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## CHAPTER EIGHT

### BUSINESS REGULATIONS AND LICENSES

#### ARTICLE 1 - Transient Merchants

##### 8.0101 Definitions

For the purpose of this article:

1. "Transient merchant" includes any person, individual, co-partnership or corporation, either as principal or agent, who engages in, does or transacts any temporary or transient business in the City limits, either in one locality or in traveling from place to place selling goods, wares and merchandise who does not intend to become and does not become a permanent merchant of the City and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, structure, lots, tract, railroad car or motor vehicles for the exhibition and sale of such goods, wares and merchandise. The person, individual, co-partnership or corporation so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer.
2. "Merchandise" does not include any livestock or agricultural product. (Source: North Dakota Century Code section 51-04-01)

##### 8.0102 License Required

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

##### 8.0103 License Fee

The license fee to be required of all transient merchants for the transaction of such business within the City is hereby fixed at the sum of \$25.00 per day for each and every day during which any such transient merchants shall transact business in the City. (Source: North Dakota Century Code section 51-04-09)

##### 8.0104 License - Application for

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

1. Applicant's name, present residence, present home address, present business address, present telephone number and if a corporation, under the laws of what state the same is incorporated;
2. The name, present residence, present home address, present business address, and present telephone number of the person or persons having the management or supervision of applicant's business during the time that it is proposed that it will be carried on in the City;
3. The residence, business address and type of business in which applicant has been engaged in the previous two (2) years;
4. The residence, business address and type of business in which the person having the management or supervision of applicant's business has been engaged in the previous two (2) years;

5. The place or places in the City, where it is proposed to carry on applicant's business, and the length of time during which it is proposed that said business shall be conducted;
6. The kind of business to be conducted;
7. The name and address of the auctioneer, if any, who will conduct the sale; and
8. A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the City, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or by sample; at auction, by direct sale or by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced, and where such goods or products are located at the time the application is filed. (see North Dakota Century Code section 51-04-02)

#### 8.0105 Exhibiting License

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

#### 8.0106 Transfer

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

#### 8.0107 Enforcement by Police

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

#### 8.0108 Revocation

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

#### 8.0209 Expiration of License

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

### ARTICLE 2- Hawkers and Peddlers

#### 8.0201 Definitions

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

#### 8.0202 License Required

It shall be unlawful for any person to engage in the business of hawker or peddler of any merchandise, article or thing without having first secured a transient merchant license as provided for under Section 8.0102.

### ARTICLE 3 - Runners, Solicitors and Canvassers

#### 8.0301 Definitions

A "runner," "canvasser" or "solicitor" is defined as any individual, whether resident of the City or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future. The definition shall include any person who, for himself, or for another person, firm or corporation hires, leases, uses or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

#### 8.0302 License Required

It shall be unlawful for any person to engage in the business of runners, solicitors and canvassers of any merchandise, article or thing without having first secured a transient merchant license as provided for under Section 8.0102.

### ARTICLE 4 - Alcoholic Beverages

#### 8.0401 Definitions.

In this article, unless the context or subject matter otherwise requires:

- A. "Alcohol" shall mean neutral spirits distilled at or above 190 proof, whether or not such product is subsequently reduced, for nonindustrial use.
- B. "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume. All alcoholic beverages shall be deemed intoxicating.
- C. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
- D. "Council" shall mean the governing body of the City of Powers Lake.
- E. "Dispense" shall mean to prepare and distribute.

- F. "Entertainment" shall mean all forms and types of entertaining patrons of 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 machine.
- G. "Licensee" shall mean any person to whom a license has been issued under the provisions of this article.
- H. "Licensed premises" shall mean the bar area, dining rooms, meeting rooms, outdoor dining areas and all other areas or spaces where alcoholic beverages are regularly or occasionally sold, served or dispensed. In the alternative, any person applying for a license under the provisions of this article may describe, depict or otherwise identify in his application for a license various areas or spaces which shall constitute the licensed premises. The council, in its discretion, may require any applicant to so describe, depict or otherwise identify the licensed premises as a condition for the issuance of a license under the provisions of this article.
- I. "Off-sale" shall mean sale of alcoholic beverages in original packages solely for consumption off or away from the premises where sold. An off-sale license shall authorize the licensee to conduct such off-sale at the place designated in the license.
- J. "On-sale" shall mean sale of alcoholic beverages for consumption only on the licensed premises. An on-sale license shall authorize the licensee to conduct such on-sales at the place designated in such license.
- K. "Package" and "original package" shall mean any 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 thereof.
- L. "Person" shall include any natural person, association, partnership, corporation and any clerk, agent and abettor thereof.
- M. "Public place" shall mean any building, property or other place that the general public can occupy as a matter of right or any building, property or place that is open to the general public by implied or express invitation, either for business purposes or otherwise.
- N. "Sale" 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.
- O. "Serve" shall mean to give someone their food or drink.
- P. "Transfer" shall mean a change in location of the licensed premises; or any assignment, sale, exchange or other conveyance of any license issued pursuant to the provisions of this article. A transfer shall be deemed to have occurred upon the assignment, sale, exchange or other conveyance of 50% or more of the interest in a licensee partnership or stock in a licensee corporation, whether such assignment, sale, exchange or other conveyance occurred in one single transaction or multiple transactions.

#### 8.0402 License required

No person shall engage in the business of the sale at retail of alcoholic beverages without first obtaining a license pursuant to the provisions of this article and posting the same in a conspicuous place on the licensed premises.

#### 8.0403 License – Qualifications

No license shall be issued to any applicant except as follows:

- a. If the applicant is an individual or partnership, such individual or partners must be a legal and bona fide resident of the state of North Dakota and be at least 21 years of age.
- b. If the applicant is a corporation, the manager of the licensed premises or another full-time employee of the licensee who is at least 21 years of age must be designated in the license application as an agent of the corporation.
- c. No license shall be issued to any person, partnership or corporation as the representative or agent of another, and the license may be issued only to the owner or owners of the business being conducted at the location sought to be licensed.

d. The applicant or manager must not have been convicted of a felony or of any violation of any state or federal law pertaining to the sale of alcoholic beverages for five years preceding the date of application.

e. The applicant or manager must not have had a license for the sale of alcoholic beverages issued and revoked to him or her within the five years preceding of the application.

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

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

h. If applicant's place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the licensee.

#### 8.0404 License - Application

Any person desiring to obtain the issuance or transfer of a license authorizing the sale at retail of alcoholic beverages shall make and file an application for such license with the council. Said application shall be made on a form approved by the council and made available through the office of the city auditor. The application shall contain the following information:

1. The type of license being applied for.

2. The street address and legal description of the premise is sought to be licensed, accompanied by a reasonably accurate sketch map of the location and extent of the licensed premises if they form part of a building containing premises which are not licensed for the sale of alcoholic beverages.

3. The name(s), date of birth(s) and current address of the applicant and/or manager.

4. All addresses and legal residence that the applicant and/or manager have resided at during the prior five years.

5. If the applicant is the natural person, a statement to the effect that the applicant is a lawful residents of the United States of America.

6. If the applicant is a Corporation, a statement to the effect that the applicant is incorporated in North Dakota or that is the foreign corporation registered as such in North Dakota and in either event, in good standing with the North Dakota Secretary of State.

7. The names and addresses of all partners or shareholders with a stake of 5% or more. A list of the name and addresses of the governing body of the applicant.

8. A statement to the effect that with regard to the five years preceding the date of application neither the applicant nor the manager has been convicted of a felony or of any violation of any state or federal law pertaining to the sale of alcoholic beverages.

9. A statement to the effect that neither the applicant nor the manager has had a license for the sale of alcoholic beverages issued and revoked to him within the preceding five years of the application.

10. A release of information and consent to background check as required by the City to investigate the facts set out in the application.

In addition to the information supplied on the application form, the council, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

#### 8.0405 License - Fees

A. Initial issuance fee--For a license granted which is not a renewal of an existing license, the fees shall be as follows:

a. On sale and off sale liquor license/beer is \$1,000 per year.

b. On sale Beer/wine license is \$500 per year.

c. Sunday Alcohol Permit is \$5.00 per Sunday requested

B. The Initial Issuance Fee is payable upon application approval and must be paid prior to engaging in the business of the sale at retail of alcoholic beverages and prior to issuance of the license.

#### 8.0406 Application - Investigation of

The chief of police/police officer or other employee or agent of the city as appointed by the city council, shall investigate the facts stated in the application filed with the council pursuant to the provisions of section 8.0403 of this article, and shall report the results of his investigation to the council prior to the hearing on said application. Said investigation and report shall include the character, reputation, fitness of the applicant to hold a license, any other pertinent information, and the recommendation of the chief of police as to whether or not such license should be granted. In addition, the council may request and consider such other recommendations and reports of other city officials. Unless specifically requested by the city auditor's office or police department at the time of the filing of the application, an investigation and report is not required for a transfer involving only a change in location of the licensed premises or a transfer wherein the existing license is to be exchanged for a license of lower category.

#### 8.0407 License renewal

The holder of an existing license issued pursuant to the provisions of this article who desires to renew said license for another license year, shall not be required to make and file a new application under the provisions of this section; provided, however, that said licensee shall be required to make annual payment as provided and to submit a written request for renewal and an affidavit indicating the current name and address of the licensee, and if said licensee is a corporation, the names and addresses of the resident manager, all corporate officers, and all shareholders holding more than 5% of the outstanding stock of the corporation, that no information has changed from the initial application other than that indicated in this renew application and such other information as the city may require. The affidavit shall be on a form to be prescribed by the city auditor's office. The written request, affidavit and payment shall be due by December 31 of each year.

Renewal Fee- The annual fee to renew an existing licenses is as follows:

1. On sale and off sale liquor license/beer is \$1,000 per year.
2. On sale Beer/wine license is \$500 per year.
3. Sunday Alcohol Permit is \$5.00 per Sunday requested

#### 8.0408 Restrictions on sale, service or dispensing of alcoholic beverages

- A. No licensee, his agent or employee, shall sell, serve or dispense any alcoholic beverage to a person less than 21 years of age; and no licensee, his agent or employee, shall permit any person less than 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
- B. No person less than 21 years of age shall be permitted to enter any portion of licensed premises in which alcoholic beverages are sold, served or dispensed; nor shall anyone less than the age of 21 years be employed in any portion of licensed premises in which alcoholic beverages are sold, served or dispensed, except as follows:
  - a. Any person less than 21 years of age may enter and remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room 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.
  - b. Any person who is employed by the restaurant as a food waiter, food waitress, busboy or busgirl may not engage in the sale, dispensing, delivery or consumption of alcoholic beverages; provided, that any person who is between 19 and 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 21 or more years of age.
  - c. A law enforcement officer or person cooperating with and under the control of such law enforcement officer, under the age of 21 years may enter premises where alcoholic beverages are sold, dispensed, or consumed in the performance of an official duty.
  - d. Any establishment where alcoholic beverages are sold may employ persons from 18 to 21 years of age to work in the capacity of musicians under the direct supervision of a person over 21 years of age.



- e. Any person under 21 years of age may enter and remain on the license premises if the person is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering or consuming alcoholic beverages.
- f. Any person under 21 years of age may remain in the area of and event where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to § 5-02-01.1 of the North Dakota Century Code and the city comparable ordinance.
- g. Any person under 21 years of age may enter and remain in a restaurant where alcoholic beverages are being sold when accompanied by a parent or legal guardian, whether or not the restaurant is separated from the room in which alcoholic beverages are opened or mixed and whether or not gross sales of food are equal to gross sales of alcoholic beverages. For purposes of this subsection, a restaurant shall be any establishment which serves prepared food and holds a restaurant license or permit.
- h. Any person under 21 years of age may enter and remain in a licensed premises for a designated alcohol-free public event in any licensed premises or in a separate room within the licensed premises where the licensee has determined not to sell or permit consumption or possession of alcoholic beverages on that licensed premises or within the designated separate room within the licensed premises during a specified time period provided the licensee complies with the requirements of this subsection. For purposes of this subsection a public event is any event to which admission is open to the general public and may be gained with or without payment of a fee or an event which is advertised to the general public.

For purposes of this section, a person is not 21 years of age until 8 a.m. on the person's twenty-first birthday.

- C. No licensee, his agent or employee shall sell, serve, consume or permit to be sold, served or consumed on the licensed premises any alcoholic beverages after 1:00 a.m. on Sundays, before 12:00 noon on Sundays, or between the hours of 1:00 a.m. and 8:00 a.m. on all other days of the week; nor shall any licensee, his agent or employees sell, serve or permit to be sold, served or consumed on the licensed premises any alcoholic beverage on Good Friday, Easter, Christmas Day or after 6:00 p.m. on Christmas Eve. Additionally, there shall be no off-sale sales allowed after 1:00 a.m. on Thanksgiving Day. For purposes of this provision, any person having a glass or other opened container containing an alcoholic beverage in close proximity or otherwise available for consumption shall be deemed to be consuming an alcoholic beverage.
- D. All licensed premises shall be closed and locked not more than one-half hour after the termination of business hours as specified in subsection (C) of this section and no persons shall be permitted to remain on said premises thereafter except for the owner and his employees for normal cleaning and maintenance activities; provided, that a licensee may remain open for the purpose of providing food service and operate its entertainment business, provided, however, that the licensee must comply with all other terms of Article 8 and those of its State of North Dakota liquor license.
- E. No license to sell alcoholic beverages under the provisions of this article shall entitle the holder thereof to carry on such business at more than one location under any one license and each license shall contain a legal description of the place where the holder thereof operates such business; provided, however, the foregoing provision shall not apply in the case where a licensee, in addition to his regular license, is granted a license to engage in the sale of alcoholic beverages at the place designated in the license.
- F. No licensee, his agent or employee shall sell or serve, or permit to be sold or served on the licensed premises any food other than prepackaged, confectionery items such as peanuts, potato chips and similar items, and prepackaged sandwiches, pizza and similar food products which are prepared and packaged off the licensed premises; provided, that this prohibition shall not apply to licensed establishments which hold a restaurant license or permit.

- G. If the licensee wishes to operate the premises or separate room as an alcohol-free area, the licensee shall give written notice of its intent at least 72 hours in advance to the council or its designee. The notice shall specify which portion of the licensed premises will be used for the alcohol free event or if a separate room within the premises will be used for the alcohol free event. If only a separate room within the licensed premise will be used for the event, the room must have a point of entry and exit which does not permit those under the age of 21 to enter any portion of the licensed premises where alcoholic beverages are being sold, mixed or consumed. The notice shall define what security measures within the licensed premises or the separate room thereof will be taken to prevent the consumption of alcoholic beverages by persons during the alcohol-free event. The council or its designee may, in his discretion, require such additional information from the licensee as is necessary to ensure compliance with this section.
- a. Security personnel shall be on the premises in such numbers as to ensure the safety of patrons and to maintain order on the premises. The Chief of Police or other employee or designee of the city council may determine the amount of security needed.
  - b. The licensee shall post conspicuously at all entrances to the alcohol-free event a notice stating the sale, possession or consumption of alcoholic beverages will not be permitted during the duration of the alcohol-free event and that no participant under the age of 21 is permitted into any area within the licensed premises where alcoholic beverages are sold, consumed, or possessed to include common areas such as hallways or restrooms.
- H. Any person under 21 years of age may enter and remain in licensed premises or in a separate room within the licensed premises for a private event where the licensee has restricted access to invited guests provided that the licensee complies with the requirements of this subsection. For purposes of this subsection a private event is an event which is not open to the general public to which access is granted to invited guests only, for which no admission fee is paid, and for which no advertising was conducted to the general public.
- a. The licensee maintains the responsibility to comply with city ordinance prohibiting selling, serving or dispensing any alcoholic beverage to a person less than 21 years of age; or permitting any person less than 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
  - b. The room must have a point of entry and exit which does not permit those less than the age of 21 to enter any portion of the licensed premises, not designated as the private event, where alcoholic beverages are being sold, mixed or consumed.
  - c. The licensee shall post conspicuously at all entrances to the private event a notice stating the sale, possession or consumption of alcoholic beverages by those less than the age of 21 will not be permitted and that no participant less than the age of 21 is permitted into any area outside of the designated separate room within the licensed premises where alcoholic beverages are sold, consumed, or possessed to include common areas such as hallways or restrooms.
  - d. Security personnel shall be on the premises in such numbers as to ensure the safety of patrons and to maintain order as determined by the Chief of Police.
  - e. The licensee shall have all patrons regardless of age removed from the private event following the completion of the private event and not reopen the separate room to the general public for the purpose of the sale, possession or consumption alcohol until one hour after the completion of the private event.
- I. Removal of wine from restaurant. If a full bottle of wine has been opened and the contents partially consumed, in conjunction with the purchase of a meal the premises may permit an individual purchasing the bottle in conjunction to remove the bottle on leaving the licensed premises if the licensee re-corks 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.

#### 8.0409 Restrictions on sale or consumption in a public place

- A. No owner, manager or person having control of any public place shall serve, permit to be served, or permit any person to drink alcoholic beverages in such place, unless such place has been duly issued an on-sale or other appropriate license under this chapter.
- B. No person shall mix, prepare, serve or consume alcoholic beverages in any public place unless such place has been duly issued an on-sale or other appropriate license under this chapter.

#### 8.0410 Restrictions on sale to obviously intoxicated person

No licensee or partner, principal, agent or employee of any licensee shall sell, serve, or furnish alcoholic beverages to or allow possession and consumption of alcoholic beverages on the licensed premises by any person who is or has become intoxicated and/or incapacitated by the consumption of alcoholic beverages. A person may be considered to be obviously intoxicated when it can be plainly determined by appearance, conduct, and/or demeanor. The term "obviously intoxicated" shall mean that the person's obvious intoxication be reasonably discernible or evident to a person of ordinary experience." Such indicators of intoxication may include, but are not limited to a combination of any of the following types of conditions:

- A. Problems with balance, inability to maintain balance, i.e., stumbling, staggering gait, bumping into furniture while walking, falling against bar or off stool, resting head on bar;
- B. Ineffective muscular coordination, i.e., spilling and/or knocking over drinks, unable to pick up change and the like;
- C. Disorientation and mental confusion as to locations, date, names and the like;
- D. Strong smell of alcohol;
- E. Unusual or distorted speech, i.e., slurred, thick tongue, uncontrollable voice pitch, muttering, and the like;
- F. Bloodshot and/or glassy eyes, flushed face, and the like;
- G. Condition of clothes and hair, i.e., soiled clothing, urinated upon clothing and the like;
- H. Unusual behavior, i.e., vomiting, profanity, hiccups, fighting, loud, boisterous, obnoxious behavior, sleeping or unconscious.

Violation of this ordinance may result in sanctions as prescribed in section 8.0411. Sanctions for a licensee selling, serving, or furnishing alcoholic beverages shall require a sale and a showing that a police officer observed and determined the person to be intoxicated. In addition, a corroborating witness or witnesses who can opine that the person was obviously intoxicated shall be required. Sanctions for a licensee allowing the consumption of alcoholic beverages on the licensed premises shall require a showing that a police officer observed and determined the intoxicated person to be intoxicated on the licensed premises, as well as a showing that the intoxicated person was allowed to consume alcoholic beverages on the licensee's premises. The police officer's observation and determination must be accompanied by information from a corroborating witness or witnesses who can opine that the person was obviously intoxicated when allowed to consume alcoholic beverages on the licensed premises.

If a licensee, partner, principal, agent or employee of any licensee shall contact law enforcement to report the presence of an obviously intoxicated patron or to obtain law enforcement assistance in removing an obviously intoxicated patron, a rebuttable presumption is created and sanctions shall not be imposed. This presumption may be overcome, however, by evidence that the licensee, partner, principal, agent or employee of any licensee did not contact law enforcement in good faith.

#### 8.0411 Licenses--Termination, suspension, revocation, and sanctions

All licenses issued under the provisions of this article, unless otherwise specifically provided, shall terminate on Dec 31st following the date of issuance; provided, however, that any license issued under the provisions of this article may, under certain circumstances, terminate automatically or may be terminated, suspended or revoked by the council.

- A. Any license issued under the provisions of this article shall automatically terminate:
  - a. Upon the death of the licensee unless, upon application to the council by the personal representative of the decedent, the council shall consent to the carrying on of such business by

the personal representative. Said application must be submitted to the council within 30 days of the licensee's death.

b. When the licensee, for any reason, ceases business at the licensed premises, except as permitted in accordance with this article. Business shall be deemed to have ceased upon occurrence of any of the following:

i. When no sale of alcoholic beverages occurs on the licensed premises for a period of at least 30 consecutive business days; or

ii. When alcoholic beverages are not sold on the licensed premises on at least 15 of any 60 consecutive business days; or

iii. When the licensed premises are not open for normal business for at least 180 hours in any 60 consecutive business days; provided, however, upon written request of the licensee, the council, in its discretion and for good cause shown, may extend the date upon which business shall be deemed to have ceased.

iv. When any license or permit of the licensee from the United States government or state of North Dakota to sell alcoholic beverages at the licensed premises has terminated or been revoked.

B. The council may, in its discretion, suspend or revoke for cause any license issued under the provisions of this article. The grounds for suspension or revocation shall, among others, include the following:

a. The licensee has filed a petition in bankruptcy.

b. An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual in active management of the licensed business is convicted of violating any of the provisions of this article.

c. The licensee has been convicted of a felony or of any violation of any state or federal law pertaining to the sale of alcoholic beverages within five years.

d. The business of the licensee, at the location licensed, is conducted in such a manner as to be in violation of the health and sanitary regulations of the city of Powers Lake.

e. The licensee has made any false statement in his application for a license.

f. The licensee conducts his business in a manner which results in, encourages or is conducive to the creation of disturbances of the peace, disorderly conduct or any other violations of federal, state and/or city laws.

g. Violation of section 8.0410 – Restrictions on sale to obviously intoxicated person as described in section 8.0411(F)

h. Violation of Compliance Checks in section 8.0411(E)

C. The grounds enumerated in subsection (B above) of this section shall not be deemed to be exclusive and any license issued under the provisions of this article may be suspended or revoked by the council for any other reason deemed by the council to be sufficient in order to promote and protect the public health, safety, morals and general welfare of the people of the city of Powers Lake. When any license is suspended or revoked by the council pursuant to the provisions of this section, or when 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 him/her.

D. No license issued under the provisions of this article shall be suspended or revoked for cause by the council without a public hearing. In the event that the council intends to consider the suspension or revocation of any license for cause, it shall direct the city auditor to notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of 15 days after the date of the service of the notice upon the licensee. If, upon such hearing, it appears to the council that sufficient cause exists for the suspension or revocation of a license issued pursuant to the provisions of this article, the council shall make its order suspending or revoking the said license.

E. Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales only so that food sales could, if applicable, continue on the licensed premises.

F. It is the intent of this ordinance that no multiple offenses shall be deemed to have occurred from a single incident. For example, on an officer contact with the licensed premises, if there should be two or more offenses involving intoxicated persons on the premises, the same will constitute one offense and not multiple

offenses. Any subsequent officer contact with the establishment at a different time may constitute a separate offense.

G. Sanctions or penalties under this subsection may not be invoked without a public hearing if so requested by the licensee. Upon written notification by the city auditor's office that a penalty is being sought under this ordinance sent to the address listed on the License Application for the applicant and/or manager, the liquor licensee may notify the city auditor's office within ten (10) days and request a hearing on the proposed penalty. Failure to request such a hearing shall be deemed to be an acceptance of the penalty and no hearing shall be granted after that time period. A hearing shall be set by the board of city council specifying the time and place of the hearing, and shall further describe the reason for said hearing, and shall be served upon the liquor licensee in the same manner as provided by law for the service of a summons in a civil action. No suspension hearing shall be held before the expiration of fifteen days after the date of service of the notice. The hearing on said suspension shall be heard by the city council. A record of the hearing shall be made by electronic recording device. If, upon such hearing, it appears to the majority of the board of city council that sufficient causes exists for the penalty sanctions, the board of city council shall make its order in accordance with the provisions of this article. The city council shall further issue its findings, conclusions and order which shall be served on the liquor licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

#### 8.0412 Special Permits: Fees

A permit issued pursuant to NDCC 5-02-01.1, to allow a licensee to operate at premises other than the licensed premises to which the license relates, shall be issued by the city council at a regularly scheduled meeting upon the following terms and conditions:

- (1) The payment by the applicant of a nonrefundable fee as follows:
  - a. For licensee with a valid current license from the City of Powers Lake a fee of \$20.00.
  - b. For a licensee with a valid current license from another jurisdiction a fee of \$100.00.
- (2) The submission by the applicant, as part of the application required by the city clerk, of a brief narrative explaining:
  - a. The nature of the occasion for the permit (e.g., wedding dance, trade show or promotion, etc.); and
  - b. The steps which will be undertaken by the permittee to restrict the sale to, and consumption of, alcoholic beverages by minors at such occasion.
- (3) The written approval by the chief of police/police department of the issuance of the permit.
- (4) If the licensee applying for the special permit is licensed through another jurisdiction, the following requirements apply:
  - a. The licensee must provide a copy of a valid license from another jurisdiction.
  - b. The licensee must provide a copy a transfer of license approval from the other jurisdiction.
- (5) A permit issued pursuant to this subsection may not be used for the off-sale of alcoholic beverages.
- (6) There shall be a limit of two (2) special permits issued for a single event.

#### 8.0413 Unlawful practices

In addition to such other prohibitions as are contained in this Article:

- A. It shall be unlawful for any person to sell or consume any alcoholic beverage in any automobile, or upon any street, alley or public highway, including any public sidewalk or boulevard, or on any private property without consent of the owner or occupant within the city of Powers Lake.
- B. It shall further be unlawful for any person to possess any bottle or receptacle containing any alcoholic beverage which has been opened or the contents of which have been partially consumed while such person is upon any street, alley or public highway, including any public sidewalk or boulevard, or upon property owned, operated or leased by the city of Powers Lake or by the state of North Dakota or any political subdivision or agency thereof, within the city of Powers Lake
- C. The sale, possession, use or consumption of alcoholic beverages shall be unlawful and prohibited in and on the premises of any public building.
- D. It shall be unlawful for any person less than 21 years of age to misrepresent his or her age for the purpose of purchasing or drinking any alcoholic beverage or for the purpose of entering any premises licensed under the provisions of this article.
- E. It shall be unlawful for any person, either personally or through an agent or employee, to procure, furnish or deliver any alcoholic beverage for the use of any person less than 21 years of age.
- F. No licensee shall deliver or permit to be delivered to any customer outside the licensed premises any alcoholic beverages sold under the terms and provisions of this article.

#### 8.0414 Inspection of licensed premises

The members of the city council of the city of Powers Lake, the chief of police, or any officer of the health or police department may, at any time, enter upon any licensed premises for the purpose of police inspection or to determine whether the licensed premises are in compliance with any and all ordinances of the city.

#### 8.0415 Purpose, Authority, and Determinations regarding Entertainment and Live Performances Upon the Licensed Premises.

- A. It is the purpose of this article to regulate alcohol beverage licensed premises in relation to adult entertainment establishments in order to promote the health, safety, and general welfare of the citizens of the City of Powers Lake, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects and concentrations of adult entertainment establishments within the City of Powers Lake. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including any sexually oriented materials. Further, it is neither the intent nor effect of this article to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither it is the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.
- B. Whereas, the City of Powers Lake has explicit authority under Section 40-05-01(29) of the North Dakota Century Code to adopt regulations governing the sale of alcohol beverages within city limits; and  
Whereas, the City has general police powers set forth in Chapter 40-05 of the North Dakota Century Code to act for the good order of the City of Powers Lake, for its commercial benefit, and for the health, safety and welfare of the public and may carry its powers out by regulation or suppression;  
Whereas, by adopting this ordinance, the City does not intend to regulate obscenity, as nudity in and of itself is not obscene;  
Whereas, the City declares its intent to address the secondary effects of live nude dancing, as defined in this chapter, in liquor licensed premises within City limits; and  
Whereas, the liquor licensed establishments featuring live nude dancing have:
  - (1) Caused depreciation in surrounding property values near these establishments;
  - (2) Harmed the economic welfare of communities;

- (3) Negatively affected the quality of life of communities,
- (4) Increased criminal and other offensive activity in other communities facing these same issues;
- (5) Increased criminal activity in our own community, as evidenced by the police reports and police call logs that were provided to City Commission members as they contemplated action on the secondary effects of nude dancing in liquor-licensed establishments; and
- (6) Disrupted the peace and order of these communities.

8.0416 Entertainment and Live Performances Upon the Licensed Premises

A. Definitions for the purposes of this title:

- (1) *Entertainment* means all forms and types of performing or entertaining for patrons on licensed premises without regard to whether such entertainment is provided by means of live performances or manually operated or electronic systems designed for stereophonic playback of prerecorded signals; provided, however, that entertainment shall not be deemed to include the use of any television, radio or coin-operated music machine subject to the restrictions in this section.
- (2) *Live performances* means any person who for consideration, monetary or otherwise, performs in person on a licensed premises as a singer, musician, dancer, comedian, model, or any other type of entertainer.
- (3) *Adult Cabaret* means any commercial premises or private club to which any member of the public or club member is invited or admitted, and where an entertainer provides live entertainment or activity as defined in adult entertainment.
- (4) *Adult entertainment* means:
  - a. Any exhibition, performance or dance of any type conducted in any premises where such exhibition, performance, or dance involves a person who performs in such clothing or sheds clothing to a point where the area below the top to the bottom of the areola of a female breast or any portion of pubic area, anus, buttocks, vulva or genitals are covered by opaque material, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genital, or human male genitals in a discernibly turgid state, even if completely and opaquely covered; and/or
  - b. Any exhibition, performance, or dance which includes any of the following:
    1. The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law; and/or
    2. The actual or simulated touching, caressing, or fondling of the breast, buttock, anus, or genitals; and/or
    3. The actual or simulated display of the pubic hair, anus, vulva, or genitals or the nipples of the female; and/or
    4. Appearances, entertainment or performances of any type consisting of or containing any nude performer or topless female dancer; and/or
  - c. Any exhibition, performance or dance which is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the premises activity. This includes, but is not limited to, any such exhibition, performance or dance performed for, arranged with, or engaged in with fewer than all members of the public on the premises at that time, which separate consideration paid, either directly or indirectly, for such performance,

exhibition or dance and which is commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing, or straddle dancing.

- B. No alcohol beverage licensee under this chapter shall permit adult entertainment or an adult cabaret on the licensee's premises.
- C. No entertainment on an alcoholic beverage licensed premises shall contain:
  - (1) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts prohibited by law;
  - (2) The actual or simulated touching, caressing, or fondling of the breast, buttocks, anus or genitals;
  - (3) The actual or simulated displaying of the pubic hair, anus, vulva or genitals, or the nipples of a female;
  - (4) Appearances, entertainment or performances of any type consisting of or containing any nude performance or nude dancer, or topless female dancer.
    - a. "Nude performer" or "nude dancer" means any person or performs or appears in attire such that any portion of the pubic area, anus, vulva, or genitals is exposed to view or not covered with an opaque material.
    - b. "Topless female performer" or "topless female dancer" means any female who performs or appears in attire such that any portion of her breasts below the top of the areola is exposed to view or not covered with an opaque material.

These restrictions apply to all alcoholic beverage licensed premises whether or not they have a cabaret license.

- D. No entertainment on a licensed premises shall be provided by means of television or video cassettes or digital streaming if the content of that entertainment depicts the acts prohibited in this section.
- E. A licensee shall have the duty and responsibility to make available for inspection by a member of the police department an identification card, such as a driver's license, containing a photograph and the age of all entertainers or performers on the licensed premises. The licensee shall 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.
- F. If any licensee, or any agent, servant or employee shall violate any provision of this section, the license of such premises may be revoked for cause in accordance with the procedures established pursuant to the provisions of this chapter.

#### 8.0417 Application of Prohibited Entertainment and Live Performances to Extraterritorial Jurisdiction.

Any related licensing and zoning ordinances shall apply to all 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 its police and zoning jurisdiction, as defined by law.

#### 8.0418 Penalty

A violation of §§ 8.0410, 8.0414, and 8.0416 by any person, firm or corporation shall be deemed a Class B Misdemeanor and, upon conviction thereof, be punished by a fine not to exceed \$1,500 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court, the court to have power to suspend said sentence and to revoke the suspension thereof.

A violation of any other sections of this article by any person, firm or corporation shall be deemed an Infraction and, upon conviction thereof, be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.



## ARTICLE 5 - Validity

### 8.0501 Validity

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

## ARTICLE 6 - Penalty

### 8.0601 Penalty

Any person, firm, corporation or association violating any of the terms, articles or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00). The court may, in addition thereto, revoke the permit or license of such violator, or terminate or revoke all powers, rights and privileges given by any license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation.

## ARTICLE 7 – Assemblies and Demonstrations

### 8.0700 Permit Required

A permit is required to organize, hold or participate in a parade or procession on the streets or alleys of the city.

### 8.0701 Permit Process

1. An applicant for a parade permit shall file an application with the city auditor containing the following information:
  - a. The name and address of the applicant. If the applicant is an organization, the name and contact information for a contact person.
  - b. The proposed route and the time and date of the parade including the time of commencement and the anticipated time of termination.
  - c. The anticipated number of participants in the parade including the anticipated number of floats, motor vehicles, animals, or people. The applicant should also provide plans for staging and parking for parade participants for both the beginning and end of the parade.
  - d. Plans for any necessary cleanup that might arise from the parade. The applicant is responsible for returning the parade route to its pre-parade condition. If an applicant fails to adequately clean up after a parade, the city shall perform the cleanup and bill the cost to the applicant.
  - e. Such other relevant information as the chief of police may require to safeguard the parade participants and the public.
2. The chief of police shall work with the applicant to assure public safety and to minimize the impact on traffic movements and public convenience. After consultation with the chief of police, the parade permit shall be issued by the governing board.

### 8.0702 Picketing and Demonstrations

1. "Picketing" means the practice of standing, marching, sitting, lying, patrolling or otherwise maintaining a physical presence by one or more persons inside of, in front of, or about any premises. Picketers shall not block the access points of any property including the private sidewalk or driveway.
2. "Public sidewalk" shall mean that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved.
3. "Street" shall mean the entire width of the public right-of-way, excluding the sidewalk, that is open to the use of the public as a street or alley, including the boulevard.

#### 8.0703 Notice if Intent to Picket or Demonstrate

1. An individual intending to picket or demonstrate or the organizer of a group intending to picket or demonstrate, where the organizer knows that the picket or demonstrations will include a group of less than 30 individuals, shall provide written notice to the city auditor of the picket or demonstration, including the planned time and location of the picket or demonstration.
2. The organizer of a picket or demonstration that the organizer knows, or should reasonably know, will include a group of 30 or more individuals shall provide written notice of the intent to picket to the city auditor at least 48 hours before the picket or demonstration is to begin. The notice shall contain the following information:
  - a. The name, address, and contact telephone number of the organizer of the picket.
  - b. The name of the organization sponsoring the picket.
  - c. The location, date and time, including duration and intended daily hours of the picket.
  - d. The organizer's best estimate of the number of individuals who will participate in the picket

#### 8.0704 Picketing Regulations

1. Picketing may be conducted on public sidewalks in the city. Picketing may not be conducted on public sidewalks during times when a permit for a different use of that location has been issued by the city. Picketing may not occur on street medians or on streets used primarily for motor vehicle traffic unless so directed by the police. Picketing shall not be allowed on a street if an adjacent public sidewalk is available.
2. Picketing shall not disrupt, block, obstruct, or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance or other access to buildings which abut the public sidewalk.
3. Placards, flags, signs, or banners carried by picketers shall be of such a size as to allow safe and unobstructed passage of pedestrian or vehicular traffic.
4. If more than one group of picketers desire to picket at the same time and location, a police officer may, without regard to the purpose or content of the picket, assign each group a place to picket in order to reduce congestion and preserve public peace. Picketing time and location shall be generally on a first-to-notify basis.
5. Whenever the free passage of any street or public sidewalk in the city is obstructed by a crowd, congregation, meeting, assembly, demonstration, picket, or procession, or the conduct of two or more persons, the persons comprising the group shall disperse or move so as to remove the obstruction when directed to do so by a police officer. It is unlawful for any person to refuse to comply with a request by a police officer pursuant to this section.
6. Picketers shall be subject to all city, state, and federal laws, rules, and regulations.