

ORDINANCE NO. 1119

AN ORDINANCE TO AMEND AND REENACT CHAPTER 10-01 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO ALCOHOLIC BEVERAGES.

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

SECTION 1. Chapter 10-01 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby amended and reenacted to read as follows:

CHAPTER 10-01

ALCOHOLIC BEVERAGES

SECTIONS:

- 10-0101. Authority.
- 10-0102. Definitions.
- 10-0103. Liquor Control Board Established.
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- 10-0118. Sale of Alcoholic Beverages in Gas Stations, Grocery Stores, and Convenience Stores.
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- 10-0122. Purchase to be from Licensed Wholesaler.
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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 license 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 in conjunction with the purchase of a meal to remove the bottle on leaving the Licensed Premises if the licensee recorks the bottle, seals 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.

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.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication, or June 1, 2019, whichever occurs later.

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President of Board of City  
Commissioners of the City of  
West Fargo, North Dakota

ATTEST:

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City Auditor

Date of First Reading: March 18, 2019

Date of Second Reading: April 15, 2019

Date of Publication: April 29, 2019