or hair is hereby prohibited unless such bones are stored and kept in a warehouse constructed in the same manner and with the same floor construction as defined in Section 10-0902.

10-0912. HIDE AND FUR HOUSES OR BUSINESS OF STORING OR SKINNING ANIMALS AS PUBLIC NUISANCE. The operation of hide and fur houses or places of business where animals or the bodies or carcasses of animals are brought into the City for the purpose of storing or skinning such animals is hereby declared to be a public nuisance unless the same be conducted in accordance with the provisions of this chapter.

10-0913. PENALTY FOR VIOLATION OF CHAPTER.--Every person, firm, company, or corporation violating any of the provisions of

this Chapter shall, upon conviction thereof, be punished by a fine not to exceed \$700, or by imprisonment not to exceed 90 days, or by both such fine and imprisonment, in the discretion of the court; the court to have the power to suspend said sentence and to revoke the suspension thereof. Each day any person, firm, company, or corporation shall violate any of the provisions of this Chapter shall constitute a separate offense.

CHAPTER 10-10

Repealed by Ordinance No. 1103, Sec. 2 (2017)

**RESERVED FOR FUTURE USE**



CHAPTER 10-11

(Source: Ord. 853, Sec. 1 [2009])

SECTIONS:

10-1101. Landing and Takeoff of Aircraft at Unauthorized Airports, Helipads, or Other Unauthorized Locations Prohibited.

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10-1101. LANDING AND TAKEOFF OF AIRCRAFT AT UNAUTHORIZED AIRPORTS, HELIPADS, OR OTHER UNAUTHORIZED LOCATIONS PROHIBITED.

1. Except as otherwise permitted herein, it is unlawful for any person, operator, corporation, association or firm to cause or permit the landing or takeoff of any aircraft within the city limits of West Fargo except at an authorized helipad, airport, or other locations approved by the City Commission.
2. The prohibition under this section shall not apply to the landing or takeoff of aircraft at heliports or airports authorized by the Federal Aviation Administration or the City Commission, nor shall this section apply to the use, training, or demonstration involving aircraft for law enforcement, emergency, military or medical purposes. Further, the prohibition under this section shall not apply to such other landings or takeoffs at locations approved by the City Commission.
3. In considering any application or request for authorization or request for authorization of locations for the landing or takeoff of aircraft in the city limits, the City Commission shall consider anticipated weather conditions, the existence of obstructions, size of proposed location, the proximity of the landing and/or take off location to schools, residential areas, commercial areas or structures, proximity to roadways, proposed landing surfaces, hours of operation, noise, and any other condition existing at the location which may be hazardous to property or unreasonably endanger persons or otherwise be detrimental to the health, safety, comfort, convenience and welfare of the public.
4. Any of the landing or takeoff locations approved by the City Commission shall be utilized in conformance with the terms of any such conditions or requirements that are imposed by the City Commission in its discretion.
5. For purposes of this section, aircraft means any device that is used or intended to be used for flight in the

air, including but not limited to, airplanes, gliders, ultra-light aircraft, blimps, jets, hot air balloons, helicopter, parachutes, and unmanned aerial vehicles/unmanned aircraft systems weighing more than 55 pounds. The term "aircraft" however shall not include unmanned aerial vehicles, unmanned aircraft systems, or model aircraft which are not designed, intended nor capable of carrying persons and which weigh 55 pounds or less.

CHAPTER 10-12

DOOR-TO-DOOR SALES AND SOLICITATION

Source: Ord. 945, Sec. 1 (2013)

SECTIONS:

- 10-12-01. Declaration of Purpose and Intent.
- 10-12-02. Door-to-Door Sales Regulated.
- 10-12-03. Door-to-Door Sales; Permit Required; Application.
- 10-12-04. Issuance of Permit and Terms Thereof.
- 10-12-05. Revocation of Permits.
- 10-12-06. Sales or Solicitations Without a Permit.
- 10-12-07. Hours of Sales Solicitation.
- 10-12-08. Locations Where Solicitations Prohibited.
- 10-12-09. License to be Carried by Licensee and Exhibited on Demand.
- 10-12-10. Penalty.

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10-12-01. DECLARATION OF PURPOSE AND INTENT. The Board of City Commissioners finds and declares that for the safety, privacy and protection of residents of the community and for the preservation of the rights of people conducting protected speech, it is necessary and proper that certain door-to-door solicitations in residential areas be regulated and that permissible sales or solicitations be restricted to daylight or early evening hours.

10-12-02. DOOR-TO-DOOR SALES REGULATED. The practice of going door-to-door at private residences without being requested or invited to do so for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services is allowed only as permitted by this chapter.

10-12-03. DOOR-TO-DOOR SALES; PERMIT REQUIRED; APPLICATION. Any person or organization desiring to engage in door-to-door sales in residential areas for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services, may do so provided they comply with the provisions of this chapter and obtain a permit to do so by filing an application with the Office of City Auditor. The application must be on a form provided by the City and contain the following:

- 6. Applicant's name, present residence, present home address, present business address, and current telephone number.
- 7. A general description of the applicant's business, including the goods, wares, merchandise, magazines, periodicals or personal services that will be sold in the City.

8. Applicant's residence and business address for the prior two-year period, if different from the present residence and address.
9. The name and address of the organization the applicant represents or by whom they are employed.
10. If the applicant is a business and the application is for multiple sales persons, a complete listing of the name, local address and telephone number of each sales person that will conduct sales in the City must be provided.
11. The application must include a copy of the applicant's North Dakota sales tax permit and if applicable, a copy of the applicant's transient merchant license.
12. Such other information as is required by the city.

An application for a door-to-door sales permit may not be granted if the applicant or sales persons included in the application have:

1. Pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government under circumstances which indicate the person poses a threat to the public interest, or has pled guilty to or been found guilty of a felony violation of NDCC Chapter 12.1-06.1, 12.1-11, 12.1-20, 12.1-22, 12.1-23 or an offense of other states or the federal government equivalent to the offenses defined in these chapters. This restriction applies for five years from the date of conviction, release from incarceration, end of a period of suspension or deferral, or expiration of parole or probation, whichever is the latest.
2. Pled guilty to or been found guilty of a misdemeanor offense in violation of NDCC Chapter 12.1-06.1, 12.1-11, 12.1-20, 12.1-22, or 12.23, or an offense of other states, the federal government, or a municipality equivalent to these offenses. This restriction applies for two years from the date of conviction, release from incarceration, end of a period of suspension or deferral, or expiration of parole or probation, whichever is the latest.
3. Been found in violation of a prior door-to-door sales permit issued by the City of West Fargo. The City Auditor shall issue or deny door to door sales permit within a reasonable time of receipt of the application. Written notice of a denial must be mailed to the applicant at the address listed as current on the application. The notice shall contain a statement of the facts upon which the denial is based.

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

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

#### 10-12-04. ISSUANCE OF PERMIT AND TERMS THEREOF.

1. Upon approval of the application, the City Auditor shall issue a permit to the applicant.
2. The permit is to be in the form of an identification badge and must be worn and visible at all times by the applicant when selling. Duplicate permits may be issued to each employee or agent of the applicant that will engage in sales.
3. The permit must have a number on it which shall also be placed on the applicant's application file. The permit or permits must also contain the name of the applicant and the name of the sales person. Each sales person shall wear a permit in a visible manner during all sales activities.
4. The permit shall be issued for a period of one year. The permit fee shall be \$200 plus an additional \$25 for each additional sales person to be included on the permit.

#### 10-12-05. REVOCATION OF PERMITS.

1. Permits issued under the provisions of this chapter may be revoked by the Board of City Commissioners after notice and hearing, for any of the following causes:
  - a. Fraud, misrepresentation or false statement contained in the application for a permit.
  - b. Fraud, misrepresentation or false statement made in the course of carrying on business.
  - c. Any violation of this chapter.
  - d. Conviction of any crime involving theft or dishonesty.

- e. Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
2. Notice of the hearing for revocation must be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice must be mailed, registered mail, to the address of the licensee as contained in the application, at least five days prior to the date of the hearing.

10-12-06. SALES OR SOLICITATIONS WITHOUT A PERMIT. Any person or organization desiring to engage in door-to-door solicitation in residential areas for the purpose of soliciting charitable or religious contributions, the sale of religious articles or publications or the sale of other articles if the proceeds are used for charitable or religious purposes, persons soliciting for or in support of any non-profit organization or public interest, political candidates, or persons campaigning for or against a political candidate or issue may do so without a permit providing they comply with the provisions of this chapter.

10-12-07. HOURS AND SALES OF SOLICITATION. Door-to-door sales or solicitation allowed pursuant to this chapter are permitted only between the hours of 9:00 a.m. and 5:30 p.m. and between the hours of 7:00 p.m. and 9:00 p.m. daily.

10-12-08. LOCATIONS WHERE SOLICITATION PROHIBITED. Notwithstanding the sales or solicitations allowed under this chapter, no person may solicit or sell at any private residence, business or establishment if there is placed on the premises in an observable location, a sign at least 10 square inches in size bearing the words "No Trespassing", "No Soliciting", or similar notice.

10-12-09. LICENSE TO BE CARRIED BY LICENSEE AND EXHIBITED ON DEMAND. Every transient merchant licensed under this chapter shall have the license in immediate possession at all times when engaging in or transacting any business regulated by this chapter. The licensee shall display the license when requested to do so by any court, law enforcement official, peace officer, or consumer. However, a person charged with violating this requirement may not be convicted, fined, or assessed the administration fee if the license is produced in court or to the arresting officer and if the license was valid at the time of the arrest.

10-12-10. PENALTY. Any person violating any provision of this chapter shall be guilty of a class B misdemeanor and subject to the imposition of penalties under Section 1-0211 of the Revised Ordinances of 1990 of the City of West Fargo.

CHAPTER 10-13

OPIOID TREATMENT PROGRAMS AND FACILITIES

(Source: Ord. 1027, Sec. 1 [2015])

SECTIONS:

- 10-1301. Definitions.
- 10-1302. License Required.
- 10-1303. Denial of License.
- 10-1304. Issuing License.
- 10-1305. Liability Insurance Required.
- 10-1306. Suspension and Revocation of License.
- 10-1307. Subsequent Licensing Inspection and Review.
- 10-1308. Facility and Clinical Environment
- 10-1309. Risk Management.
- 10-1310. Opioid Treatment Program Closure.
- 10-1311. Diversion Control.
- 10-1312. Limitations.
- 10-1313. Penalty.
- 10-1314. Severability Clause.

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10-1301. **DEFINITIONS.** In this chapter, unless the context or subject matter otherwise requires:

1. "Accreditation" means the process of review and acceptance by an accreditation body.
2. "Accreditation body" means a body that has been approved under title 42, Code of Federal Regulations, part 8 to accredit opioid treatment programs using opioid agonist treatment medications.
3. "Certification" means the process which determines whether an opioid treatment program is qualified to provide opioid treatment under federal opioid treatment standards.
4. "Certification application" means the application filed by an opioid treatment program for purposes of obtaining certification from the State, as described in title 42, Code of Federal Regulations, part 8.
5. "Commission" means the Board of City Commissioners of the City of West Fargo, North Dakota.
6. "Critical incident" means an event that could have a negative impact on a patient, a patient's family members, or the opioid treatment program or its staff, including an event that involves the loss of life or function, a serious physical or psychological injury, and a medication error.

7. "Federal opioid treatment standards" means the standards in title 42, Code of Federal Regulations, part 8 that are used to determine whether an opioid treatment program is qualified to engage in opioid treatment and that set forth patient admission criteria.
8. "Health care professional" means a physician assistant or an advanced practice registered nurse working under the medical director's supervision.
9. "Medical and rehabilitative services" means services, such as medical evaluations, counseling, and rehabilitative and other social programs such as vocational and educational guidance, and employment placement, intended to help a patient become and remain a productive member of society.
10. "Medical director" means a physician, licensed to practice medicine in the state, who assumes responsibility for administering all medical services performed by the opioid treatment program by whom the medical director is employed, either by performing the services directly or by delegating specific responsibility to authorized opioid treatment program physicians and health care professionals functioning under the medical director's direct supervision.
11. "Medication unit" means a facility established as part of, but geographically separate from, an opioid treatment program from which licensed private medical practitioners or pharmacists dispense or administer an opioid agonist treatment medication or collect biological specimen samples for drug testing or analysis.
12. "Opioid use disorder" reflects compulsive, prolonged self-administration of opioid substances that are used for no legitimate medical purpose or, if another medical condition is present that requires opioid treatment, that are used in doses greatly in excess of the amount needed for that medical condition.
13. "Opioid agonist treatment medication" means any opioid agonist drug that is approved by the United States Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid use disorder.
14. "Opioid" means any drug with the natural derivative of opium or synthetic psychoactive substance similar to morphine with capability to create physical dependence.
15. "Opioid treatment" means the dispensing of an opioid agonist treatment medication, and the provision of a comprehensive range of medical and rehabilitative



services, when clinically necessary, to an individual to alleviate the adverse medical, psychological or physical effects of an opioid use disorder.

16. "Opioid treatment program" means a program engaged in opioid treatment, which is:
  - a. Certified as an opioid treatment program by the state;
  - b. Registered by the United States Department of Justice, Drug Enforcement Administration under 21 U.S.C. section 823(g);
  - c. Accredited by an opioid treatment program accreditation body; and
  - d. Licensed as an opioid treatment program by the state and by the City.
17. "Patient" means an individual who undergoes treatment in an opioid treatment program.
18. "Program sponsor" means the person named in the application for certification under title 42, Code of Federal Regulations, part 8 as responsible for the operation of the opioid treatment program.

#### **10-1302. LICENSE APPLICATION AND REQUIREMENTS.**

1. An applicant for licensure to operate an opioid treatment program within the City must hold current licenses in good standing as both a substance abuse treatment program and as an opioid treatment program under the laws of the State of North Dakota. Copies of all documentation provided to the State of North Dakota in the application for a state license must be provided to the City at the time application is made to the City.
2. Prior to applying for a license to operate an opioid treatment program in the City, a prospective opioid treatment program provider must provide documentation proving the need for an opioid treatment program in the City. The potential provider's documentation must include an assessment of the following criteria:
  - a. Whether other existing services and facilities of the type proposed are available or accessible to meet the needs of the population proposed to be served.
  - b. The extent to which the underserved need will be met adequately by the proposed program.

- c. The impact of the service on the ability of low-income persons, racial and ethnic minorities, women, persons with disabilities, the elderly, and other underserved groups to obtain needed health care.
3. If the applicant is applying for licensure for the first time in the City, but operates an opioid treatment program in another city or state, the applicant must submit a copy of national and state certification and accreditation documentation, and copies of all survey reports written by national and state certification and accreditation organizations for each site where they have operated an opioid treatment program over the past six years.
4. A potential opioid treatment program must:
  - a. Submit a completed application form, as provided by the City, along with any applicable application fee, as determined by the City Commission.
  - b. Submit documentation to the City showing the potential opioid treatment program provider has completed an assessment of need to determine there is a need for the proposed opioid treatment program in the City.
  - c. Provide documentation ensuring the location for the new opioid treatment program meets City land use ordinances and has been approved by the City's planning commission.
  - d. Submit a completed community relations plan developed in consultation with the City or their designees, to minimize the impact of the opioid treatment program on the business and residential neighborhoods in which the program will be located. The plan must include documentation of strategies used to:
    - (1) Obtain community input regarding the proposed location;
    - (2) Address any concerns identified by the community; and
    - (3) Develop an ongoing community relations plan to address new concerns expressed by the community as the concerns arise.
  - e. Submit a plan describing reasonable transportation opportunities available to persons in need of

treatment in their proposed service area to access the opioid treatment program.

- f. Submit any additional information required by the City to assure the safe and efficient operation of the facility.
  - g. Have at least one principal officer residing within fifty (50) miles of the City.
  - h. Not have any owners, principal officers, board members, administrators, or employees under twenty-one years of age.
  - i. Provide immediate notice of changes in ownership, principal officers, board members or administrators to the City.
5. An opioid treatment program must conduct a criminal history record check of every individual seeking to become a principal officer, board member, agent, volunteer, or employee before the individual begins working at the facility.
6. An opioid treatment program may not employ an individual who has pled guilty to, been found guilty of, or pled no contest to a felony offense.

#### **10-1303. DENIAL OF LICENSE.**

1. The City must deny an applicant's license:
- a. When it fails to meet the requirements set forth in section 10-1302 of this chapter.
  - b. If the applicant has been denied, or has had revoked, the registration, accreditation, or certification required to be an opioid treatment program.
  - c. If the applicant has been denied, or has had revoked, the applicant's State-issued license as a substance abuse treatment program or the applicant's license as an opioid treatment program.
  - d. If any of the following occurred and was not resolved at a facility under the control of the applicant:
    - (1) A license for a substance use disorder treatment service or health care agency was denied, revoked, or suspended in the past;

- (2) Found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
  - (3) Misappropriation of patient property or resources;
  - (4) Failed to meet financial obligations or contracted service commitments that affected patient care;
  - (5) Has a history of noncompliance with state or federal regulations in providing substance abuse treatment;
  - (6) Refused to allow the City access to records, files, books, or portions of the premises relating to operation of the substance abuse treatment program;
  - (7) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized City representative;
  - (8) Advertised itself as licensed when a license has not been issued, or a license has been suspended or revoked; or
  - (9) Has not demonstrated the capability to provide the appropriate services to assist patients in meeting goals, including:
    - (a) Abstinence from opioids and opioid substitutes;
    - (b) Obtaining mental health treatment;
    - (c) Improving economic independence; and
    - (d) Reducing adverse consequences associated with illegal use of controlled substances.
- e. If an owner, board member, principal officer, administrator, or employee of a facility under the control of the applicant:
- (1) Has been convicted of child abuse or has been adjudicated as a perpetrator of child abuse;
  - (2) Has obtained or attempted to obtain a substance abuse treatment program license or

health care provider license by fraudulent means or misrepresentation;

- (3) Has been found guilty of, has pled guilty to, or has pled no contest to a felony offense.
- (4) Has been found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
- (5) Has misappropriated patient property or resources;
- (6) Has failed to meet financial obligations or contracted service commitments that affect patient care;
- (7) Has knowingly, or with reason to know, made a false statement of fact in the application or materials attached to the application;
- (8) Has knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in any matter under investigation by the City; or
- (9) Does not meet criminal background check requirements.

**10-1304. ISSUING LICENSE TO OPIOID TREATMENT PROGRAM.** The City may issue a license after a review of application materials, all documentation provided therewith, and an onsite visit confirms the applicant has the capacity to operate in compliance with this chapter. The City may issue an initial license for up to one year and subsequent licenses for up to two years.

**10-1305. LIABILITY INSURANCE REQUIRED.** The recipient of every license issued under the authority of this chapter must provide the City Auditor, prior to issuance of the license, proof of liability insurance and professional liability insurance showing proof of coverage for at least \$1,000,000 per individual and \$1,000,000 per occurrence.

**10-1306. SUSPENSION AND REVOCATION OF LICENSE - APPEAL.**

1. a. The City may suspend or revoke a license for one or more of the following reasons:
  - (1) The opioid treatment program has violated any federal, state, or local opioid treatment program licensing rules or regulations;

- (2) The opioid treatment program has procured any license, federal, state or local, through fraud or deceit;
- (3) The state, or any state agency, has revoked any other license issued to the opioid treatment program;
- (4) Any principal of the opioid treatment program has been found guilty of, has pled guilty to, or has pled no contest to a felony offense;
- (5) The opioid treatment program has failed to report any important change in the information about a project as required;
- (6) The opioid treatment program has failed to operate in accordance with the representations made in its application;
- (7) The opioid treatment program has failed to operate in compliance with any applicable law, rule, or regulation;
- (8) The opioid treatment program ceases to provide, or within one hundred eighty days from the date the license takes effect fails to commence to provide, the services it is authorized to provide.

b. The City will provide the opioid treatment program written notice of which of the following actions is being taken and the basis for that action:

- (1) Revocation of the operating license, without which the opioid treatment program may no longer operate;
- (2) Suspension of the operating license, during which time, the opioid treatment program may not continue its operations;
- (3) Limitation placed on the license temporarily or permanently prohibiting the opioid treatment program from operating certain identified programs or services, reducing the number of beds, restricting the number or types of patients served or imposing any other limitation determined appropriate by the City.

2. If an inspection of the opioid treatment program identifies that an opioid treatment program is not in compliance with any of the licensure requirements set forth by the City, the City will notify the opioid

treatment program in writing of the deficiencies identified.

3. The opioid treatment program must respond to the notification of deficiencies within the time the City sets forth in the notice. The opioid treatment program must include in its response a plan for the correction of the identified deficiencies or an explanation for its deviation from licensure requirements.
4. If the opioid treatment program fails to correct deficiencies or fails to provide a sufficient explanation for its failure to take action, the City may suspend or revoke the opioid treatment program's license or may require other corrective measures from the opioid treatment program. The City must notify the opioid treatment program in writing of the action being taken.
5. If there are reasonable grounds for the City to believe that continued operation of the opioid treatment program presents an immediate danger to the health and welfare of the public or any person receiving services, the City may immediately suspend a license.
6. An opioid treatment program may, upon receipt of the written notice, request a hearing before the City commission prior to any license suspension, revocation or limitation. The opioid treatment program must file a written request for hearing within ten (10) days of the date specified in the license violation notice, or licensee will be deemed to have waived its right to a hearing. Upon receipt of a hearing request, the Police Chief or his designee will schedule a hearing before the City Commission at the earliest opportunity and will send a hearing notice to licensee by certified mail.
7. If a license is revoked, the City may consider a new application for a license if the conditions upon which the revocations were based have been corrected and evidence of the corrections has been provided. A new license may be issued after the City has inspected the opioid treatment program and has found that the applicant has complied with all requirements for licensure.

**10-1307. SUBSEQUENT LICENSING INSPECTION AND REVIEW.** The City will conduct licensure reviews of each licensed opioid treatment program at least once per year, with or without prior notice. The City will inspect the opioid treatment program's services for compliance with all licensure requirements to determine the renewal term of the license. At the time of inspection, the opioid treatment program:

1. Must have maintained accreditation through an accreditation body;

2. Must have maintained certification from the State of North Dakota;
3. Must have maintained registration with the United States Department of Justice, Drug Enforcement Administration;
4. Must have maintained licensure as a substance abuse treatment program and as an opioid treatment program from the State of North Dakota;
5. Must not have had any of the following occur without being resolved at a facility under the control of the applicant:
  - a. The facility's license for a substance abuse treatment program or health care agency denied, revoked, or suspended and was not reinstated without restrictions or limitations;
  - b. A finding that the facility discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
  - c. Misappropriation of patient property or resources;
  - d. Failure to meet financial obligations or contracted service commitments which affected patient care;
  - e. Noncompliance with state or federal regulations in providing substance abuse treatment;
  - f. Refusal to allow the City access to records, files, books, or portions of the premises relating to operation of the substance abuse treatment program;
  - g. Willful interference with the preservation of material information or attempt to impede the work of an authorized City representative;
  - h. The facility advertised itself as licensed when a license has not been issued, or a license has been suspended or revoked; or
  - i. Failure to demonstrate the capability to provide the appropriate services to assist patients in meeting goals, including:
    - (1) Abstinence from opioids and opioid substitutes;
    - (2) Obtaining mental health treatment;
    - (3) Improving economic independence; and



- (4) Reducing adverse consequences associated with illegal use of controlled substances.
6. Must not have had an owner, board member, principal officer, administrator or employee of a facility under the control of the applicant:
- a. Be convicted of child abuse or be adjudicated as a perpetrator of child abuse;
  - b. Has obtained or attempted to obtain a health care provider license or substance abuse treatment program license by fraudulent means or misrepresentation;
  - c. Found guilty of, plead guilty to, or plead no contest to a felony offense;
  - d. Found to have discriminated against, demonstrated cruelty, abuse, negligence, or misconduct toward, or indifference to the welfare of, a patient;
  - e. Misappropriate patient property or resources;
  - f. Fail to meet financial obligations or contracted service commitments in a way that affected patient care;
  - g. Knowingly, or with reason to know, made a false statement of fact in the application or materials attached to the application, this includes any federal, state or local application;
  - h. Knowingly, or with reason to know, made a false statement of fact or fail to submit necessary information in any matter under investigation by the City; or
  - i. Not meet criminal background check requirements.

**10-1308. FACILITY AND CLINICAL ENVIRONMENT.**

1. Each opioid treatment program must ensure that its facility:
- a. Has sufficient space and adequate equipment for the provision of services, including diagnosis, evaluation, and treatment of other medical, psychiatric, and behavioral disorders, if they are to be provided onsite.
  - b. Is clean and well-maintained.

2. Each opioid treatment program must ensure protection of patient confidentiality, in accordance with federal and state confidentiality requirements.
3. The program sponsor is the responsible party and assumes responsibility for all of the opioid treatment program's employees, including a practitioner, agent, or other person providing medical, rehabilitative, or counseling services at the opioid treatment program or any of its medication units. The program sponsor need not be a licensed physician but must employ a licensed physician in the position of medical director. An opioid treatment program must submit a proposed change in its program sponsor to the City for approval at least sixty days prior to the effective date of the proposed change, along with evidence of state approval.
4. The medical director of an opioid treatment program is responsible for monitoring and supervising all medical services provided by the program. Only a licensed physician may serve as the medical director of an opioid treatment program. If there is a change in medical director, the opioid treatment program must notify the City in writing within thirty days of the change.

#### **10-1309. RISK MANAGEMENT.**

1. Each opioid treatment program must:
  - a. Establish procedures to guard against critical incidents.
  - b. Provide a mechanism to address patient emergencies by establishing an emergency contact system, as appropriate within confidentiality requirements.
  - c. Ensure that there are staff members on duty who are trained and proficient in cardiopulmonary resuscitation, management of opioid overdose, medical emergencies, and other techniques as appropriate.
  - d. Establish and regularly update policies and procedures which address safety and security issues for patients and staff, including training for staff to handle physical or verbal threats, acts of violence, inappropriate behavior, and other escalating and potentially dangerous situations, especially those in which security guards or police need to be summoned.
2. Each opioid treatment program must create and maintain a plan for continuity of care for patients, including emergency procedures for obtaining access to medications

in case of temporary program closure during service disruptions, such as those that may occur due to a major disaster or a more routine event, such as a snow storm. Each opioid treatment program must develop and maintain an electronic database consisting of client identification, emergency contact information, patient's current dose, last date medication administered, and number of take-home doses allowed as part of the patient's plan and must include a mechanism for informing each patient of the emergency arrangements. If there is a service disruption, the opioid treatment program must implement its emergency plan and must forward its database and plan to the City.

3. Each opioid treatment program must:
  - a. Develop procedures for reporting critical incidents to appropriate opioid treatment program staff, to the facility's accrediting body, and to the City within twenty-four hours of the critical incident.
  - b. Establish procedures to ensure:
    - (1) Full documentation of each critical incident.
    - (2) Prompt investigation and review of the situation surrounding each critical incident.
    - (3) Implementation of timely and appropriate corrective action.
    - (4) Corrective actions are monitored until their effectiveness is assured.
    - (5) Medication is dispensed safely if a patient presents with concerning behavioral or medical signs and symptoms.
4. If a patient chooses to discontinue services against medical advice, the opioid treatment program must explain the risks of discontinuing services and offer information about, and referral to, alternative treatment options.

**10-1310. OPIOID TREATMENT PROGRAM CLOSURES.** If an opioid treatment program closes involuntarily or voluntarily, the opioid treatment program must:

1. Provide the City with a plan detailing procedures to ensure continuity of care for patients. The plan must include steps for the orderly transfer of patients, records, and assets to other programs or practitioners.

**10-1311. DIVERSION CONTROL.** Each opioid treatment program must develop:

1. A diversion control plan that demonstrates accountability to its patients and to the community. The diversion control plan should reflect the efficient use of personnel and other resources to achieve the highest quality of patient care, while reducing possibilities for diversion of controlled substances from legitimate treatment to illicit use.
2. Each opioid treatment program must inform its patients that diversion will be reported to law enforcement, and the City and must indicate how suspicions or evidence of diversion will be handled clinically. Each opioid treatment program must establish clinical procedures to minimize diversion risk to ensure appropriate treatment, such as:
  - a. Routine toxicology screens;
  - b. Pill call backs for counting;
  - c. Bubble packing of prescriptions; and
  - d. Making copies of the identification numbers listed on the "strip" packaging to be available for call backs.
3. Each opioid treatment program must:
  - a. Provide regular and continuous staff education.
  - b. Review program policies and procedures at least annually.

**10-1312. LIMITATIONS.**

1. This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:
  - a. undertaking any task while under the influence of methadone, or any other drug dispensed by the opioid treatment facility;
  - b. operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of methadone, or any other drug dispensed by the opioid treatment facility, except that a patient may not be considered to be under the influence of methadone,

or any other drug dispensed by the opioid treatment facility, solely by the presence of metabolites or components of opiates in their system that appear in insufficient concentration to cause impairment.

**10-1313. PENALTY.** Any person, firm or corporation violating the terms of this chapter will, upon conviction thereof, be punished by a fine not to exceed \$1,500.00 or imprisonment not to exceed 30 days, or by both such fine and imprisonment, at the discretion of the Court. Provisions of Section 1-0807 will also apply. Any such penalty will be in addition to the authority of the City Commission to suspend or revoke a license pursuant to this chapter.

**10-1314. SEVERABILITY CLAUSE.** If any section, subsection, sentence or clause of this ordinance is for any reason held to be unconstitutional, such decision will not affect the validity of the remaining portions of the ordinance.

CHAPTER 10-14

LIVE ADULT ENTERTAINER LICENSE

Source: Ord. 982, Sec. 1, 2016

SECTIONS:

- 10-1401: Background, Intent and Purpose.
- 10-1402: Definitions.
- 10-1403: Existing Escort Services, Live Adult Entertainers, and Live Adult Entertainment Businesses.
- 10-1404: Escorts Services, Live Adult Entertainers, and Live Adult Entertainment Businesses - License required.
- 10-1405: License Term.
- 10-1406: License Renewal.
- 10-1407: Exception.
- 10-1408: Application for Live Adult Entertainers License - Contents - Renewals - Required Fees.
- 10-1409: Investigation of License Applicants.
- 10-1410: Prohibited Activities of Live Adult Entertainers.
- 10-1411: Live Adult Entertainer Personal Identification Card.
- 10-1412: Unlawful Acts.
- 10-1413: Sale or Transfer.
- 10-1414: Violation - Penalty.

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10-1401: BACKGROUND, INTENT AND PURPOSE.

1. In recent years, the West Fargo Police Department has observed an increase in individuals, businesses or agencies performing adult entertainment at residences, hotels and other locations within the City of West Fargo. Previously, these activities were normally confined to adult uses and establishments, which are regulated through the City zoning ordinances.
2. The West Fargo Police Department has also investigated numerous criminal incidents involving independent adult entertainers engaging in the activities described in paragraph 1 of this section.
3. The West Fargo Police Department has conducted numerous investigations where adult entertainers were victims of crime or engaged in criminal activity including, but not limited to, prostitution, theft, extortion and drug related crimes
4. The West Fargo Police Department has investigated activities involving "escort services" and adult entertainment services that exploit and utilize minors for prostitution activities.

5. Internet sites and other media have and are used to advertise adult entertainment and escort services to citizens of West Fargo.
6. The West Fargo Police Department has conducted numerous criminal investigations in which escort services and independent adult entertainment has been used as a cover for illegal activities, including prostitution.
7. Numerous State and Federal courts have recognized that nude dancing and other adult entertainment, if conducted by consenting adults and which does not involve a fee for sexual services, is a legitimate activity.
8. The West Fargo City Commission finds that the licensing of "escort services," "live adult entertainers," and "live adult entertainer services" (hereinafter "adult entertainment services") will provide a regulatory mechanism that will serve the following objectives and goals:
  - a. Individuals and business engaging in legitimate adult entertainment services will not be restricted or burdened;
  - b. Patrons utilizing adult entertainment services will be protected from criminal activities and will be able to identify legitimate adult entertainment service providers;
  - c. Minors will be protected by a licensing system which strictly prohibits minors from engaging in or receiving adult entertainment services;
  - d. Illegal prostitution will be discouraged.

10-1402: DEFINITIONS. For the purpose of this article, the following words and phrases shall have the meanings respectively prescribed to them by this section:

1. Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas, as set out in Section 4-429.6 of the West Fargo Municipal Code.
2. Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an

emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time, as set out in Section 4-429.6 of the West Fargo Municipal Code.

3. Adult Live Performance Theater: An enclosed building used on a regular basis for presenting live performances by singers, musicians, dancers, comedians, models, or any similar type of entertainers, which live performances are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons, as set out in Section 4-429.6 of the West Fargo Municipal Code.
4. "Escort Services" and "Live Adult Entertainer" and "Live Adult Entertainer Services" shall be used interchangeably and shall mean any person who, for consideration paid by or for the person:
  - a. Dances, strips or otherwise performs where such performances are distinguished or characterized by an emphasis to arouse or excite the patrons' sexual desires; or
  - b. Provides a service involving companionship where such companionship is distinguished or characterized by an emphasis to arouse or excite the patrons' sexual desires and where the fee for said service is based on the amount of time in companionship; or
  - c. Provides a service for a fee involving specified sexual activities or display of specified anatomical areas; or
  - d. Holds themselves out as an escort or adult entertainer by advertising such services.
5. "Live Adult Entertainment Business" means a corporate entity, business, sole proprietorship, or any other type of business or person who provides escort services or adult entertainer services, or who has employees that provide escort services or adult entertainer services, or who receives any type of fee or compensation for providing escort or adult entertainment at any location within the City of West Fargo.
6. "Nude" or "semi-nude" means a state of dress displaying specified anatomical areas.
7. "Specified anatomical area" means any of the following:



- a. Less than completely and opaquely covered: (1) human genitals, pubic region, or pubic hair (2) buttock and (3) female breast below a point immediately above the top of the areola; and
  - b. Human male genitals in a discernibly turgid state, even if completely opaquely covered.
8. "Specified sexual activities" means any of the following conditions:
- a. Human genitals in a state of sexual stimulation or arousal;
  - b. Acts or representations of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation;
  - c. Fondling or erotic touching of human genitals, pubic region, buttock or female breast;
  - d. Excretory functions as part of or in connection with any activities set forth in a. through c. above.

10-1403: EXISTING ESCORT SERVICES, LIVE ADULT ENTERTAINERS AND LIVE ADULT ENTERTAINMENT BUSINESSES. The provisions of this article shall apply to any escort service, live adult entertainer or live adult entertainment businesses in existence at the time this article takes effect. All licenses required herein shall be applied for within thirty (30) days from the effective date of this ordinance.

10-1404: ESCORT SERVICES, LIVE ADULT ENTERTAINERS AND LIVE ADULT ENTERTAINMENT BUSINESS - LICENSE REQUIRED. It shall be unlawful for any person to engage in, conduct or carry on, in or upon any location, premises or real property located or situated within the City, the activities of an escort service, live adult entertainer or live adult entertainment business, unless there has been granted to such person, business or individual a valid license, pursuant to the provisions of this article. All individuals, persons or businesses intending to provide escort services, live adult entertainment and operate live adult entertainment businesses shall apply for a live Adult Entertainer's License prior to performing the activities of an escort, escort service, live adult entertainer or operating a live adult entertainment business within the City of West Fargo. Both the business owner and the individual actually performing the escort services or adult entertainment services shall obtain an Adult Entertainer License from the City.

10-1405: LICENSE TERM. The term of a live Adult Entertainer License shall be for a period of one year; provided, however, that all licenses shall be prorated on a quarterly basis and expire on December 31 of each year unless sooner suspended or revoked.

10-1406: LICENSE RENEWAL. An Adult Entertainer License, issued pursuant to the provisions of this article, which has not been suspended or revoked, may be renewed for a period of not to exceed one year on written application to the City Auditor made at least thirty (30) days prior to the expiration date of the current valid license. The application for renewal of a license shall contain all of the information required by Section 10-1408.

10-1407: EXCEPTION. The license requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to a person in the lawful business of:

1. An employment agency licensed under the laws of the State of North Dakota;
2. An adult bookstore or adult cinema provided no live escorts or adult entertainers are employed, contracted or otherwise allowed to perform on the premises.
3. Volunteers or models who pose nude or semi-nude for federal, state or locally recognized art courses and classes.
4. A licensed liquor premise which has a cabaret license issued by the City of West Fargo. Neither shall the performer be required to have a license to perform at a licensed cabaret premise.

10-1408: APPLICATION FOR LIVE ADULT ENTERTAINER LICENSE - CONTENTS - RENEWALS -REQUIRED FEES.

1. Any person, individual or business desiring to obtain a license, or renew an existing license, to operate as an escort service, live adult entertainer or live adult entertainment business, shall make application to the City Auditor. Upon submitting such application for a license, or renewal of a license, a non-refundable fee that has been established by the City's fee schedule shall be paid to the City Auditor.
2. Neither the filing of an application for a license or renewal thereof, nor payment of an application or renewal fee, shall authorize the conducting of escort services, live adult entertainer services or a live adult entertainment business until such license has been granted or renewed.
3. Each applicant for a live Adult Entertainer License, or renewal thereof, shall furnish the following information:

- a. The full true name under which the business will be conducted;
- b. The full true name and any other names used by the applicant, date of birth, and social security number;
- c. The full true name of the person or persons providing the escort services or live adult entertainment;
- d. If the applicant is a business, the full true name of any and all employees who will provide escort services or live adult entertainment;
- e. The present residence and business address and telephone numbers of the applicant;
- f. A full and complete description of the activities that the applicant intends to undertake;
- g. Acceptable written proof that the applicant, manager or other person principally in charge of the operation of the business is at least eighteen (18) years of age;
- h. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation, and the names, residence addresses, dates of birth and social security number of each of its current officers and directors. If the applicant is a partnership, the applicant shall set forth the names, residence addresses, dates of birth and social security number of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The corporation or partnership applicant shall designate one of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this article, but only one application fee shall be charged;
- i. A full and detailed description of the service to be provided and/or merchandise to be sold;
- j. A list of all jurisdictions in which the applicant has been licensed to perform escort services or live adult entertainment.

- k. A list of any and all misdemeanor or felonies involving violence, drugs, or prostitution, and the jurisdiction in which they were committed.
  - l. Such other identification and/or information as the City Auditor may require in order to discover the truth of the matters required to be set forth in the application.
- 4. When any change occurs regarding the written information required by subsection 3 of this section to be included in the application, the applicant or license holder, as the case may be, shall give written notification of such change to the City Auditor within twenty-four (24) hours after such change.
  - 5. The City Auditor shall have a reasonable period of time in which to review the application.
  - 6. The City Auditor may deny the application if the applicant has been convicted of a misdemeanor or felony involving violence, drugs or prostitution within the last ten (10) years.
  - 7. The City Auditor may grant the license, or renewal thereof, only if he/she finds that all of the following requirements have been met:
    - a. The required fees have been paid;
    - b. The application and location conforms in all respects to the provisions of this article;
    - c. The applicant has not knowingly made a material misrepresentation of fact in the application;
    - d. The applicant has fully cooperated in the investigation of the application;
    - e. The applicant, manager or other person principally in charge of the operation of the business is at least eighteen (18) years of age.
    - f. If the City Auditor does not find that all of the requirements set forth in subsections 7.a. through e. of this section have been met, the Auditor shall deny the application for the license or renewal thereof. In the event the application for the license or renewal thereof is denied by the City Auditor, written notice of such denial shall be given to the applicant, specifying the ground or grounds of such denial. Notice of denial of the application for the license, or renewal thereof,

shall be deemed to have been served if it in fact is personally served on the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant at the residence address set forth in the application for the permit or renewal thereof. Any applicant whose application for an adult entertainment business license, or renewal thereof, has been denied by the City Auditor may appeal such denial to the City Commission within 30 days of the City Auditor mailing notice of this denial.

10-1409: INVESTIGATION OF LICENSE APPLICANTS. The Police Department shall investigate all applications for a live Adult Entertainer License. The Police shall conduct a criminal background check as part of the investigation to determine if there were any violations including violence, drugs, or prostitution. In the event a national criminal investigation is required, the applicant shall be responsible for additional fees incurred in such and, upon request, provide additional information required to complete such process. All applicants are required to complete an informal consent authorizing the disclosure of all criminal history record information. Upon completion of said investigation, Police Department shall report to the City Auditor in writing its findings and recommendation.

10-1410: PROHIBITED ACTIVITIES OF LIVE ADULT ENTERTAINERS.

1. No live adult entertainment business shall employ or be operated by any person under the age of eighteen (18) years of age.
2. No person providing escort services or a live adult entertainer shall be under the age of eighteen (18) years of age.
3. No live adult entertainment business shall display or furnish any merchandise or services to any person who is under eighteen (18) years of age, except that escort services may be provided at the special instance and request of a parent, guardian or other person in lawful custody of the person upon whose behalf the escort service is engaged.

10-1411: LIVE ADULT ENTERTAINER PERSONAL IDENTIFICATION CARD. All individuals providing escort services or live adult entertainers, or employees of a business providing escort services, or employees of a live adult entertainment business engaging in live adult entertainment shall be issued a personal identification card by the City. The individual or employee shall at all times while engaged in escort services or live adult entertainment carry such card upon his or her person when engaging in escort services

or live adult entertainment and shall immediately produce the same for inspection upon request.

10-1412: UNLAWFUL ACTS. It shall be unlawful for:

1. The holder of a live Adult Entertainer License to provide escort services, offer to provide escort services or perform any live adult entertainer services for any person under eighteen (18) years of age;
2. Any person licensed as a live adult entertainer to place his or her hands upon or touch with any part of his or her body or fondle in any manner a sexual or genital part of any other person while performing escort services or adult entertainer services;
3. The holder of a live Adult Entertainer License to provide escort services, offer to escort, engage in adult entertainment, or offer to perform adult entertainment for another person without first having a valid Adult Entertainer License.

10-1413: SALE OR TRANSFER.

1. Upon the sale or transfer of any interest in any escort service or live adult entertainment business, the establishment's Adult Entertainer License shall immediately become null and void. A new application shall be made by any person, firm or entity desiring to own or operate the adult entertainment business. A fee of twenty-five dollars (\$25) shall be payable for each such application. Any application involving the sale or other transfer of any interest in an existing adult entertainment business, as well as any license which may thereafter be granted, shall be subject to the provisions of this chapter.
2. Individuals having an Adult Entertainer License shall not sell, transfer or assign any interest in said license.

10-1414: VIOLATION - PENALTY. Any person violating any provision of this chapter shall, upon conviction, be penalized in accordance with the provisions of Section 1-0211 of the West Fargo Municipal Code.

CHAPTER 10-15

TAXICABS

(Source: Ord. 1053, Sec. 1, 2016)

SECTIONS:

- 10-1501. General.
- 10-1502. License and Certificate.
- 10-1503. Reciprocity with Other Jurisdiction.
- 10-1504. Regulation of Transportation Network Company and Transportation Network Company Driver.
- 10-1505. Miscellaneous.

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10-1501. GENERAL.

1. Definitions. The following words, terms and phrases, when used in this ordinance, shall have the meanings as described to them in this section, except where the context clearly indicates a different meaning:
  - A. "Applicant" means a person applying for a license under this ordinance.
  - B. "For hire" means for the remuneration or reward, paid or promised, either directly or indirectly.
  - C. "Taxi" or "Taxicab" means a motor vehicle designed to carry passengers operating on the public streets, alley, or places of the City, and accepting passengers for transportation for hire on call or demand, between such points as may be directed by the passenger.
2. Penalties. An owner, licensee, employer or employee, driver or other person who shall be found to be in violation of a provision of this ordinance shall, in addition to revocation or suspension of a license or permit, be subject upon conviction to the penalties prescribed in section 1-0211 of this code of ordinances. The City is also authorized to pursue equitable relief and secure injunctive relief to prevent ongoing or repeated violations thereof.
3. Designation. Each taxicab shall bear on the outside of each side, in letters not less than four inches in height, the business name of the operator or owner, and in addition may bear the telephone number and identifying design.

4. Reporting Accident. An accident arising from or in connection with the operation of a taxicab, which results in death or injury to any person, or in damage to any property, shall be reported forthwith to the Chief of Police.

10-1502. LICENSE AND CERTIFICATE.

1. Required: Expiration and Renewal.

- A. No person or entity shall operate or cause to be operated any taxicab in the City without first having obtained a license to operate as provided in this section.
- B. The license secured through the process set forth herein shall expire on June 1 of each year and shall be renewed by reapplication and payment of all fees, as set forth herein.

2. Application.

- A. The name, date of birth, residence, and present occupation of the person applying for such license. If the applicant is an entity, the names, dates of birth, addresses and occupations of all owners shall be given.
- B. Whether or not the applicant, or any officers, directors or shareholder or member of an applicant which is a corporation or limited liability company has been convicted of any felony or misdemeanor, including traffic violations, and if so, the date, nature of the offense and the court in which such conviction was entered; the same information shall be required from each partner, if the applicant is a partnership.
- C. The place or places within the City, or elsewhere, where the applicant proposes to establish his or her office from which he or she plans to operate and dispatch such taxicabs.
- D. The number of taxicabs operated or intended to be operated by the applicant pursuant to the provisions of this chapter.
- E. Whether applicant is the owner of the taxicab or taxicabs proposed to be operated under such license, and if not, the name of the owner thereof.



- F. Proof of insurance as described below, including that the applicant named the City as an additional named insured in the insurance policy.
- G. A statement that the licensee shall indemnify and hold harmless the City and its agents, officers, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property that arise from, or are connected with, or are caused by the willful or negligent acts or omissions of the licensee, or its agents, officers, employees, or contractors.
- H. A certification that every taxicab driver currently in or proposed to be in the applicant's employ has been subject to a criminal background check, is not a registered predatory offender, and has not been convicted of any violent offenses, including: willful homicide, sex offenses, robbery, aggravated assault, reckless endangerment, terrorizing, kidnapping, human trafficking, theft of a motor vehicle, felonious restraint, unlawful or false imprisonment, rioting, or attempt, facilitation, solicitation, or conspiracy of any of the previously-listed offenses.

3. Investigation; Issuance of License.

- A. Upon completion of the application required in Section 10-1502.2 hereof, the application shall be submitted to the Chief of Police, or his designate for review and investigation.
- B. Upon completion of review of the application and investigation as necessary to verify information supplied, and upon satisfaction as to compliance with all additional requirements of this ordinance, if the applicant satisfies all criteria set forth in this ordinance and pays the fees as set forth below, the dispatch license as required shall be issued. If an application is incomplete or cannot otherwise be approved, a written explanation shall be provided to the applicant.

4. Insurance.

- A. No license shall be issued until the applicant shall obtain and provide proof of a policy of commercial auto liability insurance issued by a responsible insurance company authorized to do business in the state, and providing insurance coverage for each and every taxicab for which a license is applied.

- B. Such policy of insurance shall insure the applicant against liability for personal injury to a passenger in such taxicab or to a member or members of the general public resulting from an accident in which such taxicab may be involved through the recklessness or negligence of its driver, operator or owner, as well as against any damage to property.
  - C. Such policy of insurance shall name the City as an additional named insured.
  - D. Such policy of insurance shall be in the amount of one hundred thousand dollars (\$100,000) for bodily injury to any (1) person; in the amount of three hundred thousand dollars (\$300,000) for injuries to more than one (1) person which were sustained in the same accident.
  - E. Such policy of insurance shall provide for continuing liability thereunder to the full amount thereof, notwithstanding any recovery thereon, and that the insolvency or bankruptcy of the insured shall not release the insurance company.
  - F. Such policy shall further provide that it shall not be canceled, surrendered, or revoked by either party except after ten (10) days' written notice to the City furnished by the insurance company issuing such policy of insurance.
  - G. It shall be unlawful for a person to operate, or cause or permit to be operated, any taxicab on the public streets of the City without having first fully complied with the provisions of this section.
5. Fees. An applicant to whom a license is issued shall pay at the time the application in section 10-1502.2 hereof is filed, the fee prescribed from time to time by resolution of the West Fargo City Commission.
6. Non-transfer. Licenses insured under this chapter shall not be transferable. A transfer or attempted transfer thereof to another person or entity shall automatically revoke such license.
7. Certificate.
- A. At the time an application for license is filed under Section 10-1502.2 hereof, or as soon thereafter as practical, but in any event prior to the license being issued, the Applicant shall provide information regarding each individual taxi

to be used by the licensee, which information shall include the make, model, vehicle identification number, and state license plate number.

- B. Any taxi in service to a licensee shall remain subject to random inspections to ensure continuing compliance with all statutory requirements.
  - C. Any taxi placed in service by a licensee after the insurance of the license shall be inspected as set forth herein.
  - D. Each taxi to be used by a licensee upon satisfactory compliance as set forth herein shall receive a certificate issued by the City of West Fargo setting forth the fact that the taxi is in compliance with the requirements of this ordinance.
  - E. The certificate shall be placed in the taxi so as to be seen by passengers.
8. Revocation. Any taxicab license shall be void and revoked upon any time where it is found:
- A. That any information contained in the application for such license was false or misleading;
  - B. The licensee has ceased to operate any taxicab or taxicabs a dispatch business for a period of thirty (30) consecutive days.
9. Appeal. If a license becomes void and is revoked or if an application is denied, the holder of the license or the denied applicant shall have the right to appeal to the City Auditor who shall have the authority after conducting an investigation interview or hearing as to the basis of the revocation or denial, to affirm or reverse the revocation or denial in which case the license shall be reinstated or granted.

#### 10-1503. RECIPROCITY WITH OTHER JURISDICTION.

- 1. A taxicab business licensed to do business within another jurisdiction and a taxicab driver licensed to drive taxicabs within another jurisdiction may provide taxicab services in the City so long as the business license and the taxicab driver's license are issued within reasonable conformance with the provisions of this chapter.
- 2. A taxicab business must be licensed in the City where it is located.

10-1504. REGULATION OF TRANSPORTATION NETWORK COMPANY AND TRANSPORTATION NETWORK COMPANY DRIVER. A transportation network company or transportation network company driver shall not be subject to the requirements of this ordinance provided the company and the company driver are in full compliance of NDCC chapter 39-34.

10-1505. MISCELLANEOUS.

1. Smoking prohibited. Pursuant to N.D.C.C. §§ 23-12-9 to 23-12-11 "smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter.
2. Limitation on hours. No driver of any taxicab shall be on duty or drive more than twelve (12) hours in any consecutive twenty-four (24) hour period.
3. Police Orders. No driver of a taxicab shall fail, refuse or neglect to promptly obey the rules, instructions and orders of members of the police department, given by them while on duty, relative to the parking, stopping or operation of such taxicab, or to the conduct and behavior of the driver.