

TITLE X.

BUSINESS LICENSES AND REGULATIONS

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CHAPTER 10-01

ALCOHOLIC BEVERAGES

Source: Ord. 2016-34, Sec. 1

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10-0101. **DEFINITIONS.** In this Chapter, unless the context or subject matter otherwise requires:

1. “Agent”: A person or entity acting on behalf of the license holder or an employee of the license holder, but who is not an employee.
2. “Alcoholic Beverages”: Any liquid intended 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.
3. “Beer”: Any malt beverage containing more than one-half of one percent of alcohol by volume.
4. “City”: The City of Horace.
5. “Club” or “lodge”: Any corporation or association organized for civic, fraternal, social, or business purposes, or for the promotion of sports. Said club or lodge shall have at least fifty (50) members at the time of the license application.
6. “Council”: The City Council of the City of Horace, North Dakota.
7. “Incompetent”: Someone under a guardianship whom has been judged legally incompetent.
8. “Intoxicating Liquor” and “liquor”: Any alcoholic beverage, except beer.
9. “Licensed Premises”: The bar area, dining rooms, meeting rooms and all other areas or places alcoholic beverages are regularly or occasionally sold, served, dispensed, or consumed by patrons. In the alternative, any person applying for a license under the provisions of this Chapter may describe, depict or otherwise identify in this application for a license various areas or spaces which shall constitute the licensed premises. The Council, in its discretion, requires 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 Chapter.
10. “Off Sale”: The sale of alcoholic beverages in original packages for the consumption off or away from the premises where sold. This provision shall not prohibit the licensee from dispensing and the customer from consuming a free sample as defined by the laws of this state.
11. “On Sale”: The sale of alcoholic beverages for consumption only on the licensed premises where sold.
12. “Package” and “Original Package”: 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.

13. "Person(s)": Any individual, firm, corporation, association, club, partnership, society, or any other organization.
14. "Recreational Establishment": Any pool hall, bowling alley, arcade or similar establishment having facilities or devices designated to provide for the amusement or leisure activities of its patrons.
15. "Sale" and "sell": All manners or means of furnishing of alcoholic beverages, including the selling, exchange, disposition of, and keeping for sale of such alcoholic beverages.
16. "Wholesaler": Any person engaged in the sale and distribution of alcoholic beverages at wholesale to persons holding a retail license for the sale and distribution of alcoholic beverages within the State of North Dakota or in interstate commerce.
17. "Wine": The alcoholic beverage obtained by a fermentation of agricultural products containing natural or added sugar, or such beverage fortified with brandy and containing not more than twenty-four percent (24%) alcohol by volume.

10-0102. **LICENSE REQUIRED.** No person, as defined in Section 10-0101 of this Chapter, shall sell, exchange, or keep for sale any alcoholic beverages, as defined in Section 10-0101 of this Chapter, without first having obtained a license pursuant to the provisions of this Chapter and posting said license in a conspicuous place or premises.

10-0103. **LICENSES - REGULATIONS AS TO CLASSES - FEES.**

1. Licenses authorizing the sale of alcoholic beverages within the City of Horace shall be divided into the following classes:
  - a. Wholesaler's License. The license fee for wholesaler's license shall be One Thousand Dollars (\$1,000) per year, payable in advance at the time of the issuance of the license.
  - b. Retail On and Off Premises Beer, Wine and Liquor License. The annual license fee for retail beer, wine and liquor on and off sale premises license shall be One Thousand Five Hundred Fifty Dollars (\$1,550) per year, payable in advance at the time of the issuance of the license.
  - c. Retail Off Premises Beer, Wine and Liquor License. The annual license fee for retail beer, wine and liquor off sale premises license shall be Seven Hundred Fifty Dollars (\$750) per year, payable in advance at the time of the issuance of the license.

- d. Retail Club or Lodge On Sale Liquor License. The annual license fee for a retail club or lodge on sale liquor license shall be One Thousand Dollars (\$1,000), payable at the time of application.
  - e. Retail Club or Lodge On Sale Beer License. The annual license fee for a retail club or lodge on sale beer license shall be One Hundred Fifty Dollars (\$150) per year, payable at the time of the application for the license.
2. The licenses for the sale of alcoholic beverages set out above shall be in effect for a period of one year commencing July 1 of each year and terminating June 30 of the following year. If an application is made for a license during the licensing year, the license that is granted shall only be for the unexpired portion of such year ending June 30, at which time an application for renewal of the license must be made. The license fee for the partial year shall be prorated so that it equals one-twelfth (1/12th) of the licensing fee set out above times the number of months the license will be in effect. The entire license fee for the portion of the year shall be paid at the time of the issuance of the license.
  3. If an application is for a new liquor license, or a transfer of a license, not a renewal of an existing license, in addition to the annual license fee set forth above, an initial application fee, payable to the City of Horace, must accompany the license application fee. The amount of the initial application fee shall be twenty-five percent (25%) of the annual license fee set out above for the license or licenses for which application is being made. Such initial application fee shall not be refunded, whether or not a license is granted by the City, and the initial application fee shall not be prorated, even if the initial application is for a portion of a year.

10-0104. **LICENSE - QUALIFICATIONS.** No retail license for the sale of alcoholic beverages shall be issued to any applicant unless the following requirements are met:

1. Residence Requirement.
  - a. If the applicant is an individual, the applicant must be a resident of the State of North Dakota and reside within seventy-five (75) miles of the city limits of the City of Horace.
  - b. If the applicant is a partnership, a partner or partners owning at least fifty percent (50%) of the partnership must be a resident of the State of North Dakota and reside within seventy-five (75) miles of the city limits of the City of Horace.
  - c. If the applicant is a corporation, a shareholder or shareholders owning at least fifty percent (50%) of the corporation's outstanding stock or a full-time managing agent designated in the license application who is an officer and shareholder of the corporation must be a resident of the State of North Dakota

and reside within seventy-five (75) miles of the city limits of the City of Horace.

- d. If the applicant is: (1) a corporation with shares which can be purchased or sold on a national public exchange [a “publically traded corporation”] subject to regulation by the United States Securities and Exchange Commission, or (2) a wholly owned subsidiary of a publically traded corporation, the corporation’s full-time managing agent must be a resident of the State of North Dakota and reside within seventy-five (75) miles of the city limits of the City of Horace.

If the applicant is not a resident of the State of North Dakota and does not have a legal and bona fide residence within seventy-five (75) miles of the city limits of the City of Horace, as required above, at the time the application is submitted, a license may be granted to such an applicant upon the condition that the applicant satisfies the above residence requirements within three (3) months after the approval of the license.

2. Age. The applicant, all partners, and all officers, directors and shareholders holding more than five percent of the outstanding stock of the corporation shall be at least 21 years of age.
3. Fitness. The applicant must not be deemed by the Council to be unfit to engage in the business for which the license is sought.
4. Owner of Business. No license shall be issued to any person 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.
5. Taxes. No license shall be issued, transferred or renewed for any location in which the real and/or personal property taxes are delinquent and unpaid.

A wholesaler's license may be issued to any person eligible therefor under the terms of the laws of the State of North Dakota, or any amendments thereto, who shall be engaged in the business of selling alcoholic beverages to licensed retail dealers or in interstate commerce only, provided, that no license shall be granted to any wholesaler who shall, directly or indirectly own or control, or have any financial interest in the ownership, control, or operation of a licensed retail on sale and off sale business.

10-0105. **LIABILITY INSURANCE REQUIRED OF LICENSEES.** Every person licensed under the authority of this Chapter, other than wholesalers, shall deposit with the City Auditor, not later than thirty (30) days after a license is issued, proof of liability and liquor liability insurance (Dram Shop). Such insurance shall provide coverage for at least the minimum amounts as set by the Council by resolution. The adequacy of any such insurance shall be determined by the governing body of the City.

10-0106. **LICENSE APPLICATION.** Any person desiring to obtain the issuance, transfer, or renewal of a license for the sale of alcoholic beverages shall make and file an application for such license with the Council, through the City Auditor. In the case of a renewal of the license, such application must be submitted at least twenty (20) days prior to the expiration date of the license. The application shall be made on a form approved by the Council and made available through the office of the City Auditor. In addition to the information supplied on the application form, the Council, the City Auditor, City Agent or his designee, may require such other information as they deem necessary in determining whether or not a license should be issued to the applicant. If a license is granted, the licensee shall have the affirmative duty of informing the City Auditor in writing within thirty (30) days of any changes in the facts supplied to the City in the application previously submitted.

10-0107. **INVESTIGATION OF APPLICANT.** The City Agent, or such other person as may be designated by the City Agent, shall investigate the facts stated in the application and the character, reputation, and fitness of the applicant, and shall report on said matters to the Council.

For purposes of this section, the fitness of the applicant includes all owners, partners, shareholders, officers, and directors of the corporations as well as a managing agent, if designated in the application form.

10-0108. **ISSUANCE, RENEWAL AND TRANSFER OF LICENSES.**

1. No license shall be issued, renewed or transferred without the approval of the Council. A change in the location of the licensed premises shall be deemed to be a transfer.
2. If the application is for a new license, or a transfer of an existing license to a new location, then notice that the applicant has applied for a license to sell alcoholic beverages at a place designated in the application, and that the application will be acted upon by the Council on a certain day and time, shall be published in a newspaper in the City at least ten (10) days before the date set for the hearing on the application. Such notice shall be signed by the City Auditor and the expense of its publication, in addition to the license fee, shall be paid by the applicant to the City Auditor before publication.
3. No new license, or a transfer of a license to a new location, shall be issued unless and until the applicant has proven, to the satisfaction of the governing body, that the following conditions have been met. Provided, however, that these conditions shall not apply to license renewals:
  - a. That the premises to be licensed have a minimum of two thousand five hundred (2,500) square feet of interior floor space available and devoted to the business for which the premises are licensed.
  - b. That sufficient, well-lit, off-street parking will be available to the patrons of the establishment of the applicant.

- c. That the establishment in question will be a definite asset to the City.
- d. That the licensed premises have a separate entrance or entrances from any other business and have no interior connection by which customers may move directly from another business to the licensed premises; however, this restriction will not apply to eating establishments, motels, or hotels that apply for a liquor license as part of their operation.

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

- e. The proximity of other businesses licensed to sell alcoholic beverages.
- f. Protests of neighboring property owners or occupants.
- g. Interference with neighboring properties.
- h. Public convenience necessity.
- i. Suitability of premises for sale of alcoholic beverages.
- j. Recommendations and reports of appropriate city officials, including the City Agent, Chief of the Fire Department, Building Inspector, and Health Officer.
- k. Zoning regulations.
- l. Proximity of schools, churches, funeral homes, public buildings or buildings used by and for minors.

10-0109. **LICENSE FEES - DISPOSITION OF FEES.** All license fees collected by the City Auditor shall be credited to the general fund of the City.

10-0110. **POSTING OF LICENSES.** Licenses issued to licensees shall be posted in a conspicuous place in that portion of the premises for which the license has been issued.

10-0111. **LICENSES - TERMINATION, SUSPENSION AND REVOCATION.** All licenses issued under the provisions of this Chapter, unless otherwise specifically provided, shall terminate on June 30 following the date of issuance; provided however, that any license issued under the provisions of this Chapter may, under certain circumstances, terminate automatically, or be terminated, suspended or revoked by the Council.

- 1. Any license issued under the provisions of this Chapter 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 thirty (30) days of the licensee's death.

- b. When the licensee, for any reason, ceases business at the licensed premises. Business shall be deemed to have ceased when no sale of alcoholic beverages occurs on the licensed premises for a period of at least thirty (30) consecutive business days; provided, however, upon written request of the licensee, the Council in its discretion may grant a period of up to sixty (60) additional days before business shall be deemed to have ceased.
  - c. When any license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the licensed premises has terminated or been suspended or revoked.
2. The Council may, in its discretion, suspend or revoke for cause any license issued under the provisions of this Chapter. The grounds for suspension or revocation shall, among others, include the following:
- a. The licensee has filed a Petition of 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 designated in the application as manager of the licensed business is convicted of violating any of the provisions of this Chapter.
  - c. An individual licensee, one of the partners in a partnership licensee, or one of the officers, directors or shareholders in a corporation licensee, or any individual designated in the application as manager of the licensed business is convicted of any state or federal felony.
  - d. The business of the licensee, at the location licensed, is conducted in such a manner as to be in violation of the health, sanitary or other regulations or ordinances of the City.
  - e. The licensee, having been given a conditional license pursuant to Section 10-0104 because of failure to meet the residence requirements of this Chapter, fails to have the required residency within the three (3) month period.
  - f. If the licensee ceases to be a legal bona fide resident of the State of North Dakota and reside within seventy-five (75) miles of the city limits of the City of Horace as required in Section 10-0104 of this Chapter.
  - g. The licensee has made any false statement in his application for a license.
  - h. If the licensee fails to notify the City Auditor in writing within thirty (30) days of any change in the facts supplied to the City in the application for its license.
3. The grounds enumerated in subsection 2 of this section shall not be deemed to be exclusive and any license issued under the provisions of this Chapter may be suspended or revoked by the Council for any other reason deemed by the Council to

be sufficient in order to promote the public health, safety, morals and general welfare of the people of the City. 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.

4. No license issued under the provisions of this Chapter 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, the City Auditor shall notify the licensee in writing and inform the licensee of the reason for the hearing, and specify the time and place of the hearing. The notice, and any affidavits filed in support of the suspension or revocation shall be served in the same manner as provided by law with the service of the summons in the civil action, or by registered mail. No suspension or revocation hearing shall be held before the expiration of five (5) days (or longer period if required by State law) after the date of the service of the notice upon the licensee or the mailing of the notice by registered mail.

If, upon such hearing, it appears to the Council that sufficient cause exists for the suspension or revocation of the license issued pursuant to the provisions of this Chapter, the Council shall make its order suspending or revoking the license.

**10-0112. ADMINISTRATIVE HEARING/WAIVER.** Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the City Attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the City Attorney shall set the matter for hearing not later than the next regular meeting of the Council. A copy of this affidavit and notice of hearing must be mailed to the licensee by registered mail not less than five (5) days before such hearing.

1. The City Auditor shall notify the licensee of the reason for the hearing, and specify the time and place of the hearing. The notice, and any affidavits filed in support of the suspension or revocation shall be served in the same manner as provided by law with the service of the summons in the civil action, or by certified mail.
2. A record of the hearing must be made by the use of an electronic recording device, or otherwise. If after such hearing, the Council determines that sufficient cause exists for the suspension or revocation of the license issued pursuant to the provisions of this Chapter, the Council shall make its order for immediate suspension or revocation of the license.
3. If after such hearing the City Council finds the violations charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the licensee's license for a period of time. Such action may be appealed to the district court by following the appeal procedure set forth in North Dakota Century Code § 28-24-01, except that the order revoking or suspending the license is inoperative while the appeal is pending.

**10-0113. LOCATION OF LICENSED ALCOHOLIC BEVERAGE ESTABLISHMENTS.** No alcoholic beverage license shall be issued for any building, room or place within one hundred fifty (150) feet of any church, public or parochial school grounds, or synagogue. The distance to be measured in a straight line from the building in which said school or church is conducted to the principal public entrance of the place in which the liquor is dispensed, except in case of a church or synagogue where the governing body thereof gives the licensee written permission to locate within the said prescribed limits, and such written permission is approved and filed with the Council. The foregoing shall not apply to lodges and clubs as defined herein. No license to sell liquor under the provisions of this Chapter shall entitle the holder thereof to carry on such business at more than one location under any one license, and each license shall contain the legal description of the place where the holder thereof operates such business.

**10-0114. SALE OF ALCOHOLIC BEVERAGES IN GAS STATIONS, GROCERY STORES, AND CONVENIENCE STORES.** Before a retail off sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the area to be licensed for the sale of alcoholic beverages must be clearly set out in a blueprint or diagram. The area licensed for the sale of alcoholic beverages must be separated from the non-licensed portion of the business by a wall designed to allow sales personnel to serve customers and make sales in both the licensed and unlicensed portions of the premises, and that may allow customers in either portion of the premises access to the other portion. Purchases of alcohol must be made in the area licensed for the sale of alcoholic beverages.

**10-0115. HOURS OF SALE - PROHIBITION OF SALES ON HOLIDAYS.**

1. Except as permitted by Section 10-0126 of the this Chapter, no license holder, its agents or employees, shall dispose or permit the consumption of alcoholic beverages on licenses premises between the hours of 2:00 a.m. and 11:00 am on Sundays, between the hours of 2:00 a.m. and 8:00 a.m. on all other days of the week, nor dispense or permit such consumption on Christmas Day, after 2:00 a.m. on Thanksgiving Day, or after 6:00 p.m. on Christmas Eve. In addition, a person may not provide off-sale after 2:00 a.m. on Thanksgiving Day or between 2:00 a.m. and 12:00 noon on Sunday. A person who violates this section is guilty of a Class A Misdemeanor.
2. Those license holders who receive a Sunday sales permit by the Council pursuant to Section 10-0126 of this Chapter may permit the sale and/or consumption of alcoholic beverages on licensed premises, or other premises set out in the permit, between the hours of 11:00 am on Sunday and 2:00 a.m. on Monday, or pursuant to the hours set forth in the particular permit granted if more restrictive.
3. Nothing in this section shall be construed as permitting the sale or dispensing of intoxicating liquor when such sales are prohibited by state or federal law.

**10-0116. SERVER TRAINING REQUIRED.** A qualified alcoholic beverage licensee, or license applicant, under the provisions of this Chapter, shall be required to send all managers and

employees involved in the sales or serving of alcoholic beverages at said licensed establishment to a server training course, as approved by the Council.

1. Persons successfully completing the approved class will receive a “server training certificate card,” which shall remain with said individual wherever employed. The “server training certificate card” is not required to be in said person’s possession during hours of employment, at a licensed establishment, provided the card can be produced within twenty-four (24) hours.
2. The “server training certificate card” must be renewed every three (3) years.
3. All new establishments are required, within ninety (90) days of opening, to provide the City Auditor with a roster of managers and employees depicting first name, last name, date of birth, date of hire, and server training card expiration date.
4. Recently hired managers and employees not having in their possession a current “server training certificate card” must, within ninety (90) days of the employment start date, successfully complete an approved server training class.
5. All existing licensees are required to submit along with the license renewal applications, a complete roster of managers and employees involved in the sale or serving of alcoholic beverages. Said roster is to include first name, last name, date of birth, date of hire, and server training card expiration date. Failure to comply with the above-referenced requirements may result in the delay of the liquor license renewal and/or suspension of said license until date of compliance.

**10-0117. RESTRICTIONS ON SALE, SERVICE OR DISPENSING OF ALCOHOLIC BEVERAGES.**

1. No licensee, his agent or employee, shall sell, serve or dispense any alcoholic beverage to a person under 21 years of age; no licensee, his agent, or employee, shall permit any person under 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
2. No licensee, his agent or employee shall sell, serve or dispense, nor permit to be furnished with any alcoholic beverage upon the licensed premises, any habitual drunkard, an intoxicated person, a person under guardianship after written notice of such guardianship by the legal guardian and during the continuance of such guardianship.
3. No licensee, his agent or employee shall be permitted to sell to any person upon credit any intoxicating liquor.

4. No person under 21 years of age shall be permitted to enter any room of a licensed premises in which alcoholic beverages are sold, served or dispensed. Nor shall anyone under the age of 21 years be employed in any room or rooms on a licensed premises which alcoholic beverages are sold on-sale, except as provided in subsection 5 of this section.
5. Any person under 21 years of age may remain in a restaurant where alcoholic beverages are sold if:
  - a. the restaurant is separate from the room in which alcoholic beverages are opened or mixed;
  - b. gross sales of food are at least equal to the gross sales of alcoholic beverages which are consumed in the dining area;
  - c. employed by the restaurant as a food waiter/waitress, busboy/girl under the direct supervision of a person 21 or more years of age, and not engaged in the sale, dispensing, delivery or consumption of alcoholic beverage;
  - d. the person is a law enforcement officer entering the premises in the performance of official duty; or
  - e. the person is between the ages of 18 to 21 years of age and has been employed by the liquor licensee to work in the capacity of musicians under the direct supervision of a person 21 or more years of age.

Any person who is 19 years of age or older but under 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, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages.

6. If a licensee owns or operates a recreational establishment which is open to persons under 21 years of age, the licensee shall designate, in his license application, an area to be used solely in its recreational capacity by persons under 21 years of age. No such licensee shall permit the sale, service, dispensing or consumption of alcoholic beverages in such designated area and no such licensee shall permit persons under 21 years of age to enter any area not so designated.
7. No off-premise liquor or beer licensee shall permit the opening or consumption of alcoholic beverages upon the licensed premises; provided, however, the licensee may permit the sampling of alcoholic beverages upon the licensed premises without charge to the consumer.

10-0118. **REMOVAL OF WINE FROM RESTAURANT.** If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages that are consumed

on the premises may permit an individual purchasing the bottle in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises if the licensee 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.

**10-0119. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION REGARDING SALE OF ALCOHOLIC BEVERAGES TO MINORS.** If the violation of the liquor ordinances relates to the sale of alcoholic beverages to minors by a licensee or licensee's employees, the following administrative suspensions or revocations shall be imposed:

1. The first such violation shall subject licensee to a written warning and a twelve (12) month Probationary Period.
2. The second violation within the Probationary Period shall subject licensee to a three (3) day suspension of the license.
3. The third violation within the Probationary Period shall subject licensee to a ten (10) day suspension of the license.
4. Subsequent violations within the Probationary Period shall subject licensee to a thirty (30) day license suspension.
5. If any sale of liquor products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full Probationary Period.
6. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one (1) offense during any twenty-four (24) hour day.
7. The Probationary Period shall be a period of twelve (12) months for a violation which is not within any period of probation already established by a violation of any of this section, which twelve (12) months shall be defined as commencing on the date of the said first offense and shall extend for twelve (12) consecutive months thereafter. If any subsequent offenses occur within the said twelve (12) month period, the Probationary Period for any such subsequent offense shall extend for either the same twelve (12) consecutive months from the date of the first offense, as described above, or for a period of six (6) months from the date of the subsequent offense, whichever period would expire later.

**10-0120. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION REGARDING SALE OF ALCOHOLIC BEVERAGES TO A MINOR IF LICENSEE HAS CERTIFIED TO AN APPROVED TRAINING PROGRAM.** If the violation relates to the sale of alcoholic beverages to minors by a licensee, if licensee has certified to an approved training program, or licensee's employees, the following administrative suspensions or revocations shall be imposed:

1. The first violation shall subject licensee to a written warning and a twelve (12) month Probationary Period.
2. The second violation within the Probationary Period shall subject licensee to a Two Hundred Fifty Dollar (\$250) administrative fine.
3. The third violation within the Probationary Period shall subject licensee to a Five Hundred Dollar (\$500) administrative fine.
4. The fourth violation within the Probationary Period shall subject licensee to a three (3) day suspension of the license.
5. The fifth violation within the Probationary Period shall subject licensee to a ten (10) day suspension of the license.
6. Subsequent violations within the Probationary Period shall subject licensee to a thirty (30) day license suspension.
7. If any sale of liquor products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full Probationary Period.
8. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one (1) offense during any twenty-four (24) hour day.
9. The Probationary Period shall be a period of twelve (12) months for a violation which is not within any period of probation already established by a violation of any of this section, which twelve (12) months shall be defined as commencing on the date of the said first offense and shall extend for twelve (12) consecutive months thereafter. If any subsequent offenses occur within the said twelve (12) month period, the Probationary Period for any such subsequent offense shall extend for either the same twelve (12) consecutive months from the date of the first offense, as described above, or for a period of six (6) months from the date of the subsequent offense, whichever period would expire later.

10-0121. **DELIVERY OF ALCOHOLIC BEVERAGES.** No licensed retail alcoholic beverage dealer, the officers, employees or agents in the City of Horace shall deliver or shall cause to be delivered to any customer outside of the licensed premises, any alcohol or alcoholic beverages sold under the terms and provisions of this Chapter, unless the package containing such liquor shall be securely wrapped and shall contain on the outside, in plain, legible writing, the name of the dealer selling the same and also the name and address of the purchaser.

No driver of any taxicab operating or driving the same in the City shall at any time possess, carry or have in such taxicab any alcohol or alcoholic beverages of the kind and character referred to in this section, excepting only that such driver may accept for delivery to a customer from a licensed dealer, any package(s) as described above.

No owner, operator, officer, or employee or driver of any taxicab in the City shall accept from any person, except a liquor dealer regularly licensed by the City, any order for the delivery of any such alcohol or alcoholic beverage as described above.

Any police or other peace officer of the City shall have the right to enter and search any taxicab, operating in the City under a license from said City, or elsewhere, at any time there may be a reason to believe or suspect that the driver of such vehicle is violating the provisions.

The violation of any of the provisions of this section by any licensed alcoholic beverage dealer, agents, officers or employees, the owner of any taxicab, or the driver thereof, shall be grounds for the revocation of the license issued for that purpose and where a driver of any taxicab is found guilty of violating the terms and provisions of this section, the license of the owner of such taxicab may also, in the discretion of the Council, be revoked.

**10-0122. RULES FOR POSSESSION OF ALCOHOLIC BEVERAGE BY A LICENSEE.**

1. Possession of Unstamped Liquor Illegal. No alcohol or alcoholic beverages, as defined by the laws of the State of North Dakota, shall be permitted to be owned, held, or possessed upon any licensed premises, or by any person to whom a license has been issued unless the tax stamp, as provided by the laws of the State of North Dakota has been properly affixed thereto, and unless taxes on said alcohol and alcoholic beverages have been paid, and the possession of any container of any kind in which such alcohol or alcoholic beverage is found which does not bear the proper stamps issued by the State of North Dakota shall be deemed to be illegal and a violation of this section.
2. Purchase to be from Licensed Wholesaler. No licensee shall purchase, have, or possess any alcohol or alcoholic beverages as defined by the laws of the State of North Dakota unless licensee has purchased the same from a wholesaler duly licensed pursuant to the provisions of the laws of the State of North Dakota.
3. Invoices to be Filed, Contents of. Each licensee shall keep on file all invoices covering purchases of such alcohol or alcoholic beverages, showing the name and license number of the wholesaler, and the name of the municipality issuing such wholesale license. Such invoices shall be retained in possession of the licensee and shall, at all times, be open to inspection by any police officer or peace officer in the State of North Dakota.
4. Records to be Kept. Each licensee under this Chapter shall keep a book showing the kinds and quantities of all alcoholic beverages purchased by him, together with the name of the person from whom purchased, the license number of the wholesaler selling such alcoholic beverages to said licensee, and the name of the municipality issuing such wholesale license.

10-0123. **LICENSED PREMISES - REQUIREMENTS FOR.**

1. Every on-sale retail premise licensed for the sale of alcoholic beverages must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition.
2. Every on-sale licensee for the sale of alcoholic beverages shall equip his establishment with tables and chairs in sufficient numbers to accommodate his patrons.
3. Every licensee is hereby made responsible for the conduct of the place of business and is required to maintain order and sobriety in such place of business. No intoxicated person(s) shall be permitted to remain upon the premises licensed or to be served any alcoholic beverages by any licensee.
4. Every licensee of an off sale liquor license which has a drive-in window for service must provide sufficient lighting so as to remove any and all traffic hazards that might arise as a result of the drive-in window and provide for motor vehicle ingress and egress to and from said facility without in any way impeding, hampering, delaying or jeopardizing the safe flow of motor vehicle traffic.
5. Every on-sale retail premise licensed for the sale of alcoholic beverages, which does not have gross sales of food greater than gross sales of alcoholic beverages in the separate dining area, which has premises that extend out-of-doors (hereinafter the "outdoors"), must meet the following requirements:
  - a. The outdoors must be contiguous with the rest of the licensed premises (hereafter called "indoors").
  - b. The periphery of the outdoors shall be enclosed with a wall, fence or dense plantings maintained at a minimum height of at least forty-two (42) inches so as to clearly define the boundary of the licensed premises and to prevent ingress/egress to the outdoor premises. The licensee shall post signs around the periphery of the outdoors stating that patrons may only enter the outdoor area through the licensed premises entrance.
  - c. A wall, fence or plantings required under subsection 5(b) may not contain any gates except as required under the fire code. Such gates shall remain secured during business hours, but shall be equipped with a latch that can only be released from the inside and which allows for emergency exit from the premises.
  - d. Access to the patio shall be made only through the licensed premises.
  - e. The licensee shall file with the building inspector a site plan showing the location, plans and specifications of the proposed enclosure in relation to

the licensed structure and the lot lines of the premises. The proposed plan must be approved by the building inspector and fire chief, and the enclosed patio area may not exceed the total square footage of the licensed premises to which it is attached.

- f. The requirements set forth in this section shall take effect on December 1, 2016.
6. Every on-sale retail premise licensed for the sale of alcoholic beverages in which gross sales of food are greater than gross sales of alcoholic beverages in the separate dining area, which has premises that extend out-of-doors (hereinafter the “outdoors”) must meet the following requirements:
- a. The outdoors must be contiguous with the rest of the licensed premises (hereafter called “indoors”).
  - b. The periphery of the outdoors shall be clearly defined with a wall, fence or plantings, or combination thereof, enclosing at least eighty percent (80%) of the perimeter of the outdoor area, maintained at a minimum height of at least twenty-eight (28) inches so as to clearly define the boundary of the licensed premises and permit the licensee to monitor patron activity.
  - c. The licensee shall file with the building inspector a site plan showing the location, plans and specifications of the proposed enclosure in relation to the licensed structure and the lot lines of the premises. The proposed plan must be approved by the building inspector and the fire chief, and the enclosed patio area may not exceed the total square footage of the licensed premises to which it is attached.
  - d. The requirements set forth in this section shall take effect on December 1, 2016.

10-0124. **INSPECTION OF LICENSED PREMISES TO BE ALLOWED.** The licensee accepts the license privileged upon the condition, which need not elsewhere be expressed, that the Council or the City Agent, may, at any time, enter upon the premises licensed for the purpose of inspection, or to determine whether the premises are being conducted in compliance with the ordinances of the City.

10-1225. **CABARET LICENSE.**

1. Definitions.

- a. Entertainment - shall be defined for purposes of this Chapter to mean all forms and types of performing or entertaining for patrons on licensed premises without regard as to whether such entertainment is provided by means of live performances or manually operated, 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.

- b. Live performances - shall be defined for the purpose of this Chapter to mean any person who for consideration, monetary or otherwise, performs in person on a licensed premise as a singer, musician, dancer, comedian, model, or any other type of entertainer.
2. No licensee under this Chapter shall permit entertainment for more than one day a week any given week without first having obtained a cabaret license as hereinafter provided.
3. The license fee for cabaret license shall be Two Hundred Fifty Dollars (\$250) per year.
4. The license fee set forth in subsection 3 of this section shall be for a period of one year from July 1 to June 30 and shall be payable in advance at the time of the issuance of the licensee and thereafter, on or before June 10 of each subsequent year for renewal of said license.
5. The application for cabaret license shall be made by the licensee on forms provided by the City Auditor's office of the City of Horace. The granting of a cabaret license shall be subject to the approval of the Council and it may be suspended or revoked in conformance with procedures established under Section 10-0111 of this Chapter.
6. No live performances are permitted on a licensed premise which contain any form of dancing. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument. This restriction applies to all licensed premises whether or not they have a cabaret license.
7. No live performances are permitted on a licensed premise which involve the removal of clothing, garments or any other costume. Such prohibition does not include the removal of headwear or footwear; or the incidental removal of a tie, suitcoat, sportcoat, jacket, sweater or similar outer garments. Incidental removal for purposes of this section shall mean the removal of a garment or article of clothing which is not a part of the act or performance. This restriction applies to all licensed premises whether or not they have a cabaret license.
8. No entertainment on a licensed premise shall contain:
  - a. 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;

- b. The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals;
- c. The actual or simulated displaying of the pubic hair, anus, vulva or genitals; or the nipples of a female.

This restriction applies to all licensed premises whether or not they have a cabaret license.

- 9. A licensee shall have the duty and responsibility to make available for inspection by a City Agent an identification card, such as a driver's license, containing a photograph and the age of all entertainers or performers on the licensed premise. The licensee shall not permit a person to make a live performance on the licensed premise if the licensee is not able to obtain the required identification from the performer.

#### 10-0126. **SPECIAL PERMITS FOR SALE OF ALCOHOLIC BEVERAGES.**

- 1. Authorization. The Council shall have the authority to issue special permits for the sale of alcoholic beverages when authorized to do so by state law as provided in North Dakota Century Code §§ 5-0201.1, 5-0205.1, or any other state statute now in effect, or as amended, or enacted in the future which provides authority for North Dakota cities to issue special permits for the sale of alcoholic beverages.
- 2. Licenses and Special Conditions. Any person or entity seeking a permit as authorized by paragraph 1 of this section must apply to the Council for such a permit. The City, in granting such a permit, shall have the authority to put additional conditions on the license over and above the conditions and requirements provided in state law, if the Council deems it desirable to do so.
- 3. License Fee. The City, by resolution, may provide a schedule for fees for such special permits, which fees shall not exceed the maximum permitted by state law.
- 4. Restrictions on License. Any special permits given pursuant to this section shall be subject to all of the provisions of this Chapter, except where such provisions are in conflict with the provisions of state law authorizing special permits.
- 5. Revocation of License. The special licenses authorized by this section may be suspended or revoked by the City for violations of the terms of this section, as well as any other provisions of this Chapter. In addition, violation of the provisions of this section also subject a violator to suspension or revocation of any other license for the sale of alcoholic beverages issued by the City pursuant to Section 10-0111 of this Chapter.

10-0127. **MICROBREW PUB; DOMESTIC WINERY; DOMESTIC DISTILLERY; AND BREWER TAPROOM LICENSES.** A person may obtain a license for a microbrew pub; domestic winery; domestic distillery; brewer taproom; and/or any similar establishment provided that

the licensee obtains the required license pursuant to this Chapter and Title 5 of the North Dakota Century Code.

10-0128. **APPLICATION OF CHAPTER.** This Chapter 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 police jurisdiction, as defined by law.

10-0129. **SEVERABILITY CLAUSE.** If any section, subsection, sentence or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

10-0130. **PENALTY.** Any person, firm or corporation violating the terms of this Chapter shall, upon conviction thereof, be punished by a fine not to exceed One Thousand Five Hundred Dollars (\$1,500) or imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court. Provisions of Section 1-0807 of the Revised Ordinances of 2003 of the City shall also apply. Such a penalty should be in addition to the authority of the Council to suspend or revoke a license pursuant to Section 10-0111 of this Chapter.

## CHAPTER 10-02

### GAMBLING

#### SECTIONS:

- 10-0201. Games of Chance.
- 10-0202. Application for Local Gambling License or Site Authorization.
- 10-0203. Limitation on Site Authorizations.
- 10-0204. Limitation on Hours and Participation of Games of Chance.
- 10-0205. Availability of Records.
- 10-0206. Work Permits.
- 10-0207. Failure to Display Work Permit -- Revocation or Suspension.
- 10-0208. Failure to Obtain a Work Permit.
- 10-0209. Revocation of Site Authorization.
- 10-0210. Hearing Before City Council.
- 10-0211. Severability Clause.

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

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

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

10-0204. **LIMITATION ON HOURS AND PARTICIPATION OF GAMES OF CHANCE.** A person under 21 years of age may not participate in the games of pull tabs, jars, punch

boards, twenty-one, or sports pools. No games of chance shall be conducted in licensed liquor premises, or at premises for which site authorizations have been granted by the City of Horace other than during the hours when alcoholic beverages may be dispensed in accordance with the applicable regulations of the State of North Dakota and the City of Horace.

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

10-0206. **WORK PERMITS.** All gaming employees at sites authorized to conduct games of chance under the Class A and Class B license provisions of the North Dakota charitable gambling laws for any form of gambling in Horace shall be required to have a work permit. Gaming employees for purposes of this section shall be defined as dealers, overseers, pit bosses, bingo operators, pull tab operators, accountants, bookkeepers and the gaming committee directly connected with the operation and supervision of the card tables, tip jars and other gaming activities. The procedure and requirements for obtaining a work permit are as set out below:

1. The person applying for his or her work permit shall submit an application on a form provided by the City Auditor. The form shall include such information as the City may reasonably require with respect to the identity and personal history of the applicant. The truthfulness of the information supplied by the applicant shall be sworn by the applicant under oath in writing. The application shall be accompanied by the fingerprints and a recent photograph of the applicant meeting the specifications of the City.
2. The applicant shall accompany his application with a non-refundable fee in the amount of \$20.00. The license shall only permit the person to be a gaming employee within the City of Horace for a particular charitable organization. If the applicant desires to work for a different charitable organization within the City of Horace, the applicant must apply for another work permit. The cost for a subsequent permit whether as a result of losing the first permit, or changing the charitable organization for which a person is employed shall be accompanied with a non-refundable fee in the amount of \$5.00. The applicant for a subsequent permit shall not have to complete another initial application form. However, the person seeking a subsequent permit to work for a different charity shall fill out a form listing the name of the charity by which he/she was formerly employed, the name of the new charity with whom he/she is going to be employed, and the reason for his/her change of employment. If he/she was discharged or allowed to resign, the applicable facts shall be listed on said form.
3. The application for a work permit shall be submitted to the City Auditor, who may request any law enforcement agency to review the same. The City Auditor shall issue or deny the work permit not more than thirty (30) days after the applicant has submitted to the City a completed application form accompanied with the required

photograph, fingerprints and application fee. The City shall not issue a work permit to any person:

- (a) Who is under the age of twenty-one (21);
  - (b) Who submits false information on his/her application;
  - (c) Who has been convicted of a felony within the last two (2) years;
  - (d) Who has been convicted of any misdemeanor involving theft of property or services, shoplifting or related criminal offense within the last two (2) years;
  - (e) Who is determined by the Attorney General of the State of North Dakota to have participated in organized crime or unlawful gambling;
  - (f) Who is otherwise determined by the gambling enforcement officer to not be a fit and proper person to engage in such work pursuant to Section 53-06.1-06(10)(b) of the North Dakota Century Code.
4. A person who has been denied a work permit pursuant to this section shall have the right to appeal the denial to the Horace City Council by filing a written notice of appeal with the Horace City Auditor within ten (10) days after the receipt of the denial of the work permit. Upon failure to file such notice within the ten (10) day period, the action of the gambling enforcement officer denying such work permit shall be final and conclusive. The gambling enforcement officer upon denial of a work permit shall give the applicant written notice of the denial setting forth the reason for the denial and the appeal procedure.
5. All gaming employees required to have a work permit shall be required to conspicuously display it about his/her person while engaged in gaming activities.
6. No person shall be required to have or display a work permit prior to May 1, 2003.

**10-0207. FAILURE TO DISPLAY WORK PERMIT - REVOCATION OR SUSPENSION.** Failure to display the work permit as required by this Chapter shall be cause for revocation or suspension of a gaming employee's work permit. The gambling enforcement officer shall notify the person of the revocation or suspension of his permit for violation of this section which revocation shall go into effect ten (10) days after receipt of the notice. The notice shall also state that the employee has ten (10) days from the receipt of the notice to file a written appeal with the City Auditor requesting a hearing before the City Council.

**10-0208. FAILURE TO OBTAIN A WORK PERMIT.** It shall be unlawful for a person to work as a gaming employee without obtaining a proper work permit as required by this chapter, or to work as a gaming employee after such work permit has been revoked or is under suspension pursuant to this chapter.

10-0209. **REVOCAION OF SITE AUTHORIZATION.** It shall be the responsibility of the holder of a site authorization not to allow persons to work as gaming employees at their site who do not have the proper work permit. In addition, it shall be the responsibility of the holder of the site authorization to require all its gambling employees to display their work permit as required by this chapter. The gambling enforcement officer shall notify the City Council if the holder of a site authorization is not complying with the provisions of this section, and such noncompliance shall be grounds for suspension or revocation of the site authorization. In addition, the gambling enforcement officer shall notify the City Council if the holder of the site authorization is violating any of the terms of the site authorization issued by the City of Horace, or any applicable state law or regulations of the Attorney General. Such noncompliance with the provisions of the site authorization, state law, or regulations of the Attorney General shall also be grounds for suspension or revocation of the site authorization.

10-0210. **HEARING BEFORE CITY COUNCIL.** Any person who is denied a work permit, or whose work permit is suspended or revoked, and who files a written appeal within the ten (10) day period shall be entitled to a hearing before the City Council to review the denial, suspension, or revocation. The hearing shall be held at the next regularly scheduled meeting of the City Council after the written appeal has been filed with the City Auditor. A sound recording shall be kept of the hearing, and after the completion of the hearing the City Council shall prepare its findings in writing.

The City Auditor upon receipt of notice from the gambling enforcement officer that there are grounds to suspend or revoke a site authorization, shall notify the holder of the site authorization of the date at which the City Council will have a hearing to determine whether or not to suspend or revoke the site authorization. There shall be a sound recording of such hearing, and after the completion of the hearing the City Council shall make its findings in writing.

10-0211. **SEVERABILITY CLAUSE.** The invalidity of any section, clause, sentence or any provisions of this ordinance shall not affect the validity of any part of this ordinance which can be given affect without such invalid part or parts.

## CHAPTER 10-03

### PAWNBROKERS

#### SECTIONS:

- 10-0301. "Pawnbroker" Defined.
- 10-0302. License Required.
- 10-0303. Licenses - Fees For.
- 10-0304. Bond - Conditions Of.
- 10-0305. Licenses - Expiration Of.
- 10-0306. Licenses - Revocation Of.
- 10-0307. City Auditor to Keep Register of Licenses.
- 10-0308. Record of Goods Pawned or Consigned -- Duty of Licensee.
- 10-0309. Record of Goods Pawned or Consigned -- Copy to Chief of Police.
- 10-0310. Description of Property When Necessary.
- 10-0311. Licensees Not to Sell Property Within Forty-eight Hours.
- 10-0312. Licensees -- Notice Not to Sell Property -- Sale or Redemption of Property Not Allowed.
- 10-0313. Transactions with Minors -- Consent of Parents Required.
- 10-0314. Severability Clause.
- 10-0315. Penalty.

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10-0301. **"PAWNBROKER" DEFINED.** As used in this chapter, unless the context or subject matter otherwise requires, the term "pawnbroker" shall mean any person who:

1. Loans money on deposit or pledge of personal property, or other valuable thing;
2. Deals in the purchasing of personal property or other valuable thing, on condition of selling the same back again at a stipulated price; or
3. Loans money, secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged.

10-0302. **LICENSE REQUIRED.** Every person before engaging in the business of pawnbroker, as defined in Section 10-0301, or dealer in secondhand goods in the city shall obtain from the City a license so to do.

10-0303. **LICENSES - FEES FOR.** Every pawnbroker, and every dealer in secondhand goods, before commencing business shall pay into the City treasury the required fee which shall be established by resolution of the City Council.

10-0304. **BOND - CONDITIONS OF.** Before the issuance of a license by the City Auditor to any person as a pawnbroker or dealer in secondhand goods, the person applying for said license

shall execute a bond to the City of Horace in a sum set by the City Council by resolution with sufficient sureties, to be approved by the City Attorney, conditioned that the said applicant will, in every particular, conform to the requirements of this chapter and with the requirements of any law or ordinance which may hereafter be passed concerning pawnbrokers and secondhand dealers.

10-0305. **LICENSES - EXPIRATION OF.** Each license granted and issued under this chapter shall expire at the expiration of one year next following the granting and issuing of the same, unless sooner revoked as hereinafter provided.

10-0306. **LICENSES - REVOCATION OF.** Every license issued under the provisions of this chapter shall be issued upon the distinct understanding that such license may be revoked by the City Council at any time, or by the court upon the conviction of the holder of a violation of this chapter. If the person so convicted shall have a license under the provisions of this chapter and said license is revoked, a new license shall not be issued to the same person within six months thereafter, except by consent of four-fifths of the City Council.

10-0307. **CITY AUDITOR TO KEEP REGISTER OF LICENSES.** The City Auditor shall keep a register of all the licenses granted under this chapter in which he shall record the name of the person licensed, the time of issuing the license, and the place of business of such person.

10-0308. **RECORD OF GOODS PAWNED OR CONSIGNED -- DUTY OF LICENSEE.** Every person who shall be engaged in the business of pawnbroker as defined in Section 10-0301 or dealer in secondhand goods shall keep a book in which shall be clearly written in ink at the time of each loan, purchase, or consignment an accurate account or description, in the English language, of the goods, articles, or other things pawned, pledged, received, deposited, purchased, or placed on consignment, the amount of money loaned or paid therefor, the time of the receipt of the same, the name, residence, and description of the person pawning, pledging, selling, or consigning the same, which book, as well as the article pawned, purchased, or consigned, shall, at all reasonable times, be open to the inspection of the City Council, the police commissioner, the city attorney, City Auditor, or any member of the police force.

10-0309. **RECORD OF GOODS PAWNED OR CONSIGNED -- COPY TO CITY.** It shall be the duty of every pawnbroker or dealer in secondhand goods to make out and deliver to the City Auditor or Agent designated by the City Council by resolution, every day before the hour of 12:00 Noon, a legible and correct copy from the book required to be kept in Section 10-0308 of all personal property or other valuable things received, deposited, purchased, or placed on consignment during the preceding day, together with the time when received, deposited, purchased, or consigned, a description of the person or persons and an impression of the right thumbprint of the person or persons by whom such articles were left in pledge or from whom the same were purchased or taken on consignment.

Should the right thumb be amputated or crippled then the left thumb may be used and the copy of the print should be so marked.

10-0310. **DESCRIPTION OF PROPERTY WHEN NECESSARY.** No person shall be required to furnish the description of any property purchased from private residences,

manufacturers, or wholesale dealers having an established place of business or of goods purchased at open sale from any bankrupt stock or from any other person doing business and having an established place of business in the City. Such goods, however, must be accompanied by a bill of sale or other evidence of open or legitimate purchase and must be shown to the City Council, the police commissioner, the city attorney, City Auditor, or any member of the police force when demanded.

**10-0311. LICENSEES NOT TO SELL PROPERTY WITHIN FORTY-EIGHT HOURS.** No personal property received on deposit or purchased by any pawnbroker or dealer in secondhand goods shall be sold or permitted to be redeemed from the place of business of such person for the space of forty-eight hours after the copy and statement required to be delivered to the City Auditor or Agent designated by the City Council by resolution shall have been received as required by Section 10-0309.

**10-0312. LICENSEES--NOTICE NOT TO SELL PROPERTY--SALE OR REDEMPTION OF PROPERTY NOT ALLOWED.** Whenever the City Auditor or Agent designated by the City Council by resolution shall notify any dealer or dealers not to sell any property received on deposit or purchased by them or permit the same to be redeemed, such property shall not be sold or permitted to be redeemed until such time as may be determined by the City Agent who required them to be held.

**10-0313. TRANSACTIONS WITH MINORS -- CONSENT OF PARENTS REQUIRED.** No person granted a license under the provisions of this chapter shall purchase or receive any article or thing of value from, or transact any business as provided herein with, any person who has not reached the age of eighteen years, without the written consent of such minor's parent or guardian.

**10-0314. SEVERABILITY CLAUSE.** The invalidity of any section, clause, sentence or any provisions of this ordinance shall not affect the validity of any part of this ordinance which can be given effect without such invalid part or parts.

**10-0315. PENALTY CLAUSE.** Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

Source: Ord. 2015-13, Sec. 5

CHAPTER 10-04

SUNDAY OPENING - FOOD STORES

SECTIONS:

10-0401. Opening Food Stores on Sunday.

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10-0401. **OPENING FOOD STORES ON SUNDAY.** Food stores may be operated on Sunday as provided in Subsection 30 of Section 12.1-30-03 of the North Dakota Century Code, without limitation as to the number of employees which may work at any one time on a Sunday.

## CHAPTER 10-05

### TOBACCO LICENSING

(Source: Ord. 2015-13, Sec. 6)

#### SECTIONS:

10-0501.	Definitions.
10-0502.	License Required.
10-0503.	Prohibited Sales.
10-0504.	Administrative Remedies.
10-0505.	Criminal Penalties.

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#### 10-0501. **DEFINITIONS.**

1. **E-CIGARETTE, ELECTRONIC CIGARETTE, OR ELECTRONIC SMOKING DEVICE.** Any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, or e-pipe, or under any other product, name or descriptor, and also includes any cartridge or other component of the device.
2. **INDIVIDUALLY-PACKAGED TOBACCO PRODUCTS.** Any package containing only one individually-wrapped tobacco product. This definition includes, but is not limited to, single packs of cigarettes, single bags of tobacco product for rolling, and individual cans of tobacco product for chewing or sniffing.
3. **PROBATIONARY PERIOD.** A period of 12 months for a violation which is not within any period of probation already established by a violation of any of this section, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period, the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of 6 months from the date of the subsequent offense, whichever period would expire later. For purposes of this section, an offense is deemed to have occurred when the offense is committed, and not the date of judgment or conviction.
4. **SELF-SERVICE MERCHANDISING.** Any open display of tobacco products to which the public has access without the intervention of an employee of the retail establishment.

5. **TOBACCO PRODUCTS.** Any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, e-cigarette, electronic cigarette, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
6. **VENDING MACHINE.** Any mechanical, electric, or electronic device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products.

10-0502. **LICENSE REQUIRED.** No person or entity shall directly or indirectly, or by means of any device, keep for retail sale, sell at retail, or otherwise dispense any tobacco products within the City of Horace without a City of Horace tobacco product dealer's license. Any person or entity that has a state license for the sale of tobacco products issued pursuant to Chapter 57-36 of the North Dakota Century Code shall automatically be deemed to have a license issued by the City of Horace for the sale of tobacco products without the need for an application to the City or any action of the City of Horace. As long as the person or entity has a state license issued under Chapter 57-36 for the sale of tobacco products, they shall be deemed to have a license from the City of Horace for the sale of tobacco products, unless and until the City license is suspended or revoked pursuant to this chapter. There shall be no fee for the municipal license.

10-0503. **PROHIBITED SALES.** (Source: Ord. No. 2021-04)

1. No person or entity shall sell, offer for sale, give away or deliver any tobacco product to any person under the age of twenty-one (21) years.
2. No person shall sell or dispense any tobacco product through the use of a vending machine except as follows:
  - a. A vending machine may be used to dispense tobacco products in an area within a factory, business, office or any other place not open to the general public or to which persons under twenty-one (21) years of age are not generally permitted access.
  - b. A vending machine may be used to dispense tobacco products on the premises of a licensed on-sale or off-sale intoxicating liquor establishment, including club licenses. Provided, however, that if an on-sale licensed premises is also a restaurant, a vending machine located in a portion of the premises in which minors are allowed must be operable only by activation of an electronic switch operated by an employee of the establishment before

each sale, or by insertion of tokens provided by an employee of the establishment before each sale.

3. No person shall sell or dispense any tobacco product through the use of self-service merchandising methods or displays.

10-0504. **ADMINISTRATIVE REMEDIES.**

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

If the violation relates to the sale of tobacco products to persons under the age of twenty-one by a licensee or licensee's employees, the following administrative suspensions, or revocations shall be imposed:

- a. The first such violation shall subject licensee to a written warning.
- b. The second violation within the probationary period shall subject licensee to a 3-day suspension of the license.
- c. The third violation within the probationary period shall subject licensee to a 10-day suspension of the license.
- d. Subsequent violations within the probationary period shall subject licensee to a 30-day license suspension.
- e. If any sale of tobacco products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full probationary period.
- f. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one offense during any 24-hour day.

(Source: Ord. No. 2021-04)

2. **ADMINISTRATIVE HEARING/WAIVER.** Upon receipt of information indicating that a license violation has occurred, the City Auditor or his designee shall send a license violation notice to licensee by certified mail. The license violation notice shall indicate the nature of the violation and whether such violation will result in an administrative fine, license suspension, or license revocation.

If the proposed disposition includes a license suspension, revocation, or fine, the notice shall also indicate that licensee has the option of requesting a hearing before the City Council prior to the license suspension, revocation, or imposition of fine, or

waiving such hearing and accepting the disposition described in the license violation notice. The licensee shall file a written request for a hearing within ten (10) days of the date specified in the license violation notice, or licensee shall be deemed to have waived its right to a hearing. Upon receipt of a hearing request, the City Auditor or his designee shall schedule a hearing before the City Council at the earliest opportunity and shall send a hearing notice to licensee by certified mail.

3. CLERK PENALTIES. Any employee of a license holder who is in violation of the restriction attached to a tobacco product license shall be subject to an administrative fine of Fifty and no/100 Dollars (\$50.00).

#### SECTION 10-0505. **CRIMINAL PENALTY.**

1. PENALTY. Any person, firm or corporation violating the terms of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$1,500 or imprisonment not to exceed 30 days, or by both such fine and imprisonment, at the discretion of the Court. Provisions of Section 1-0807 shall also apply. Such a penalty should be in addition to the authority of the City Council to suspend or revoke a license pursuant to Section 10-0504.

## CHAPTER 10-06

### FOOD TRUCKS AND MOBILE FOOD VENDORS

(Source: Ord No. 2019-4)

#### SECTIONS:

- 10-0601. Definitions.
  - 10-0602. License Application.
  - 10-0603. General Regulations.
  - 10-0604. Food Truck Areas.
  - 10-0605. Traffic and Parking Regulations.
  - 10-0606. Maintenance Regulations.
  - 10-0607. Health Regulations.
  - 10-0608. Violations.
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10-0601. **DEFINITIONS.** In this Chapter, unless the context or subject matter otherwise requires:

1. "Food Truck" means a licensed mobile food unit, as licensed through the North Dakota Department of Health (NDDOH).
2. "License Holder" means a food truck operator who holds all requisite permits, licenses, and permissions to operate a food truck in the City of Horace.
3. "NDDOH" means the North Dakota Department of Health.
4. "Public Space" means a parcel or portion thereof that predominantly features a landscaped or hardscaped environment with the primary purpose of providing social or economic amenities to the general public.
5. "Vacant Space" means a parcel or portion thereof characterized by a lack of built environment.

#### 10-0602. **LICENSE APPLICATION.**

1. Applicant must submit a food truck license application, with all necessary documentation and fees, to the City Auditor. The application is made on a form approved by the City Council and made available through the office of the City Auditor.

The City Auditor then schedules a hearing with the City Council, at its next regularly scheduled meeting.

2. Upon recommendation from City staff, the City Council may approve, conditionally approve, or deny a food truck license application based on the applicant's compliance with this Chapter, qualifications of the applicant, amount of licenses previously approved, and other factors deemed reasonable by the City Council in determining whether or not a license should be issued to the applicant. The City Council may postpone consideration of the application to request additional information of the applicant.
3. If the application is approved or conditionally approved, the City Auditor shall issue the applicant a license under this Chapter, listing the proposed conditions, if any. If a license is granted, the license holder has the affirmative duty of informing the City Auditor, in writing within ten (10) days, of any changes in the facts supplied to the City in the application previously submitted.

#### 10-0603. **GENERAL REGULATIONS.**

1. A person may not set up or operate a food truck without first obtaining a license and complying with the requirements and conditions laid out in this Chapter. Upon receiving license approval from the City Council, the City Auditor is authorized to issue a license for a food truck. This license may only be obtained if the NDDOH has licensed the food truck.
2. Food trucks may only operate in a designated "food truck area" as defined in Section 10-0603 of this Chapter.
3. Food truck application and license fees are set by resolution of the City Council. Licenses are issued annually and are only valid until November 1, regardless of when an applicant obtains a license.
4. Power must be self-contained or the food truck must have written approval from a property owner to connect power in a safe manner.
5. Food trucks must be moved from their operating locations and parked in a storage area each night.
6. Food trucks must provide adequate lighting to illuminate the surrounding vicinity.
7. Food trucks may only operate between the hours of 6:00 a.m. to 10:00 p.m. A thirty (30) minute allowance for set up and tear-down is permitted.
8. Food trucks may not be left unattended.
9. The license holder must comply with all noise regulations set forth in Chapter 12-08 of these ordinances.

10. The license holder may not have on the premises any bell, siren, horn, loudspeaker, or any similar device to attract the attention of possible customers.
11. Alcohol may not be sold or consumed in, on, or around the food truck while operating under the license.

**10-0604. FOOD TRUCK AREAS.**

1. The following locations are considered food truck areas, subject to approval from the property owner:
  - a. The parking area, public area, or vacant area in a commercial or industrial zone.
  - b. The parking area, public area, or vacant area of a religious or fraternal institution.
  - c. The parking area or other area within a City park, as determined by the Horace Park Board.
  - d. Public right-of-way as determined by the City Council.
2. Prior to set up, written approval must be granted by the owner of any lot which a food truck desires to park. In the case of a corporate entity, this letter must be accompanied by proof that the signatory is an authorized agent. This letter must be kept in the food truck. This provision expressly applies to Horace Park District property.

**10-0605. TRAFFIC AND PARKING REGULATIONS.** The following traffic and parking regulations apply to food trucks operating under the license issued pursuant to this Chapter:

1. May not be parked within one hundred feet (100') from the entrance of a restaurant; within five feet (5') from a driveway, ADA ramp, emergency call box, building entrance, or utility box; or within fifteen feet (15') from a fire hydrant.
2. May not utilize a drive-through window.
3. May not park on sidewalks.
4. Must locate the vending window to ensure pedestrian safety and may not make sales to anyone within a roadway.
5. Food trucks, or their customers, may not interfere with public access to adjacent parking stalls or to driveways or entrances of existing buildings.

6. Customers may not use the right-of-way or any landscaped area for queueing.
7. May not operate in a congested area where such operation might impede or inconvenience the public use of such streets or public way. For the purpose of this subsection, the judgement of a police officer or City official, exercised in good faith, is deemed conclusive as to whether the area is congested and the public impeded or inconvenienced.
8. Must obey all state and local parking and traffic regulations.

10-0606. **MAINTENANCE REGULATIONS.** The license holder is responsible for the following:

1. Providing proper containers or other means for collection of waste and trash from the food truck.
2. Keeping the immediate area around the food truck, and the food truck itself, clean of garbage, trash, paper, cups, cans, or any other litter associated with the operation of the food truck. Waste and trash will be properly disposed of by the license holder.
3. Removing garbage, spills, or stains, as well as repairs for any damage to the designated area resulting from operation of the food truck.
4. Maintenance, upkeep, and security of the food truck. Skirting of the food truck is not allowed.
5. Keeping the food truck in good operating condition, with no rust or peeling paint.

10-0607. **HEALTH REGULATIONS.**

1. The license holder must comply with all NDDOH and other applicable regulatory agency requirements including, but not limited to, the requirements for food service. The license holder must display, in a conspicuous location, all such required licenses and/or certificates and provide copies of those licenses and/or certificates to the City Auditor prior to issuance of a license for the food truck by the City Auditor.
2. The license holder must obtain and display, at its sole cost and expense, a certificate of insurance from a company licensed to do business in North Dakota, evidencing that the license holder has a blanket or general liability insurance policy against claims for personal injury, death, or property damage occurring in connection with the food truck license services provided with limits of at least Five Hundred Thousand Dollars (\$500,000) per occurrence and One Million Dollars (\$1,000,000) in aggregate. The City of Horace must be named as an additional insured.

3. The license holder must provide, with their application, the number of vehicles they intend to operate as a food truck, a description of all food trucks they intend to operate, license plate information for each food truck, VIN for each food truck, proof of insurance coverage for each food truck, and proof of fire and safety inspection for each food truck.
4. A separate application and fee is required for each food truck applied for by the applicant.
5. If information changes, the license holder must deliver updated and current information to the City Auditor's office within ten (10) days. Failure to provide updated information may result in termination of the food truck license.
6. Food, oil, and organic waste must be disposed of at a licensed food establishment. Arrangements for such disposal must be shown at the time of application via a signed contract with a licensed food establishment.
7. There must be a designated Person in Charge of food safety with the food truck at all times, as per NDDOH requirements.

10-0608. **VIOLATIONS.** Violations of this Chapter are subject to fines or the removal of the food truck license for the remainder of the license issuance period, as follows:

1. The Code Enforcement Officer, or authorized representative, is authorized to issue written warnings to violators of any provision of this Chapter. The Code Enforcement Officer, or authorized representative, is authorized to issue written requests to the license holder to correct issues as a first warning.
2. If the license holder remains in violation of this Chapter three (3) days after the issuance of a written request to correct the issue, a fine in the amount of Five Hundred Dollars (\$500) may be issued by the City.
3. Failure of the license holder to submit payment for any fines, in a timely manner, may result in the City Council denying future food truck license applications.
4. The license holder may appeal the fine, within thirty (30) days of issuance, to the City Council. If the license holder appeals the decision within thirty (30) days of issuance, the City Council will hold a hearing to determine the sufficiency of the fine.
5. Violations of any provision of this Chapter may be reported, as any other code violation, to City officials.
6. In addition to the penalties described in this Section, a violation of this Chapter may be punishable as an infraction as set forth in Section 1-0211 of these ordinances.