

BURLEIGH COUNTY  
ALCOHOLIC BEVERAGE  
RULES AND REGULATIONS  
OCTOBER 21, 2013  
(Amended September 2, 2015 & April 19, 2017)

A RESOLUTION RELATING TO THE LICENSING OF DEALERS IN ALCOHOLIC BEVERAGES AND ESTABLISHING RULES AND REGULATIONS COVERING THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES IN BURLEIGH COUNTY, NORTH DAKOTA, OUTSIDE OF INCORPORATED CITIES.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA that the following rules and regulations shall govern the sale and distribution of alcoholic beverages in all places in Burleigh County outside the limits of incorporated cities pursuant to the powers set forth in Title 5 of the North Dakota Century Code.

**SECTION 1. DEFINITIONS**

A. The terms located here within are defined as per Title 5 of the North Dakota Century Code.

**SECTION 2. MUST OBTAIN LICENSE WHEN LICENSE EXPIRES**

No person shall sell alcoholic beverages without first obtaining a license to do so, as herein provided. All licenses granted under the provisions of this Resolution shall expire on the 30th day of June, in each year, unless sooner suspended or revoked for cause. Applications for renewal of licenses must be submitted to the Burleigh County Auditor/Treasurer by June 1 of each year. Applications to renew a license filed after June 1 but prior to July 1 may be considered and approved by the Board of County Commissioners upon payment of a late fee of \$50. No refund of any license fee shall be made once a license has been issued. All fees shall be paid before a license is issued. For the initial issuance of a license when application is made for a license after (August 1) of a year, the County Commission shall prorate the fee for the license so that the fee would be one-twelfth (1/12<sup>th</sup>) of the regular fee as set forth in Section 3 of this resolution for each month or portion of a month during which the license will be in effect.

**SECTION 3. TYPES OF LICENSE ISSUED—FEES**

TYPE "B1" LICENSE: A license for "OFF" sale beer only, which fee for said license being the sum of \$400 per year.

TYPE "B2" LICENSE: A license for "On and "OFF" sale beer and wine only, which fee for said license being the sum of \$600 per year.

TYPE "BB" LICENSE: A license for "ON" and "OFF" sale beer only, to a microbrewery or brewer taproom pursuant to Title 5 of the ND Century Code, which fee for said license being the sum of \$350 per year. A Type BB License shall authorize the licensee to operate a microbrewery and to sell beer produced on the premises by the licensee "on" and "off-sale". A Type BB License may be issued only to a microbrewery owner or operator who obtains a microbrew pub license or a brewer taproom license from the State Tax Commissioner allowing for the production of beer.

A Type BB license will authorize the licensee to sell beer produced by that microbrewery on the premises at on-sale or off-sale, pursuant to state law. A Type BB licensee may sell beer produced off of the premises, on-sale only, so long as the sales of beer produced off of the premises do not exceed 20% of the licensee's total beer sales. All Type BB license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant retained by the licensee certifying that gross on-premises produced beer sales and off-premises produced beer sales for the previous calendar year meet the requirements of this section. The Board of County Commissioners may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the commission deems necessary.

TYPE "C" LICENSE: A License for "ON" sale only, both beer and all alcoholic beverages, which fee for said license being \$850 per year.

TYPE "D" LICENSE: A License for full privileges, which includes "ON" and "OFF" sale of beer and all alcoholic beverages, which fee for said license being the sum of \$1,100 per year.

TYPE "E" LICENSE: A full privilege license, the same as "D" for issuance to bona fide lodges and clubs which shall mean and include any corporation or associated organization for civic, social, fraternal or business process which has at least 25 members at the time the license is applied for, which fee for said license being the sum of \$1,100 per year.

TYPE "F1" LICENSE: A license for food and alcoholic beverages to sell on-sale only; off-sale is not permitted. The fee for said license is \$600 per year.

TYPE "F2" LICENSE: A license for food and beer and wine only to sell on-sale only; off-sale is not permitted. The fee for said license is \$350 per year.

TYPE "F3" LICENSE: A license for food and beer only to sell on-sale only; off-sale is not permitted. The fee for said license is \$275 per year.

All TYPE "F" LICENSEES must abide by the following:

- 1) Gross sales of alcoholic beverages may not be greater than 50 percent of total gross sales of food and alcoholic beverages. All Class F license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant retained by the licensee certifying that gross food sales and liquor sales for the previous calendar year meet the requirements of this section. The Board of Burleigh County Commissioners may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the commission deems necessary. All sales of alcoholic beverages by Class F 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.
- 2) The licensee may not sponsor or permit public dances or public dancing.

TYPE "I" LICENSE: An Institutional permit to sell alcoholic beverages by the operator of the dining services contract at the University of Mary. The license may be held only by the operator who has been awarded and currently holds the dining services contract and shall terminate with the termination of the contract. This license is limited to on-sale service of alcoholic beverages to private groups who have rented dining room facilities at the University of Mary and is not open to the public at large. The fee for said license is \$600 per year.

TYPE "SE" LICENSE: Special Permit for the "on-sale" of alcoholic beverages at an event away from licensed establishment up to 14 days. Fee for such license shall be \$25.00 per event. An SE License will only be issued to a licensee of Burleigh County who holds a current Class B2, BB, C, D, E, F, I, or W License.

TYPE "W" LICENSE: A Domestic Winery license to operate a domestic winery and to sell wine produced on the premises by the licensee "on" and "off-sale". A Type W 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. A Type W license will authorize the licensee to sell, on the winery premises, wine produced by that winery on the premises at on-sale or off-sale, in retail lots, and not for resale. A licensee may dispense free samples of the wines offered for sale. A Type W license will authorize the licensee to utilize special event permits issued by the State Tax Commissioner to give free samples of its wine and to sell its wine by the glass or in closed containers, at off-premises events. In the absence of another appropriate license, sales or delivery of off-sale or on-sale wine, beer or any other alcoholic beverage produced off the premises shall not be permitted. Fee for such license shall be \$350 per year.

#### **SECTION 4. APPLICATION**

A. Any person desiring a license to sell alcohol or alcoholic beverages at retail within the territorial jurisdiction of this Resolution shall make and file with the County Auditor of Burleigh County, North Dakota, a verified application, on such forms and with respect to such information as may be required from time to time by the Board of County Commissioners, together with a receipt from the County Treasurer for the fee prescribed by this resolution, and a statement from the County Treasurer, showing that all property taxes of the applicant(s) have been paid.

B. Each applicant must be either an individual over the age of twenty-one (21) years who is a physical resident and citizen of the state of North Dakota, or a domestic private corporation organized under the laws of the state of North Dakota with its principal place of business within the County of Burleigh or a co-partnership, all of the members of which are over the age of twenty-one (21) years who are physical residents and citizens of the state of North Dakota. Each applicant must be of good moral character and reputation and otherwise a fit and proper person to sell alcohol and alcoholic beverages at retail pursuant to this Resolution, and, for that purpose, subject to investigation as to such facts by the Board of County Commissioners or under its direction, the finding of which facts shall be made by the Board of County Commissioners.

C. The application shall contain the name of the applicant, place of residence and post office address of applicant in the case of an individual. The application shall contain the name, place of residence and post office address of each person holding one or more percent of capital stock in a domestic private corporation in the case of a domestic private corporation. The application shall contain the name, place of residence of any person being a co-partner in the case of a co-partnership. In addition, the name, place of residence of any person having a financial interest in the enterprise shall be stated in the application.

D. The application shall contain the following provision, to wit: The applicant does hereby consent that the Sheriff of Burleigh County or any of his deputies, the States Attorney of Burleigh County, or his assistants, and any of the County Commissioners of Burleigh County, may enter upon the premises described in this application at any hour of the day or night and that they or either of or any of them shall have free access to said premises for the purpose of inspecting said premises and the records of this applicant relating to the purchase and sale of alcohol and alcoholic beverages.

E. The Burleigh County Auditor shall submit forthwith the application to the Board of Burleigh County Commissioners for consideration at a general or special meeting. Upon approval of the application by the Board of Burleigh County Commissioners, the Burleigh County Auditor shall issue and deliver to the applicant an appropriate and numbered license authorizing the applicant to sell alcohol and alcoholic beverages at retail on the premises described in the application and license. A legal description of the premises must be specifically stated in the application and license. The license shall be displayed prominently at all times in a room where the licensee sells alcohol and alcoholic beverages. Upon rejection of application by the Board of Burleigh County Commissioners, a refund to the applicant of the amount of money paid for such license shall be made.

F. All applications must include Township Board approval if the premises where alcoholic beverages are to be sold or displayed are located within an organized Township (NDCC 5-01-07).

#### **SECTION 5. INVESTIGATION OF FITNESS**

The Sheriff of Burleigh County shall investigate the facts stated in the application, and the character, reputation and fitness of the person or persons named in said application, and shall report on such matters to the Board of County Commissioners. The Board at their discretion may require the applicant to submit such proof as they may require of the truth of any allegation contained in the application. The Board at their discretion may at any time require any licensee to present to the Board an affidavit disclosing the ownership, management or actual control of the licensed business.

**SECTION 6. LICENSE ISSUED TO WHOM**

No license shall be issued to any person unless he/she is a legal and bona fide resident and citizen of the state of North Dakota. No license shall be issued to any person, firm or corporation as the representative or agent of another and a license shall be issued only to the owner or owners of the business being conducted at the location sought to be licensed. If more than one person is the owner of said business for which a license is desired, the names of all owners must appear on the license or licenses issued. No license shall be issued to any person under the age of twenty-one years. The Burleigh County Commission reserves the right to assess the suitability of the application's proposed location and to deny license application if the proposed site is deemed inappropriate or in conflict with existing actual land use.

**SECTION 7. MUST OBSERVE STATE LAW—CLOSING HOURS**

**A. DISPOSAL PROHIBITED ON CERTAIN DAYS—PENALTY.**

A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and eleven a.m. on Sundays, between the hours of one a.m. and eight a.m. on all other days of the week, or on Christmas Day or after six p.m. on Christmas Eve. In addition, a person may not provide off sale after one a.m. on Thanksgiving Day or between one a.m. and noon on Sundays. A person that violates this section is guilty of a class A misdemeanor.

**B. STREET SALE OR USE PROHIBITED.** The sale or serving or consumption of intoxicating liquor as herein defined upon or across any street alley or public way is prohibited.

**C. PERSONS LESS THAN TWENTY-ONE YEARS PROHIBITED - EXCEPTIONS.** Any persons under twenty-one years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where such beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with Section 5-02-06 of the North Dakota Century Code is guilty of a misdemeanor.

**D. PERSONS UNDER TWENTY-ONE YEARS PROHIBITED, PENALTY, EXCEPTIONS.** Any licensee who dispenses alcoholic beverages to a person under twenty-one years of age or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed is guilty of a misdemeanor subject to the provisions of Section 5-01-08, 5-01-08.1, and 5-01-08.2 of the North Dakota Century Code. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian or if employed by the restaurant as a food waiter, food waitress, busboy or busgirl under the direct supervision of an adult, and not engaged in the distribution, and consumption of alcoholic beverages.

**SECTION 8. LICENSE NOT TRANSFERABLE**

No license issued hereunder shall be transferable except to the executors or administrators of the estate of the deceased licensee.

**SECTION 9. LICENSE TO BE POSTED**

Licenses issued hereunder shall be posted in a conspicuous place in that portion of the licensed premises for which the license has been issued.

**SECTION 10. LOCATIONS**

No license shall be issued for any building, room or place located within four hundred feet, measured from entrance to entrance by the usual route traveled, of any church, public or parochial school, college or university building used for academic purposes, unless, the entity affected by the above limitations consents to the issuance of the license. No

license shall be issued for the retail sale of liquor, clubs and lodges excepted, for any location in a basement or above the first floor of any building, but the issuance of such license shall be confined to stores and rooms on the street level. The licensed premises must meet all local and state requirements regarding sanitation and safety.

#### **SECTION 11. TERMINATION AND REVOCATION OF LICENSES**

Licenses issued pursuant to this ordinance shall be revoked, or in appropriate cases, suspended, for the following causes:

- A. The death of the licensee unless the license is transferred to his executors or administrators.
- B. When the licensee ceases business at the location licensed or closed his establishment for 60 days.
- C. When the licensee has been adjudged bankrupt.
- D. When the licensee has been convicted of any felony.
- E. When the licensee ceases to be a legal, bona fide resident and citizen of the State of North Dakota.
- F. When the license or permit to the licensee from the State of North Dakota has been suspended or revoked.
- G. When the business of the licensee at the location licensed shall be conducted in violation of law, or shall constitute a nuisance.
- H. When the licensee or any agent or employee shall refuse to permit the Sheriff, State's Attorney, or other health or peace officer to enter upon the licensed premises for the purpose of inspection, or to determine whether the premises are being conducted in accordance with the law of the State of North Dakota and this ordinance.
- I. When the licensee or any agent or servant of such licensee shall violate any provision of this resolution or any law of the State of North Dakota relating to the manufacture, sale or distribution of alcoholic beverages.
- J. When the licensee makes any misstatement or concealment of fact in an application for a license or in any affidavit required under the provisions of Section 5.

When a license is terminated or revoked for cause, or the licensee voluntarily ceases to do business, no part of the licensee fee previously paid to the County of Burleigh shall be returned to said licensee or those claiming under him.

Any license issued hereunder may be suspended or revoked for cause shown at any time by the Board of Burleigh County Commissioners, subject to review by the Courts.

#### **SECTION 12. PARTITIONS, SCREENS, ETC. NOT ALLOWED**

No licensee shall construct, maintain or suffer or cause to be constructed or maintained, any side room, closed booth or other screened enclosure in the place of business licensed, nor any screen partition, curtain, blind or obstruction of any kind preventing a clear view at all times of all parts of the interior of the premises licensed; provided, however, that partitions, subdivisions, panels and booths, not higher than forty (40) inches from the floor may be constructed as not in conflict with the foregoing; and that said licensee shall at all times conduct and maintain his place in a clean, orderly and respectable manner.

#### **SECTION 13. TOILETS AND LAVATORIES**

The premises where licenses are granted must be equipped with adequate and sufficient lavatory and toilet facilities

separately maintained for men and women pursuant to ND State Building Code

**SECTION 14. LICENSEE RESPONSIBLE FOR CONDUCT OF PLACE OF BUSINESS**

Every licensee is hereby made responsible for the conduct of his place of business and is required to maintain order and sobriety in such place of business. No intoxicated person or persons shall be permitted to remain upon the premises or to be sold intoxicating liquor by any person holding any license issued pursuant to this ordinance.

**SECTION 14A. ENTERTAINMENT**

Entertainment shall be defined for the purposes of this Rule & Regulation to mean all forms and types of performing or entertaining for patrons on licensed premises. No live performances are permitted on a licensed premise which contains any form of dancing. Such prohibition on dancing does not include the incidental movement or choreography of a singer or musicians which are made in connection with their singing or playing of a musical instrument.

No live performances are permitted on a licensed premise which involves 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, suit coat, sport coat, 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. 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.

A licensee shall have the duty and responsibility to make available for inspection by a member of the Burleigh County Sheriff's Dept. 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 for the performer.

These restrictions apply to all licensed premises.

**SECTION 15. DISPOSITION OF FEES**

All license fees collected by Burleigh County under this ordinance shall be deposited with the County Treasurer to be credited to the General Fund of Burleigh County.

**SECTION 16. INSPECTION OF LICENSED PREMISES TO BE ALLOWED**

The licensee accepts the license privilege upon the condition, which need not elsewhere be expressed, that the Sheriff or any health or peace officer of Burleigh County, may at any time enter upon the premises licensed under this resolution for the purpose of determining whether the premises are being conducted in compliance with this resolution and the laws of the State of North Dakota.

**SECTION 17. EFFECTIVE DATE—REPEAL**

All resolutions in conflict herewith are repealed. This resolution shall take effect October 21, 2013. All present licensees will be required to meet all of the requirements of this resolution before their licenses will be renewed. No new licenses will be issued until the applicant complies with these regulations.

**SECTION 18. PENALTY**

Unless otherwise provided in this Resolution, any person distributing alcoholic beverages in Burleigh County without compliance with the provisions of this Resolution is guilty of a misdemeanor as defined and punished by the North Dakota Century Code.

**SECTION 19. SAVING CLAUSE**

Should any word, phrase, clause, sentence or paragraph of this Resolution be adjudged to deprive any person of constitutional or state rights, the remaining provisions would have been adopted and shall remain in full force and effect. All rights, privileges, and prohibitions of the North Dakota Century Code not provided for in this Resolution shall be considered a part of this resolution.

Adopted, as amended, by the Board of Burleigh County Commissioners at Bismarck, North Dakota, this 21<sup>st</sup> day of October, 2013.

Adopted, as amended, by the Board of Burleigh County Commissioners at Bismarck, North Dakota, this 2<sup>nd</sup> day of September, 2015.

Adopted, as amended, by the Board of Burleigh County Commissioners at Bismarck, North Dakota, this 19<sup>th</sup> day of April, 2017.