

CHAPTER 5  
ALCOHOLIC BEVERAGES

**Section 1 Definitions**

For the purpose of this article:

1. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.

2. "Beer" means any malt beverage containing more than one-half of one percent of alcohol by volume.

3. "Licensee" means any person, firm, corporation, association or club which shall have secured a license pursuant to provisions of this chapter or their agent or employee.

4. "Liquor" means any alcoholic beverage except beer.

5. "Person" means and includes any individual, firm, corporation, association, club, co-partnership, society or any other organization; and shall include the singular and the plural.

6. "Sale" and "sell" shall mean all methods or modes of furnishing alcoholic beverages, with or without consideration, whether by selling, dispensing, exchanging, bartering or other similar means of transfer. Such term shall include all transactions, whether for cash, credit or other considerations and shall include, but not be limited to, transactions where the consideration for the alcoholic beverage is included or combined with another transaction or where the consideration is called a "donation", or used to purchase any ticket, token or other object redeemable for alcoholic beverages.

7. "Package" and "original package" mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.

8. "Club" or "lodge" includes any corporation or association organized for civic, fraternal, social or business purposes or the promotion of sports, which has at least 100 members at the time of application for license.

9. "Retail sale" means the sale of alcoholic beverages for use or consumption and not for resale.

10. "Off-sale" means the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where

sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.

11. "On-sale" means the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

12. "Intermittent License" means a license issued to any licensee that offers beer or wine on less than a daily basis and offers beer or wine no more than 5 days consecutively and not more than 180 days in a calendar year. The license is for beer or wine on sale only and off sale is prohibited. This license is issued for a certain location and may not be transferred to another location without approval of the city governing body. The facility must be constructed to ensure that minors do not have access to the area where beer or wine are prepared or served. Applicants are required to describe in detail on the application the area where beer or wine are prepared and served. The city governing body may authorize persons under twenty-one years of age to remain in the area where beer or wine are consumed and said area must be specifically set forth in the permit which may describe in detail the measures which shall be in place to ensure that no persons under twenty-one years of age consume, possess, or receive alcoholic beverages.

13. "Event Permit" means a permit by the City governing body authorizing a qualified alcoholic beverage licensee to engage in the sale or sampling of alcoholic beverages at events designated by the permit. Said permits are subject to the conditions as indicated in NDCC 5-02-01.1, NDCC 5-01-17(2), NDCC 5-01-19(2), or NDCC 5-01-21(3) and additional conditions, if any, as directed by the City governing body.

14. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

Note: This ordinance adopts the Definitions and amendments thereto under North Dakota Century Code section 5-01-01.

## **Section 2 Exceptions**

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

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

a. Denatured alcohol produced and used pursuant to Acts of Congress and the regulations thereunder.

b. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.

c. Flavoring extracts, syrups and food products.

d. Scientific, chemical and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

**Section 3 License Required**

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

**Section 4 Licenses - Classes of - Fees** (Source: North Dakota Century Code section 5-02-03)

The fee for an on and off sale liquor license is \$2,000.00 per year.

The fee for an on and off sale beer and wine license is \$5000.00 per year.

The fee for an on sale liquor license is \$1,000.00 per year.

The fee for an on sale beer and wine license is \$250.00 per year.

The fee for an off sale liquor license is \$800.00 per year.

The fee for an off sale beer and wine license is \$250.00 per year.

The fee for a Club license is \$835.00 for alcoholic beverage on sale and \$165.00 for beer and wine only on sale per year.

The fee for an Intermittent License is \$125 per year.

The fee for an Event Permit is \$25 per event.

**Section 5 Licenses - Terms of**

1. All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 31<sup>st</sup> day of December in each year. Where a license is granted for a period less than one (1) year, any subsequent renewal thereof must be made for the full annual term.

2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees for said license shall be proportional to represent the number of days which said license will be in effect.

**Section 6 License - Qualifications for** (Source: North Dakota Century Code section 5-02-02)

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

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

2. If applicant is a corporation or limited liability company, the manager of the licensed premises and the officers, directors, shareholder, or members must be legal residents of the United States and persons of good moral character. Corporate and limited liability applicants must first be properly registered with the North Dakota Secretary of State.

3. If applicant is a partnership, the manager of the licensed premises and all of the members must be legal residents of the United States and of good moral character. Partnership applicant must first be properly registered with the North Dakota Secretary of State.

4. The applicant or manager must not have been convicted of an offense determined by the North Dakota Attorney General to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer, or, following conviction of any offense, is determined not to be sufficiently rehabilitated under NDCC Section 12.1-33-02.1.

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

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

7. If applicant's business at the licensed location is to be conducted by a manager or agent, the manager or agent must possess the same qualifications required of the licensee.

**Section 7 Application for Liquor License**

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

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

2. Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a co-partnership the same preceding information for each member of said co-partnership; and if the applicant is a corporation, the

date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated and if such corporation is a subsidiary of any corporation, the name of the parent corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. The classification of license applied for.

19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the governing body a list of the members belonging to such lodge or club.

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

21. The City governing body may require the applicant to set forth such other information in the application as necessary to enable the governing body to determine if a license should be granted.

## **Section 8 License - Applicant Fitness**

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

2. The chief of police or such other person authorized to conduct the background investigation may require the applicant to pay, in advance, an estimated fee necessary to defray the actual cost of a background check. This fee may only be used for that stated purpose and any unused funds must be returned within thirty days of the conclusion of the background check. In addition, the applicant or such other person subject to a background check may be required to

execute a written consent to obtain background or criminal history information. (NDCC 5-02-02).

### **Section 9 License - Location of**

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

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

### **Section 10 License - Granting**

After the City governing body has received the application as provided herein, they shall meet and consider the same. If the City governing body finds that the applicant meets the qualifications for a license and are satisfied as to the completeness and the accuracy of the information contained in the application, and after considering the factors listed in section 8.0609, and are satisfied that the harmony between community and business interests are not upset by the quantity of said licenses, or location of said licenses within the city's jurisdiction,

the City governing body may grant the license. If the City governing body finds that the applicant does not meet with the qualifications or they are not satisfied as to the completeness or accuracy of the information, they may request that the applicant supply more verified information to the City governing body or they may reject the application. Further, the City governing body may reject an application if it finds that granting the license would not be suitable by reason of its location, quantity of licenses by similar type or otherwise already issued, or not in harmony with community and business interests.

### **Section 11 License - Limit to One Location**

Each license shall be valid only for the specific premises licensed except as otherwise allowed by an Event Permit set forth below.

### **Section 12 License - Posting of**

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

### **Section 13 License - Transfer of**

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

### **Section 14 License Fees - Disposition of**

All license fees collected under this article shall be transferable to the city auditor and credited to the general fund of the City.

### **Section 15 Licensee's Responsibility**

Every licensee is hereby made responsible for the conduct of the licensee's place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person.

### **Section 16 Gambling Prohibited - Exceptions**

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board or any other machine or device of similar nature, nor shall gambling whether by cards, dice or otherwise, of any nature, be permitted upon the licensed premises. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting permit issued by the City governing body or license issued by the State of North Dakota.



### **Section 17 Cashing Certain Checks Prohibited**

No licensee hereunder shall cash any bank check, voucher, order or document of any kind drawn by a county welfare board or any state or federal agency in payment for wages made for work done on any so-called work relief project, or for relief purposes, which by its terms authorizes or permits any person presenting such bank check, voucher, order or document to receive payment of money.

### **Section 18 Sales Prohibited - Persons**

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

### **Section 19 Minors in Licensed Premises**

No licensee shall permit any person under twenty-one (21) years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except as provided in N.D.C.C. 5-01-08 and N.D.C.C 5-02-06 including any amendments thereto.

### **Section 20 Age Identification**

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

### **Section 21 Street Sales Prohibited**

The sale of alcoholic beverages upon or across any street, alley or public way is prohibited except as may otherwise be permitted by a vote and written approval of the City Council authorizing such sale and simultaneously closing said street, alley, or public way to vehicular traffic.

### **Section 22 Premises, Equipment of**

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

### **Section 23 Closed or Screened Areas**

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

## **Section 24 Purchase from Licensed Wholesaler**

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

## **Section 25 Toilets Required**

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

## **Section 26 Deliveries - Off Licensed Premises**

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

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

## **Section 27 Termination or Revocation of Licenses**

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

a. The death of the licensee unless upon application to the City governing body by personal representative of the decedent, the City governing body consents to the carrying on of the business by the personal representative.

b. When the licensee ceases business at the location licensed, unless a new location has been approved.

c. When the licensee is adjudged bankrupt.

d. When the licensee has been convicted of the violation of any provision of this article, or of the laws of the State of North Dakota pertaining to alcoholic beverages or of a

felony under the laws of the United States, the State of North Dakota or of any other state of the United States.

e. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.

f. When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the location licensed has been terminated or revoked.

g. When the licensee ceases to be a legal bona fide resident and citizen of the State of North Dakota.

2. License issued pursuant to this ordinance may, in the discretion of the governing body, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds when City Council determines by the preponderance of the evidence:

a. When the licensee has violated any of the provisions of this article or violated any provision of Chapter 5 of the North Dakota Century Code.

b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the City.

c. When the licensee, if an individual, or one of the partners, if the licensee is a partnership, or one of the officers or the manager if the licensee is a corporation, be convicted of drunkenness or disorderly conduct within the City, or if any appeal is taken from such conviction then when such conviction be sustained by the higher court or courts.

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

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

## **Section 28 Event Permits Required**

Any person desiring to sell alcoholic beverages at an event must obtain an event permit. The City Auditor shall create an application which must be completed by each applicant. The application must contain the following information:

1. Consent of the Owner of the premises where the event will take place;
2. The dates of the event, not to exceed 14 days as set forth in N.D.C.C. § 5-02-01.1;

3. A map containing the area of the permit clearly delineated on the map. Additionally, if there will be individuals under the age of 21 present and as allowed by N.D.C.C. § 5-02-01.1, the areas where these individuals will be allowed must also be clearly delineated on the map;
4. A copy of any State permit or a license of the City, as the case may be;
5. Any other requirements at the City Auditor's discretion; and
6. An application fee of \$25.00 and any additional fee set by the City Council if the applicant desires to expedite the approval process of their application if received less than 30 days prior to the start date of the event.

All applications must be presented to the City Auditor. Upon receipt the City Auditor shall notify the Carrington Chief of Police. The Carrington Chief of Police may require the presence of a duly sworn Law Enforcement Officer(s) or other licensed security personnel as approved by the Chief of Police as a condition of approval of the permit. The City Auditor may approve of application or may, at the City Auditor's discretion, refer any application to the City Governing Body for approval. The City Auditor and City Governing Body may use any factor listed in Sections 9 and 10 to approve, deny, or approve a permit with conditions.

If an existing license holder of the City obtains an event permit, the license holder may continue to operate its business at its licensed premises and at the location of the event as allowed by the permit for an additional fee as established and amended from time to time by the City Council.

To the extent that N.D.C.C. § 5-02-01.1, and any amendments thereto allows an Event Permit holder to authorize individuals under the age of twenty-one to remain in the area of the Event, the Event Permit Holder must not allow any person under the age of twenty-one within the area described in the Event Permit to consume, possess, or receive alcoholic beverages.

An Event Permit holder must abide by the City of Carrington Municipal Code and all applicable Century Code provisions.

### **Section 29 Bar Extensions**

Any existing license holder may apply for a permit to temporarily extend the parameters of their license under the conditions set forth herein. The license holder must submit an application containing the following information:

1. Dates of the proposed extension not to exceed 14 days;
2. Map clearly delineating the expanded area desired by the applicant. The expanded area must be adjacent to the existing licensed area. Under certain circumstances, the expanded area does not have to be contiguous in order to comply with the requirements of a street closing permit;
3. Submission of a street closing permit application, if needed, simultaneously with the application;
4. An application fee and any fees for expediting the approval process applicant desires to expedite the approval process of their application is received less than 30 days prior to the start date of the bar extension; and

5. Any other information the City Auditor deems necessary.

All applications must be presented to the City Auditor. Upon receipt the City Auditor shall notify the Carrington Chief of Police. The Carrington Chief of Police may require the presence of duly sworn Law Enforcement Officer(s) or other licensed security personnel as approved by the Chief of Police as a condition of approval of the permit. The City Auditor shall have the authority to approve of any bar extension, but may, at the City's Auditor's discretion, refer any matter to the City Council for review and approval. The City Governing Body may use any factor listed in Sections 9 and 10 to approve, deny, or approve a permit with conditions.

Upon approval of the bar extension permit, the applicant may only conduct business in a manner consistent with its existing license. If an applicant desires to operate its business and temporary extensions in a manner inconsistent with its license, it must apply for a different license and meet all other requirements of the City Code and the North Dakota Century Code.

### **Section 30 Penalties**

Any person, firm, corporation or association violating any of the provisions of this article for which a penalty is not provided within or by state law, shall upon conviction thereof, be guilty of a Class B Misdemeanor. In addition, all powers, rights and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with the above section.

Failure of the holder of an event permit to have Law Enforcement Officer(s) or other licensed security personnel as required by the Permit for the duration of the Event, will be guilty of an infraction and ordered to pay a mandatory minimum fine of \$500.00. This shall be a strict liability offense.