

ARTICLE 25-15

ALCOHOLIC BEVERAGES

[NOTE: Article 25-15, Intoxicating Liquors, and article 25-16, Beer, Sale Of, of the Revised Ordinances of 1965 (sections 25-1501 to 25-1532 and 25-1601 to 25-1623) were repealed by Ordinance No. 1869 (1978), which enacted new article 25-15, Alcoholic Beverages (sections 25-1501 to 25-1515).]

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25-1501. Definitions.--In this article, unless the context or subject matter otherwise requires:

1. "Alcohol" shall mean neutral spirits distilled at or above 190 proof, whether or not such product is subsequently reduced, for nonindustrial use.

2. "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. All alcoholic beverages shall be deemed intoxicating.

3. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.

4. "Business complex" shall mean any shopping center, shopping mall or similar physical facility where two or more retail businesses are located and conducted, whether or not such businesses are separately owned and operated.

5. "Commission" shall mean the board of city commissioners of the city of Fargo, its governing body.

6. "Entertainment" shall mean all forms and types of entertaining patrons of licensed

premises, whether such entertainment is provided by means of live performances or audio and/or video presentations, whether remote or prerecorded; provided, however, that “entertainment” shall not be deemed to include the use of any regularly broadcast television or radio programs, or coin-operated music machine.

7. “Licensee” shall mean any person to whom a license has been issued under the provisions of this article.

8. “Licensed premises” shall mean the bar area, dining rooms, meeting rooms, outdoor dining areas as provided in Article 18-03 of the Fargo Municipal Code, and all other areas or spaces where alcoholic beverages are regularly or occasionally sold, served or dispensed. In the alternative, any person applying for a license under the provisions of this article may describe, depict or otherwise identify in his application for a license various areas or spaces which shall constitute the licensed premises. The commission, in its discretion, may require any applicant to so describe, depict or otherwise identify the licensed premises as a condition for the issuance of a license under the provisions of this article.

9. “Lodge” or “club” shall mean any corporation or association organized for civic, fraternal, social or business purposes, or for the promotion of sports. Said lodge or club shall have at least 200 members at the time a license is applied for and shall have been in existence for at least 20 years prior to the time of application for the license; provided, that a local veteran’s organization which has not existed for 20 years but is a subsidiary of and chartered by a national organization which has had a bona fide existence for more than 20 years shall be deemed to be a “lodge” or “club” for purposes of this article.

10. “Microbrew pub” means a brewer that brews 25 or fewer barrels of beer per week and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.

11. “Off-sale” shall mean sale of alcoholic beverages in original packages solely for consumption off or away from the premises where sold. An off-sale license shall authorize the licensee to conduct such off-sale at the place designated in the license.

12. “On-sale” shall mean sale of alcoholic beverages for consumption only on the licensed premises. An on-sale license shall authorize the licensee to conduct such on-sales at the place designated in such license or as may be authorized by a Class E license issued pursuant to the provisions of this article.

13. “Package” and “original package” shall mean any container or receptacle holding alcoholic beverages when such container or receptacle is corked or sealed by the manufacturer thereof and when the cork or seal has not been removed or broken prior to the sale of such package to the purchaser thereof.

14. “Person” shall include any natural person, association, partnership, corporation and any clerk, agent and abettor thereof.

15. “Public place” shall mean any building, property or other place that the general public can occupy as a matter of right or any building, property or place that is open to the general public by implied or express invitation, either for business purposes or otherwise. “Public place” shall not include, however, that area set aside and specifically designated on the Fargodome parking lot by North Dakota State University and utilized for its sponsored tailgating activities.

16. “Recreational establishment or places of amusements” shall mean any establishment whose business building contains a square footage of at least Twelve Thousand (12,000) square feet where games of skill, such as billiards, volleyball, indoor golf, bowling or soccer (but not video or pinball) are usually played, which premises are duly licensed and meet building code requirements

for said games of skill, and which has annual gross receipts at least Two Hundred Thousand Dollars (\$200,000) of which no more than Fifty Percent (50%) may be derived from the sale of alcoholic beverages.

17. "Sale" shall mean all methods or modes of furnishing alcoholic beverages, with or without consideration, whether by selling, dispensing, exchanging, bartering or other similar means of transfer. Such term shall include all transactions, whether for cash, credit or other considerations and shall include, but not be limited to, transactions where the consideration for the alcoholic beverage is included or combined with another transaction or where the consideration is called a "donation", or used to purchase any ticket, token or other object redeemable for alcoholic beverages.

18. "Sparkling wine" shall mean wine made effervescent with carbon dioxide.

19. "Transfer" shall mean a change in location of the licensed premises; or any assignment, sale, exchange or other conveyance of any license issued pursuant to the provisions of this article. A transfer shall be deemed to have occurred upon the assignment, sale, exchange or other conveyance of 50% or more of the interest in a licensee partnership or stock in a licensee corporation, whether such assignment, sale, exchange or other conveyance occurred in one single transaction or multiple transactions.

20. "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 24% alcohol by volume.

21. "Mandatory server training" shall mean server training that has been approved by the Fargo police department and/or its designee for managers and employees involved in selling alcoholic beverages at licensed liquor establishments, including restaurants.

22. "Stadium" shall mean a fixed physical structure, which may be fully-enclosed or open, in which spectators of events watch sports, concerts or other similar entertainment activities, with permanent seating and which has controlled access to and from its grounds. A stadium shall include the seating arena, private suites, concession stands, concourse area, playing field, and other permanent or fixed structures and areas related to spectator activities.

23. "Winery" shall mean a domestic operation wherein the owner/operator of the winery shall produce wine within the state of North Dakota in accordance with the provisions of N.D.C.C. 5-01-17.

24. "Wine bar" shall mean an establishment serving primarily on-sale wine and sparkling wine, with incidental on-sale beer, non-alcoholic beverages and food sales, but does not include any sale of alcohol or off-sale wine, sparkling wine, or beer. Such establishment shall offer patrons wines by the glass, flight, bottle and taste, and will allow for presentation of beverages at the table, as well as at the bar. A "wine bar" shall also be focused on education of wines from around the world; may occasionally offer primarily acoustical live performances in the genre of jazz, blues, and classical music; and shall be a non-smoking.

Source: 1965 Rev. Ord. 25-1501, 1869 (1978), 1899 (1979), 2497 (1989), 2509 (1989), 2677 (1993), 2760 (1995), 2775 (1995), 3018 (1999), 4214 (2002), 4216 (2002), 4368 (2004), 4401 (2004), 4412 (2004), 4416 (2004), 4501 (2005), 4622 (2007).

25-1502. License required.--No person shall engage in the business of the sale at retail of alcoholic beverages without first obtaining a license pursuant to the provisions of this article and posting the same in a conspicuous place on the licensed premises.

Source: 1965 Rev. Ord. 25-1502, 1869 (1978).

25-1503. License--Qualifications.--No license shall be issued to any applicant except as follows:

- A. If the applicant is an individual or partnership, such individual or partners must be legal and bona fide residents of the city of Fargo and state of North Dakota and be at least 21 years of age.
- B. If the applicant is a corporation, the manager of the licensed premises or another full-time employee of the licensee who is at least 21 years of age must be designated in the license application as an agent of the corporation. The manager of the licensed premises shall reside within either Cass County, North Dakota, or Clay County, Minnesota. All officers, directors and shareholders holding more than 5% of the outstanding stock of said corporation shall be at least 21 years of age.
- C. No license shall be issued to any person, partnership or corporation as the representative or agent of another, and the license may be issued only to the owner or owners of the business being conducted at the location sought to be licensed.
- D. If the applicant is a lodge or club, said applicant shall be deemed qualified for a Class "A" license only and no other class license shall be issued to any lodge or club.
- E. Mandatory server training (as defined by 25-1501(21)) shall be required of all liquor licensees. Persons successfully completing the approved class will receive a "server training certificate card" which will remain with that individual wherever employed. The "server training certificate card" is not required to be carried on the person so long as the same can be produced at a later date. The "server training certificate card" must be renewed every three (3) years on the anniversary date as shown on the said card. For all new managers and employees not having previously received server training, there shall be a grace period of 90 days in which to successfully complete the approved class. On each license renewal date, the licensee shall provide the city with a roster of employees which can then be checked against the training records. If the licensee is found to be not in compliance, license renewal for the upcoming year may be denied or delayed.

Source: 1965 Rev. Ord. 25-1506, 1869 (1978), 1880 (1978), 1900 (1979), 2827 (1997), 4416 (2004).

25-1504. License--Application.--Any person desiring to obtain the issuance or transfer of a license authorizing the sale at retail of alcoholic beverages shall make and file an application for such license with the commission. Said application shall be made on a form approved by the commission and made available through the office of the city auditor.

In addition to the information supplied on the application form, the commission, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

Source: 1965 Rev. Ord. 25-1504, 1869 (1978), 2169 (1984), 2211 (1985), 2344 (1987), 2346 (1987), 2730 (1995), 2822 (1997), 4402 (2004), 4504 (2006).

25-1504.1. License renewal.--The holder of an existing license issued pursuant to the

provisions of this article who desires to renew said license for another license year, shall not be required to make and file a new application under the provisions of this section; provided, however, that said licensee shall be required to make annual payment as provided in § 25-1507(F) and to submit a written request for renewal and an affidavit indicating the current name and address of the licensee, and if said licensee is a corporation, the names and addresses of the resident manager, all corporate officers, and all shareholders holding more than 5% of the outstanding stock of the corporation, and such other information as the city may require. The affidavit shall be on a form to be prescribed by the city auditor's office.

Source: 4504 (2006).

25-1504.2. Renewal of combined food/alcohol licenses.--All holders of Class "F", Class "FA", Class "FA-RZ", Class "G", Class "H", and Class "I" licenses shall also be required to file with the city, with the request for renewal of the license, an opinion by a certified public accountant indicating that he or she has audited the books and records of the licensee and that the licensee's gross revenue from the sale of food is equal to or exceeds the gross revenue from the sale of alcoholic beverages for the most recent 12-month period. At the option of the licensee, in lieu of a certified public accountant's opinion, licensee may request from the State Tax Commissioner's Office and furnish to the city auditor's office a certified copy of licensee's sales tax returns for the most recent 12-month period prior to renewal.

Notwithstanding furnishing of such sales tax returns, the city may, in its discretion, require licensee to comply with the requirement that an opinion by a certified public accountant be furnished as aforesaid. Any costs incurred in connection with the requirements of this section shall be the sole responsibility of the licensee. The city may also, or any other time during the year, in its discretion, conduct an independent investigation of the sales ratio of food to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records. In the event that the results of an independent investigation by the city results in a determination that sale of food does not equal or exceed the sale of beverages, the licensee shall be required to pay all costs of such investigation.

As part of the licensee's obligation that the licensee derive more gross receipts from the sale of prepared meals than from the sale alcoholic beverages, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

Source: 4504 (2006).

25-1504.3. In addition to the requirements of Articles 25-1504, 25-1504.1 and 25-1504.2, the licensee, through its owner or manager, shall attend an alcohol license renewal meeting conducted by the city as part of the license renewal process. City will schedule sufficient one-hour meetings prior to the renewal date to accommodate licensees.

Source: 4621 (2007).

25-1504.4. In addition to the requirements of Articles 25-1504, 25-1504.1, 25-1504.2 and 25-1504.3, Renewal of combined food/business proceeds/liquor licenses. – All holders of Class

FA-ENTERTAINMENT licenses shall also be required to file with the City, with the request for renewal of the license, an opinion by certified public accountant indicating that he or she has audited the books and records of the licensee and that the licensee's gross revenue from the sale of food and the business income is equal to or exceeds the gross revenue from the sale of alcoholic beverages for the most recent 12 month period. At the option of the licensee, in lieu of a certified public accountant's opinion, licensee may request from the State Tax Commissioner's office and furnish to the City Auditor's office a certified copy of licensee's sales tax returns for the most recent 12 month period prior to renewal.

Notwithstanding furnishing of such sales tax returns, the City may, in its discretion, require licensee to comply with the requirement that an opinion by a certified public accountant be furnished as aforesaid. Any costs incurred in connection with the requirements of this section shall be the sole responsibility of the licensee. The City may also, or any other time during the year, in its discretion, conduct an independent investigation of the sales ratio of food and business receipts to alcoholic beverages and for such purpose, the licensee agrees to allow inspection of its business records. In the event that the results of an independent investigation by the City results in a determination that the sale of food and business income does not equal or exceed the sale of alcoholic beverages, the licensee shall be required to pay all costs of such investigation.

As part of the licensee's obligation that the licensee derive more gross receipts from the sale of prepared meals, the sale of food and business receipts than from the sale of alcoholic beverages, the licensee shall retain and keep appropriate business records concerning purchase of food, business income and alcoholic beverages and sales receipts for the same. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food and business income to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

Source: 4623 (2007).

25-1505. Application--Investigation of.--The chief of police shall investigate the facts stated in the application filed with the commission pursuant to the provisions of § 25-1504 of this article, and shall report the results of his investigation to the commission prior to the hearing on said application. Said investigation and report shall include the character, reputation, fitness of the applicant to hold a license, any other pertinent information and the recommendation of the chief of police as to whether or not such license should be granted. In addition, the commission may request and consider such other recommendations and reports of other city officials. Unless specifically requested by the city auditor's office or police department at the time of the filing of the application, an investigation and report is not required for a transfer involving only a change in location of the licensed premises or a transfer wherein the existing license is to be exchanged for a license of lower category (e.g. a more restrictive license such as an "F" license for a "G" license, etc.).

Source: 1965 Rev. Ord. 25-1505, 1869 (1978), 2086 (1983), 2344 (1987), 2822 (1997), 4291 (2002).

25-1506. Licenses--Classifications.--Licenses authorizing the sale at retail of alcoholic

beverages within the city of Fargo shall be divided into the following classes:

- A. Class AB. - A “Class AB” license shall authorize the licensee to sell “on-sale” and “off-sale.”
- B. Class ABH - A “Class ABH” license shall authorize the licensee to sell “on-sale” and “off-sale”, subject to the following restrictions and conditions:
 - 1. A “Class ABH” license may be issued only to persons engaging in the sale of alcoholic beverages in a hotel or motel having 100 or more guest rooms.
 - 2. A “Class ABH” license shall authorize the licensee to sell “off-sale” only to guests or patrons of the hotel or motel in which the licensee conducts business.
 - 3. A “Class ABH-RZ” license may be issued to persons engaging in the sale of alcoholic beverages under the following restrictions and conditions:
 - a. In a hotel in the Renaissance Zone having a minimum of 15 guest rooms. For purposes of this license, a hotel is defined as a building where the owner maintains or provides all of the following: room keys, 24-hour uniformed on-staff front desk clerk/concierge services, security, room service, porter service, daily linens, towels and the like, on-staff maid service providing daily room cleaning, utilities and telephone service. A hotel shall further exhibit to the public physical factors befitting an establishment catering to transient guests. Such factors shall include, but not be limited to, appropriate architecture, décor and furnishings. It is the intention of the commission that the purpose of an “ABH-RZ” license is to allow the sale of alcoholic beverages as adjunct to the hotel operation and not that of operating a full-time liquor establishment. Additionally, a hotel shall not be primarily a residence hotel or corporate lodging facility.
 - b. The hotel, as defined above, shall be an approved Renaissance Zone building project located within said Renaissance Zone.
 - c. Authorization for off-sale of alcoholic beverages shall be restricted only to guests or patrons of the hotel in which the licensee conducts business and not to the general public or walk-in customers.
 - d. A Class “ABH-RZ” license is only available in the Renaissance Zone as established by the city of Fargo. Transfer of a license issued hereunder shall be governed by all relevant terms of article 25-15, provided, however, that a Class “ABH-RZ” license cannot be transferred outside the said Renaissance

Zone. Upon termination of the business, said license shall revert to the city.

- C. Class A. - A "Class A" license shall authorize the licensee to sell "on-sale" only.
- D. Class B. - A "Class B" license shall authorize the licensee to sell "off-sale" only. No Class "B" license shall be issued to any applicant whose primary business is not, or upon the issuance of the license applied for, shall not be the sale of alcoholic beverages on an off-sale basis.
- E. Class C. - A "Class C" license shall authorize the licensee to sell beer "on-sale" only.
- F. Class D. - A "Class D" license shall authorize the licensee to sell beer "off-sale" only.
- G. Class E. - A "Class E" license, in the nature of a special permit, shall authorize the holder of an existing "on-sale" license to engage in the sale of alcoholic beverages (on-sale only) on such licensed premises as may be designated in the "Class E" license, subject to the following restrictions and conditions:
 - 1. A Class "E" license may be issued only to persons currently holding a Class "AB", Class "ABH", "ABH-RZ", Class "A", Class "C", Class "F", Class "FA", Class "G", Class "H", Class "I", Class "N", Class "W" or Class "Z" license.
 - 2. A Class "E" license may be issued for a period of time not to exceed 14 days, and may include Sundays.
 - 3. Except as hereinabove provided, a Class "E" license shall not include days or times when the sale of alcoholic beverages is prohibited by state law and/or city ordinances.
 - 4. Persons under the age of twenty-one (21) years of age may be allowed to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit subject to the following conditions:
 - a. The area where persons under twenty-one (21) years of age must remain must be specifically set forth in the permit;
 - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one (21) years of age may deliver and sell the beer, wine or sparkling wine;
 - c. Subject to § 25-1509, the area where persons under twenty-one (21) years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to § 5-02-01, N.D.C.C., and comparable city ordinance;
 - d. No person under twenty-one (21) years of age within the area described in the permit may consume, possess or receive alcoholic beverages.

5. A Class “E”, in the nature of a special serving permit, shall authorize the holder of an existing “off-sale” license to hold wine and sparkling wine demonstrations and tastings on such premises as may be designated in the Class “E” license subject to the following restrictions and conditions:
 - a. A Class “E” license issued under this section may be issued only to persons currently holding a Class “B” license.
 - b. A Class “E” license issued under this section may be issued for a period of time not to exceed 14 days, and may include Sundays.
 - c. Except as otherwise provided, a Class “E” license shall not include days or times when sale of alcoholic beverages is prohibited by state law and/or city ordinances.
 - d. Only wine or sparkling wine may be served under the Class “E” special serving permit.
 - e. There shall be no charge of any kind made by the Class “B” license holder.
 - f. The Class “E” special serving permit issued hereunder shall be only for events held by governmental, fraternal, or other regularly organized non-profit groups or societies.
- H. Class F. - A “Class F” license shall authorize the licensee to sell “on-sale” only, subject to the following restrictions and conditions:
 1. A Class “F” licensee may sell alcoholic beverages in a restaurant which is separated from the room in which alcoholic beverages are opened or mixed and which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code, and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. It is specifically provided, however, that wine may be “presented” to the patron of a holder of a Class “F” license at the patron’s table. “Presentation” or “presented” shall mean the ordering of a bottle of wine by the patron for consumption in the restaurant, having the server open the bottle of wine, offering the cork to the patron, pouring a small portion of wine into a glass for the patron’s approval, and after approval, pouring wine into the patron’s glass. After the presentation, further service of the wine may take place at the patron’s table and the wine need not be immediately returned to the room in which alcoholic beverages are opened or mixed.
 2. A Class “F” license shall authorize the licensee to sell “on-sale” only and no licensee hereunder may conduct any “off-sale” liquor sales.

3. Alcoholic beverages shall be consumed only at tables or booths. No alcoholic beverages shall be consumed at a counter or bar.
4. No dancing will be permitted in an establishment holding a license hereunder without the approval of the commission. Such approval shall be indicated on the Class "F" license and may be revoked at any time at the discretion of the commission, provided, however, that no dancing will be allowed when the licensed premises are closed for alcoholic beverage sale, service or consumption pursuant to § 25-1509 of the Fargo Municipal Code.
5. The minimum seating capacity required on the premises for a Class "F" license is 40 seats.
6. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park'N Shop program may be considered as compliance with this provision.
7. The physical layout of any establishment seeking a license hereunder shall be subject to the approval of the commission.
8. A restaurant shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d'oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an "F" license is to allow the sale of alcoholic beverages as an adjunct to the restaurant operation and not that of operating a full-time liquor establishment. It is specifically provided, however, that a nonconforming Class "F" license existing at the time of adoption of City Ordinance Number 4230 on March 18, 2002) may be continued under the terms and limitations contained hereafter. The nonconformity shall extend only to the requirement that the restaurant provide multi-course meals of steak, fish, seafood and other similarly menued main courses which must be fully prepared and cooked on the

premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for faster convenience service. Any other type of food service as a restaurant that was allowable at the time of the adoption of the above-referenced ordinance amendment may be continued, except that if it is voluntarily discontinued for more than 30 days, it shall then be deemed abandoned and any further use must be in conformity with all of the requirements of this subdivision. All of the other provisions of this subdivision shall apply to any establishment which is deemed nonconforming due to the type of food service including, but not limited to, the hours of sale, full operation of kitchen facilities and the like. It is the intention of this revision that a Class “F” licensee which was in compliance with the type of food service requirements prior to adoption of Ordinance 4230 shall be deemed in compliance with the subsequent food service requirements of this subdivision provided that the licensee has held a Class “F” at all times and has been in business continually since that time. The provisions of this subdivision adding a clause for nonconformity shall not apply to a Class “F” licensee that subsequently ceases operation of the business for which the license is issued or transfers the license.

9. The Class “F” license shall be governed by all the provisions of this article applicable to Class “A” licensees and in addition, said licensee shall hold a restaurant license or permit pursuant to article 13-04 of the Fargo Municipal Code relating to restaurants.
10. As part of the licensee’s obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of alcohol of prepared meals than from the sale alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

I. Class FA.--A Class “FA” license shall authorize the licensee to sell “on-sale” only, subject to the following restrictions and conditions:

1. A Class “FA” licensee may sell alcoholic beverages in a

restaurant which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.

2. A Class “FA” license shall authorize the licensee to sell “on-sale” only and no licensee hereunder may conduct any “off-sale” liquor sales.
3. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park’N Shop program may be considered as compliance with this provision.
4. A restaurant shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d’oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an “FA” license is to allow the sale of alcoholic beverages as an adjunct to the restaurant operation and not that of operating a full-time liquor establishment. A recipient of an “FA” license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.
5. In addition to the foregoing, the Class “FA” license shall be governed by all the provisions of this article applicable to Class “A” licensees and in addition, said licensee shall hold a restaurant license or permit pursuant to article 13-04 of the Fargo Municipal Code relating to restaurants.
6. As part of the licensee’s obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and

alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

- J. Class FA-RZ -- A Class "FA-RZ" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:
1. A Class "FA-RZ" licensee may sell alcoholic beverages in a restaurant which holds a restaurant license or permit pursuant to the provisions of Article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. Further, such restaurant must be located in the Renaissance Zone as established by the city of Fargo.
 2. A Class "FA-RZ" license shall authorize the licensee to sell "on-sale" only and no licensee hereunder may conduct any "off-sale" liquor sales.
 3. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park'N Shop program may be considered as compliance with this provision.
 4. There shall be no charitable gaming or gaming of any kind.
 5. A "restaurant" shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d'oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an "FA-RZ" license is to allow the sale of alcoholic beverages as an adjunct to the restaurant operation and not that of operating a full-time liquor establishment. A recipient of an "FA-RZ" license shall

provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.

6. A recipient of a license hereunder shall be allowed to serve alcoholic beverages only in areas which are specifically identified as the licensee's licensed premises. Further, no Class "E" license shall be issued to such recipient.
 7. A Class "FA-RZ" license is only available in the Renaissance Zone as established by the city of Fargo. Transfer of a license issued hereunder shall be governed by all relevant terms of article 25-15, provided, however, that a Class "FA-RZ" license cannot be transferred outside the said Renaissance Zone. Upon termination of the business, said license shall revert to the city. A Class "FA-RZ" license cannot be transferred outside the said Renaissance Zone.
 8. In addition to the foregoing, the Class "FA-RZ" license shall be governed by all the provisions of this article applicable to Class "A" licensees and in addition, said licensee shall hold a restaurant license or permit pursuant to article 13-04 of the Fargo Municipal Code relating to restaurants.
 9. As part of the licensee's obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).
- K. Class FA-GOLF. A Class "FA-GOLF" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:
1. A Class "FA-GOLF" licensee may sell alcoholic beverages as the food and beverage concessionaire at a golf course which also holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives a percentage (hereinafter stated) of its gross receipts from the sale of prepared meals and not alcoholic beverages. A recipient of "FA-GOLF" license must derive at least 25% of its gross receipts from the sale of prepared meals and food products and not alcoholic beverages during the months from April through October of each year. During the

remaining months of the year, said recipient must derive 50% or more of its gross receipts from the sale of prepared meals and not alcoholic beverages. It is the intention of this restriction that the purpose of a “FA-GOLF” license is to allow the sale of alcoholic beverages as an adjunct to the operation of the golf course and restaurant and not that of operating a full-time liquor establishment. Further, such licensee must be located at and serve a golf course of at least nine (9) or more holes. Said golf course must be USGA approved.

2. The Class “FA-GOLF” license shall authorize licensee to sell “on-sale” only and no licensee hereunder may conduct any “off-sale” liquor sales.
3. A licensee hereunder, which must also operate a restaurant under the provisions of this title, shall provide adequate off-street parking within the discretion of and subject to the approval of the commission.
4. A recipient of a license hereunder shall not be authorized to receive or be issued a live entertainment license as provided in section 25-1510. Further, there shall be no charitable gambling or gaming of any kind.
5. A “restaurant” shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d’oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an “FA-GOLF” license is to allow the sale of alcoholic beverages as an adjunct to the operation of the golf course and restaurant and not that of operating a full-time liquor establishment. A recipient of an “FA-GOLF” license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.
6. A recipient of a license hereunder shall be allowed to serve alcoholic beverages only in areas which are specifically identified as the licensee’s licensed premises. This shall not include, however, the parking lot or the golf course itself. Any service on the golf course itself shall be from one location or one mobile cart for a nine-hole golf course for which an “E” permit shall be obtained by licensee. An

eighteen-hole golf course may have two locations or two mobile carts for which an “E” permit shall be obtained by licensee. The fee for an “E” permit as herein required is included in the annual fee and no additional charge will be made for the same. The licensee shall not be entitled to receive any other Class “E” license except for service on the golf course itself as aforesaid.

7. A Class “FA-GOLF” license is only available to the food and beverage concessionaire of a golf course as defined hereinbefore. Notwithstanding the closing time as allowed by state law and city ordinance, a licensee hereunder must close at 1:00 o’clock a.m. The license shall be site specific and shall not be transferred in any manner provided, however, the license may be transferred to a successor food and beverage concessionaire of a golf course. Upon cessation or termination of the business, said license shall revert to the city.
8. In addition to the foregoing restrictions and conditions, the Class “FA-GOLF” license shall be governed by all the provisions of this article applicable to Class “A” licenses and shall in addition, said licensee shall hold a restaurant license or permit pursuant to article 13-04 of the Fargo Municipal Code relating to restaurants.

L. Class FA-ENTERTAINMENT – A “Class FA-ENTERTAINMENT” license shall authorize the licensee to sell “on-sale” only, subject to the following restrictions and conditions:

1. A Class FA-ENTERTAINMENT may sell alcoholic beverages in a place of amusement or recreational establishment as defined hereinbefore provided the licensee also holds a restaurant license or permit pursuant to the provisions of Article 13-04 of the Fargo Municipal Code. A recipient of a “FA-ENTERTAINMENT” must derive at least 50% of its gross receipts from the sale of prepared meals and food products or from goods related to the business of the place of amusement and not from the sale of alcoholic beverages. All sales must occur at the place of business of the licensee. It is the intention of this restriction that the purpose of a FA-ENTERTAINMENT license is to allow the sale of alcoholic beverages as an adjunct to the operation of the place of amusement and not that of operating a full time liquor establishment. By way of illustration, such licensee operating a billiard establishment must have at least 50% combined prepared meals and food products, rental and/or sales of pool tables, pool cues and other accessories in order to be in compliance with said percentage requirement.
2. A Class FA-ENTERTAINMENT shall authorize licensee to sell “on-sale” only and no licensee hereunder may conduct any “off-sale” liquor sales.

3. A licensee hereunder, which must also operate a restaurant pursuant to the provisions of City Ordinance, shall provide adequate off-street parking within the discretion of and subject to the approval of the Commission as well as all other requirements of the Land Development Code.
 4. A recipient of a license hereunder shall not be entitled or authorized to receive or be issued a live entertainment license as provided in Section 25-1510. Further there shall be no charitable gambling or gaming of any kind.
 5. No smoking will be allowed on the entire premise (including licensed premises) of an establishment granted a FA-ENTERTAINMENT.
 6. A recipient of a license hereunder shall be allowed to serve alcoholic beverages only in areas which are specifically identified as the licensee's licensed premises and as permitted by the State of North Dakota Liquor License.
 7. A Class "FA-ENTERTAINMENT" license shall not be entitled to receive any Class "E" license.
 8. A recipient of a license hereunder shall not be allowed to advertise drink specials, nor shall such licensee be allowed to offer drink specials, such as 2 for 1's or the like. No advertising of any kind shall be allowed except that the licensee has a liquor license; is authorized to dispense alcohol on its premises; and the brands of alcohol dispensed.
 9. No person, partnership or other form of business entity holding an "A," "AB," "ABH," or "ABH-RZ" license can hold a license issued hereunder.
 10. In addition to the foregoing restrictions and conditions, the Class "FA-ENTERTAINMENT" license shall be governed by all of the provisions of this Article applicable to Class "A" licenses and shall in addition, require the licensee to hold a restaurant permit pursuant to Article 13-04 of the Fargo Municipal Code relating to restaurants.
- M. Class G.--A Class "G" license shall authorize the licensee to sell wine and sparkling wine "on-sale" only, subject to the following restrictions and conditions:
1. A Class "G" licensee may sell wine and sparkling wine in a restaurant which is separated from the room in which said wine and sparkling wine are opened or dispensed and which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not wine and sparkling wine. It is specifically provided, however, that wine may be "presented" to the patron of a holder of a Class "G" license at the patron's table. "Presentation" or "presented" shall mean the ordering

of a bottle of wine by the patron for consumption in the restaurant, having the server open the bottle of wine, offering the cork to the patron, pouring a small portion of wine into a glass for the patron's approval, and after approval, pouring wine into the patron's glass. After the presentation, further service of the wine may take place at the patron's table and the wine need not be immediately returned to the room in which alcoholic beverages are opened or mixed.

2. A Class "G" license shall authorize the licensee to sell wine and sparkling wine "on-sale" only and no licensee hereunder may conduct any "off-sale" wine and sparkling wine sales.
 3. Wine and sparkling wine shall be consumed only at tables or booths. No wine and sparkling wine shall be consumed at a counter or bar.
 4. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park'N Shop program may be considered as compliance with this provision.
 5. The physical layout of any establishment seeking a license hereunder shall be subject to the approval of the commission.
 6. The Class "G" license shall be governed by all the applicable provisions of article 13-04 of the Fargo Municipal Code relating to restaurants and the licensee shall hold a restaurant license from the city of Fargo.
 7. As part of the licensee's obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of wine and sparkling wine, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and wine/sparkling wine and sales receipts for food and wine/sparkling wine beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).
- N. Class H.--A Class "H" license shall authorize the licensee to sell beer "on-sale" only, subject to the following restrictions and conditions:
1. A Class "H" licensee may sell beer in a restaurant which is separated from the room in which said beer is opened or dispensed and which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo

Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not beer.

2. A Class “H” license shall authorize the licensee to sell beer “on-sale” only and no licensee hereunder may conduct any “off-sale” beer sales.
3. Beer shall be consumed only at tables or booths. No beer shall be consumed at a counter or bar.
4. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park’N Shop program may be considered as compliance with this provision.
5. The physical layout of any establishment seeking a license hereunder shall be subject to the approval of the commission.
6. The Class “H” license shall be governed by all the applicable provisions of article 13-04 of the Fargo Municipal Code relating to restaurants and the licensee shall hold a restaurant license or permit from the city of Fargo.
7. As part of the licensee’s obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of beer, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and beer and sales receipts for food and beer. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

O. Class I.--A Class “I” license shall authorize the licensee to sell beer, wine and sparkling wine “on-sale” only, subject to the following restrictions and conditions:

1. A Class “I” licensee may sell beer, wine and sparkling wine in a restaurant holding a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.
2. A Class “I” license shall authorize the licensee to sell beer, wine and sparkling wine “on-sale” only and no licensee hereunder may conduct any “off-sale” beer, wine and sparkling wine sales.
3. A restaurant under the provisions of this title shall provide

adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park'N Shop program may be considered as compliance with this provision.

4. The physical layout of any establishment seeking a license hereunder shall be subject to the approval of the commission.
 5. The Class "T" license shall be governed by all the applicable provisions of article 13-04 of the Fargo Municipal Code relating to restaurants and the licensee shall hold a restaurant license or permit from the city of Fargo.
 6. As part of the licensee's obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).
- P. Class J.--A Class "J" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:
1. A Class "J" license shall be issued only to a non-profit organization operating a club or establishment located on property which is owned by or leased to the state or federal government for military purposes.
 2. A Class "J" license shall authorize the licensee to sell "on-sale" only and no licensee hereunder may conduct any "off-sale" liquor sales.
 3. A Class "J" licensee shall be subject to all laws and ordinances otherwise applicable to licensed liquor dealers.
- Q. Class L. -- A Class "L" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:
1. A Class "L" licensee may sell alcoholic beverages on an excursion boat operating upon the Red River of the North.
 2. The boat and the licensee shall be in compliance with any and all other licenses and restrictions that may be imposed and required by any other regulatory or governing body.
 3. The licensee shall be regularly engaged, on an annual or seasonal basis, in the business of offering tours and excursions by boat on the Red River of the North.

4. The boat shall moor, dock and board passengers at a location within the corporate limits of the city of Fargo.
 5. The boat shall have a minimum certified seating capacity of at least 100 persons.
 6. Sale of alcoholic beverages shall be limited to passengers on the boat and such passengers may not be permitted to remove alcoholic beverages from the boat.
 7. Sale or dispensing of alcoholic beverages shall be allowed only when the boat is engaged in a tour or excursion or when the vessel is moored to a dock within the jurisdiction and limits of the city of Fargo; provided, that alcoholic beverages shall not be sold or served anytime while the boat is drydocked, removed from the waterways of the Red River of the North, or otherwise rendered incapable of engaging in the business of offering tours and excursions by boat on the Red River of the North.
 8. The boat and its operations shall be in compliance with all applicable laws and regulations concerning health, fire and safety.
 9. The licensee shall regularly sell meals and provide food service on the boat, in addition to the sale of alcoholic beverages.
 10. Persons under the age of 21 years of age may be permitted on the boat in accordance with § 5-02-06 of the North Dakota Century Code; provided, that the area where persons under the age of 21 are permitted is separated from the area where alcoholic beverages are opened or mixed.
 11. Temporary bars may be set up and sale or service of alcoholic beverages permitted to passengers anywhere on the vessel at times when persons under the age of 21 years of age are not permitted on the boat.
 12. The license which is established by this subsection shall be a seasonal license, commencing on the 1st day of April and terminating on the 15th day of November of each license year.
- R. Class M. - A "Class M" license shall authorize the licensee to operate a "microbrew pub" and to sell beer "on-sale" and "off-sale", subject to the following restrictions and conditions:
1. A Class "M" license may be issued only to a brewer which brews 25 or fewer barrels of beer per week on the license premises.
 2. A Class "M" license may be issued only to persons currently holding a Class "AB", "ABH", "A", "ABH-RZ", "C", "F", "FA", "G", "H", or "T" license.
 3. A Class "M" license will authorize the licensee to sell only beer which is brewed on the premises, and may be sold "on-

- sale” or “off-sale”.
4. A Class “M” license shall not be construed as a modification of any of the restrictions imposed on said licensee as the owner of an “on-sale” beverage license.
- S. Class “N” - A Class “N” license shall authorize the licensee to sell “on-sale” only, subject to the following conditions:
1. A Class “N” licensee need not have a Class “E” license as defined in § 25-1506(G) so long as the provisions of this Class “N” license are followed. A Class “N” licensee must be in compliance with any and all other licenses and restrictions that may be imposed and required by any other governing body.
 2. A Class “N” licensee may sell alcoholic beverages at a stadium which has a minimum permanent seating capacity of 1,500.
 3. A Class “N” licensee may sell alcoholic beverages within 90 minutes prior to and during the event or activity held in the stadium.
 4. Persons under the age of twenty-one (21) years shall be allowed into and throughout the stadium of a Class “N” licensee.
 5. Alcoholic beverages may be sold and consumed as follows:
 - a. Concourse Area and Seating Arena. Only beer, wine and sparkling wine may be sold, consumed and distributed in the concourse area and seating arena of the stadium. All such beverages shall be sold in plastic or paper containers, such as bottles or cups.
 - b. Privates Suites and Other Designated, Controlled Areas. Alcoholic beverages may be sold and consumed in private suites and other specifically designated areas. Access to such designated areas must be limited to certain points of entry and departure. Alcoholic beverages other than beer, wine and sparkling wine may not be removed from such designated areas.
 6. Only employees of the Class “N” licensee who are at least twenty-one (21) years of age may deliver and sell the beer, wine or sparkling wine in the seating arena.
 7. A Class “N” license shall authorize the licensee to sell on-sale only and no licensee hereunder may conduct any off-sale liquor sales.
 8. The Class “N” license shall be governed by all of the provisions of this article applicable to Class “A” licensees.
- T. Class “O” - A Class “O” license shall authorize the licensee to operate as a winemaker and/or vendor of winemaking supplies and related services.

A license holder possessing such a license shall be authorized to offer complimentary samples of wines produced on the premises provided that the size of each sample is no greater than two (2) fluid ounces. No other alcoholic beverages may be sampled on the premises. In the absence of another appropriate license, sales of off-sale or on-sale wine, beer or any other alcoholic beverage shall not be permitted. The intent of this license is to allow a winemaker to permit sampling by prospective customers of the winemaker's products and services prior to sales to, or engagement by, the customer.

U. Class P – A Class “P” license shall authorize the licensee to operate a domestic winery and to sell wine “on-sale” and “off-sale”, subject to the following restrictions and conditions:

1. A Class “P” license may be issued only to a domestic winery owner or operator who obtains a license from the State Tax Commissioner allowing the production of wine.
2. A Class “P” license will authorize the licensee to sell, on the winery premises, wine produced by that winery at “on-sale” or “off-sale”, in retail lots, and not for resale, in total quantities not in excess of 10,000 gallons in a calendar year. In addition, a Class “P” licensee may, if so authorized by a license issued by the State of North Dakota, sell beer “on-sale” only provided, however, that such “on-sale” beer sales shall be incidental to the sale of wine. Notwithstanding any other provisions of law to the contrary, sales of beer and wine shall cease at 11:00 p.m.
3. A Class “P” license will authorize the licensee to sell glassware, wine literature and accessories, cheese, cheese spreads, and other snack food items.
4. A Class “P” license will authorize the licensee to utilize special event permits issued by the State Tax Commissioner, provided, however, that the incidental sales of “on-sale” beer allowed by paragraph 2 above, will not be allowed at the locations where said permits are utilized.
5. The Class “P” license shall be governed by all the provisions of this article applicable to Class “A” licensees.

A Class “P” license shall not be required, however, for a domestic winery owner or operator having a license from the state tax commissioner allowing the production of wine and only being present within the city to utilize special event permits issued by the state tax commissioner. It is the intent of this exemption to not require licensure by domestic winery owners or operators, if properly licensed elsewhere, where the only presence in the city is to utilize special event permits.

V. Class “Z” – A “Class Z” license shall authorize the licensee to sell “on-sale” only, subject to the following restrictions and conditions:

1. A Class “Z” license shall authorize a licensee to sell “on-sale” only, and no licensee hereunder may conduct any “off-sale”

liquor sales.

2. A Class “Z” licensee under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the current Fargo parking program (presently POP), or any subsequently adopted parking program, may be considered as compliance with this provision.
 3. A new Class “Z” license shall be issued only to individuals or partnerships.
 4. No person, partnership, or anyone having any ownership interest in any other type of business entity may hold more than one (1) “Z” license.
 5. No person or partnership holding an “A”, “AB”, “ABH”, or “ABH-RZ” license can hold a “Z” license.
 6. The initial fee for a “Z” license, as well as the annual renewal fee shall be as set forth in city ordinance.
 7. A “Z” license shall be essentially non-transferable. In the event, the holder of a Class “Z” license shall voluntarily go out of business, the license shall revert to the city. It is the intent of this provision that the city of Fargo desires to control the issuance of additional liquor licenses and restrict any artificial appreciation in value of said licenses. Additional terms, conditions and restrictions on transferability shall be as set forth in section 25-1508.
 8. The initial issuance of a “Z” license shall consider all of the factors set forth in article 25-1508 hereinafter. In the event the applications for said license shall exceed the number then available, any applications meeting all of the requirements shall be determined by a drawing in the presence of the governing body of the city and in such manner as it shall direct.
 9. In addition to the foregoing, the Class “Z” license shall be governed by all the terms of this article applicable to Class “A” licensees provided, however, that in the event the provisions should conflict with this section, provisions of this section shall prevail.
- W. Class “W” – A “Class “W” license shall authorize the licensee to sell “on-sale” only, subject to the following restrictions and conditions:
1. A Class “W” licensee may sell wine, sparkling wine, and beer in an establishment holding a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 20% or more of its annual gross receipts from the sale of food and not alcoholic beverages.
 2. A Class “W” license shall authorize a licensee to sell “on-sale” wine, sparkling wine and beer only.

3. A Class “W” licensee under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the current Fargo parking program (presently POP), or any subsequently adopted parking program, may be considered as compliance with this provision.
 4. A new Class “W” licensee shall be issued only to individuals or partnerships.
 5. No person, partnership, or anyone having any ownership interest in any other type of business entity may hold more than one (1) “W” license.
 6. No person or partnership holding an “A”, “AB”, “ABH”, or “ABH-RZ” license can hold a “W” license.
 7. The initial fee for a “W” license, as well as the annual renewal fee, shall be as set forth in city ordinance.
 8. A “W” license shall be essentially non-transferable. In the event the holder of a Class “W” license shall voluntarily go out of business, the license shall revert to the city. It is the intent of this provision that the city of Fargo desires to control the issuance of additional liquor licenses and restrict any artificial appreciation in value of said licenses. Additional terms, conditions and restrictions on transferability shall be as set forth in section 25-1508.
 9. The initial issuance of a “W” license shall consider all of the factors set forth in article 25-1508 hereinafter. In the event the applications for said license shall exceed the number then available, any applications meeting all of the requirements shall be determined by a drawing in the presence of the governing body of the city and in such manner as it shall direct.
 10. In addition to the foregoing, the Class “W” license shall be governed by all the terms of this article applicable to Class “AB” licensees provided, however, that in the event the provisions should conflict with this section, provisions of this section shall prevail.
 11. A Class “W” licensed establishment may be audited on an annual basis by the assigned department of the city of Fargo to ensure compliance with the alcohol/food ration as specified in the license.
- X. Class “B-Limited” – A “B-Limited” license shall authorize the licensee to sell “off-sale” only, subject to the following restrictions and conditions:
1. A Class “B-Limited” license shall authorize a licensee to sell “off-sale” only, and no licensee hereunder may conduct any “on-sale” liquor sales. No Class “B-Limited” license

shall be issued to any applicant whose primary business is not, or upon the issuance of the license applied for, shall not be the sale of alcoholic beverages on an off-sale basis.

2. A Class “B-Limited” licensee under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the current Fargo parking program (presently POP), or any subsequently adopted parking program, may be considered as compliance with this provision.
3. A new Class “B-Limited” license shall be issued only to individuals or partnerships.
4. No person, partnership, or anyone having any ownership interest in any other type of business entity may hold more than one (1) “B-Limited” license.
5. No person or partnership holding an “A”, “AB”, “ABH”, “ABH-RZ” or “B” license can initially hold a “B-Limited” license.
6. The initial fee for a “B-Limited” license, as well as the annual renewal fee shall be as set forth in city ordinance.
7. A “B-Limited” license shall be essentially non-transferable. In the event, the holder of a Class “B-Limited” license shall voluntarily go out of business, the license shall revert to the city. It is the intent of this provision that the city of Fargo desires to control the issuance of additional liquor licenses and restrict any artificial appreciation in value of said licenses. Additional terms, conditions and restrictions on transferability shall be as set forth in section 25-1508.
8. The initial issuance of a “B-Limited” license shall consider all of the factors set forth in article 25-1508 hereinafter. In the event the applications for said license shall exceed the number then available, any applications meeting all of the requirements shall be determined by a drawing in the presence of the governing body of the city and in such manner as it shall direct.
9. In addition to the foregoing, the Class “B-Limited” license shall be governed by all the terms of this article applicable to Class “A: licenses provided, however, that in the event the provisions should conflict with this section, provisions of this section shall prevail.

Source: 1965 Rev. Ord. 25-1506, 1884 (1978), 2087 (1983), 2212 (1985), 2218 (1985), 2243 (1986), 2344 (1987), 2517 (1990), 2532 (1990), 2581 (1991), 2582 (1991), 2596 (1991), 2624 (1992), 2636 (1992), 2649 (1993), 2676 (1993), 2677 (1993), 2760 (1995), 2806 (1996), 2808 (1996), 2822 (1997), 2848 (1998), 2940 (1998), 3014 (1999), 4193 (2001), 4194 (2001), 4196 (2001), 4217 (2002), 4219 (2002), 4230 (2002), 4235 (2002), 4294 (2003), 4295 (2003), 4348 (2003), 4350 (2003), 4368 (2004), 4420 (2004), 4436 (2004), 4448 (2005), 4461 (2005), 4466

(2005), 4498 (2005), 4501 (2005), 4503 (2005), 4512 (2006), 4540 (2006), 4566 (2006), 4586 (2007), 4589 (2007), 4593 (2007), 4622 (2007).

25-1507. License--Fees--

A. Initial issuance fee--For a license granted which is not a renewal or a transfer of an existing license, the following fees shall be payable as hereinafter provided:

- Class AB--\$150,000
- Class ABH--\$ 30,000
- Class ABH-RZ--\$15,000
- Class A--\$115,000
- Class B--\$ 90,000
- Class C--\$3,000
- Class D--\$1,500.00
- Class E--\$25 plus \$10 for each day requested.
- Class F--\$3,000
- Class FA--\$100,000
- Class FA-RZ--\$50,000
- Class FA-GOLF--\$60,000
- Class FA-ENTERTAINMENT--\$100,000
- Class G--\$1,000
- Class H--\$800
- Class I--\$25,000
- Class J--No fee
- Class L--No fee
- Class M--\$1,500
- Class N--\$3,000
- Class O--\$400
- Class P--\$1,400
- Class W--\$25,000
- Class Z--\$105,000
- Class B-Limited--\$80,000

No fee shall be charged for the initial issuance of a license hereunder to a lodge or club, nor shall any fee be charged for the initial issuance of a license to any liquor establishment licensed by any other political subdivision over which the city of Fargo has subsequently acquired jurisdiction by annexation, provided, however, that such liquor establishment must have been in existence for at least fifteen (15) years prior to such annexation by the city of Fargo. The initial issuance fee charged shall be the difference between the city fee and the fee originally charged by the issuing subdivision..

A non-refundable payment in the sum of 10% of the initial issuance fee shall be paid at the time issuance of the license is approved by the board of city commissioners pursuant to § 25-1508 of this article. The remainder of the initial issuance fee shall be payable upon issuance of the license, but not more than 30 days after date of approval by the board of city commissioners;

provided, that the time for payment of the remaining balance of the initial issuance fee may, with the approval of the board of city commissioners, be deferred and paid by periodic payments within 180 days after the date of approval. In the event that the applicant fails to pay the remainder of the initial issuance fee within 30 days, or such other time as may have been approved by the board of city commissioners, the approval shall be deemed to have expired and the 10% payment by the applicant shall be forfeited.

B. Annual fees shall be payable at the beginning of each license year as follows:

Class AB--\$2,400

Class ABH--\$2,000

Class ABH-RZ--\$2,000

Class A--\$1,700, except that the license fee for any lodge or club having a total membership of less than 1,000 shall be \$1,200 per year.

Class B--\$1,400

Class C--\$500

Class D--\$200

Class E--No annual fee shall be charged for a Class E license.

Class F--\$1,500

Class FA--\$1,700

Class FA-RZ--\$1,700

Class FA-GOLF--\$1,700

Class FA-ENTERTAINMENT--\$1,700

Class G--\$400

Class H--\$300

Class I--\$1,000

Class J--\$25

Class L--\$1,000

Class M--\$200

Class N--\$1,500

Class O--\$150

Class P--\$500

Class W--\$1,000

Class Z--\$1,700

Class B-Limited--\$1,400

C. The transfer of a license issued pursuant to the provisions of this article shall require a transfer fee equal to the total annual cost of the license being transferred; provided, however, that a transfer fee shall not be imposed for the following-described transfers:

1. When an individual holding a license issued pursuant to the provisions of this article has become deceased, the license may, upon application of the personal representative of the decedent, be transferred to another individual, partnership, firm or corporation.
2. When any corporation holding a license issued pursuant to the provisions of this article voluntarily dissolves, a license may be issued to any individual shareholder in such

corporation who held said stock at the time of the issuance or last renewal of the license and whose application is approved by the holders owning a majority of the outstanding shares of stock in said corporation prior to the time of dissolution; provided, however, that such shareholder shall be subject to all the requirements of this article relating to the application for a license and to the qualifications of a licensee.

3. When any licensee under the provisions of this article applies for and receives the approval of the commission on the change of location of the licensed premises.
 4. When an individual licensee desires to transfer a license to a corporation in which the licensee is the owner of at least 75% of the outstanding shares of stock in said corporation; provided, however, that such licensee may not permit his stock ownership in the transferee corporation to fall below a majority of the outstanding stock in said corporation without the prior approval of the commission and payment of the required transfer fee. The transferee corporation shall be subject to all the requirements of this article relating to the application for a license and the qualifications of a licensee.
 5. When a licensee is a corporation or partnership which desires to transfer a license to another corporation or partnership having substantially the same partners or stockholders; provided, however, that such transferee corporation or partnership shall be subject to all the requirements of this article relating to the application for a license and the qualifications of a licensee. No Class "E" licensee shall transfer his license under any circumstances.
- D. In addition to the fees set forth in paragraphs A, B and E of this section, each application for a new license (except Class "E" and Class "J"), or a transfer of a license pursuant to § 25-1504 of this article shall, at the time of submission of his application for such issuance or transfer, pay to the city auditor, the sum of \$250 as a minimum non-refundable fee for the investigation which is required by § 25-1505 of this article. Any additional costs incurred by the city in connection with such investigation shall be paid by the applicant prior to the hearing on said application and shall not be refunded in the event that the applicant is not successful.
- E. In addition to the fees and costs set forth in paragraphs A, B, C and D of this section, each licensee who applies for and receives a Class "E" license for a special event shall, upon conclusion of said special event pay to the city auditor, a sum of money sufficient to defray the extra costs incurred by the city in providing police protection for said event. The amount of such extra cost shall be determined by the police chief and an appropriate statement sent to the licensee but in no event shall said extra costs exceed the sum of \$300.
- F. The license fees set forth in subsection B of this section shall be for a period of one year from July 1 through June 30 and shall be payable in advance at

the time of the issuance of the license and thereafter, on or before June 10 of each subsequent year.

- G. If an application is made for the issuance of a license at a time other than the beginning of the license year, the license fee shall be prorated on a monthly basis of the unexpired term of the license commencing on the first day of the month in which the application is filed and any subsequent renewal of said license shall be for a full license year.
- H. Class “F”, “G”, “H”, “I”, and “N” licenses may be issued as seasonal licenses for minimum periods of six months. Application for such licenses shall be made prior to June 30 each year and the application shall indicate the months in which the license is to be effective. Fees for such licenses shall be prorated to the nearest fractional month of the effective period and payment therefor shall accompany the application.

Source: 1965 Rev. Ord. 25-1507, 1884 (1978), 1912 (1979), 1920 (1979), 2088 (1983), 2161 (1984), 2213 (1985), 2244 (1986), 2270 (1986), 2344 (1987), 2353 (1987), 2517 (1990), 2532 (1990), 2539 (1990), 2553 (1990), 2596 (1991), 2636 (1992), 2642 (1993), 2677 (1993), 2720 (1994), 2760 (1995), 2822 (1997), 4201 (2001), 4218 (2002), 4236 (2002), 4368 (2004), 4448 (2005), 4461 (2005), 4501 (2005), 4541 (2006), 4545 (2006), 4587 (2007), 4593 (2007), 4624 (2007).

25-1508. Issuance and transfer of licenses--Restrictions--Hearing required.--

- A. No license, other than a Class “E” license, shall be issued or transferred without approval of the commission. A Class “E” license may be issued by the city auditor, without notice or hearing.
- B. When an application for any license other than a Class “E” is filed with the commission pursuant to the provisions of § 25-1504 of this article, the city auditor shall cause notice to be published in a newspaper of general circulation within the city of Fargo, that the applicant has applied for a license to sell alcoholic beverages at the place named in the application or for the transfer of an existing license, and that the application will be acted upon by the commission on a certain day and time. A hearing on the application shall be held not less than 10 days nor more than 30 days after the date of publication. The expense of the publication, in addition to the license fee, shall be paid by the applicant to the city auditor prior to publication.
- C. At the time of the hearing on the application, the commission shall, in its discretion, determine if the issuance or transfer of the license is in the best interests of the public health, safety, morals and general welfare of the community. Among the factors to be considered by the commission in granting or denying a license or a transfer are the following:
 - 1. The convenience of police regulation.
 - 2. Public health and sanitation.
 - 3. The proximity of other businesses licensed to sell alcoholic beverages.
 - 4. The proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
 - 5. Protests of neighboring property owners or occupants.

6. Zoning regulations.
 7. Interference with neighboring properties.
 8. Suitability of premises for sale of alcoholic beverages.
 9. Public convenience and necessity.
 10. Number of such licenses already in existence.
 11. Economic impact upon other such licensed premises.
 12. Sufficiency of the application required by § 25-1504 of this article.
 13. Recommendations and reports of city officials, such as the chief of police, chief of the fire department, building inspector, health officer, and any other official submitting a recommendation or report at the request of the board of city commissioners.
- D. No transfer of any license shall be approved by the commission until the transferee has submitted a license application and has met all the requirements imposed upon an applicant for a new license.
- E. No license issuance or transfer authorizing off-sale of any kind shall be approved by the commission for the sale of alcoholic beverages on premises, any part of which are closer than 100 feet to any grocery store, drug store or gasoline service station, or any portion thereof; provided, that this restriction shall not apply to a transfer which is an assignment, sale, exchange or other conveyance of a license.
- F. The number of licenses which may be issued by the board of city commissioners shall be limited as follows:
1. Class "AB" - 22
 2. Class "ABH" - no limit
 3. Class "A" - 8 (not including licenses issued to lodges or clubs)
 4. Class "B" - 12
 5. Class "C" - 2 (limited to those issued prior to February 1, 1986)
 6. Class "D" - 1 (limited to those issued prior to February 1, 1986)
 7. Class "E" - no limit
 8. Class "F" - no limit
 9. Class "FA" - no limit
 10. Class "FA-GOLF" - no limit
 11. Class "FA-ENTERTAINMENT" - no limit
 12. Class "G" - no limit
 13. Class "H" - no limit
 14. Class "I" - 12
 15. Class "J" - no limit
 16. Class "L" - no limit
 17. Class "M" - no limit
 18. Class "N" - no limit
 19. Class "O" - no limit
 20. Class "P" - no limit

21. Class “W”--1 with the conditions and limitations set forth in subsection (H) hereinafter. The initial issuance of a Class “W” license shall provide one (1) license (as aforesaid). At such time as the population of the city of Fargo shall exceed 100,000, one (1) additional “W” license shall become available for each 10,000 people in excess of 100,000 population. The granting of additional licenses shall be subject to all of the terms and conditions of the “W” license set forth hereinbefore.
 22. Class “Z” -- Class “Z” – 4 with the conditions and limitations set forth in subsection (I) hereinafter. The initial issuance of a Class “Z” license shall provide for four (4) licenses (as aforesaid) with two (2) licenses being designated for the downtown area and two (2) for areas outside the downtown area as defined. “Downtown area” shall mean that area included in the Downtown Area Plan as previously approved by the board of city commissioners and as it may hereafter be amended. At such time as the population of the city of Fargo shall exceed 100,000, one (1) additional “Z” shall become available for each 10,000 people in excess of 100,000 population. The granting of additional licenses shall be subject to all of the terms and conditions of the “Z” license as set forth hereinbefore.
 23. Class “B-Limited” – a Class “B-Limited” license shall authorize the licensee to sell “off-sale” only with the conditions and limitations set forth in subsection (J) hereinafter. One (1) Class “B-Limited” license shall be available immediately. An additional Class “B-Limited” shall become available at such time as the population of the city of Fargo shall exceed 100,000 with an additional Class “B-Limited” then becoming available for each additional 10,000 increase in population as determined by the Census Bureau – American Community Survey. The granting of additional licenses shall be subject to all of the terms and conditions of the Class “B” license as set forth hereinbefore and as limited by subsection (J) hereinafter.
- G. Alcoholic beverage licenses which are located in motels/hotels having a minimum of 100 rooms and one single license located in the Hector Airport Terminal building shall be reserved for those locations and may be transferred to other owners as hereinabove provided but shall not be transferred to any other location. Ownership of licenses issued to lodges and clubs shall not be transferable.
- H. A Class “W” on-sale only license has been created and is subject to different conditions (set forth hereinbefore) which include certain terms, conditions, and restrictions on transferability which are set forth hereinafter. A Class “W” license, in addition to the foregoing conditions on transfer (to the extent

possible), shall be subject to the following:

1. Should any “W” licensee voluntarily go out of business, the license shall revert to the city.
2. In the event the licensee shall file a petition in bankruptcy, become insolvent, or otherwise cease business, the license shall revert to the city.
3. There shall be no limitation on the transferability of a “W” license as regards a change in location of licensed premises provided, however, that the licenses issued for the downtown area shall only be allowed to relocate in said area. In the event of a change of location (as herein restricted), the licensee may apply for transfer subject to all of the terms and conditions of this article.
4. When an individual holding a “W” license issued pursuant to the provisions of this article has become deceased, the license may be transferred to the heir or heirs of the individual, but may not be transferred to any other person, partnership, firm or corporation.
5. Upon the death or withdrawal of any partner in a partnership holding a license issued pursuant to the provisions of this article, the remaining partner or partners may continue to hold the license, but no partnership interest may be issued to any new partner. It is the intent of this provision that the city of Fargo desires to control the transfer of the “W” license and restrict any artificial appreciation in value of said license.

6. When an individual or partnership holding a “W” license issued pursuant to the provisions of this article sells the business as a going concern, the purchaser of the business has the first preference to purchase the “W” license being returned to the city for such business. The purchaser must, however, meet all other relevant conditions of article 25-1508 including the factors contained in 25-1508(C).
- I. A Class “Z” on-sale only license has been created and is subject to different conditions (set forth hereinbefore) which include certain terms, conditions and restrictions on transferability which are set forth hereinafter. A Class “Z” license, in addition to the foregoing conditions on transfer (to the extent applicable), shall be subject to the following:
 1. Should any “Z” licensee voluntarily go out of business, the license shall revert to the city.
 2. In the event the licensee shall file a petition in bankruptcy, become insolvent, or otherwise cease business, the license shall revert to the city.
 3. There shall be no limitation on the transferability of a “Z” license as regards a change in location of licensed premises provided, however, that the licenses issued for the downtown area shall only be allowed to relocate in said area. In the event of a change of location (as herein restricted), the licensee may apply for transfer subject to all of the terms and conditions of this article.
 4. When an individual holding a “Z” license issued pursuant to the provisions of this article has become deceased, the license may be transferred to the heir or heirs of the individual, but may not be transferred to any other person, partnership, firm or corporation.
 5. Upon the death or withdrawal of any partner in a partnership holding a license issued pursuant to the provisions of this article, the remaining partner or partners may continue to hold the license, but no partnership interest may be issued to any new partner. It is the intent of this provision that the city of Fargo desires to control the transfer of the “Z” license and restrict any artificial appreciation in value of said license.
 6. When an individual or partnership holding a “Z” license issued pursuant to the provisions of this article sells the business as a going concern, the purchaser of the business has the first preference to purchase the “Z” license being returned to the city for such business. The purchaser must, however, meet all other relevant conditions of article 25-1508 including the factors contained in 25-1508(C).
 - J. A Class “B-Limited” has been created and is subject to different conditions including certain terms, conditions and restrictions on transferability which are set forth hereinafter. A Class “B-Limited”,

addition to availability based on population increase as set forth above, shall be subject to the following:

1. Should any “B-Limited” licensee voluntarily go out of business, the license shall revert to the city.
2. In the event the licensee shall file a petition in bankruptcy, become insolvent, or otherwise cease business, the license shall revert to the city.
3. There shall be no limitation on the transferability of a “B-Limited” license as regards a change in location of the licensed premises. In the event of change of location, the licensee may apply for transfer subject to all of the terms and conditions of this article. This will include, but not be limited to, the provisions of section 25-1508 regarding factors in considering the granting or denying of license, as well as proximity to other business establishments.
4. Upon the death or withdrawal of any partner in a partnership holding a license issued pursuant to the provisions of this article, the remaining partner or partners may continue to hold the license, but no partnership interest may be issued to any new partner. Nothing contained herein shall prevent the license holder (whether solely-owned or owned by partners) from incorporating for liability purposes providing, however, that all shares in the corporation must remain in the ownership of the initial license holder or holders, with the license to be returned to the city upon the conditions contained in this section (i.e. upon the death of the sole shareholder or sole surviving partner, as well as the other conditions for reversion to the city). It is further provided that there may one lifetime transfer to an heir of the original license holder in the case of a solely-owned licensed, or the heir of a sole remaining partner in the event of license initially issued to a partnership. It is the intent of this provision that the city of Fargo desires to control the transfer of the “B-Limited” license and restrict any artificial appreciation in value of said license.
5. When an individual or partnership holding a “B-Limited” license issued pursuant to the provisions of this article sells the business as a going concern, the purchaser of the business has the first preference to purchase the “B-Limited” license being returned to the city for such business. The purchaser must, however, meet all other relevant conditions of article 25-1508 including, but not limited to, the factors contained in 25-1508(C).

Source: 1965 Rev. Ord. 25-1508, 1869 (1978), 1882 (1978), 1941 (1979), 2089 (1983), 2111 (1983), 2159 (1984), 2214 (1985), 2240 (1986), 2271 (1986), 2344 (1987), 2448 (1989), 2517 (1990), 2531 (1990), 2532 (1990), 2596 (1991), 2627 (1992), 2642 (1993), 2719 (1994), 2720

(1994), 2731 (1995), 2774 (1995), 2808 (1996), 2822 (1997), 2847 (1998), 2944 (1998), 4218 (2002), 4236 (2002), 4368 (2004), 4448 (2005), 4461 (2005), 4501 (2005), 4588 (2007), 4625 (2007).

25-1509. Restrictions on sale, service or dispensing of alcoholic beverages.--

- A. No licensee, his agent or employee, shall sell, serve or dispense any alcoholic beverage to a person under 21 years of age; and no licensee, his agent or employee, shall permit any person under 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
- B. No person under 21 years of age shall be permitted to enter any portion of licensed premises in which alcoholic beverages are sold, served or dispensed; nor shall anyone under the age of 21 years be employed in any portion of licensed premises in which alcoholic beverages are sold, served or dispensed, except as provided in subsections (C) and (D) of this section. For purposes of this section, a person is not 21 years of age until 8 a.m. on the person's twenty-first birthday.
- C. Any person under 21 years of age may enter and remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area. Any person who is employed by the restaurant as a food waiter, food waitress, busboy or busgirl may not engage in the sale, dispensing, delivery or consumption of alcoholic beverages; provided, that any person who is between 19 and 21 years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person 21 or more years of age. A law enforcement officer, or person cooperating with and under the control of such law enforcement officer, under the age of 21 years may enter premises where alcoholic beverages are sold, dispensed, or consumed in the performance of an official duty. Any establishment where alcoholic beverages are sold may employ persons from 18 to 21 years of age to work in the capacity of musicians under the direct supervision of a person over 21 years of age. Any person under 21 years of age may enter and remain on the license premises if the person is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering or consuming alcoholic beverages. Any person under 21 years of age may remain in the area of and event where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to § 5-02-01.1, N.D.C.C., and the city comparable ordinance § 25-1506(G)(4).
- D. Any person under 21 years of age may enter and remain in a restaurant where alcoholic beverages are being sold when accompanied by a parent or legal guardian, whether or not the restaurant is separated from the room in which alcoholic beverages are opened or mixed and whether or not gross sales of food are equal to gross sales of alcoholic beverages. For purposes of this subsection, a restaurant shall be any establishment which serves prepared

- food and holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code.
- E. No Class “B” or Class “D” licensee shall permit the opening or consumption of alcoholic beverages upon the licensed premises; provided, that a Class “B” licensee may permit the sampling of alcoholic beverages upon the licensed premises without charge to the consumer.
 - F. No licensee, his agent or employee shall sell, serve, consume or permit to be sold, served or consumed on the licensed premises any alcoholic beverages after 2:00 a.m. on Sundays, before 12:00 noon on Sundays, or between the hours of 2:00 a.m. and 8:00 a.m. on all other days of the week; nor shall any licensee, his agent or employees sell, serve or permit to be sold, served or consumed on the licensed premises any alcoholic beverage on Christmas Day or after 6:00 p.m. on Christmas Eve. Additionally, there shall be no off-sale sales allowed after 2:00 a.m. on Thanksgiving Day. For purposes of this provision, any person having a glass or other opened container containing an alcoholic beverage in close proximity or otherwise available for consumption shall be deemed to be consuming an alcoholic beverage.
 - G. All licensed premises shall be closed and locked not more than one-half hour after the termination of business hours as specified in subsection (F) of this section and no persons shall be permitted to remain on said premises thereafter except for the owner and his employees for normal cleaning and maintenance activities; provided, that a licensee may remain open for the purpose of providing food service and operate its entertainment business, provided, however, that the licensee must comply with all other terms of Article 25 and those of its State of North Dakota liquor license.
 - H. No license to sell alcoholic beverages under the provisions of this article shall entitle the holder thereof to carry on such business at more than one location under any one license and each license shall contain a legal description of the place where the holder thereof operates such business; provided, however, the foregoing provision shall not apply in the case where a licensee, in addition to his regular license, is granted a Class “E” license to engage in the sale of alcoholic beverages at the place designated in the Class “E” license. In addition, the provisions of this subsection shall not apply to any licensee serving alcoholic beverages at the city auditorium or the Fargodome, pursuant to the provisions of article 18-05 and article 34-01 of the Fargo Municipal Code; provided, however, that all other provisions of this article and all other ordinances of the city of Fargo, not inconsistent herewith, shall apply to any licensee serving alcoholic beverages at the city auditorium or the Fargodome.
 - I. No licensee, his agent or employee shall sell or serve, or permit to be sold or served on the licensed premises any food other than prepackaged, confectionery items such as peanuts, potato chips and similar items, and prepackaged sandwiches, pizza and similar food products which are prepared and packaged off the licensed premises; provided, that this prohibition shall not apply to licensed establishments which hold a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code.

J. Any licensee holding a Class “AB”, Class “ABH”, Class “A”, Class “FA”, Class “FA-RZ”, Class “G”, Class “H”, or Class “T” license, who also holds a restaurant license, limited restaurant license, or permit issued pursuant to the provisions of Article 13-04 of the Fargo Municipal Code, and who regularly serves food and beverages, may dispense alcoholic beverages in connection with food sales, on tables located on the public sidewalk adjacent to the licensed establishment; provided, that tables on the public sidewalk shall be in accordance with Article 18-03 of the Fargo Municipal Code.

* K. Any person under 21 years of age may enter and remain in a licensed premises for a designated alcohol-free public event in any licensed premises or in a separate room within the licensed premises where the licensee has determined not to sell or permit consumption or possession of alcoholic beverages on that licensed premises or within the designated separate room within the licensed premises during a specified time period provided the licensee complies with the requirements of this subsection. For purposes of this subsection a public event is any event to which admission is open to the general public and may be gained with or without payment of a fee or an event which is advertised to the general public.

1. The licensee shall give written notice of the intent to operate the premises or separate room within the premises as an alcohol-free area at least 72 hours in advance to the chief of police on a form to be prepared by the chief of police. The notice shall specify which portion of the licensed premises will be used for the alcohol free event or if a separate room within the premises will be used for the alcohol free event. If only a separate room within the licensed premise will be used for the event, the room must have a point of entry and exit which does not permit those under the age of 21 to enter any portion of the licensed premises where alcoholic beverages are being sold, mixed or consumed. The notice shall define what security measures within the licensed premises or the separate room thereof will be taken to prevent the consumption of alcoholic beverages by persons during the alcohol-free event. The chief of police may, in his discretion, require such additional information from the licensee as is necessary to ensure compliance with this section.

2. Security personnel shall be on the premises in such numbers as to ensure the safety of patrons and to maintain order on the premises as follows:

- 99 or less - 2 security personnel
- 100 to 200 - 3 security personnel
- 201 to 300 - 4 security personnel
- 301 to 400 - 5 security personnel
- 401 to 500 - 6 security personnel
- 501 and over - appropriate number of security

personnel as may be determined by the chief of police.

3. The licensee shall post conspicuously at all entrances to the alcohol-free event a notice stating the sale, possession or consumption of alcoholic beverages will not be permitted during the duration of the alcohol-free event and that no participant under the age of 21 is permitted into any area within the licensed premises where alcoholic beverages are sold, consumed, or possessed to include common areas such as hallways or restrooms.
4. During the alcohol-free event, the licensee shall remove from public view and secure all containers of alcoholic beverages as well as de-activate any device used to dispense alcohol in the alcohol free event.
5. The licensee shall have all patrons regardless of age removed from the alcohol free event following the completion of the alcohol-free event and not reopen the licensed premise or the separate room thereof for the sale, possession or consumption of alcohol until one hour after the completion of the alcohol-free event.
6. Smoking shall not be permitted at alcohol-free public events.

* L. Any person under 21 years of age may enter and remain in a licensed premises or in a separate room within the licensed premises for a private event where the licensee has restricted access to invited guests provided that the licensee complies with the requirements of this subsection. For purposes of this subsection a private event is an event which is not open to the general public to which access is granted to invited guests only, for which no admission fee is paid, and for which no advertising was conducted to the general public.

1. The licensee maintains the responsibility to comply with city ordinance 25-1509 (A) which prohibits selling, serving or dispensing any alcoholic beverage to a person under 21 years of age; or permitting any person under 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
2. The room must have a point of entry and exit which does not permit those under the age of 21 to enter any portion of the licensed premises, not designated as the private event, where alcoholic beverages are being sold, mixed or consumed.
3. The licensee shall post conspicuously at all entrances to the private event a notice stating the sale, possession or consumption of alcoholic beverages by those under the age of 21 will not be permitted and that no participant under the age of 21 is permitted into any area outside of the designated separate room within the licensed premises where alcoholic beverages are sold, consumed, or possessed to include

- common areas such as hallways or restrooms.
4. Security personnel shall be on the premises in such numbers as to ensure the safety of patrons and to maintain order.
 5. The licensee shall have all patrons regardless of age removed from the private event following the completion of the private event and not reopen the separate room to the general public for the purpose of the sale, possession or consumption alcohol until one hour after the completion of the private event.
 6. Smoking shall not be permitted at a private event designated under this section.
 7. In addition to the foregoing restrictions and conditions, the licensee shall be governed by all applicable provisions of the Fargo Municipal Code.
- M. Any licensee holding a valid license under Article 25-15 of the Fargo Municipal Code and conducting business as a bowling alley may:
1. Allow the sale, service and consumption of alcoholic beverages in the bowling alley area and concourse adjacent to the bowling alley area during events sanctioned by the American Bowling Congress, Women's International Bowling Congress sanctioned events, or other nationally or regionally recognized bowling associations;
 2. At all other times, the licensee may allow alcoholic beverages to be consumed in the bowling alley area and concourse adjacent to the bowling alley area provided that the alcoholic beverages are purchased and dispensed within the licensed premises.
- N. Removal of wine from restaurant. If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages that are consumed on the premises may permit an individual purchasing the bottle in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises if the licensee re-corks the bottle, seals the bottle with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.
- O. Any licensee holding a valid license under Article 25-15 of the Fargo Municipal Code which allows the licensee to dispense alcoholic beverages in an extended stay hotel or motel (not entitled to licensed as an Class ABH or ABHRZ license) may dispense such alcoholic beverages in accordance with the license issued. The following additional restrictions, however, will apply:
1. Such licenses will only be available to the hotels, motels, or such extended stay facilities that have more than 50 lodging

- rooms but less than 100 rooms.
2. No off-sale of any kind shall be allowed by such licensees.
 3. No in-room service will be allowed.
 4. All alcoholic beverages will be opened, mixed or poured in a room separate from the room in which they are to be consumed.
 5. Alcoholic beverages shall be consumed only at tables or booths. No alcoholic beverages shall be consumed at a counter or bar.
 6. Food must be available and service of alcoholic beverages shall be only available to hotel or motel patrons or their guests.
 7. Hours of service shall be limited to a period from 4:00 p.m. to 8:00 p.m.
 8. The food to alcohol ratio (50 percent) requires that food purchases exceed alcohol purchases.

It is the intention that the alcoholic beverage license be used in extended stay hotels or motels so as to allow “managers social” subject to the foregoing restrictions.

** The provisions of this section apply to the licensee’s City of Fargo Alcohol License only and do not apply to or grant any exemption from the necessary state liquor license requirements or the provisions of the North Dakota Century Code.*

Source: 1965 Rev. Ord. 25-1509, 1869 (1978), 2090 (1983), 2099 (1983), 2160 (1984), 2162 (1984), 2217 (1985), 2241 (1986), 2264 (1986), 2344 (1987), 2447 (1989), 2509 (1989), 2517 (1990), 2583 (1991), 2584 (1991), 2597 (1991), 2603 (1992), 2645 (1993), 2760 (1995), 2822 (1997), 3015 (1999), 3084 (1999), 4401 (2004), 4476 (2005), 4528 (2006), 4535 (2006), 4565 (2006), 4618 (2007), 4619 (2007), 4626 (2007), 4659 (2008).

25-1509.1. Restrictions on sale or consumption in a public place.--

- A. No owner, manager or person having control of any public place shall serve, permit to be served, or permit any person to drink alcoholic beverages in such place, unless such place has been duly issued an on-sale or other appropriate license under this chapter.
- B. No person shall mix, prepare, serve or consume alcoholic beverages in any public place unless such place has been duly issued an on-sale or other appropriate license under this chapter.
- C. The area set aside and specifically designated on the Fargodome parking lot by North Dakota State University and specifically excepted from the definition of “public place” shall nonetheless conform to and abide by all of the other relevant provisions of this chapter. Minors shall not be allowed to possess or consume alcoholic beverages. Minors shall not be allowed in the area set aside and specifically designated unless accompanied by a parent or guardian. There shall be adequate security provided, to the satisfaction of the chief of police, or his designee, and North Dakota State University shall allow inspection by the Fargo Police Department and any other city officials.

Source: 3019 (1999), 4412 (2004).

25-1509.2. Restrictions on sale to obviously intoxicated person.—No licensee or partner, principal, agent or employee of any licensee shall sell, serve, or furnish alcoholic beverages to or allow possession and consumption of alcoholic beverages on the licensed premises by any person who is or has become intoxicated and/or incapacitated by the consumption of alcoholic beverages. A person may be considered to be obviously intoxicated when it can be plainly determined by appearance, conduct, and/or demeanor. The term “obviously intoxicated” shall mean that the person’s obvious intoxication be reasonably discernible or evident to a person of ordinary experience.” Such indicators of intoxication may include, but are not limited to a combination of any of the following types of conditions:

- A. Problems with balance, inability to maintain balance, i.e., stumbling, staggering gait, bumping into furniture while walking, falling against bar or off stool, resting head on bar;
- B. Ineffective muscular coordination, i.e., spilling and/or knocking over drinks, unable to pick up change and the like;
- C. Disorientation and mental confusion as to locations, date, names and the like;
- D. Strong smell of alcohol;
- E. Unusual or distorted speech, i.e., slurred, thick tongue, uncontrollable voice pitch, muttering, and the like;
- F. Bloodshot and/or glassy eyes, flushed face, and the like;
- G. Condition of clothes and hair, i.e., soiled clothing, urinated upon clothing and the like;
- H. Unusual behavior, i.e., vomiting, profanity, hiccups, fighting, loud, boisterous, obnoxious behavior, sleeping or unconscious.

Violation of this ordinance may result in sanctions as prescribed in Section 25-1512(H) and (I) hereinafter. Sanctions for a licensee selling, serving or furnishing alcoholic beverages shall require a sale and a showing that the police officer observed and determined the person to be intoxicated. In addition, a corroborating witness or witnesses who can opine that the person was obviously intoxicated shall be required. Sanctions for a licensee allowing the consumption of alcoholic beverages on the licensed premises shall require a showing that the police officer observed and determined the intoxicated person to be intoxicated on the licensed premises, as well as a showing that the intoxicated person was allowed to consume alcoholic beverages on the licensee’s premises. The police officer’s observation and determination must be accompanied by information from a corroborating witness or witnesses who can opine that the person was obviously intoxicated when allowed to consume alcoholic beverages on the licensed premises.

If a licensee, partner, principal, agent or employee of any licensee shall contact law enforcement to report the presence of an obviously intoxicated patron or to obtain law enforcement assistance in removing an obviously intoxicated patron, a rebuttable presumption is created and sanctions shall not be imposed. This presumption may be overcome, however, by evidence that the licensee, partner, principal, agent or employee of any licensee did not contact law enforcement in good faith.

Source: 4332 (2003).

25-1510. Live entertainment license.--

- A. No licensee shall feature or permit entertainment, including outdoor amplified music or vocal performances, without first having obtained a live

entertainment license provided that a licensee may feature certain forms of background music without obtaining such license. Background music allowed without a live entertainment license shall only include instrumental performances such as a piano, string ensemble, or other instrumental ensemble, or vocal performances held in conjunction with dining in a restaurant or operating under a Class FA-ENTERTAINMENT license. Such entertainment shall not include dancing. A live entertainment license is required for any performance where tickets are sold or where a cover charge is required. It is the intention of this proviso that background-type entertainment clearly incidental to dining and operation of a restaurant, or operation under a Class FA-ENTERTAINMENT license, including non-amplified outdoor music or vocal performances, is allowed without a live entertainment license.

- B. The initial license fee for a live entertainment license shall be \$700 and the renewal fee for such license shall be \$350 per year.
- C. The license fee required for a live entertainment license shall be for a period of one year from July 1 through June 30 and shall be payable in advance at the time of the issuance of the license and thereafter, on or before June 10 of each subsequent year for renewal of said license.
- D. Annual application for a live entertainment license shall be made by the licensee on forms provided by the city auditor's office of the city of Fargo. The granting of a live entertainment license shall be subject to the approval of the city commission, with any appropriate conditions, and it may be suspended or revoked in conformance with the procedures established by § 25-1512 of this article.
- E. The applicant shall provide sufficient information on the application relating to adequate parking, adequate traffic controls, acceptable indoor and outdoor noise levels, and protections against underage drinking. Such other information may be required as necessary in order to properly determine whether a license should be granted to the applicant.
- F. No licensee shall feature or permit entertainment at a time when the licensed premises are closed for alcoholic beverage sale, service or consumption pursuant to § 25-1509 of the Fargo Municipal Code.

Source: 1965 Rev. Ord. 25-1510, 1869 (1978), 2859 (1998), 2941 (1998), 4437 (2004), 4627 (2007).

25-1510.1. Entertainment on licensed premises--Restrictions.--

Source: 2775 (1995), repealed by Ord. 2870 (1998).

25-1511. Licensed premises--Requirements for.--

- A. Every Class "AB", "ABH", "ABH-RZ", "A", "C", "F", "FA", "FA-ENTERTAINMENT", "G", "H", "I", "L", "M", and "N" licensed premises must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition.
- B. Every Class "AB", "ABH", "ABHE-RZ", "A", "C", "F", "FA", "G", "H",

- “T”, “L” and “M” licensee shall equip his establishment with tables and chairs in sufficient number to accommodate his patrons.
- C. Every licensee is hereby made responsible for the conduct of his place of business and is required to maintain order and sobriety in such place of business. No intoxicated person or persons shall be permitted to remain upon the premises licensed or to be served or furnished any alcoholic beverages by any licensee.
- D. A licensee shall not be permitted to utilize licensed premises as a food service establishment at times or on days when the sale and dispensing of alcoholic beverages is prohibited except under the following conditions:
1. Said licensee is the holder of a restaurant license pursuant to the provisions of article 13-04 of the Fargo Municipal Code, and is regularly engaged in the business of serving food;
 2. Said licensee is the holder of an FA-ENTERTAINMENT license; and
 3. The bar or other part of the premises where alcoholic beverages are opened or mixed is either:
 - a. Physically shut off from the remainder of the premises by an opaque barrier; or
 - b. Devoid of all containers, promotional material, apparatus and equipment relating to alcoholic beverages.
- E. Every holder of an alcoholic license in the city of Fargo shall implement a program of mandatory server training. The server training shall be approved by the Fargo Police Department and/or its designee. All current managers and employees working directly with the dispensing of alcoholic beverages must obtain and maintain a “server training certificate card”. Said training must be completed within 90 days for current managers and employees. The “server training certificate card” is not required to be carried on the person so long as said card can be produced at a later date. The “server training certificate card” must be renewed every three (3) years by the anniversary date as shown on said card. For all new managers and employees not having previously received server training, there shall be a grace period of 90 days in which to successfully complete the approved class. Additionally, one month before each license renewal date, the licensee shall provide the city with a roster of employees which can then be checked against the training records. If the licensee is found to be not in compliance, license renewal for the upcoming year may be denied or delayed.

Source: 1965 Rev. Ord. 25-1511, 1869 (1978), 1885 (1978), 2100 (1983), 2344 (1987), 2532 (1990), 2822 (1997), 4218 (2002), 4294 (2003), 4346 (2003), 4418 (2004), 4628 (2007), 4697 (2009).

25-1512. Licenses--Termination, suspension, revocation, and sanctions.--All licenses issued under the provisions of this article, unless otherwise specifically provided, shall terminate on June 30th next following the date of issuance; provided, however, that any license issued under the provisions of this article may, under certain circumstances, terminate automatically or may be

terminated, suspended or revoked by the commission.

- A. Any license issued under the provisions of this article shall automatically terminate:
 1. Upon the death of the licensee unless, upon application to the commission by the personal representative of the decedent, the commission shall consent to the carrying on of such business by the personal representative. Said application must be submitted to the commission within 30 days of the licensee's death.
 2. When the licensee, for any reason, ceases business at the licensed premises, except as permitted in accordance with § 25-1507(H) of this article. Business shall be deemed to have ceased upon occurrence of any of the following:
 - a. When no sale of alcoholic beverages occurs on the licensed premises for a period of at least 30 consecutive business days; or
 - b. When alcoholic beverages are not sold on the licensed premises on at least 15 of any 60 consecutive business days; or
 - c. When the licensed premises are not open for normal business for at least 180 hours in any 60 consecutive business days;provided, however, upon written request of the licensee, the commission, in its discretion and for good cause shown, may extend the date upon which business shall be deemed to have ceased.
 3. When any license or permit of the licensee from the United States government or state of North Dakota to sell alcoholic beverages at the licensed premises has terminated or been revoked.
- B. The commission may, in its discretion, suspend or revoke for cause any license issued under the provisions of this article. The grounds for suspension or revocation shall, among others, include the following:
 1. The licensee has filed a petition in bankruptcy.
 2. An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual in active management of the licensed business is convicted of violating any of the provisions of this article.
 3. The licensee has been convicted of a felony under the laws of the United States or under the laws of one of the several states.
 4. The business of the licensee, at the location licensed, is conducted in such a manner as to be in violation of the health and sanitary regulations of the city of Fargo.
 5. The licensee has made any false statement in his application for a license.

6. The licensee conducts his business in a manner which results in, encourages or is conducive to the creation of disturbances of the peace, disorderly conduct or any other violations of federal, state and/or city laws.
- C. The grounds enumerated in subsection (B above) of this section shall not be deemed to be exclusive and any license issued under the provisions of this article may be suspended or revoked by the commission for any other reason deemed by the commission to be sufficient in order to promote and protect the public health, safety, morals and general welfare of the people of the city of Fargo. When any license is suspended or revoked by the commission pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.
 - D. No license issued under the provisions of this article shall be suspended or revoked for cause by the commission without a public hearing. In the event that the commission intends to consider the suspension or revocation of any license for cause, it shall direct the city auditor to notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of 15 days after the date of the service of the notice upon the licensee.

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

- E. Penalties for failing compliance checks conducted by the Fargo police department are as follows:
 1. First offense - \$500 penalty. This penalty may be waived if the person serving the alcoholic beverages, as well as the management, have server training certificates. There will, however, be mandatory server training within 30 days for any employee or member of management not having server training. There will be no license sanction on a first offense.
 2. Second offense - \$750 penalty. No license sanction penalty.
 3. Third offense - \$1,000 penalty - for Class "AB", "A" and "B" license holders, one day suspension of license (liquor sales only) with the date selected by licensee within thirty (30) days of either occurrence of the offense or final decision upon appeal. For all other classes of liquor licenses, two days suspension of liquor sales only.
 4. Fourth offense - no monetary penalty - for Class "AB", "A" and "B" license holders, three days in one week suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other

classes of liquor licenses, six consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.

5. Fifth offense - no monetary penalty - for Class "AB", "A" and "B" license holders, seven consecutive day suspension of license (liquor sales only) with the dates selected by licensee requiring the business to be closed for liquor sales. For all other classes of liquor licenses, fourteen consecutive days suspension of liquor sales only, such suspension to be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.
6. Sixth offense - no monetary penalty - for Class "AB", "A" and "B" license holders, ten consecutive day suspension of license (liquor sales only) with the dates selected by licensee requiring the business to be closed for liquor sales. For all other classes of liquor licenses, twenty consecutive days suspension of liquor sales only, such suspension to be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.
7. Seventh offense - no monetary penalty - revocation of liquor license.

The foregoing penalties for failing compliance checks will be those offenses occurring within a one-year period. Said one-year period commences to run and is calculated (365 days) from the first offense by the licensee. The city of Fargo police department, in conjunction with its designee, will make a reasonable effort to conduct up to four compliance checks a year at each licensed liquor serving establishment in the city. In the event a licensed establishment fails to pass compliance checks during such visits, the same may result in additional compliance checks being conducted at that establishment during the year.

- F. For those businesses with liquor licenses requiring a food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT licensee, a food and business income to alcohol sales ratio), there shall be an audit at least once every three (3) years (one-third of the licensees each year) provided, however, that subject businesses obtaining a new license and businesses that transfer an existing license to new owners shall be subject to an audit 12 months after obtaining or transferring of the license. The city of Fargo shall pay the cost of the audit if the business is in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT licensee, a food and business income to alcohol sales ratio). The liquor licensee shall, however, pay for the cost of the audit of the business is not in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT licensee, a food and business income to alcohol sales ratio). Penalties for failed audits shall be as follows:
 1. First offense - six month probationary period to come into

compliance to be followed by a second audit establishing compliance. Sale and consumption of alcoholic beverages shall be discontinued at 1:00 a.m. for such time as the length of any probationary period. Yearly audits for the next two years to be paid for by the liquor licensee.

2. Second offense - thirty days suspension of liquor license not requiring closure of the business which may remain open for food sales. Yearly audits for the next two years to be paid for by the liquor licensee.
 3. Third offense - revocation of license.
- G. Sanctions or penalties under subsections E and F above may not be invoked without a public hearing if so requested by the licensee. Upon written notification by the city auditor's office that a penalty is being sought under subsections E and F above, the liquor licensee may notify the city auditor's office within ten (10) days and request a hearing on the proposed penalty. A hearing shall be set by the board of city commissioners specifying the time and place of the hearing, and shall further describe the reason for said hearing, and shall be served upon the liquor licensee in the same manner as provided by law for the service of a summons in a civil action. No suspension hearing shall be held before the expiration of fifteen days after the date of service of the notice. The hearing for said suspension shall be heard by the board of city commissioners. A record of the hearing shall be made by electronic recording device.

If, upon such hearing, it appears to the majority of the board of city commissioners that sufficient causes exists for the penalty sanctions, the board of city commissioners shall make its order in accordance with the provisions of this article. The board of city commissioners shall further issues its findings, conclusions and order which shall be served on the liquor licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

- H. Administrative penalties for violation of section 25-1509.2 regarding sale to an intoxicated person or person incapacitated by consumption of alcoholic beverages are as follows:
1. First offense: Warning. There will also be mandatory server training refresher course within 30 days after the offense.
 2. Second offense: \$1,000 monetary penalty, plus one-day suspension of alcoholic beverage license to be determined by the liquor control committee. For Class "AB", "A" and "B" license holders, one day suspension of license (liquor sales only) with the date selected by licensee within thirty (30) days of either occurrence of the offense or final decision upon appeal. For all other classes of liquor licenses, two days suspension of liquor sales only with the dates selected by licensee within thirty (30) days of either occurrence of the offense or final decision on appeal.
 3. Third offense: \$2,000 monetary penalty, plus a three-day

suspension of alcoholic beverage license to be determined by liquor control committee. For Class “AB”, “A” and “B” license holders, three days in one week suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, six consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.

4. Fourth offense: \$2,000 monetary penalty, plus a four-day day suspension of alcoholic beverage license to be determined by liquor control committee. For Class “AB”, “A” and “B” license holders, four days in one week suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, eight consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.
5. Fifth offense: \$2,000 monetary penalty, plus a 10-day suspension, and a possible revocation of alcoholic beverage license to be determined by liquor control committee. For Class “AB”, “A” and “B” license holders, ten days suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, twenty consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.

The level of offenses shall be determined by reference to a 18-month period from the first offense by licensee. By way of illustration, a second offense occurring more than 18-months after a first offense would then be deemed a first offense.

Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales only so that food sales could, if applicable, continue on the licensed premises.

- I. Administrative penalties for violation of section 25-1509.2 regarding allowing consumption of alcoholic beverages on the licensed premises by any intoxicated person are as follows:
 1. First offense: Warning. There will also be mandatory server training refresher course within 30 days after the offense.
 2. Second offense: \$500 monetary penalty.
 3. Third offense: \$1,000 monetary penalty, plus a one-day suspension of alcoholic beverage license to be determined by liquor control committee. For Class “AB”, “A” and “B” license holders, one day suspension of license (liquor sales

only) with the date selected by licensee within thirty (30) days of either occurrence of the offense or final decision upon appeal. For all other classes of liquor licenses, two days suspension of liquor sales only.

4. Fourth offense: \$1,500 monetary penalty, plus a two-day day suspension of alcoholic beverage license to be determined by liquor control committee. For Class “AB”, “A” and “B” license holders, two days in one week suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, four consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.
5. Fifth offense: \$2,000 monetary penalty, plus a four-day suspension, and a possible revocation of alcoholic beverage license to be determined by liquor control committee. For Class “AB”, “A” and “B” license holders, four days in one week suspension of liquor license (liquor sales only) on consecutive dates chosen by licensee requiring the business to be closed. For all other classes of liquor licenses, eight consecutive days suspension of liquor sales only. Such suspension shall be within thirty (30) days of either the occurrence of the offense or final decision upon appeal.

Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales only so that food sales could, if applicable, continue on the licensed premises.

It is the intent of this ordinance that no multiple offenses shall be deemed to have occurred from a single incident. For example, on an officer contact with the licensed premises, if there should be two or more offenses involving intoxicated persons on the premises, the same will constitute one offense and not multiple offenses. Any subsequent officer contact with the establishment at a different time may constitute a separate offense.

Sanctions or penalties under this subsection may not be invoked without a public hearing if so requested by the licensee. Upon written notification by the city auditor’s office that a penalty is being sought under this ordinance, the liquor licensee may notify the city auditor’s office within ten (10) days and request a hearing on the proposed penalty. A hearing shall be set by the board of city commissioners specifying the time and place of the hearing, and shall further describe the reason for said hearing, and shall be served upon the liquor licensee in the same manner as provided by law for the service of a summons in a civil action. No suspension hearing shall be held before the expiration of fifteen days after the date of service of the notice. The hearing on said suspension shall be heard by the liquor control committee subject to an appeal to the board of city commissioners who will review the findings of fact made by the liquor control committee. A record of the hearing shall be made by electronic recording device. Upon appeal to the board

of city commissioners, the licensee shall be allowed to make any statements or arguments and fully argue its case, but it will not be entitled to a trial de novo. The hearing shall be based on the findings of fact made by the liquor control committee, the record of the hearing, together with the statements and arguments of the licensee.

If, upon such hearing, it appears to the majority of the board of city commissioners that sufficient causes exists for the penalty sanctions, the board of city commissioners shall make its order in accordance with the provisions of this article. The board of city commissioners shall further issue its findings, conclusions and order which shall be served on the liquor licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

Source: 1965 Rev. Ord. 25-1512, 1869 (1978), 2198 (1985), 2539 (1990), 2822 (1997), 4182 (2001), 4215 (2002), 4333 (2003), 4416 (2004), 4502 (2006), 4629 (2007).

25-1513. Unlawful practices.--In addition to such other prohibitions as are contained in this article:

- A. It shall be unlawful for any person to sell or consume any alcoholic beverage in any automobile, or upon any street, alley or public highway, including any public sidewalk or boulevard, or on any private property without consent of the owner or occupant within the city of Fargo, except as permitted by subsection (J) of section 25-1509 of this chapter. It shall further be unlawful for any person to possess any bottle or receptacle containing any alcoholic beverage which has been opened or the contents of which have been partially consumed while such person is upon any street, alley or public highway, including any public sidewalk or boulevard, or upon property owned, operated or leased by the city of Fargo or by the state of North Dakota or any political subdivision or agency thereof, within the city of Fargo, except under a valid alcoholic beverages license issued under this article, and further except as permitted by 25-1509.1(C).
- B. The sale, possession, use or consumption of alcoholic beverages shall be unlawful and prohibited in and on the premises of any public building except as may be authorized by appropriate license or permit issued pursuant of this chapter, and further except as permitted by 25-1509.1(C).
- C. It shall be unlawful for any person under 21 years of age to misrepresent his or her age for the purpose of purchasing or drinking any alcoholic beverage or for the purpose of entering any premises licensed under the provisions of this article.
- D. It shall be unlawful for any person, either personally or through an agent or employee, to procure, furnish or deliver any alcoholic beverage for the use of any person under 21 years of age.
- E. No licensee shall deliver or permit to be delivered to any customer outside the licensed premises any alcoholic beverages sold under the terms and provisions of this article unless the package containing such alcoholic beverage shall be securely wrapped and shall contain on the outside thereof, in plain, legible writing, the name of the dealer selling the same and also the name and address of the purchaser thereof. Additional conditions and restrictions on delivery of alcoholic beverages are as follows:

1. Delivery shall only be allowed by licensees having an off-sale license.
 2. Delivery shall be limited to customers having a pre-established credit arrangement with the off-sale licensee. Such credit arrangement may be in the form of a house account or open charge account established between the customer and off-sale licensee, but specifically shall not include credit cards, debit cards, bank credit cards or any other form or type of credit arrangement. The pre-established credit arrangement between the customer and the off-sale licensee shall have been established at least one (1) week before any delivery is allowed thereunder. It is the intent of this paragraph that the entire sales transaction is complete at the point of sale subject only to delivery.
 3. Delivery shall only be made to the address of the customer as identified on the pre-established credit arrangement with the off-sale licensee.
 4. Delivery shall only be made by a person who is of legal age and who has completed mandatory server training.
 5. Positive identification of the purchaser shall be made at the point of delivery. In addition, a digital photograph shall be taken to confirm the identity of purchaser.
- F. No driver of any taxicab operating or driving the same in the city of Fargo shall at any time possess, carry or have in such taxicab any alcoholic beverages except that such driver may accept for delivery to a customer from a dealer regularly licensed under the provisions of this article any package or packages thereof when such packages are wrapped and addressed and otherwise comply with subsection (E) above. Any police or other peace officer of the city shall have the right to enter and search any taxicab operating in the city under a license from said city or elsewhere at any time he may have reason to believe or suspect that the driver of such vehicle is violating the provisions hereof.
- G. No owner, operator, officer or employee or driver of any taxicab in the city of Fargo shall accept from any person, except a dealer regularly licensed under the provisions of this article, any order for the delivery of any alcoholic beverage.

Source: 1965 Rev. Ord. 25-1513, 1869 (1978), 2025 (1981), 2344 (1987), 2570 (1991), 2760 (1995), 2814 (1997), 2822 (1997), 3090 (1999), 4202 (2002), 4401 (2004), 4412 (2004), 4413 (2004).

25-1514. Inspection of licensed premises.--The members of the board of city commissioners of the city of Fargo, the chief of police, or any officer of the health or police department may, at any time, enter upon any licensed premises for the purpose of police inspection or to determine whether the licensed premises are in compliance with any and all ordinances of the city.

Source: 1965 Rev. Ord. 25-1514, 1869 (1978).

25-1515. Penalty.--Any person, firm or corporation violating §§ 25-1509 or 25-1513 of this article shall, upon conviction thereof, be punished by a fine not to exceed \$500 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court, the court to have power to suspend said sentence and to revoke the suspension thereof.

Every person, firm or corporation violating any other sections of this article shall, upon conviction thereof, be punished by a fine not to exceed \$500; the court to have power to suspend said sentence and to revoke the suspension thereof.

Source: 1965 Rev. Ord. 25-1515, 1869 (1978), 2517 (1990).