

ORDINANCE NO. 1790

AN ORDINANCE AMENDING AND REENACTING ARTICLE 4.08.06 OF THE MUNICIPAL CODE OF THE CITY OF DICKINSON, NORTH DAKOTA, RELATING TO THE LEGACY SQUARE CONCESSION LICENSE

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF DICKINSON, NORTH DAKOTA, AS FOLLOWS:

Section 1: Article 4.08.060 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 4.08.060 License Requirements

The Board of City Commissioners hereby finds that in order to ensure compliance by all licensees with all applicable federal, states, and city laws, ordinances, and regulations, and in order to adequately police establishments engaged in the retail sale of alcoholic beverages, and in order to promote the public welfare, it is necessary and proper to limit the number of certain classes of licenses, as provided herein, pursuant to the City's police powers and the authority granted by Title 5 of the North Dakota Century Code.

(a) **On/Off Sales License**

The City may grant an "on/off sale license", which authorizes the licensee to sell beer and/or intoxicating liquor at retail for consumption on and off the licensed premises subject to the following conditions:

- 1) As of December 31, 2012, a total of seventeen on/off sale licenses existed within the city limits of the City of Dickinson. No additional on/off sale licenses shall be granted until the population of the City reaches an estimated twenty-one thousand (21,000) people at which time the Board of City Commissioners may, but shall not be required to, grant an additional on/off sale license, as hereinafter provided pursuant to Section 4.08.065 of this Chapter.
- 2) The Board of the City Commissioners may grant an additional on/off sale license for each incremental population increase of three thousand people above 21,000 people, as may be determined in the sole discretion of the Board of the City Commissioners from time to time, based upon annexations, household units, census projections, census results, or other methods of estimated population.
 - a. Any on/off sale license which is added to the City by virtue of annexation shall automatically increase the number of on/off sale licenses available under subsection (1) of this section. Notwithstanding addition of on/off sale licenses added by annexation, the City may nevertheless add additional on/off sale licenses based upon the requisite population increases, as stated in subsection (2) of this section.
- 3) If additional licenses have been granted because of an increase in population, said licenses will be eliminated when the population falls below the population level that authorized the additional license. In addition, if the

population of the City falls below twenty-one thousand, one on/off sale license shall be eliminated from the number authorized under this section. However, said licenses shall not be eliminated until such time as a license is vacated.

- 4) The fee for this license shall be set by the City's fee schedule.
- 5) A licensee hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this chapter.

(b) Lodge or Club License.

The City may grant a "lodge or club license", which authorizes the licensee to sell beer and/or intoxicating liquor at retail for consumption upon the premises of the licensee, except when permitted by subsection (4) below, primarily for the convenience of the club or lodge members subject to the following conditions:

- 1) No license shall be transferable to any other owner.
- 2) Any additional lodge or club license shall be granted only to organizations qualifying as a lodge or club, and then only in the discretion of the Board of City Commissioners.
- 3) No electronic or mechanical gaming devices or games of chance shall be allowed upon the premises licensed hereunder in any area where minors are allowed to be present.
- 4) A licensee may apply for a special event permit under Section 4.08.270.
- 5) The fee for this license shall be set by the City's fee schedule.
- 6) A licensee hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this chapter.

(c) Motel or Hotel License.

The City may grant a "motel or hotel license", which authorizes the licensee to sell beer and/or intoxicating liquor on and off -sale of the hotel or motel, subject to the following conditions:

- 1) The room from which such sales are made must be physically attached to and be a part of said hotel or motel.
- 2) Temporary bars may be used in banquet rooms or other areas for special events such as conventions, dinner meetings, or similar events, all of which must be held within the confines of the hotel or motel; such areas need not be designated in the license.
- 3) To qualify for the renewal of a hotel or motel on-sale liquor license, the applicant must have maintained an average room occupancy rate of at least 50% for the year preceding the application for renewal.
- 4) There shall be no restrictions as to the number of licenses issued under this chapter subsection.
- 5) The fee for this license shall be set by the City's fee schedule.
- 6) A licensee hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this.

(d) Restaurant On-Sale License.

The City may grant a "restaurant on-sale license", to any restaurant within city limits, which authorizes the licensee to sell beer and liquor on an on-sale basis only, except when permitted by subsection (4) below, subject to the following terms and conditions:

- 1) The restaurant shall have sufficient dining area and facilities to adequately serve its patrons, as well as the public generally.
- 2) The restaurant may have a lounge area or waiting area lounge for patrons waiting to be seated for the purposes of serving alcoholic beverages in conjunction with its restaurant business. Permission for such area should be duly noted on the licensee's license.
- 3) No electronic or mechanical gaming devices or games of chance shall be allowed upon the premises licensed hereunder unless licensee has a designated bar area upon said premises.
- 4) A licensee may apply for a special event permit under Section 4.08.270 or Section 4.080.275.
- 5) Those receipts from the sales of alcoholic beverages hereunder shall not exceed fifty percent of the gross receipts from the sale of all food items and alcoholic beverages combined.
- 6) All restaurant on-sale license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant certifying that gross food sales and liquor sales for the previous calendar year meet the requirements of this section. The Board of City Commissioners may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the it deems necessary.
- 7) All sales of alcoholic beverages by restaurant on-sale licensees must be separately receipted to the customer by cash register receipt and clearly identified as sales of liquor, beer or wine on all receipts.
- 8) In order to qualify for an alcoholic beverage license under this provision, it is necessary that the dining area and other food service facilities be in operation and be open for business.
- 9) There shall be no restrictions as to the number of licenses issued under this subsection.
- 10) The fee for this license shall be set by the City's fee schedule.
- 11) A licensee hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this chapter.

(e) Military Club Beer and Wine License.

The City may grant a "military club beer and wine license", to military clubs of the armed forces within city limits, which authorizes the licensee to sell beer and/or wine on an on-sale basis only, subject to the following terms and conditions:

- 1) For the purposes of this section and others pertaining thereto, "armed forces" shall mean the Army, Navy, Air Force, Marine Corps and Coast Guard of the United States of America.
- 2) A license hereunder shall comply with all of the laws of the State relating to the sale and dispensation of alcoholic beverages.
- 3) The beer and/or wine license hereunder shall be for the sale of beer and/or wine for consumption on the premises only, to military club members only, and no sales for consumption off the premises.
- 4) There shall be no restrictions as to the number of licenses issued under this subsection.

- 5) The fee for this license shall be set by the City's fee schedule.
- 6) A licensee hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this chapter.

(f) Microbrewery Pub License.

The City may grant a "microbrew pub license", which authorizes the licensee to produce and manufacture beer at retail for consumption upon the licensed premises, in accordance with the requirements and limitations of N.D.C.C. § 5-01-14, which are incorporated herein by reference. A microbrew pub licensee is also subject to the following specifications and restrictions:

- 1) A microbrew pub may manufacture on the licensed premises, store, transport, sell to wholesale malt beverage licensees, and export no more than 10,000 barrels of beer per year.
- 2) A microbrew pub license will authorize the licensee to sell:
 - a. Growlers, sold off-sale only; and
 - b. Beer that has been brewed on the premises of the licensee, which may be sold either on-sale or off-sale
- 3) A microbrew pub licensee may not engage in wholesaling activities. All sales and delivery of beer to any other retail licensed premises may be made only through a wholesale beer licensee. A microbrew pub licensee must comply with all statutory provisions for taxation under N.D.C.C. § 5-01-14.
- 4) A microbrew pub licensee is not precluded from retailing beer it purchases from a wholesaler.
- 5) Complimentary samples of beer may not be in an amount exceeding 16 ounces per patron.
- 6) Except as modified in this subsection, a microbrew pub licensee shall comply with and be subject to all of the remaining qualifications for licensees.
- 7) There shall be no restrictions as to the number of licenses issued under this subsection.
- 8) The fee for this license shall be set by the City's fee schedule.
- 9) A licensee hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this chapter.

(g) Beer and Wine Concession License.

The City may grant a "beer and wine concession license" to the operator(s) of the food and beverage concession(s) under contract with Dickinson Parks and Recreation District for concession services at Dakota Community Bank & Trust Ballpark – Astoria & Coke Fields, a Dickinson municipal ballpark (Ballpark) subject to the following restrictions and conditions:

- 1) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.
- 2) A licensee hereunder may sell wine, tap beer, beer in opened bottles, cans or similar packages.
- 3) The license hereunder shall be for the sale of beer and wine for consumption on the premises only, and no sales for consumption off the premises shall be made.

- 4) The license is nontransferable and may be held only by the operator(s) who have been awarded and currently hold a concession(s) contract, provided the contract permits the sale of beer and wine, and may be held only for the period of the operator's concession contract and shall terminate with the termination of that contract.
- 5) This license is limited to on-sale service of beer and wine to patrons of the Ballpark.
- 6) The fee for this license shall be set by the City's fee schedule.
- 7) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

(h) Distillery License.

The City may grant a "domestic distillery license", which authorizes the licensee to produce distilled spirits and authorizes the sale of distilled spirits in accordance with the requirements and limitations of N.D.C.C. § 5-01-19, which are incorporated herein by reference. A domestic distillery licensee is also subject to the following restrictions and conditions:

- 1) A domestic distillery licensee may sell spirits produced by that distillery at on-sale or off-sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the State in a manner consistent with the laws of the place of the sale or delivery in total quantities not to exceed 25,000 gallons in a calendar year. Direct sales within the State of North Dakota are limited to 2.38 gallons or less per month per person for personal use and not for resale. The packaging for spirits must conform with the labeling requirements set forth in N.D.C.C. § 5-01-16.
- 2) A domestic distillery licensee may obtain a domestic distillery license and a retailer license allowing the on-premises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the domestic distillery. A domestic distillery licensee may also own or operate a winery.
- 3) A domestic distillery license shall only be issued to a domestic distillery owner or operator who has obtained an annual manufacturing license from the North Dakota State Tax Commissioner allowing the production of distilled spirits.
- 4) To the extent the following activities are authorized under N.D.C.C. § 5-01-19(2), the same shall also be authorized within the City:
 - a. A licensee may dispense free samples of the distilled spirits offered for sale.
 - b. Special events for which a permit has been obtained from the State Tax Commissioner allowing the domestic distillery to give free samples of its product and to sell its product by the glass or in closed containers at off-premises events are, as a result of such permit, authorized within the City.
 - c. Participation in Pride of Dakota events for which a special events permit has been obtained from the State Tax Commissioner is, as a result of such permit, authorized within the City.

- 5) A domestic distillery license authorizes the licensee to sell glassware, distilled spirits literature and accessories, cheese, cheese spreads, and other snack food items.
- 6) There shall be no restrictions as to the number of licenses issued under this subsection.
- 7) The fee for this license shall be set by the City's fee schedule.
- 8) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

(i) Brewer Taproom License.

The City may grant a "brewer taproom license", which authorizes the licensee to manufacture on the licensed premises, store, transport, sell, and export 25,000 barrels or less of beer annually in accordance with the requirements of N.D.C.C. § 5-01-21, as amended from time to time, which are incorporated herein by reference. A brewer taproom licensee is also subject to the following restrictions and limitations:

- 1) A licensee may sell malt beverages manufactured on the licensed premises for consumption on the premises of the brewery or a restaurant owned by the licensee and located on property contiguous to the brewery.
- 2) A brewer taproom licensee may sell beer manufactured on the licensed premises for off-premises consumption in brewery-sealed containers of not less than 12 ounces, growlers, and in brewery-sealed kegs not to exceed 5.16 gallons.
- 3) A licensee may sell and deliver beer produced by the brewery to licensed beer wholesalers.
- 4) A brewer taproom licensee shall obtain any brewery license required by the State of North Dakota.
- 5) Multiple brewer taproom licenses may be issued to the owner or operator of a brewery producing no more than 25,000 barrels of malt beverages annually. Brewer taproom licensees with multiple taprooms must produce beer at each location and the total amount of beer produced at all locations combined may not exceed 25,000 barrels of malt beverages annually.
- 6) To the extent the following activities are authorized under N.D.C.C. § 5-01-21(2), as amended from time to time, the same shall also be authorized within the City:
 - a. A licensee may dispense free samples of beer offered for sale. Complimentary samples may not exceed 16 ounces per patron.
 - b. A licensee may sell and deliver beer produced by the brewery to licensed retailers within the State of North Dakota, subject to the conditions set forth in N.D.C.C. § 5-01-21(2)(f), as amended from time to time.
 - c. Special events for which a permit has been obtained from the State Tax Commissioner allowing the brewer taproom licensee to give free samples of its beer and to sell its beer by the glass or in enclosed containers at off-premises events are, as a result of such permit, authorized within the City, so long as notice of the special event to which the permit is issued is given to the City Administrator, who

shall forward to the Chief of Police, no less than three days before the event is to occur.

- 7) All sales and delivery of beer to licensed retailers within the State must be made in accordance with N.D.C.C. § 5-03-07 (governing tax rate) and N.D.C.C. § 5-01-21(2)(f) (governing sale and delivery of beer to licensed retailers within the State). Additional sales may be made through a wholesaler licensed in this State. Beer manufactured on the licensed premises and sold by a brewer taproom licensee directly to the consumer for consumption on or off of the premises are subject to the taxes imposed pursuant to N.D.C.C. § 5-03-07, in addition to any other taxes imposed on brewers and retailers.
- 8) There shall be no restrictions as to the number of licenses issued under this subsection.
- 9) The fee for this license shall be set by the City's fee schedule.
- 10) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

(j) Domestic Winery License.

The City may grant a "domestic winery license", which authorizes the licensee to operate a domestic winery and to produce and sell wine on-sale and off-sale within in the City in accordance with the requirements and limitations of N.D.C.C. § 5-01-17, which are incorporated herein by reference. A domestic winery licensee is also subject to the following restrictions and conditions:

- 1) A domestic winery license may be issued only to a domestic winery owner or operator who obtains a license from the State Tax Commissioner allowing the production of wine.
- 2) A domestic winery license authorizes the licensee to sell wine produced by that winery at on-sale or off-sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside the State in a manner consistent with the laws of the place of the sale or delivery in total quantities not to exceed 25,000 gallons in a calendar year. In addition, a domestic winery licensee may, if so authorized by a license issued by the State of North Dakota, sell beer on-sale only, provided that such on-sale beer sales shall be incidental to the sale of wine.
- 3) A domestic winery license authorizes the licensee to sell glassware, wine literature and accessories, cheese, cheese spreads, and other snack food items.
- 4) Direct sale by licensed wineries.
 - a. A licensed winery that produces no more than 50,000 gallons of wine per year may sell and deliver, on site or off site, the wine produced by the winery directly to licensed retailers. The licensed winery may sell and deliver wine on site to a licensed retailer who presents the retailer's license or a photocopy of the license. The winery may deliver the wine off site if the winery:
 - i. Uses the winery's equipment, trucks, and employees to deliver the wine;

- ii. Contracts with a licensed distributor to ship and deliver the wine to the retailer; or
 - iii. Contracts with a common carrier to ship and deliver the wine to the retailer directly from the winery or the winery's bonded warehouse.
 - b. The shipments delivered by a winery's equipment, trucks, and employees in a year may not exceed 4,500 cases. A case may not exceed 2.38 gallons of wine.
 - c. Individual shipments delivered by common carrier may not exceed three cases per day for each licensed retailer. The shipments delivered by a common carrier in a year may not exceed 4,500 cases. A case may not exceed 2.38 gallons of wine.
 - 5) To the extent the following activities are authorized under N.D.C.C. § 5-01-17(2), the same shall also be authorized within the City:
 - a. A licensee may dispense free samples on the licensed premises of the wines offered for sale.
 - b. Special events for which a permit has been obtained by the State Tax Commissioner to give free samples of its product and to sell its wine by the glass or in closed containers at off-premises events are, as a result of such permit, authorized within the City.
 - c. Participate in Pride of Dakota events, for which a special events permit has been obtained from the State Tax Commissioner is, as a result of such permit, authorized within the City, provided that the incidental sales of on-sale beer allowed by paragraph c above, will not be allowed at the locations where said permits are utilized.
 - 6) A domestic winery license shall not be required for a domestic winery owner or operator possessing a license from the State Tax Commissioner allowing the production of wine and only being present within the City to utilize special event permits issued by the State Tax Commissioner. It is the intent of this exemption to not require licensure by domestic winery owners or operators, if properly licensed elsewhere, where its only presence in the City is to utilize special event permits.
 - 7) There shall be no restrictions as to the number of licenses issued under this subsection.
 - 8) The fee for this license shall be set by the City's fee schedule.
 - 9) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.
- (k) Beer Only On-Sale License
- The City may grant a "beer only on-sale license," which authorizes a licensee to sell on-sale tap beer, beer in open bottles and cans in similar packages at retail for consumption upon the leased premises of the licensee subject to the following restrictions and conditions:
- 1) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.

- 2) The license hereunder shall be for the sale of beer for consumption on the premises only, except when permitted by subsection (5) below, and no sales for consumption off the premises shall be made.
- 3) A licensee hereunder shall ensure that any alcoholic beverages sold pursuant to this section shall be sold, distributed, and/or dispensed by an authorized employee of licensee.
- 4) There shall be no restrictions as to the number of licenses issued under this subsection.
- 5) A license may apply for a restricted special event permit under Section 4.08.275.
- 6) The fee for this license shall be set by the City's fee schedule.
- 7) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

(l) Beer and Wine Only On-Sale License.

The City may grant a "beer and wine only on-sale license," which authorizes a licensee to sell on-sale tap beer, beer in open bottles and cans, and/or wine in similar packages at retail for consumption upon the leased premises of the licensee subject to the following restrictions and conditions:

- 1) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.
- 2) The license hereunder shall be for the sale of beer and/or wine for consumption on the premises only, except when permitted by subsection (3) below, and no sales for consumption off the premises shall be made.
- 3) A licensee may obtain a restricted special event permit under Section 4.08.275.
- 4) A licensee hereunder shall ensure that any alcoholic beverages sold pursuant to this section shall be sold, distributed, and/or dispensed by an authorized employee of licensee.
- 5) There shall be no restrictions as to the number of licenses issued under this subsection.
- 6) The fee for this license shall be set by the City's fee schedule.
- 7) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

(m) Legacy Square Concession License

The City may grant the "Legacy Square Concession License" to the licensee awarded the license to operate concession services at the City of Dickinson Legacy Town Square, subject to the following restrictions and conditions:

- 1) This license is limited to on-sale service of beer, wine, liquor as set forth below to patrons of the Legacy Town Square during City sanctioned and sponsored events.
 - a. Any events occurring at the Legacy Town Square not sponsored and sanctioned by the City will require a special event permit pursuant to section 4.08.270 of this chapter.
 - b. The licensee granted the Legacy Town Square License hereunder shall be given the right of first refusal for any private events occurring at the Legacy Town Square requesting alcohol service.

Should the licensee choose not to exercise the right of first refusal, the patron shall have the ability to contract with any licensee qualified to dispense alcoholic beverages pursuant to a special use permit issued by the City.

- 2) A licensee may sell liquor, wine, and beer in cans. Sales of any of these items in bottles shall not be permitted.
- 3) The license hereunder shall be for the sale for consumption in the Legacy Town Square Corridor only, and no sales for consumption off the Legacy Town Square Corridor shall be made. For purposes of this section, the Legacy Town Square Corridor shall mean the defined Legacy Square streets located in the 100 Block of 1st Ave West and 10 Block of 2nd Street West.
- 4) This license shall be an annual license that will begin January 1st of every year and end on December 31st of that year with the bidding process occurring prior to December 31st.
- 5) Licensee shall be responsible for ensuring all events conducted pursuant to this license have sufficient security personnel. This would include any private events where the licensee exercised its right of first refusal pursuant to (m)(1)(b).
- 6) The license is nontransferable and may be held only by a licensee with an On/Off Sale License or a Lodge or Club License.
- 7) A licensee hereunder shall comply with all the laws of the state relating to the sale and dispensation of alcoholic beverages.
- 8) In addition to the bid price paid by the licensee pursuant to paragraph 9 below, the City shall also receive ~~twenty (20) percent of a percentage of~~ gross sales of all alcohol sold at all City sanctioned and sponsored events in an amount to be determined by the City Administrator during the annual bidding process. The licensee shall provide documentation to the City upon the expiration of the annual license term to verify sales for that year.
- 9) This bidding process for this license shall be as follows:
 - a. Prior to October 1st of every year, the City shall set a date for the receipt of sealed bids from any interested on/off sale licensees and a date and time for a bid opening.
 - b. The Board of City Commissioners may, in its sole discretion, establish a minimum bid amount, which shall be made known to any and all potential bidders.
 - c. Interested parties shall submit an application for the license, together with the information required by Dickinson City Code 4.08.070, or as may otherwise be required for City staff to determine the party's qualifications for the license. Parties failing to submit the required application and information, shall have their bids removed from consideration.
 - d. Interested parties shall further submit to the City a sealed bid for the license.
 - e. City staff shall review the application and information submitted by all interested parties. Parties who are determined by City staff to be

not qualified for a license shall have their bids removed from consideration.

- f. Opening of sealed bids shall be held at the time and date set by the City. Parties shall have the opportunity to improve their written bids pursuant to an auction process.
 - g. City staff shall submit all final, qualified bids to the Board of City Commissioners, together with a recommendation from City staff regarding the award of the bid.
 - h. At its sole discretion, the Board of City Commissioners may grant the license to the highest responsible bidder.
 - i. Upon grant of the license from the Board of City Commissioners, the successful party shall immediately pay the full bid price. If the successful party is unable to immediately pay the full bid price, the Board of City Commissioners may offer the license to the next highest bidder or, in the Board of City Commissioner's sole discretion, decline to offer the license to any remaining bidder.
 - j. The City reserves the right to reject any and all bids, to waive any informalities in the bidding process or any bid received, and to accept any bid which, in sole judgment of the Board of City Commissioners, is in the City's best interest.
- 10) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

Section 2: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 3: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 4: Effective Date. This Ordinance shall be in full force and effect following its final passage.

Dated this 19th day of December 2023.

CITY OF DICKINSON

By _____
Scott Decker, President
Board of City Commissioners

ATTEST:

Dustin Dassinger, City Administrator
First Reading: December 5, 2023
Second Reading: December 19, 2023

Final Passage: December 19, 2023