

RESOLUTION #3-2018

2018 WARD COUNTY ALCOHOLIC BEVERAGE RETAIL SALE LICENSURE AND REGULATIONS IN WARD COUNTY, NORTH DAKOTA EXCEPTING INCORPORATED CITIES

Title 5 of the North Dakota Century Code provides the authority of a Board of County Commissioners to license, restrict and regulate the retail sale of alcoholic beverages.

In an effort to license, restrict, revoke and regulate the retail sale of alcoholic beverages, the Ward County Board of County Commissioners adopted the Resolution for the Licensure and Regulations of Retail Sales of Alcoholic Beverages in the County of Ward and the State of North Dakota, Excepting Incorporated Cities, 1969, as amended in 1993, 2002, 2005 and 2008. Due to conflicting public interests, the Legislature and the Governor, which significantly amends Title 5 of the North Dakota Century Code and provides further authority to the different Boards of County Commissioners authority to license, restrict, revoke and regulate the retail sales of alcoholic beverages, have enacted recent legislation in law.

Ward County's current resolution, which deals with licensing, restricting and regulating the retail sale of alcoholic beverages, provides expressly for that any license issued under it is subject to amendatory or supplementary resolutions adopted by the Ward County Board of County Commissioners.

Accordingly, the Ward County Board of County Commissioners recognizing that conflicting public interests exist in Ward County in regard to the licensing, restricting and regulating the retail sale of alcoholic beverages and deeming a supplementary resolution to the subject matter is in order to address the conflicting public interests in the simplified matter, hereby repeals the existing RESOLUTION OF ALCOHOLIC BEVERAGE RETAIL SALE LICENSEURE AND REGULATION IN WARD COUNTY, NORTH DAKOTA EXCEPTING INCORPORATED CITIES, as amended and hereby adopts the 2018 Resolution to Reform the Retail Sale Licensure and Regulation of Alcoholic Beverages in Ward County, North Dakota Excepting Incorporated Cities (Resolution) as follows:

Section 1: Definitions:

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- A. **Auditor** shall mean the Ward County Auditor.
- B. **Board** shall mean the Ward County Board of Commissioners.
- C. **Alcoholic beverages** shall mean any liquid suitable for drinking by human beings, which contains one-half ($\frac{1}{2}$) of one (1) percent or more of alcohol by volume.

- D. **Beer** shall mean any malt beverage containing more than one-half (½) of one (1) percent of alcohol by volume.
- E. **Growler** shall mean a professionally sanitized and sealed glass bottle with a capacity not to exceed sixty-four (64) ounces filled by a licensee or an employee of a licensee with beer from a keg procured or produced by the licensee in accordance with applicable laws.
- F. **Event Premises** unless otherwise indicated, shall mean the designated area in a Ward County on-sale licensee's Event Permit application approved by the Board for the delivery and/or consumption of certain on-sale alcoholic beverages.
- G. **License** shall mean the numbered certificate identifying the licensee, Premises, effective dates, the types of sales authorized and other information as issued by the Board.
- H. **Liquor** shall mean any alcoholic beverage except beer.
- I. **Off-sale** shall mean and include the sale of alcoholic beverages in the original package, or in a growler as defined in this section, for consumption off or away from the licensed premises where sold, including permitted deliveries.
- J. **On-sale** shall mean and include the sale of alcoholic beverages for consumption on the licensed premises where sold.
- K. **Package and original package** shall mean and include any container or receptacle holding alcoholic beverages which is corked or sealed by the manufacturer and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser; provided, however, that the filling of a growler, as defined in this section, shall not constitute the breaking of a package under this definition.
- L. **Person** shall mean and include persons, partnerships, unincorporated associations, and bodies corporate.
- M. **Premises** shall mean that distinct portion of the building in which alcoholic beverages are sold or consumed.
- N. **Golf course** shall mean a golf course with at least nine (9) or more holes.
- O. **Restaurant** shall mean a business which prepares and sells food and meals for consumption on the premises where sold, which is properly licensed or permitted for such activity by the appropriate public health authorities who have charge of such matters.
- P. **Sale** shall mean and include any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal proprietor, agent, servant, employee or corporation.

- Q. **Sell at retail or sale at retail** shall mean a sale to a consumer for use or consumption and not for the purpose of resale in any form.
- R. **Sparkling wine** shall mean wine made effervescent with carbon dioxide.
- S. **Supper club** shall mean the place where food service is the primary function and where, with the Supper Club license, the sale of liquor and beer will be permitted and where the patrons may be entertained by performers. It shall be unlawful for any supper club to sell any alcoholic beverages for off-sale purposes and to make or aid in the making of any delivery of alcoholic beverages outside its Premises.
- T. **Wine** shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four (24) percent alcohol by volume.

Section 2: General Provisions

- A. State Law: unless otherwise provided by the Board, the provision of NDCC Chaps. 5-01 and 5-02, as amended, including definitions, along with any alcoholic beverage and/or gaming related regulations adopted by the Attorney General, are adopted and incorporated herein by reference to this Resolution.
1. **Hours of Operation**: A person may not dispense or permit the consumption of alcoholic beverages on licensed premises between one am and eleven am on Sundays, between the hour of one am and eight am on all other days.
- B. Health and Safety Standards: persons applying for a license to sell alcoholic beverages at retail within the jurisdiction of this Resolution shall file with the Ward County Auditor the applicable license application form and make payment of the license fee for the license being applied for, and provide such information as may be approved and required from time to time by the Board along with:
1. **Township approval**: Written consent for the license from the Township Board of Supervisors of the township within which the proposed licensee will be located shall be provided for all new license applications(s).
 2. **Fire Inspection**: The Fire Marshall or Fire Chief of the Fire Department serving the district or location of the proposed Premises must annually submit a letter to the County Auditor approving the safety of either the Premises or the final plans for a new or remodeled building.
 3. **Health Code**: The First District Health Unit must annually certify the proposed license and Premises meets all health and environmental requirements and/or procedures.

4. Parking: Any licensed Premises for any form of on-sale of alcoholic beverage(s) shall have on-site parking of at least one parking place for every one hundred (100) square feet of Premises. Off-sale only licenses are excluded from this requirement.
 5. Scale drawing: For new applications only, a scale floor plan drawing of the proposed Premises identifying the entire area or areas where alcoholic beverages are to be served, such drawing to clearly show the square footage of the Licensed Premises, and on the same or different scale drawing an identification of the parking available on the contiguous property owned, rented or leased by the applicant must be provided. For renewal applications, either a scale drawing(s) for the Premises or a certification that the structure or grounds has not changed since the filing of the original or subsequent scale drawing must be provided.
- C. Property Taxes: No license shall be granted, renewed or issued for any Premises where the real estate taxes for said Premises are delinquent and unpaid.
- D. Annual License Fees: The annual fee for any license shall be the same as the annual fee set out below for that license, without regard for the portion of the calendar year already passed. Except for when a licensed Premise is annexed into a city in Ward County, there shall be no refund of any annual license fee(s) or portion thereof for any license surrendered or that becomes void for any reason or is revoked.
- E. Amendments: Any license issued pursuant to this Resolution as may be amended, shall be subject to any amendatory or supplementary resolutions that may be adopted from time to time by the Board.
- F. The number of liquor licenses and beer and wine licenses including supper club and golf course licenses shall be limited by township such that only one liquor and one beer or wine license including supper club and golf course licenses shall be allowed and issued per each population increment of 750, or the next fraction thereof, per township, such population determined by the latest published report of the U.S. Census Bureau. A liquor license for premises located on the North Dakota State Fairgrounds is hereby provided for and such license shall not be considered in determination of the number of licenses available in Nedrose Township.
- G. Annexation: In the event a licensed premise is annexed into a city of Ward County, the license will automatically be terminated on the effective date of the annexation.

Section 3: Licenses:

- A. Classification and Fees: Only those alcoholic beverages defined within the following license classifications shall be sold under the applicable license classification. The issuance of one of the following general classes of licenses after payment of the appropriate fees authorize the licensee to sell alcohol and alcoholic beverages subject to the provision of this Resolution.

1. Liquor Licensed (no beer) (on and off-sale) \$1,000.00
2. Beer and Wine License (on and off-sale) \$500.00
3. Supper Club Alcoholic Beverage License (on-sale only) \$750.00
4. Supper Club Beer and Wine License (on-sale only) \$375.00
5. Liquor License (no beer) (on-sale only) \$1,000.00
6. Beer and Wine License (on-sale only) \$500.00
7. Liquor License (no beer) (off-sale only) \$750.00
8. Beer and Wine License (off-sale only) \$375.00
9. Golf Course Alcoholic Beverage License (on-sale and off-sale) \$1,000.00
10. Golf Course Beer and Wine License (on-sale and off-sale) \$500.00
11. Golf Course Alcoholic Beverage License (on-sale only) \$750.00
12. Golf Course Beer and Wine License (on-sale only) \$375.00

B. Qualifications:

1. Every applicant, whether an individual, a partner in a co-partnership, a shareholder in a corporation, an officer in a corporation, a co-partnership or a corporation and the named or proposed manager of the proposed licensed premises, shall be:
 - a. 21 years of age or older;
 - b. A physical resident of the State of North Dakota for at least 30 days;
 - c. If a corporation, then it must be a domestic, private corporation that is organized under the laws of the State of North Dakota with its principal place of business within Ward County;
 - d. Each applicant shall be of good moral character and reputation and otherwise a fit and proper person to sell alcoholic beverages at retail pursuant to this Resolution;
 - e. Each retail license issued or re-issued by the Board shall only be issued to and maintained by a bona fide owner of the licensed business conducted on the Licensed Premises; and
 - f. All licensees agree and consent to the jurisdiction of Ward County, the State of North Dakota and the applicable laws of the State of North Dakota.
2. For the purpose of this Resolution, all applicants for the license issuance and renewal are subject to investigation as to relevant facts by the Board, or under its direction, the finding of which facts and relevancy shall be made by the Board.
3. Each applicant, whether an individual, a partner in a co-partnership, a shareholder in a corporation, an officer in a corporation, a co-partnership, or a corporation, and the named, proposed manager of the business, shall not have been:
 - a. Convicted of a felony in any jurisdiction within five (5) years prior to the date of license application; or,

- b. Be on parole or probation for a felony conviction; or,
- c. Convicted within a period of five (5) years prior to the date of the license application; or,
- d. Corruption of a minor under NDCC 12.1-20-05 or equivalent; or,
- e. Contributing to the deprivation or delinquency of a minor under NDCC 14-10-06 or equivalent; or
- f. Convicted of three (3) or more violations of NDCC Title 5 within the last five (5) years; or
- g. Convicted of an offense comparable to any of the above offenses in any jurisdiction in the past five (5) years prior to the date of license application.

C. Contents: The license application for each individual applicant, each partner in the co-partnership, each share or stockholder of the corporation, each director of a corporation, each officer of a corporation, each named or proposed manager of the proposed Licensed Premises and each person having a financial interest in the enterprise shall contain the individual's:

- 1. Name and date of birth;
- 2. Place of residence;
- 3. Post Office box number;
- 4. Social Security number; and
- 5. Information containing convictions of offenses described herein of this Resolution.

D. Consent and Declaration:

- 1. Consent: The application shall contain the following: the applicant does hereby consent and agree that the Ward County Sheriff, or any Deputies, the Ward County State's Attorney, or any Assistant State's Attorney, and any of the Ward County Commissioners may enter upon the premises described in the application at any hour of the day or night and that any of them have free and unlimited access to the Premises for the purpose of inspecting the Premises and the records of the applicant relating to the purchase and sale of alcoholic beverages. Applicant further consents to and agrees that the above ability to inspect includes any area subject to or adjacent to an Event Permit Premises or Sunday Permit Premises.
- 2. Declaration: The application shall also contain the following: The applicant does hereby acknowledge that he has read the 2018 Resolution To Reform Alcoholic Beverage Retail Sale Licensure in Ward County, and NDCC Title 5 and understands the nature and gravity of the responsibilities, duties, obligations, and limitations placed upon him by virtue of holding a Ward County license and selling alcoholic beverages to the public.

E. Licensing Procedures:

1. Licenses: The Auditor shall submit the application to the Board for consideration at a general or special meeting. Upon Board approval of the application, the Auditor shall issue an appropriate and numbered license authorizing the applicant to sell specified alcoholic beverages at retail on the Premises described in the application and license. A legal and physical description of the Premises must be specifically stated on the license prior to deliver to the applicant. In the event the Premises cannot be described, the license shall be issued but held by the Auditor pending satisfaction of this or any other conditions which the Board may have specified. During the period when the license shall have been issued but not delivered, the license shall not be available to others unless the licensee has voluntarily relinquished it, it is revoked or otherwise becomes void. Licenses held by the Auditor pending delivery shall be considered issued and the policies of this Resolution shall apply. Licenses issued without condition shall be delivered to the licensee promptly upon issuance. The Auditor shall deliver a license issued conditionally when the Auditor has actual evidence and is satisfied that such conditions as have been placed upon issuance by the Board have been met. The license shall be displayed prominently at all times in a room there the licensee sells alcohol and alcoholic beverages. Upon rejection of the license application by the Board, a refund to the applicant of the amount of money paid for the licenses(s) shall be made.
2. Conditional Licenses: Licenses issued upon conditions specified by the Board may be renewed as set forth in this Resolution, however, such license issued conditionally, even if renewed, shall become void and shall expire after twelve months from the date it is first approved by the Board unless the conditions placed upon the license are satisfied and the license is delivered to the licensee as described in this Resolution. It is the intention and practice of the Board to not allow for indefinite conditional licensing.

F. Renewal:

1. December 1st: All licenses for the retail sale of alcoholic beverages expire at 1:00 a.m. on January 1st of each year. By the first day of December each applicant for license renewal shall file with the Auditor the application for license and make payment of the license fee. Current or existing licensees shall have priority as to renewals of existing licenses provided they make timely application and meet all mandated qualifications and procedures required by the Ward Count Resolution for Licensure and Regulations of Alcoholic Beverages. The Auditor's form shall require the following information to accompany the renewal application:
 - a. Written finding by First District Health Unit that the licensed Premises has acceptable sanitation;
 - b. Written finding by the Fire Marshall or Fire Chief of the appropriate Fire District that the licensed Premises meets the minimum fire safety requirements;
 - c. Written statement by applicant that meets the requirements of this Resolution;and

- d. Payment of the appropriate annual fee.
 2. Same Classification: License renewal shall be considered only for the same type or types of license currently held by the licensee. Applications for licenses other than that (or those) held by the renewal applicant shall be handled as a new application.
- G. Transfer of License:
1. Permission: No license or permit shall be assignable or transferable except by the prior permission of the Board.
 2. Application: No license shall be transferred unless the present licensee proposing the transfer and the applicant requesting the transfer makes application for the same. The applicant for the transfer shall make an application for the transfer as required by initial application for a license and must meet the requirements of an initial applicant for a license.
 3. Treatment: An applicant for a license transfer will be deemed the same in all respects as an application for a new license and the application shall be accompanied by the appropriate license fee for a full calendar year regardless of the balance of the year remaining with no credit being given for the license fee already paid for the calendar year by the present licensee proposing the transfer. Provided, however, that no annual calendar year license fee need be paid for the calendar year within which the application for transfer is made if such application is made after December 1st of that year to take effect on or before January 1st of the ensuing year in which case only the license fee for the ensuing year need be submitted with the application.

SECTION 4: PERMITS

- A. Event Permits: Pursuant to NDCC 5-02-01.1, the Board may issue an Event Permit for the retail on-sale of alcoholic beverages to a current Ward County alcoholic beverage license holder upon proper application by the license holder. The Event Permit may be for an off-site event. The following conditions apply to and govern all license holder's Event Permit applications and issued Event Permits:
1. Presentment: Application for an Event Permit shall be presented to the Board no less than fourteen (14) days before the beginning date of the Event Permit on a form provided by the Auditor. There shall be no exceptions.
 2. Duration: The Event Permit shall be valid for up to fourteen (14) consecutive days, including Sundays. All Event Permits for off-site events, which are effective at least until 12:30 a.m., shall remain in effect until 2:00 a.m. for that date so the Event Permitted Premises shall remain a Licensed Premises until 2:00 a.m. of that date. Even though the Event Permit remains in effect until 2:00 a.m., the Licensed Premises remains subject to the 1:00 closing time.

3. **Information:** The Event Permit application shall contain an accurate diagram of the proposed Event Permitted Premises, shall indicate the point of sale within the Event Permitted Premises and shall clearly show the area(s) of the proposed Event Permitted Premises where the delivery and consumption of on-sale alcoholic beverages would be allowed, if the Event Permit is granted. Such area(s) shall contain an adequate amount of similar quality seating for alcohol and non-alcohol consumption. The application must state whether people under 21 years of age will be allowed in any part of the Event Permitted Premises. The Board may require the applicant to provide such additional information, as they deem necessary to enable them to determine if an Event Permit should be granted.
4. **Scope:** Event Permits shall not be granted for the sale of alcoholic beverages other than what a licensee may sell under the licensee's regular license. Event Permits may be granted for the sale of less than all alcoholic beverages that the licensee may sell under the licensee's regular license.
5. **Health and Safety:** The Event Permit Premises must meet local and state requirements regarding sanitation and safety, and the point of sale within the Event Permitted Premises shall be clearly identified on the application form. Failure to comply with this requirement can result in the licensee's application being returned to the licensee.
6. **Sheriff:** Applicants shall notify the Ward County Sheriff of applications for Event Permits. Event Permits shall be valid only while the uniformed law enforcement officer(s) or licensed private security personnel are on duty on the Event Permitted Premises. The cost of the law enforcement officer(s) shall be paid by the Event Permit holder. The use of licensed private security personnel shall be at the discretion of the Sheriff, and shall be permitted only after the filing of proof of licensure with both the Sheriff and Auditor.
7. **Fees and Refunds:** For the proposed event, the application shall be accompanied by a \$25.00 fee. The fee is non-refundable.
8. **Conspicuous:** The Event Permit must be posted in conspicuous public place of the Event Permitted Premises for the event described on the permit application.
9. **On-Sale:** Only Ward County on-sale license holders shall be eligible to apply for Event Permits. Only on-sale beverages may be sold under an Event Permit. On-sale beverages may be delivered for consumption only in the area of the Event Permitted Premises designated for alcoholic delivery and consumption.

B. GOLF COURSES

1. The golf course license shall be for the on-sale of liquor, beer, and wine by an operator of the concession at a golf course.
2. **Fee.** The annual fee for a golf course license shall be determined as set out in Section 3: Licenses.

3. Premises. A recipient of a golf course license shall be allowed to serve alcoholic beverages only in areas, which are specifically identified, as the licensee's licensed premises. This shall not include the parking lot or the golf course itself, except as permitted herein.
4. The golf course licensed premises shall extend to allow service of alcoholic beverages on the golf course itself from one (1) location or one (1) mobile cart for a nine-hole golf course or from two (2) locations or two (2) mobile carts for an eighteen-hole golf course. No additional license is required for the sale of alcoholic beverages from a location or cart permitted under this provision.

C. SUNDAY ALCOHOLIC BEVERAGE PERMIT/SALES – pursuant to NDCC 12.1-30-02 and 12.1-30-03 and subject to any other rules and regulations or provisions in this Resolution, all licenses issued pursuant to this Resolution shall include Sunday retail sales.

SECTION 5: ENFORCEMENT

- A. Suspension and Revocation: The Board shall have the power and authority to suspend and/or revoke any license or permit issued pursuant to this Resolution for any one or more of the following reasons:
1. Convictions: Licensee or any individual with a financial interest in the licensed enterprise is convicted of felony, corruption of a minor, contributing to the deprivation or delinquency of a minor, or three or more violations of NDCC Title 5 in any continuous five (5) year period;
 2. False Statement: Willful making of any false statement of material fact in any license application of this Resolution;
 3. Misconduct: Permission by the licensee of any disorderly, immoral or illegal conduct upon the Premises, or willful or negligent failure to enforce or observe the law and provision of this Resolution;
 4. Discontinuance: Discontinuance of business by the licensee on the Premises;
 5. Principal Place: The license, in the case of the individual or a co-partner in a case of a co-partnership case or in the case of domestic corporation, ceases to have its principal places of business on Ward County;
 6. Termination: Termination or revocation, without prompt renewal, of the license or permit, if any are required from time to time, of the United States or the State of North Dakota authorizing the licensee to sell alcohol or alcoholic beverages at retail on the Premises;

7. Not Owner or Operator: It shall appear that the licensee is not the actual bona fide owner and operator of any business conducted on the Premises described in the license;
 8. Death: Death of the licensee if any individual, or upon the death of any co-partner if the co-partnership, or upon the forfeiture or cancellation of its charter, if a corporation, and in any such case, the license shall expire automatically without notice;
 9. Kegs: Licensee's failure to place certain information on beer kegs and maintain complete record as to their sale, as required by state law;
 10. Risk: Written notice to the Board by appropriate authority(ies) that health and/or public safety are at risk; or
 11. Notice of Change: Licensee's failure to notify the Auditor of any changes in the information provided in the application for licensing, renewal, and/or alcohol permit.
- B. Removal Prohibited: Allowing the removal of an on-sale beverage from the Premises or the failure to make reasonable efforts to prohibit the removal of the beverage from the Premises shall be a violation of this Resolution.
- C. Open Container Prohibited: Allowing the opening of a container containing an alcoholic beverage or the consumption of an alcoholic beverage on the Premises licensed as off-sale only or on the property upon which such Premises is situated is prohibited and a violation the Resolution.
- D. Penalty: Unless otherwise provided in this resolution, any person or individual distributing alcoholic beverages in this County without complying with this Resolution is guilty of misdemeanor as defined and punished by the North Dakota Century Code.

SECTION 6: SAVINGS CLAUSE

Should any provision (including, but not limited to, any word, phrase, clause, sentence, or paragraph) of this Resolution, even if it has been subject to amendment, should be adjudged to deprive any person of constitutional or state rights, the remaining provisions of its Resolution would have been adopted and shall remain in full force and effect. All rights privileges, prohibitions, requirements of the North Dakota Century Code not provided for in this Resolution shall be considered a part of this Resolution.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS AT MINOT, NORTH
DAKOTA ON August 3, 1993; AMENDED October 8, 2002; AMENDED September 6, 2005;
AMENDED April 15, 2008; AMENDED November 9, 2019.

ATTEST:

Chairman, Board of County Commissioners

Ward County Auditor

First Reading: September 4, 2018

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Second Reading: November 9, 2018