

CHAPTER 8

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ORDINANCE NO. 2013-03

AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 8 ARTICLE 1 AND CHAPTER 8 ARTICLE 4 OF THE CITY CODE OF THE CITY OF HETTINGER, NORTH DAKOTA, RELATING TO BUSINESS REGULATIONS AND LICENSES

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

Chapter 8, Article 1 – General Provisions

8.0101 Licenses Unless otherwise specifically provided, licenses and permits that are specifically required pursuant to Chapter 8 for the carrying on of a business or trade within the city shall be applied for, issued, terminated and revoked according to the provisions of this article. Permanent Merchants do not require a business license.

Section 8.0101 A Licenses – Definition of a Permanent Merchant

A permanent merchant includes any person, individual, co-partnership or corporation, either as principal or agent, who engages in, does or transacts business in the City of Hettinger for a period of time exceeding 100 days and manifests the intention of remaining in the City of Hettinger for a period of one year or more, provided that said merchant does not meet the requirements of a peddler, runner, solicitor, canvasser, show, carnival and/or circus as defined by this chapter.

Chapter 8 Article 4

Section 8.0402 – Exceptions – No license shall be required hereunder for runners, solicitors, or canvassers so long as the members of an organization are under the age of eighteen (18), and are taking orders, are selling goods on behalf of the organization, and are not being paid or rewarded monetarily.

Steven Turner, Mayor
City of Hettinger

ATTEST:

Patricia Carroll
City Auditor

1st Reading: August 14, 2013
2nd Reading: September 11, 2013
Final Passage: September 11, 2013

**CHAPTER 8
BUSINESS REGULATIONS AND LICENSE**

ARTICLE 1 – General Provisions

8.0101 Licenses

Unless otherwise specifically provided licenses and permits required for the carrying on of a business or trade within the city shall be applied for, issued, terminated and revoked according to the provisions of this article.

8.0102 Licenses – Application

Any person desiring a license or permit under any ordinance of the city shall make a written application to the city therefore upon application blanks furnished by the City Auditor and file the same with the City Auditor, stating the purpose for which the same is desired, for what length of time, and specifying the place where his business is to be carried on; if required to file a bond before being licensed he shall also name his proposed sureties on his bond in his application.

8.0103 Licenses – Granting

The City Auditor shall receive applications for licenses and permits and grant the same in all cases where expressly authorized upon the terms and conditions specified by ordinance. If he shall not feel authorized to grant any particular application for license or permit for any purpose not named by ordinance, he shall report such application to the next meeting of the governing board for their action thereon.

8.0104 Licenses – Term

1. No license or permit shall be granted for a longer period than one (1) year.
2. All yearly licenses or permits shall commence on the first day of January in each year and expire on the last day of December in each year. All semi-annual licenses or permits shall commence on the first day of January and the first day of July and expire on the last day of June and the last day of December respectively, except as otherwise provided in this chapter.
3. No license or permit shall be valid until signed and sealed nor shall any persons be deemed licensed until a license shall be duly issued to him.
4. Each license shall be dated the day of issuance thereof; but if the applicant or applicants shall have been acting without a license, the license shall commence with the date business commenced; if the business calls for a yearly license than a license shall commence on the first day of January in the year for which the license shall be issued.
5. The date of issuance of the license, together with the time of commencing and expiration shall be given in the license and the license record.

8.0105 Licenses – Not Transferable

No license or permit shall be assignable or transferable except by permission of the governing board. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. The city may grant the continuance of the business licensed to any other portion of the city, such permission to be certified on the license by the city auditor. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

8.0106 Licenses – Revocation

All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the city’s governing body. Any person who shall violate any provision of this article relating to his license may be proceeded against for any fine or penalty imposed thereby, and his license may be revoked or forfeited in the discretion of the governing body or the court before which any action may be brought for the recovery of any fine or penalty. Where not otherwise provided any license may be revoked by the governing board at any time for cause, “Cause” shall include, but not be limited to, the following:

1. Violation of the laws of the State of North Dakota, or any of the ordinances of the city dealing with or pertaining to the business or trade licensed.
2. The willful making of any false statement as to a material fact in the application for license.
3. Permitting any disorderly or immoral practices upon the premises where the licensee is licensed to carry on the business or trade.
4. The death of licensee.
5. When the licensee ceases business at the location licensed.
6. When the licensee ceases to be a legal and bona fide citizen of the State of North Dakota.

When the license is terminated or revoked for cause, the licensee or those claiming under him, shall not be entitled to any return of any portion of the license fee previously paid to the city.

8.0107 Licenses – Posting of

All licenses and permits issued by the city for the operation of any business establishment, trade or any part of the operation thereof, shall be posted in a conspicuous place in the main business establishment, where badges representing permits or licenses are issued to be worn by an individual such licensee shall wear such badge during the normal course of employment for which said badge was issued.

8.0108 Licenses – Short Term

No license unless otherwise specified shall be issued for a fractional part of the year, but shall relate back if taken out subsequent to the first day of January of each year.

8.0109 Licenses – Enforcement

All city officials having duties to perform with reference to licensed premises, including all police officers, shall have authority to enter the licenses premises with or without a search warrant to check for violations of ordinances or state laws by the licensee.

ARTICLE 2 – Transient Merchants

8.0201 Definitions

For the purpose of this article:

1. “Transient merchant” includes any person, individual, co-partnership or corporation, either as principal or agent, who engages in, does, or transacts any temporary or transient business in the City of Hettinger or within one mile of the municipal limits, either in one locality, or in

traveling from place to place selling goods, wares and merchandise, who does not intend to become and does not become a permanent merchant of the City of Hettinger and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, structure, lots, tract, railroad car or motor vehicles for the exhibition and sale of such goods, wares and merchandise. The person, individual, co-partnership or corporation so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as part of, or in the name of any local dealer, trader, merchant or auctioneer.

2. shall not include any livestock or agricultural product.

8.0202 Licenses Required

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

8.0203 License Fee

The license fee to be required of all transient merchants for the transaction of such business within the City, is contemplated in and provided for in and by Section 51-04-09, North Dakota Century Code, is hereby fixed at the sum of \$15.00 per day for each and every day during which any such transient merchants shall transact business in the City.

8.0204 License – Application for

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

1. Applicant's name, present residence, present home address, present business address, and if a corporation, under the laws of what state the same is incorporated;
2. The name, present residence, present home address and present business address of person or persons having the management or supervision of applicant's business during the time that it is proposed that it will be carried on in the city.
3. The residence, business address, and type of business in which applicant has been engaged in the previous two (2) years;
4. The residence, business address, and type of business in which the person having the management or supervision of applicant's business has been engaged in the previous two (2) years;
5. The place or places in the city, where it is proposed to carry on applicant's business, and the length of time during which it is proposed that said business shall be conducted;
6. The kind of business to be conducted;
7. The name and address of the auctioneer, if any, who will conduct the sale; and

8. A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant, in the city, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or by sample; at auction, by direct sale or by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time said application is filed.

8.0205 Bond

Before any license shall be issued to a transient merchant for engaging in business in this city, the applicant therefore shall file with the City Auditor a bond running to the city in the sum of \$1,000.00 executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the State of North Dakota; said bond not to be revocable nor to terminate prior to passage of two years time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be canceled has been given to the City Auditor; said bond to be approved by the City Attorney, conditioned that the said applicant shall comply fully with all of the provisions of the ordinances of the city and the statutes of the State of North Dakota, regulating against said applicant for any violation of said ordinances or statutes, or any of them, together with all judgments and costs that may be recovered against him by any person or persons for damage growing out of any misrepresentation or deception practiced on any persons transacting such business with such applicant, whether said misrepresentation or deceptions were made or practiced by the owners or by their servants, agents, or employees, of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person. This section shall take effect on year after the passage of this chapter.

8.0206 Service of Process

Before any license as herein provided shall be issued for engaging in business as a transient merchant, as herein defined, in this city, such applicant shall file with the City Auditor an instrument nominating and appointing the City Auditor his true and lawful agent with full power and authority to acknowledge service or notice of process for and on behalf of said applicant in respect to any matters connected with or arising out of the business transacted under said license and the bond given as required by this article, or for the performance of the conditions of said bond or for any breach thereof, which said instrument shall also contain recitals to the effect that said application for said License consents and agrees that service of any notice or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served upon the person or persons applying for the said License under this article, according to the law of this state and any other state, and waiving all claim or right of error by reason of such acknowledgement of service or manner of service. Immediately upon service of process upon the City Auditor, as herein provided, the City Auditor shall send to the licensee at his last known address, by registered mail, a copy of said process. This section shall take effect one year after the passage of this chapter.

8.0207 Exhibiting License

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

8.0208 Transfer

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

8.0209 Enforcement by Police

It shall be the duty of the police officers of the city to examine all places of business and persons in their respective territories subject to the provisions of this article, to determine if this article has been compiled with and to enforce the provisions of this article against any person found to be violating the same. The City Auditor shall deposit with the Chief of Police a record of each license number, together with the location within the city of the business licensed thereunder to assist and promote such enforcement.

8.0210 Revocation

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

8.0211 Expiration of License

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

ARTICLE 3 – Hawkers and Peddlers

8.0301 Definitions

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

8.0302 License Required

It shall be unlawful for any person to engage in the business of hawker or peddler of any merchandise, article or thing without having first secured a license therefore.

8.0303 Exceptions

No license shall be requested for peddling, vending or marketing farm products raised in the State of North Dakota, fish, vegetables, fruits, nuts, cake, candy, ice cream, or other light products or refreshments.

8.0304 License – Application for

Applicants for license under this article must file with the City Auditor a sworn application in writing, which shall give the following information:

1. Name, age and sex of the applicant;
2. Address (legal and local);
3. A brief description of the nature of the business and the goods to be sold;
4. If employed, the name and address of the employer, together with credentials establishing the exact relationship;
5. The length of time for which the right to do business is desired;
6. If a vehicle is to be used, a description of the same, together with license number; and
7. A statement as to whether or not the applicant has been convicted of any crimes, misdemeanors or violations of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore.

8.0305 Fees

The license fee to be required of all hawkers and peddlers for the transaction of business within the City shall be in the sum of \$15 per day for each day or portion of the day which any such hawker or peddler shall transact business in the City.

8.0306 Exhibition of License

Hawkers and peddlers are required to exhibit their licenses at the request of any citizen.

8.0307 Transfer

No license issued under the provisions of this article shall be transferred or used at any time by any person other than the one to whom it was issued.

8.0308 Use of Streets

No hawker or peddler shall have any exclusive right to any location in the public streets, nor shall any be permitted to a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgement of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

8.0309 Enforcement

It shall be the duty of any police officer of this city to require any person seen hawking or peddling, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this article against any person found to be violating the same.

8.0310 Revocation

1. Licenses issued under the provisions of this article may be revoked by the governing body of the city after notice and hearing for any of the following causes:
 - a. Fraud, misrepresentation, or false statement contained in the application for license;
 - b. Fraud, misrepresentation, or false statement made in the course of carrying on his business;
 - c. Any violation of this article;
 - d. Conviction of any crime or misdemeanor involving moral turpitude;
 - e. Conducting the business of hawking and peddling in an unlawful manner or in such a manner as to constitute a breach of peace, or constitute a menace to the health, safety, or general welfare of the public.
2. Notice of a hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed postage prepaid, to the licensee at his last known address at least five days prior to the date set for the hearing.

ARTICLE 4 – Runners, Solicitors and Canvassers

8.0401 Definitions

A “runner”, “canvasser”, or “solicitor” is defined as any individual whether resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself, or for another person, firm, or corporation, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

8.0402 Exceptions

No license shall be required hereunder for runners, solicitors, or canvassers of regular retailers of goods, wares and merchandise, and personal property, but only for those runners, solicitors, and canvassers selling directly to the consumer.

8.0403 License Required

It shall be unlawful for any person to engage in the business of runners, solicitors and canvassers of any merchandise, article or thing without having first secured a license therefore.

8.0404 License – Application for

Applicants for license under this article must file with the City Auditor a sworn application in writing, which shall give the following information:

1. Name, age and sex of the applicant;
2. Address (legal and local);
3. A brief description of the nature of the business and the goods to be sold;
4. If employed, the name and address of the employer, together with credentials establishing the exact relationship;
5. The length of time for which the right to do business is desired;
6. If a vehicle is to be used, a description of the same, together with license number; and
7. A statement as to whether or not the applicant has been convicted of any crimes, misdemeanors or violations of any municipal ordinance, the nature of the offense and punishment or penalty assessed therefore.

8.0405 Fees

The license fee to be required of all runners, solicitors and canvassers for the transaction of business within the City shall be in the sum of \$5 per day for each day or portion of the day which such runner, solicitor or canvasser shall transact business in the City.

8.0406 Exhibition of License

Runners, solicitors, and canvassers are required to exhibit their licenses at the request of any citizen.

8.0407 Transfer

No license issued under the provisions of this article shall be transferred or used at any time by any person other than the one to whom it was issued.

8.0408 Use of Streets

No runner, solicitor, or canvasser shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

8.0409 Enforcement

It shall be the duty of any officer of this city to require any person seen soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this article against any person found to be violating the same.

8.0410 Revocation

1. Licenses issued under the provisions of the article may be revoked by the governing body of the city after notice and hearing, for any of the following causes:
 - a. Fraud, misrepresentation, or false statement contained in the application for license;
 - b. Fraud, misrepresentation, or false statement made in the course of carrying on his business;
 - c. Any violation of this article;
 - d. Conviction of any crime or misdemeanor involving moral turpitude;
 - e. Conducting the business of soliciting and canvassing in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.
2. Notice of a hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at last known address at least five days prior to the date set for the hearing.

ARTICLE 5 – Solicitation Without Invitation

8.0501 Solicitation Without Invitation Prohibited

The practice of going in and upon private residence or privately owned property in the city by solicitors, peddlers, hawkers, itinerant merchants, transient vendors of merchandise, photographers and magazine and periodical subscription agents, not having been requested or invited to do so by the owner or owners, occupant or occupants of such private residences or private property, for the purpose of soliciting orders for the sale of goods, wares, and merchandise and/or for the purpose of disposing of and/or peddling or hawking the same, and for the purpose of soliciting subscriptions to magazines or periodicals and/or for the purpose of taking photographs in hereby declared to be a nuisance and unlawful.

8.0502 Enforcement

The Chief of Police and all police officers in the city are hereby required and directed to suppress the same and to abate any such nuisance as described in 8.0501.

ARTICLE 6 – Alcoholic Beverages and Tobacco

8.0601 Definitions

For the purpose of this article:

1. “Alcoholic beverages” shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume,
2. “Beer” shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
3. “License” shall mean any person, firm, corporation, association, or club which shall have secured a license pursuant to provisions of this chapter or their agent or employee.
4. “Liquor” shall mean any alcoholic beverage except beer.
5. “Person” shall mean and include any individual, firm, corporation, association, club, co-partnership, society, or any other organization; and shall include the singular and the plural.
6. “Sale” and “sell” shall mean all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of, and keeping for sale of such alcoholic beverages.
7. “Package” and “original package” shall mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.
8. “Club” or “lodge” shall include any corporation or association organized for civic, fraternal, social or business purposes, or the promotion of sports, which has at least 200 members at the time of application for license and which was in existence on November 3, 1936.
9. “Retail sale” shall mean the sale of alcoholic beverages for use or consumption and not for resale.
10. “Off-sale” shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.
11. “On-sale” shall mean the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

8.0602 Exceptions

1. This article shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.
2. This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:

- a. Denatured alcohol produced and used pursuant to Acts of Congress, and the regulations thereunder.
- b. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
- c. Flavoring extracts, syrups and food products.
- d. Scientific, chemical, and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

8.0603 License Required

No person shall sell at retail within the city limits of this city any alcoholic beverage without first having obtained a license therefore is herein provided. This section shall not apply to public carriers engaged in interstate commerce.

8.0604 Licenses – Class of – Fee

1. On and off-sale beer and liquor licenses at the annual fee of \$1,500.
2. On-sale beer and liquor licenses in the annual fee of \$1,000.
3. Off-sale beer and liquor licenses at the annual fee of \$1,000.
4. On-sale beer/wine only licenses at the annual fee of \$500.00
5. 10 percent of license fees shall be designated by the City for use in promotion and development of tourism.

8.0604A Licenses – Fee Refund

The City, in its discretion, shall refund a part of a license fee to any licensee who sells liquor and beer exclusively to members of an organization to which the license is granted, and where such liquor and beer is consumed in the club rooms of the organization.

8.0604B Sunday Liquor License

For an additional fee of \$5.00 per Sunday or a maximum of \$260.00 per year, any Licensee may apply for a license to sell alcoholic beverages, between the hours of 12:00 noon on Sundays and 1:00 a.m. Mondays on the licensed premises. Such application shall be made to the City Council. The City Council, upon confirmation that the application is made by an individual/entity holding a valid license, may grant the application and further may place any restrictions that it deems proper, including but not limited to the number on Sundays for which the permit is valid, on the Sunday Liquor License. Any restriction(s) placed on a Sunday Liquor License shall be approved by a majority vote of the City Council.

Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this Ordinance is guilty of a Class A Misdemeanor.

This Ordinance does not negate the need for a separate Special Events Permit, obtained pursuant to Hettinger City Ordinance 8.0632, should the Licensee intend to sell alcoholic beverages on Sunday at any place other than the licensed premises.

Upon enactment of this Ordinance, Hettinger City Ordinance 8.0604(b) which required that the sale of beer or wine on Sundays must be in conjunction with the sale of prepared meals is hereby repealed.

8.0605 Licenses - Nonpayment of Utilities

1. No license for the sale of alcoholic beverages, including beer and liquor, shall be issued to an entity or person who is not current in payments due the City of Hettinger for utilities, including but not limited to, garbage, water, and sewer.
2. Upon thirty (30) days notice to a Licensee under this Chapter and Article who is not current in payments due the City of Hettinger for utilities, including but not limited to garbage, water, and sewer, the license of said Licensee for the sale of alcoholic beverages may be revoked by action of the City Council of the City of Hettinger.

8.0606 Licenses – Term of

1. All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 1st day of July in each year. Where a license is granted for a period less than one (1) year any subsequent renewal thereof must be made for the full annual term. Beginning January 1, 1991, licenses shall commence on the 1st day of January and expire on the last day of December of each year.
2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees for said license shall be proportional to represent the number of whole months which said license will be in effect.

8.0607 License – Qualifications for

No retail license shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. Applicant, if an individual, must be a citizen of the United States, State of North Dakota and County of Adams and be a person of good moral character.
2. If applicant is a corporation, the manager of the licensed premises and the officers, directors and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the Secretary of State.
3. If applicant is a co-partnership, all the members must be citizens of the United States and residents of North Dakota for a period of more than one year prior to the date of application and be persons of good moral character.
4. Applicant or manager must not have been convicted of a felony.
5. Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
6. Taxes on property for which application for license is made must not be delinquent.
7. If applicant's place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the licensee.

8.0608 Application for Liquor License

Any person desiring a license to sell alcoholic beverages at retail as hereinbefore described shall make and present a written verified application to the governing body of this city, filed with the City Auditor, containing the following information:

1. The name and address of the applicant; if the applicant is a co-partnership, the name and address and place of residence of each member of said co-partnership; if the applicant is a corporation, the name and address of the officers of the corporation and the manager of the licensed premises.
2. Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a co-partnership the same preceding information for each member of said co-partnership; and if the applicant is a corporation, the date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated and if such corporation is a subsidiary of any corporation, the name of the parent corporation.
3. The legal description and the address of the premises for which license is sought.
4. The date on which the applicant acquired title to the premises sought to be licensed, and if the applicant does not have title to said premises, the name and address of the owner of the premises together with a copy of the applicant's lease, if written, under which he holds possession of said premises.
5. Whether there are any delinquent taxes against the premises sought to be licensed.
6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the applicant first began to operate.
7. Whether the applicant had ever had a license revoked or canceled by a municipal, state or federal authority, and if so, the date of such cancellation, the place and authority canceling the same, and the reason for such cancellation.
8. Whether the applicant has ever been convicted of the violation of any law of the United States or of any state, or of the violation of any local ordinance, with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of place, and courts, in which said convictions were had.
9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation, and the reasons assigned therefore.
10. Whether the applicant has ever been convicted of any other crime than stated in subsections (8) and (9) hereof, in this state or any other state, or under any federal law, and if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passes, and the court in which convicted.

11. The name and address and the place of residence for a period of one year prior to the date of application of any person who will have charge, management, or control of the establishment for which license is sought.
12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures, or equipment in the premises for which license is sought, and if so the name and address of such person together with a statement of the interest so held.
13. Whether the applicant has any interest whatsoever directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State of North Dakota, and if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, and within the borders of the United States.
14. The occupations which the applicant has followed during the past five years.
15. The names and addresses of at least three business references.
16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.
17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.
18. The classification of license applied for.
19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized, and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the governing body a list of the members belonging to such lodge or club.
20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of this city or of the State of North Dakota.
21. Such other and further information as the governing body may from time to time require.

8.0609 License – Application Fitness

The Chief of Police or such other person or officer as may be designated by the governing body shall, upon the filing of an application investigate the facts as stated in the application and the character, reputation and fitness of the applicant, and shall report on said matters to the governing body.

8.0610 License – Location of

No license shall be issued to transferred to any person, firm or corporation to engage in the sale of beer or alcoholic beverages within the city without approval as to the location of said license business by the governing board. The application for approval shall be in writing filed with the board. At the time of hearing the board shall in its discretion determine if said location is in harmony with the public interest and welfare of the community, and shall consider among other things the following factors:

1. The convenience of police regulations.

2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings, or buildings used by or for minors.
5. Any protests of neighboring property owners or occupants.
6. Zoning regulations.
7. Proposed on or off-sale or both licensee.
8. Interference with or proximity to residential property.
9. Interference with neighboring property.
10. Suitability of premises for sale of beer, liquor or alcoholic beverages.
11. Public convenience and necessity.

8.0611 License – Grant

After the governing body of the city has received the application as provided herein they shall meet and consider the same. If they find that the applicant meets the qualifications for a license and are satisfied as to the completeness and the accuracy of the information contained in the application, they may grant the license. If they find that the applicant does not meet with the qualifications or they are not satisfied as to the completeness or accuracy of the information they may request that the applicant supply more verified information to the governing body or they may reject the application.

8.0612 License – Limit to One Applicant

Not more than one license of each classification shall be issued or granted to any applicant; and each license shall be valid only for the specific premises licensed.

8.0613 License – Posting of

License issued hereunder shall be posted in a conspicuous place in the premises for which the license has been issued.

8.0614 License – Transfer of

No license under the provisions of this article shall be transferable and any attempt to do so shall constitute a violation of the provisions of this article.

8.0615 License Fees – Disposition of

All license fees collected under this article shall be transferable to the Auditor of the city and credited to the general fund of the city.

8.0616 Hours and Time of Sale – Penalty (replaced 8-10-11)

The provisions of North Dakota Century Code section 5-02-05 and all subsequent amendments shall be ad is hereby incorporated by reference in this ordinance. (see ordinance #2011-1)

8.0617 Licensee’s Responsibility

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, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person, nor shall any intoxicated person be permitted to remain on the premises.

8.0618 Gambling Prohibited – Exceptions

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board, or any other machine or device of similar nature, nor shall gambling, whether by cards, dice, or otherwise, of any nature, be permitted upon the licensed premises. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder, and such license shall be revoked upon conviction of any such violation. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting license issued by the State of North Dakota.

ORDINANCE NO. 2011-1

AN ORDINANCE AMENDING AND RE-ENACTING SECTION 8.0616 OF THE CITY CODE OF THE CITY OF HETTINGER, NORTH DAKOTA, RELATING TO HOURS AND TIME OF SALE - PENALTY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HETTINGER, NORTH DAKOTA AS FOLLOWS:

Section 1: Section 8.0616 entitled “Hours and Time of Sale - Penalty” is hereby amended and re-enacted as follows:

8.0616 Hours and Time of Sale - Penalty

~~The provisions of North Dakota Century Code section 5-02-05 and all subsequent amendments shall be and is hereby incorporated by reference in this ordinance.~~

A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between the hours of one a.m. and twelve noon 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. A person that violates this section is guilty of a class A misdemeanor.

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

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

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

Mayor, Hettinger City Council

ATTEST:

Patricia Carroll, City Auditor

First Reading: 7-13-11

Second Reading: 8-10-11

Final Passage: 8-10-11

8.0619 Cashing Certain Checks Prohibited

No licensee hereunder shall cash any bank check, voucher, order or document of any kind drawn by a County Welfare Board, or any state or federal agency in payment for wages made for work done on any so-called work relief project, or for relief purposes, which by its terms authorizes or permits any person presenting such bank check, voucher, order or document to receive payment of money.

8.0620 Sales Prohibited – Items

No licensee shall sell on the licensed premises any item other than alcoholic beverages, soft drinks, tobacco products, drink mixing supplies, peanuts, pretzels, potato chips, and related sundries; except a licensee may sell alcoholic beverages in a restaurant separated from the room in which alcoholic beverages are opened or mixed if gross sales of food are at least equal to sales of alcoholic beverages in the dining area.

8.06021 Sales Prohibited – Persons

No licensee, his agent, or employee shall sell any alcoholic beverages to a person under twenty-one (21) years of age, a habitual drunkard, an incompetent or an intoxicated person.

8.0622 Minors in Licensed Premises

The provisions of North Dakota Century Code section 5-01-08 and all subsequent amendments shall be and is hereby incorporated by reference in this ordinance.

8.0623 Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises a licensee, his agent or employee, may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this article.

8.0624 Street Sales Prohibited

The sale or consumption of alcoholic beverages upon or across any street, alley, or public way is prohibited.

8.0625 Premises, Equipment of

Premises licensed hereunder for on-sale alcoholic beverages shall be equipped with tables, chairs, booths, and stools in a sufficient number to accommodate reasonably the patrons.

8.0626 Closed or Screened Areas

No premises licensed for on-sale of alcoholic beverages shall contain any side rooms, closed booths, or other screened enclosures, nor shall any screen, partition, curtain, blind, or obstruction of any kind prevent a clear view at all times of all parts of the interior of the premises licensed. All booths located in such premises shall open directly into the main part of said premises and shall be accessible from the aisles therein.

8.0627 Purchase from Licensed Wholesaler

No license hereunder shall purchase, have or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the State of North Dakota pursuant to the provisions of Title V of the North Dakota Century Code; and each license hereunder shall keep on file all invoices covering purchases by him of such alcoholic beverages showing the name and license number of the wholesaler, and such records shall be retained in the possession of the licensee and shall be at all times open to inspection by any police officer or peace officer of the State of North Dakota.

8.0628 Toilets Required

That the premises where on-sale license is granted must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and kept in a clean and sanitary condition. The on-sale license may be revoked when the foregoing requirements, or any other health ordinance or regulation, is not, at all times strictly observed.

8.0629 Deliveries – Off License Premises

1. It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer or alcoholic beverages to make, or cause to be made any deliveries outside of the licensed place of business of beer, liquor or other alcoholic beverages to any purchaser or prospective purchaser.
2. It shall be unlawful for any person, firm or corporation to deliver by foot, carrier or motor carrier, any beer, liquor or alcoholic beverage, to any person with the city limits provided however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.
3. Where any retail alcoholic beverage or beer license is a club or lodge, such license shall sell members and their guests only.

8.0630 Termination or Revocation of Licenses

1. License issued pursuant to this article shall be deemed canceled and revoked and terminated upon the happening of any one or more of the following contingencies:
 - a. The death of the licensee unless upon application to the governing body by personal representative of the decedent, the governing body shall consent to the carrying on of the business by the personal representative.
 - b. When the licensee ceases business at the location licensed, unless a new location has been approved.
 - c. When the licensee be adjudged bankrupt.
 - d. When the licensee has been convicted of the violation of any provision of this article, or of the laws of the State of North Dakota pertaining to alcoholic beverages, or of a felony under the laws of the United States, the State of North Dakota, or of any other state of the United States.
 - e. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.
 - f. When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the location licensed has been terminated or been revoked.
 - g. When the licensee ceases to be legal bona fide resident and citizen of the State of North Dakota, or ceases to be a legal bona fide resident of the County of Adams.
2. License issued pursuant to this ordinance may, in the discretion of the governing body, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:
 - a. When the licensee has been convicted of violating any of the provisions of this article.
 - b. When the business of the licensee at the location licensed shall be conducted in violation of health and sanitary regulations or other ordinances of the city.
 - c. When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager if the licensee be a corporation, be convicted in the municipal court of the city of drunkenness or disorderly conduct, or if any appeal be taken from such conviction then when such conviction be sustained by the higher court or courts.
3. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and such license may also be canceled and revoked or suspended at any time by the governing body for any cause deemed by said governing body to sufficient cause and justified by reason of public health or public morals. Such termination shall be subject only to review by the courts of the State of North Dakota.
4. When any license is terminated or revoked for cause, or the licensee voluntarily ceases his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

8.0631 Penalties

Any person, firm, corporation or association violating any of the provisions of this article shall upon conviction thereof, be subject to a fine of not to exceed Five Hundred and No/100 Dollars (\$500.00), or to imprisonment of not to exceed thirty (30) days; or in the discretion of the court to both such fine and imprisonment; and in addition to both such fine and imprisonment all powers, right, and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with section 8.0629 of this article.

8.0632 Special Events Permit

Repealed.

ORDINANCE NO. 2014-1

AN ORDINANCE AMENDING AND RE-ENACTING ARTICLE 6 OF CHAPTER 8 OF THE CITY CODE OF THE CITY OF HETTINGER, NORTH DAKOTA, RELATING TO CITY SPECIAL EVENTS PERMITS AND FEES RELATED THERETO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HETTINGER, NORTH DAKOTA AS FOLLOWS:

Section 1: **Enactment:** Article 6 of Chapter 8 of the City Code of the City of Hettinger is hereby amended and re-enacted as follows:

Section 8.0632 Special Events Permit

The City Council may by special permit authorize an on-sale, or on and off-sale alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events on licensed premises as may be designated by the Permit. The fee for this special permit shall be ~~\$25.00~~ \$50.00 but may be set at a lesser amount at the discretion of the City Council in individual cases. The permit shall not be valid for a period greater than three consecutive days. The City Council may establish rules as it may deem proper to regulate and restrict the operation of a special permit.

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

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

Section 4: **Effective Date:** This Ordinance shall be in full force and effect from and after final passage.

CITY OF HETTINGER

Richard Wyman, Mayor
Hettinger City Council

ATTEST:

Patricia Carroll, City Auditor

First Reading: 7-9-14

Second Reading: 8-13-14

Final Passage: 8-13-14

8.0633 Special Permits for Private Groups

1. Special permits to serve beer, liquor, wine or alcoholic beverages in public buildings and other public facilities leased or used for social or business use by private groups without license fees or other changes therefor may be obtained upon compliance with the provisions of this Section.
2. Qualification. The application for a permit authorized by this Article must be a temporary social or business use.
3. Application must be for a permit to:
 - a. Serve without charge by the applicant, his/her or its guests as an act of hospitality.
 - b. Serve without profit and at cost to those persons who are described in the application and who have contributed to the fund with which applicant has purchased the beer, wine, liquor or alcoholic beverages with mixes and incidentals to its service.
4. Application of other law. Any person or organization operating under a special permit issued under this Article shall operate in compliance with all applicable provisions of the Code and City Ordinances relating to beer, wine, liquor, or alcoholic beverages.
5. Application Form. Application for a permit authorized by the provisions of this Article shall be made to the City upon forms furnished by it, and the applicant shall furnish any additional information required by them.
6. Statement. The application for a permit under this Article must state that applicant will not sell at retail any beer, wine, liquor, or alcoholic beverages under such permit.
7. Fee. The application fee for a permit under this Section shall be \$25.00 but may be set at a lesser amount at the discretion of the City Council.
8. Inspection of Premises. The applicant for a permit under this Section shall, by making such application, consent and agree that the sheriff, sheriff deputies or police officers may enter and inspect the leased premises or part thereof at any time to check compliance with City Ordinances.

8.0634 Special Sunday Convention Alcoholic Beverage Permit

1. **Special Permits Authorized.** A Special Sunday Convention Alcoholic Beverage Permit to sell alcoholic beverages at retail may be issued to a private club, lodge, motel or hotel, as defined under City Ordinances and licensed as a retail alcoholic beverage establishment pursuant to Chapter 5-02 of the North Dakota Century Code. The permit will apply to the headquarters for State or National convention of a bona fide organization recognized by the City Council. The authority to issue such special permit shall rest solely in the discretion of the City Council. Such permit shall be effective for one Sunday only. A permit will not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the City Council, are primary local in nature.
2. **Application of Permit.** The application for a Special Sunday Convention Alcoholic Beverage Permit shall be made in writing and accompanied by a fee of \$25.00.
3. **Use of Permit.** Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, motel or hotel which have been specifically reserved for convention activities but shall not be permitted in bar and lounge area containing the permanent bar fixtures and normally opened to the public. Dancing and the distribution of alcoholic beverages will be permitted between the hours of 12:00 o'clock Noon on the specified Sunday and 1:00 o'clock A.M. on Monday. Under no circumstances shall the general public be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. It shall be the duty of the private club, lodge, motel or hotel granted this special permit to enforce the requirements of this Section and the conditions established by the City under the permit.

8.0635 Sale of Tobacco – Vending Machines

1. It shall be unlawful for any person to sell or dispense any tobacco through the use of a vending machine except that tobacco products may be offered for sale or sold from a vending machine on licensed on-sale or off-sale alcoholic beverage premises. Tobacco vending machines located upon licensed premises must be located within the immediate vicinity, plain view and control of a responsible employee, so that all tobacco purchases will be readily observable. The tobacco vending machine shall not be located in a coat room, restroom, unmonitored hallway, outer lobby or waiting area of similar unobserved area; nor shall the tobacco vending machine be accessible to the public when the establishment is closed.
2. For the purpose of this ordinance, “vending machine” shall mean any kind of device or mechanical machine which, upon the insertion of a coin or coins, tokens or other objects will release tobacco products in packages or otherwise.
3. Violation of this section shall be an infraction punishable by a fine of \$100 for each day the violation continues.

ARTICLE 7 – Shows, Carnivals and Circuses

8.0701 License Required

No person, firm, association or corporation shall exhibit or cause to be exhibited or assist in exhibiting any natural or artificial curiosity or conduct a circus, menagerie, tent show, carnival, or carnival show, continuous theatrical performance, shooting gallery, or other like exhibition without first obtaining license from the city.

8.0702 Fees for

The fees to secure license to conduct the exhibitions mentioned in the foregoing section shall be as follows:

- Any carnival, per day.....\$15
- Any circus, per day.....\$15

In addition to the above fees any carnival or circus granted a license shall deposit with the City Auditor cash bond in the amount of \$1000 guaranteeing that the premises upon which such carnival or circus is located shall be cleaned after the showing of such carnival or circus to the satisfaction of the City Engineer and upon certification of the City Engineer to the City Auditor or if the City has no City Engineer upon determination of the City Auditor that the same has been done said cash deposit shall be returned to the licensee. Provided, further, that in addition to such fees, an additional fee to be fixed by the governing body shall be paid at the time of obtaining license to provide for fire and police protection and additional policing in connection with the showing of such carnival or circus. In addition to the above, the City Auditor may request a cash deposit of \$100.00, which amount will be returned to the licensee only if the premises utilized by the licensee are properly cleaned after use.

ARTICLE 8 – Games of Chance

8.0801 Games of Chance

The provisions of North Dakota Century Code chapter 53-06.1 and all subsequent amendments shall be and is hereby incorporated by reference in this ordinance.

ARTICLE 9 - Penalty

8.0901 Penalty

Any person, firm, corporation, or association violating any of the terms, articles, or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be punished by a fine not to exceed Five Hundred and No/100 (\$500.00), or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment in the discretion of the court. The court shall have the power to suspend such sentence and to revoke the suspension thereof. The court may, in addition thereto, revoke the permit of such violator, or terminate or revoke all powers, rights, and privileges given by any license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation thereof.