

**ORDINANCE NO. 451**

**AN ORDINANCE AMENDING AND RE-ENACTING ORDINANCE NO. 447 AND CHAPTER VI. REGULATING BUSINESS AND TRADES OF THE BEULAH MUNICIPAL ORDINANCES OF THE CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA, AS FOLLOWS:

THAT ORDINANCE NO. 447 CHAPTER VI OF THE BEULAH MUNICIPAL ORDINANCES BE AMENDED AND RE-ENACTED TO READ AS FOLLOWS:

**CHAPTER VI. REGULATION OF ALCOHOL, BUSINESS, AND TRADES**

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## **ARTICLE I. GENERAL RULES GOVERNING GRANTING OF LICENSES**

### **6-101 Licensure Application**

All applications for licenses to pursue any business or calling, etc., where a license is required, shall be made in writing to the Mayor and City Council and shall be filed with the City Auditor. The applicant shall at the time of the filing their application, deposit with the City Auditor the amount of license fee required, if any. At the next regular meeting of the City Council, the City Auditor shall lay such application before it. If such application is granted and bond approved by the City Council, the City Auditor shall issue the license accordingly. If such application is refused, the license money deposited with the City Auditor shall be refunded to the applicant.

*(Amended by Ordinance No. 451)*

### **6-102 Expiration and Period of Licensure**

No license shall be granted for a longer period of time than one (1) year, except as herein provided, and all yearly licenses shall commence on the first day of January in each year and expire on the last day of December in each year, except in the instance of liquor licenses, which are herein separately provided for, and except in such other instances which may be specially provided for; and all licenses shall be signed by the City Auditor under the corporate seal. No license shall be valid until so signed and sealed, nor shall any person be deemed licensed until a license shall be duly issued to him. Each license shall be dated the day of the issuance thereof; but if the applicant or applicants have been acting without a license, the license shall commence with the date the business commenced, and if the business calls for a yearly license, then in that case, the license shall commence on the first day of January in the year for which the license is issued, and the date of the issuance of the license, together with the time of commencing and expiration shall be given in the license and license record.

### **6-103 Mayoral Authorization to Fix License Fees Not Expressly Mentioned**

The Mayor is hereby authorized and empowered, whenever in his or her judgment, any calling, vocation, or business not expressly named herein ought to be required to obtain a license for such calling, vocation, or business, and fix the amount thereof, and the sum so fixed by him or her shall be paid for any such license and such license shall be issued in the manner herein provided.

### **6-104 Licensure Non-Transferable**

No license shall be assignable or transferable; nor shall any person be authorized to do business or act under such license except the person to whom it is granted, or at any place other than the place specified therein. Provided that the Mayor and City Council may grant the continuance of the business licensed to any other portion of the City, the said permission to be certified on such license by the City Auditor, no license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place that is therein specified. Whoever shall violate any of the provisions of the section shall be deemed to be

acting without a license, and shall be subject to the same penalty as prescribed for acting without licensure.

**6-105 Subject to Ordinance**

All licenses granted shall be subject to the ordinance in relation to licenses, which may be in force at the time of issuing thereof, or which may be subsequently passed by the City Council; and if any person shall violate any provision of an ordinance relating to their license, they may be proceeded against for any fine or penalty imposed thereby, and their license may be revoked or forfeited in the discretion of the Mayor and City Council, or of the court before which any action may be brought for the recovery of any fine or penalty.

**6-106 Chief of Police to Enforce Ordinances Related to Licenses**

The Chief of Police shall enforce all ordinances in relation to licenses and shall, from time to time, examine the license record on file in the City Auditor's office. The Chief of Police shall prosecute all persons who shall be acting without a license and refusing to comply with the provisions of this Article in relation to obtaining a license, and said Chief of Police shall collect from them the sum which may be taxed for their license; his or her report shall be good to the extent and purport thereof, but no person shall be considered licensed until license is issued in due form as required hereby.

**6-107 Rules to Govern**

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

**6-108 Issuance of Licenses**

If it shall appear that the applicant is entitled to a license, the City Auditor shall issue a license signed by the City Auditor. Licenses shall be issued and shall be consecutively numbered. Upon surrender or cancellation of a license, the fact that it has been surrendered or cancelled shall be entered by the City Auditor.

*(Amended by Ordinance No. 451)*

**6-109 Payment of and Fees for Licenses**

No license shall be issued until the fee prescribed therefor has been paid to the City Auditor. The amount paid and the date thereof and the term for which the license was issued shall be shown on each license.

**6-110 Not to Issue Unless Personal Property Taxes Paid**

Whenever, pursuant to any ordinance of the City of Beulah, now existing or which may hereafter be enacted, a license is required to be obtained from the City of Beulah for the conduct of any business, trade, or occupation, or for any other purpose except dog licenses, no license shall be issued to any persons, firm, or corporation until such person, firm, or

corporation shall have paid all delinquent and current personal property taxes owing by such person, firm, or corporation to the County of Mercer in the State of North Dakota.

*(6-111 and 6-112 revoked by Ordinance No. 451)*

## **ARTICLE II. ALCOHOL AND INTOXICATING LIQUOR**

### **6-201 Definitions**

#### 1. Alcohol

“Alcohol” means neutral spirits distilled at or above one hundred ninety degrees (190°) proof, whether or not such product is subsequently reduced for nonindustrial use.

#### 2. Alcoholic Beverages

“Alcoholic beverage” means any liquid suitable for drinking by human beings, which contains one-half of one percent (0.5%) or more of alcohol by volume.

#### 3. Bar

“Bar” means any business establishment that is licensed to and does sell alcoholic beverages, but shall not include gas stations, grocery stores, or liquor stores with off-sale licensure.

#### 4. Beer

“Beer” means any malt beverage containing one-half of one percent (0.5%) or more of alcohol by volume and includes an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses, which has not undergone distillation.

#### 5. Intoxicating Liquor and Liquor

The terms “intoxicating liquor” and “liquor,” whenever used in this Chapter, shall mean and include such alcohol or alcoholic beverages as defined by the Liquor Control Act of the State of North Dakota or any amendments or acts supplementary thereto.

#### 6. Wine

“Wine” means any alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent (24%) alcohol by volume.

#### 7. Sparkling Wine

“Sparkling wine” means any wine made effervescent with carbon dioxide.

#### 8. Off-Sale

“Off-sale” means the sale of alcoholic beverages in the original package or container for consumption off or away from the licensed premises where sold.

9. On-Sale

“On-sale” means the sale of alcoholic beverages for consumption on the premises where sold.

10. On/Off-Sale

“On/off-sale” means the sale of alcoholic beverages in the manner set forth in both “on-sale” and “off-sale.”

11. Licensed Premises

“Licensed premises” means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint, which must be included with the license application or the license renewal application.

12. Twenty-One (21) Years of Age

“Twenty-one (21) years of age,” whenever used in this Chapter, means it is after 8:00 a.m. on the date twenty-one (21) years after a person’s date of birth.

13. Guardian

“Guardian,” for the purposes of this Chapter, means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one (21) years of age.

14. Mental Health Professional

“Mental health professional,” for purposes of this Chapter, means a physician, a physician assistant, or an advanced practice registered nurse who is licensed in the State of North Dakota.

*(Amended by Ordinances No. 326, 332, 426 & 447)*

**6-202 Liquor License Required**

It shall be unlawful for any person, firm, or corporation to engage in the sale of alcoholic beverages, as defined herein and as defined in the laws of the State of North Dakota or any amendments or acts supplementary thereto, within the city of Beulah without first obtaining the appropriate license. Once a license is obtained, licensee must maintain the license by paying the annual fees and meeting all conditions outlined in this Article. If one allows their license to expire, then neither the individual nor business may sell, exchange, dispose of, or keep for sale any liquor or other alcoholic beverages.

**6-203 Licenses and License Fees**

1. Classes of License for the Sale of Alcoholic Beverages.

The following classes of licenses and annual fees are established:

- A. CLASS I LICENSE: On/Off-Sale Beer, Wine, Sparkling Wine, and Liquor.  
License annual fee - \$1,200.00

- B. CLASS II LICENSE: On-Sale Beer, Wine, Sparkling Wine, and Liquor.  
License annual fee - \$1,075.00
  - C. CLASS III LICENSE: Off-Sale Beer, Wine, Sparkling Wine, and Liquor.  
License annual fee - \$875.00
  - D. CLASS IV LICENSE: On-Sale Beer – May sell beer in a restaurant which is separated from the room in which said beer is opened or mixed and where gross sales of food are at least equal to gross sales of alcoholic beverages. License annual fee - \$525.00
  - E. CLASS V LICENSE: On-Sale Beer, Wine, and Sparkling Wine – May sell beer, wine, and sparkling wine in a restaurant which is separated from the room in which said beer, wine, and sparkling wine are opened or mixed and where gross sales of food are at least equal to gross sales of alcoholic beverages. License annual fee - \$675.00
2. Term of License and Due Date. Each license provided for in this Article shall expire on June 30<sup>th</sup> of each year. To maintain licensure, license fees shall be paid annually, in advance, and shall be due on July 1<sup>st</sup> of each year.
  3. Pro-Rating of License Fees. Any license fee paid for a partial year shall be pro-rated on a monthly basis, with any partial month counting as a full month.
  4. Disposition of Fees. All license fees collected under this Article shall be collected by the City Auditor and credited to the general fund of the City of Beulah.
  5. Violation Penalty. Any person who violates or fails to comply with the licensure requirements above shall be guilty of an infraction and subject to a fine of up to One Thousand Dollars (\$1,000.00), and a separate violation may be deemed committed for each day that a person violates or fails to comply with any provision of this Article.

*(Amended by Ordinances No. 326, 332, & 451)*

#### **6-204 Applicant Qualifications**

In addition to qualifications or other requirements which are not or may hereafter be prescribed by the laws of the State of North Dakota or by the ordinances or resolutions of the governing body of the City of Beulah, no license shall be issued to any applicant unless such applicant shall file a sworn application therefore, accompanied by the required fee, and shall show in such application that he possesses the following qualifications:

1. Applicant, other than a corporate applicant, must be a legal and bona fide resident and citizen of the State of North Dakota and have been a resident of the City of Beulah for at least thirty (30) days immediately prior to the filing of the application. The residency requirement herein is a continuing requirement during the term of any license issued hereunder.

2. Applicant or manager must not have been convicted of an offense determined by the Attorney General to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer; or, following conviction of any offense, is determined not to be sufficiently rehabilitated under Section 12.1-33.02.1.
3. Applicant shall not have had revoked, within five (5) years preceding their application for any license to him or her, pursuant to ordinances or resolutions of the City of Beulah, to the laws of the State of North Dakota or any state to sell beer, alcohol, or alcoholic beverages.
4. If the applicant is a partnership, all members of the partnership must be personally qualified to obtain a license, except that the limited or managing partner (provided that the limited or managing partner has a 10% or more interest in the partnership), shall be the only partner required to meet the requirement that he be a resident of the City as set out above.
5. If the applicant is a corporation, all officers and directors thereof, and any stockholders holding more than five percent (5%) of stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation must possess all the qualifications required herein for an individual licensee, provided, however, that the requirements as to being a resident and citizen of the State of North Dakota and a resident of this City shall not apply to non-resident officers, directors, and stockholders of such corporation, but such requirements shall apply to any officer, director, or stockholder who is also a member of the licensed premises or who is engaged or employed at the licensed premises, in any capacity, in the conduct and operation of the licensed premises.
6. No license shall be issued to any person, firm, or corporation engaged in business as the representative or agent of another and the license will be issued only to the owner or owners of the business to be conducted at the location for which the license is sought.
7. No applicant shall enter into any agreement or understanding with any other person with respect to the use, operation, or management of any beer or liquor establishment licensed within the City.
8. No license issued under the provisions of this Article shall be transferable without the approval of the Mayor. Upon the City Council approving such transfer, the person to whom the license is transferred shall pay, as a condition precedent to such transfer, a fee of Twenty-Five Dollars (\$25.00) to the City of Beulah.
9. No license shall be issued under the provisions of this Article when the personal property taxes on the property for which license is sought are delinquent, or when any applicant – individual, member of co-partnership, or corporation – has delinquent personal property taxes on any property owned by such person or persons.

*(Amended by Ordinance No. 451)*

## 6-205 Conditions of Licensure

1. Hours and Time of Sale. No person shall dispense or permit the consumption of beer or alcoholic beverages on the licensed premises between the hours of 1:00 a.m. and 8:00 a.m. each day of the week, or dispense or permit such consumption of alcoholic beverages on said licensed premises on Christmas Day, or after 1:00 a.m. on Thanksgiving Day, or after 6:00 p.m. on Christmas Eve. All doors to such licensed premises shall be locked during the times that the sale of alcoholic beverages is prohibited.
2. Location. Licensees shall adhere to certain location requirements to ensure the safety of patrons and well-being of the residents of the City of Beulah. Any proposed location for a licensed establishment is subject to the approval of the City Council.
  - A. License Valid Only on Approved Premises. No license under the provisions of this Article shall entitle the holder thereof to carry on such business at more than one location under any license, and each license shall contain the legal description of the place where the holder thereof operates their business.
  - B. On-Sale Facilities. No on-sale license shall be issued for the retail sale of alcoholic beverages where the premises sought to be licensed are located in any basement or below the first floor of any building. No on-sale license for the retail sale of alcoholic beverages shall be issued for any premises above the first or ground floor of any building or premises.
  - C. Off-Sale Facilities Subject to Approval. Off-sale licenses may be issued without the floor-level restrictions, but the location shall still be subject to the approval of the City Council.
  - D. Gas Station Licensure Prohibited Unless Selling from Separate Facilities. No license shall be approved for a gas station unless the facility from which such sales take place is entirely separate from the place in which other goods are sold and has an entrance from the outside which is separate entirely from the entrance to the facility in which other goods are sold. No gas station shall be allowed any license which allows on-sale retail sales of alcoholic beverages.
3. License to be Posted. Licenses issued to licensees hereunder shall be posted in a conspicuous place in the premises for which the license has been issued.
4. Prohibited Transactions and Responsible Conduct. Every licensee is responsible for the conduct of their place of business and is required to maintain order and respectability in such place of business.
  - A. Intoxicated Persons. No intoxicated person or persons shall be permitted to remain upon the premises or to be sold additional alcoholic beverages by any person holding a license to sell alcoholic beverages.

B. Incompetent Persons. No person under civil guardianship or deemed cognitively incompetent shall be served alcoholic beverages.

- Persons under Twenty-One (21) Years of Age. No person under the age of twenty-one (21) shall be served or furnished with alcoholic beverages or allowed to remain on the licensed premises. For more details on this policy and exceptions, *see* Section 6-206 below.
5. Street Sale or Use Forbidden. The sale, serving, or consumption of alcoholic beverages as defined in this Article upon or across any street, alley, or public way is prohibited, except under a Special Alcohol Event Permit, as provided in 6-208 herein. This shall apply to any sale made in the open air in any manner or place other than in the building for which the license is issued.
  6. Walk-Up or Drive-In Prohibited. It is unlawful for any person holding any license for the sale of alcoholic beverages within the city limits of the City of Beulah, North Dakota to maintain or operate any walk-up or drive-in facility for the sale dispensation, or delivery of any alcoholic beverage.
  7. Consumption of Alcohol in Off-Sale Premises Prohibited. No person holding an off-sale license hereunder shall permit the opening and consumption of alcoholic beverages on the premises where sold. All sales of alcoholic beverages made by a licensee holding an off-sale license shall be completed upon the licensed premises by the delivery of the container containing alcoholic beverages from the licensee to the purchaser upon such premises.
  8. Enclosed Areas Prohibited. No licensee for the retail sale of liquor shall construct, maintain, or place any side room, closed booth, or other enclosure in the licensed premises. All booths in the premises shall open to the main part of said premises and shall be accessible from the aisles therein and shall not have any screen, curtain, partition, door, blind, or other obstruction preventing clear view into said booths from the main room or aisle of said premises.
  9. Window Obstructions Prohibited. No licensee for the retail sale of liquor shall be permitted to place in the windows or door of the licensed premises any sign, advertising matter, paper, cards, or any other material which shall in any manner obstruct the view into the said premises and through the same from the street level in front of said premises.
  10. Gambling Prohibited in Certain Establishments. Any licensee for the retail sale of liquor from grocery stores, liquor stores, or similarly situated businesses which do not regularly allow the consumption of alcoholic beverages on the premises shall not be allowed to renew their license for the retail sale of alcoholic beverages if such licensee allows wagered card, dice, or other games or installs within such business electronic gaming machines or pull-tab machines. Such restriction does not apply to the sale of state-regulated lottery tickets.

11. Sanitary Requirements. All premises licensed pursuant to this Article must provide adequate and sufficient lavatories and toilets and meet such other health and sanitary regulations as may be prescribed by the City Council of Beulah, North Dakota. On-sale licenses may be revoked where the foregoing requirements or any other health ordinance or regulations are not at all times strictly observed.
12. Inspection of Licensed Premises to Be Allowed. The licensee accepts the license privilege upon the condition which need not elsewhere be expressed that the Mayor, any officer of the health department of the City of Beulah, or any police officer, sheriff, or peace officer of the City of Beulah or of the State of North Dakota, may at any time enter upon the premises licensed for the purpose of police inspection or to determine whether the licensed business is being conducted in compliance with the conditions of the license.
13. Violation Penalty. A person that violates Subsection 1 of this Section is guilty of a class A misdemeanor, in accordance with N.D.C.C. § 5-02-05, and is subject to the penalties for such an offense. Any person who violates Subsection 6 of this Section shall pay a fine in the amount of One Hundred Dollars (\$100.00) per day for each day such subsection is violated. Any person who violates or fails to comply with any of the other Subsections of this section shall be subject to a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00) or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

*(Amended by Ordinances No. 125, 130, 296, 308, 322, 447, & 451)*

## **6-206 Persons under Twenty-One (21) Years of Age**

1. Persons under Twenty-One Years of Age Not Permitted on Licensed Premises. Except as permitted in this section, a licensee who dispenses alcoholic beverages to an individual under twenty-one (21) years of age, or who permits an individual under the age of twenty-one (21) years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to Sections 5-01-08, and 5-01-08.02 of the North Dakota Century Code.
2. Exceptions for Certain Individuals under Twenty-One (21) Years of Age. An individual under the age of twenty-one (21) years of age may, in the course of their employment, enter and remain on a licensed premises where alcohol is being sold or displayed, if the owner of the licensed premises receives permission from the City of Beulah for individuals to be on the premises as allowed under this section, and falls into one of these categories:
  - A. Attendees of Permitted Events. An individual under twenty-one (21) years of age may attend an event where alcoholic beverages are sold in accordance with the conditions of a special alcohol event permit, pursuant to Section 6-208, upon the condition that alcohol will not be provided to an individual under twenty-one (21) years of age for consumption or possession.

- B. Patrons of the Licensed Premises. An individual under twenty-one (21) years of age may enter and remain on a licensed premises while alcohol is being sold or displayed, at the discretion of the owner of the licensed premises, if the individual is:
    - i. Accompanied by a parent or guardian who is twenty-one (21) years of age or older;
    - ii. On the premises to consume a meal or in an emergency situation;
    - iii. Not on the licensed premises after 10:00 p.m.; and
    - iv. Not seated at or within three (3) feet of the bar counter.
  
  - C. Employees of Licensed Premises. The licensed premises may employ an individual who is under the age of twenty-one (21) years if the individual is:
    - i. Eighteen (18) years of age or older;
    - ii. Employed by the licensed premises as either a server or busser, or rather as a musician or entertainer;
    - iii. Under the direct supervision of someone twenty-one (21) years of age or older; and
    - iv. Not engaged in the mixing, dispensing, delivery, or consumption of alcoholic beverages.
  
  - D. Independent Contractors and Their Employees. The licensed premises may allow an individual to enter and stay within the premises if the individual is:
    - i. An independent contractor or an employee of an independent contractor engaged in contract work and
    - ii. Not engaged in selling, dispensing, delivering, or consuming alcoholic beverages.
  
  - E. Law Enforcement Officials. The licensed premises must allow law enforcement officers or other public officials entrance to the premises, even if the officer/official is under the age of twenty-one (21) years of age, if the officer or official:
    - i. Enters the licensed premises in the performance of official research purposes or for the purpose of legitimate law enforcement duties;
    - ii. Notifies his or her superior(s) as to the reason and duration of such duties.
3. Misrepresentations of Age. Any individual who misrepresents or misstates their own age or the age of any other person, or who misrepresents that person's age through the presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. In accordance with North Dakota 5-01, a licensed retailer of alcoholic beverages or employee of a licensed retailer may determine proof of age for purchasing or consuming an alcoholic beverage solely by inspection of:
- A. A valid driver's license or identification card issued by North Dakota, another state, or a province of Canada which includes the photograph and the date of birth of the licensed individual;

- B. A valid military identification card issued by the United States department of defense; or
  - C. A valid passport issued or recognized by the United States.
4. Seizure of False Identification by Licensed Premises. A licensed retailer or employee of a licensed retailer may seize a form of identification displayed as proof of age if the licensed retailer or an employee of a licensed retailer has a reasonable belief that the form of identification has been altered, falsified, or is being otherwise used unlawfully to obtain alcoholic beverages. Within twenty-four (24) hours of seizing a form of identification as allowed under the North Dakota Century Code 5-01-08.3, a licensed retailer or an employee of a licensed retailer shall notify law enforcement of the seizure and the law enforcement agency shall take possession of the identification within twenty-four (24) hours after receipt of notice.
  5. Mitigating Factors Considered for Conviction. If an individual is convicted of this section, the court shall consider the following in mitigation:
    - A. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
    - B. Within twelve (12) hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.
  6. Alcohol-Related Emergency Reporting and Immunity. The provisions of N.D.C.C. § 5-01-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

An individual under twenty-one (21) years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one (21) years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.

*(Amended by Ordinance No. 447)*

## **6-207 Revocation of License**

1. Causes for Revocation. If a license is terminated or revoked for cause, the licensee or those claiming under them shall not be entitled to any return or any portion of the license fee previously paid to the City of Beulah. Licenses issued pursuant to this Article shall be revoked for the following causes:
  - A. The death of the licensee;
  - B. The licensee ceases to do business at the licensed location and a permit for change of location has been denied;

- C. The licensee is adjudged bankrupt;
  - D. The licensee is convicted of the violation of any provision of this Article or of a felony under the laws of the United States, the State of North Dakota, or of any other state of the United States;
  - E. The licensee ceases to be a legal bona fide resident and citizen of the State of North Dakota;
  - F. When the license or permit of the licensee from the United States government to sell intoxicating liquor has been terminated or revoked;
  - G. The business of the licensee at the licensed location is conducted in violation of health or sanitary regulation or other ordinances of the City of Beulah, North Dakota;
  - H. The licensee made any false statement(s) in the application for license.
2. Other Causes for Revocation. Such cases hereinbefore described shall not be deemed to be exclusive and such license may be terminated at any time by the City Council of the City of Beulah, North Dakota, and said license revoked for any cause deemed by the City Council to be sufficient cause and justified by reason of public health or public morality. Such termination shall be subject only to review by the courts of the State of North Dakota. When any license is revoked or the licensee voluntarily ceases their business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through them.

**6-208 Special Alcohol Event Permits.**

1. Event Permit. The City Council may, by permit, authorize a qualified alcoholic beverage licensee to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this Section, “qualified alcoholic beverage licensee” shall be a licensee holding a valid license to dispense and sell alcoholic beverages. The fee for the local permit shall be Twenty-Five Dollars (\$25.00). The permit shall not be valid for a period greater than fourteen (14) days and may include Sundays.
2. Application for Event Permit. An alcoholic beverage licensee desiring to conduct an event, public dance, or music festival, wherein alcoholic beverages will be sold, or to sell alcoholic beverages at an event, public dance, or music festival conducted by any other person who has been granted a permit to do so by the City Council, shall make an application for a permit to do so and submit it to the City Council. The following shall be included in the application:
- A. Name of licensee;
  - B. Name of business;
  - C. Mailing address;
  - D. State Alcoholic Beverage license number;
  - E. Name of local licensor;
  - F. Local license number;
  - G. Dates of the event;
  - H. A full description of the special event;
  - I. Description of the demographic, specifically whether individuals under twenty-one (21) years of age will be allowed to attend;

- J. A clear, readable drawing of the proposed event location;
  - K. Statement of at least one entrance, and at least one separate exit;
  - L. Verification that food items will be sold and/or served in an area separate from where alcohol is sold; and
  - M. Comments and recommendation regarding approval from the Beulah Police Department to ensure safety and security.
3. Refusal and Revocation of Permit for Cause. The City Council shall refuse to issue such permit and shall revoke a permit already issued where it appears that:
- A. The permitted site is or is likely to become a public nuisance or detrimental to public morals;
  - B. Alcoholic beverages or controlled substances are being sold or given away except as provided by such permit;
  - C. Any of the ordinances of the City of Beulah or in the laws of the State of North Dakota are being violated; or
  - D. In the sole judgment of the governing body, protests to the issuing of such permit are made, either orally or in writing, of the site for which application for such permit is made to warrant refusal or revocation of such permit as being in the public interest.
4. Violation Penalty. A person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor, in accordance with N.D.C.C. § 5-01-01.1.

*(Added by Ordinance no. 148A; amended by Ordinance No. 333, 391, and 447)*

#### **6-209 Police Power Defined**

This Article is declared to be an exercise of the police power directly affecting and designed to promote the peace, safety, well-being, public health, and public morals of the people of the City of Beulah.

#### **6-210 Unlicensed Public Consumption**

No person shall drink or consume an alcoholic beverage, whether beer, liquor, or wine, on any public way, street, alley, or parking lot, nor in any municipal building, public building, or commercial establishment open to the public not licensed for such purpose. Violation of this section shall be punishable by a Fifty Dollar (\$50.00) fine. Any person who fails to answer to a citation for unlicensed public consumption or to pay the fee specified within thirty days, as required, is guilty of an infraction. Failure to answer to the citation for unlicensed public consumption within the time provided on the citation is an admission of the commission of the unlicensed public consumption violation charged.

*(Amended by Ordinance No. 268 & 451)*

## **6-211 Public Intoxication – Assistance and Medical Care**

1. Intoxication Defined. As used in this section, “intoxicated” means a state in which an individual is under the influence of alcoholic beverages, drugs, or controlled substances, or a combination of alcoholic beverages, drugs, and controlled substances.
2. Assistance of Intoxicated Persons. A peace officer may take any apparently intoxicated individual to the individual’s home, to a local hospital, to a detoxification center, or, whenever that individual constitutes a danger to that individual or others, to a jail. A mental health professional of a local hospital may hold that individual for treatment up to seventy-two (72) hours.
3. Restrictions on Jailing Intoxicated Persons. An intoxicated person may not be held in jail because of intoxication more than twenty-four (24) hours. An intoxicated individual may not be placed in a jail unless a jailer is constantly monitoring the individual and medical services are provided if the need is indicated.
4. Notification of Family. Upon placing the intoxicated individual in jail, or if the individual is admitted to a hospital or detoxification center, upon admission, the peace officer shall make a reasonable effort to notify the intoxicated individual’s family as soon as possible.
5. Costs Recoverable. Any additional costs incurred by the city, county, ambulance service, or medical service provider on account of an intoxicated individual are recoverable from that individual.

*(Amended by Ordinance No. 447)*

## **6-212 No Prosecution for Intoxication**

The provisions of N.D.C.C. § 5-01-05.2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person shall be prosecuted solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

*(Amended by Ordinance No. 447)*

## **ARTICLE III. PEDDLERS AND TRANSIENT MERCHANTS**

### **6-301 Definitions**

1. Peddler

“Peddler” means any person engaged in the selling of personal property by going from place to place or house to house, without permission or invitation from the owner(s) or

occupant(s) of the private residences, or by selling from a vehicle and who carries with him such property for delivery at time of sale; includes the word “hawker(s)”.

2. Transient Merchant

“Transient merchant” means any person, individual, co-partnership, or corporation, either as principal or agent, who engages in, does, or transacts, any temporary or transient business in the state, either in one locality or in traveling from place to place selling goods, wares, merchandise, personal property, and personal services, including, but not limited to, spraying, trimming, or pruning of trees or shrubs, painting or repairing of buildings or structures, and pest or rodent control, who does not intend to become a permanent merchant of such place and who, for the purpose of carrying on such business, hires, leases, occupies, or uses a building, structure, lot, tract, railroad car, or motor vehicle for the exhibition and sale of such goods, wares, and merchandise.

3. Mobile Food Vendors

“Mobile food vendor” shall, for the purposes of this Section, be defined as a person who lawfully possesses and operates a licensed mobile food unit, as licensed through the NDDOH.

4. Mobile Food Unit

“Mobile food unit” shall mean a vehicle-mounted food service establishment designed to be readily movable. “Vehicle-mounted” refers to a movable motor-driven or self-propelled vehicle that can change location and includes pulling an enclosed trailer or similar portable structure.

*(Amended by Ordinance No. 447)*

**6-302 License Required**

No merchant, solicitor, peddler, transient merchant, or mobile food vendor as described in Section 6-301 shall sell or offer for sale in any manner any article without first having obtained a license from the City Council of Beulah to do so, except as follows:

1. Sales of goods or products crafted, grown, baked, carved, knitted, or otherwise made by the person offering said goods for sale, so far as the sale of said commodities is authorized by law;
2. Fundraisers held by service organizations, school organizations, athletic organizations, youth development organizations, veterans organizations, religious organizations or congregations, or any other organization dedicated to the service and uplifting of others;
3. Door-to-door fundraising sales by youth groups, such as the sale of Girl Scout cookies or Boy Scout popcorn;

4. Unorganized operations run by children or youth, such as lemonade stands or car washes, so long as they are neither substantially profitable nor located in a location deemed inconvenient or unsafe by a law enforcement official;
5. Door-to-door food and can drives for the purpose of gathering nonperishable food items to be donated to a local food pantry or shelter;
6. Sales by any person who has had, or one who represents a company which has had, a prior business transaction with the property owner or tenant;
7. Any person distributing or selling religious, political, economic, or educational information via pamphlets, papers, or periodicals in which proceeds are to be used exclusively for religious, charitable, or benevolent purposes;
8. Solicitation of orders for the distribution of regularly published newspapers; or
9. Solicitations or sales conducted by persons who have a permanent residence or permanent place of business in Mercer County, North Dakota.

### **6-303 Licenses and License Fees**

Every applicant, before they shall be entitled to such license, shall pay into the City Treasury a fee in accordance with the following schedule:

1. **PEDDLER LICENSE:**  
License daily fee per person - \$25.00
2. **TRANSIENT MERCHANT LICENSE:**  
License daily fee per person - \$25.00
3. **MOBILE FOOD VENDOR:**  
License annual fee per mobile food unit - \$10.00  
(Amended by Ordinance 451).

### **6-304 Peddling & Transient Merchant License**

1. Application Required. Every person desiring to obtain a license as a peddler or transient merchant in the City of Beulah shall make an application in writing to the City Auditor.
2. Application Requirements. Application for a peddling or transient merchant license shall be made to the City Council and shall show:
  - A. The name of the applicant and all persons associated with him or her in the business or having any interest therein;
  - B. A valid Transient Merchant License number from the North Dakota Attorney General's Office;
  - C. A valid driver's license or identification card issued by North Dakota, another state, or a province of Canada which includes the photograph and the date of birth of the licensed individual;
  - D. The nature of the goods, wares, or merchandise to be peddled;
  - E. The place where such business is to be conducted;
  - F. Dates for which a license is required for business;

- G. The means of travel, whether by foot or by vehicle;
  - H. The present place of business of the applicant;
  - I. The place of residence of the business engaged in by the applicant; and
  - J. Applicant's signature.
3. Issuance. Upon payment of the aforementioned fee and the approval of the City Council of Beulah, the license shall be issued by the City Auditor and shall specify the manner in which applicant will conduct his or her business and the length of time for which it is issued.
4. Proof of Licensure. Any person licensed as a Peddler or Transient Merchant in the City of Beulah shall have the license in immediate possession at all times when engaging in or transacting any business regulated by this chapter. The licensee shall display the license when requested to do so by any court, law enforcement official, peace officer, or consumer. However, a person charged with violating this requirement may not be convicted, fined, or assessed an administrative fee if the license is produced in court or to the arresting officer and if the license was valid at the time of arrest.
5. Standards of Conduct
- A. Individuals with a Peddler Permit, when conducting business in and upon private property, must respect the wishes of owners and occupants of said private property and shall comply with any request from an owner or occupant to vacate the premises immediately;
  - B. No person shall directly or indirectly solicit contributions for any purpose or misrepresentation of his or her name, occupation, financial condition, social condition or residence, and no person shall make or perpetrate any other misstatement, deception, or fraud;
  - C. No peddling or solicitations shall take place upon premises which have posted signs printed with "No Solicitors," "No Trespassing," or the like;
  - D. There shall be no door-to-door sales or solicitations upon any premises before 9:00 a.m. or after 9:00 p.m. Central Time, of any day, other than in instances where an invitation was extended by the owner or occupant of the premises;
  - E. No more than two individuals shall engage in solicitations or sales upon any premises at the same time for the same goods or services;
  - F. No person shall make more than one solicitation call at the same premises for the same goods or services within any consecutive six-month period without a prior invitation to come back to the premises at a later time; this provision shall be construed to prohibit a person, or their employee, agent, or representative from knowingly soliciting the same premises more than once in the aforesaid period; and
  - G. All ordinances of the City of Beulah, statutes of the State of North Dakota, and federal laws must be adhered to at all times.

*(Amended by Ordinance No. 447)*

## 6-305 Mobile Food Vendor License

1. Application Required. Every person desiring to obtain a license as a mobile food vendor in the City of Beulah shall make an application in writing to the City Auditor.
2. Application Requirements. Application for a mobile food vendor license shall be made to the City Council and shall show:
  - A. The name of applicant and all persons associated with him or her in the business or having any interest therein;
  - B. A valid Mobile Food Vendor License number from the North Dakota Department of Health and the date of expiration for such license;
  - C. Date of the last inspection by the NDDOH or a public health unit with whom the NDDOH has a memorandum of understanding;
  - D. If applicable, a copy of the commissary agreement between the applicant and a licensed food establishment;
  - E. A valid driver's license or identification card issued by North Dakota, another state, or a province of Canada which includes the photograph and the date of birth of the licensed individual;
  - F. A list of all driving infractions from the past 12 months;
  - G. A description of the food truck they intend to operate, license plate information for the food truck, proof of insurance coverage for the food truck, and proof of fire and safety inspection for the food truck;
  - H. Proposed locations to park the mobile food unit to make sales;
  - I. A copy of a notarized statement signed by the applicant holding the City of Beulah harmless against claims and litigation for issuing a license;
  - J. A statement by applicant which states applicant's consent to inspection of the equipment and premises on which business is conducted or inventory is stored at any reasonable time by a police officer, health official, or other agent of the City of Beulah or the State of North Dakota; and
  - K. Applicant's agreement to and signature guaranteeing adherence to all ordinances of the City of Beulah, any laws of the State of North Dakota, or any food and safety regulations of the FDA.
3. Health and Safety Regulations.
  - A. The License holder shall comply with all NDDOH and other applicable regulatory agency requirements. The licensee shall display the required state license in a conspicuous location.
  - B. All food, oil, and organic waste must be disposed of at a licensed food establishment with which the license holder has an agreement;
  - C. There must be a designated Person in Charge of food safety with the food truck at all times, as per NDDOH requirements;

- D. The license holder shall ensure that the immediate area around the food truck and the food truck are both clean of garbage, trash, paper, cups, cans, or litter associated with the operation of the food truck;
  - E. The license holder shall be responsible for the maintenance, upkeep, and security of the food truck.
4. Parking and Traffic Regulations.
- A. A food truck may not utilize a drive through window;
  - B. A food truck must be moved from operating location, if on public street or property, and parked in a storage area each night;
  - C. A food truck may only operate between the hours of 6 a.m. to 10 p.m., unless within one hundred fifty feet (150') of a residentially zoned area, in which case it may only operate between the hours of 7 a.m. and 10 p.m. If the food truck is part of a special event that runs outside of those hours, it may operate until the event ends. In addition, a thirty (30) minute allowance for set-up and tear-down is allowed;
  - D. Parking on sidewalk, median, or landscaped area of the Right of Way is not allowed;
  - E. Mobile vending units, when parked on a street, may park only in parallel spaces and should be within one foot (1') of the curb – neither vehicle nor customers may interfere with public access to adjacent parking spots or to driveways or entrances of existing buildings or uses;
  - F. A food truck, when parked on a street, must locate the vending window facing the sidewalk and may not make sales to anyone within a roadway, unless exceptions are made part of a special alcohol event permit where such area is blocked from traffic;
  - G. No food truck shall be parked within thirty feet (30') of an intersection, except as part of a special alcohol event permit, where such area is blocked from traffic;
  - H. A food truck does not have an exclusive right to a location;
  - I. A food truck may not operate in a congested area where such operation might impede or inconvenience the public use of such streets or public way. For the purpose of this item, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced;
  - J. A food truck must obey all state and local parking and traffic regulations;
  - K. Prior to parking on public grounds which are not a street, written approval must be granted by both the Chief of Police and the governing body for the area in which the mobile food unit wishes to operate (i.e. pool board, school board, park board, etc.).
  - L. During an event sponsored by the City of Beulah or any of its governing bodies, food trucks may not park within one (1) block of said event, unless otherwise permitted by the sponsoring agency.

*(Amended by Ordinance No. 451)*

**6-306 Established Businesses Not Subject to Fee**

The provisions of this Article related to transient merchants shall not apply to any individual, partnership, or corporation who or which has heretofore been or shall hereafter have been continuously engaged in their regular line of business in Beulah for a period of one (1) year or more, whether duly licensed or not, and has during such period maintained an established place of business for such purpose; therefore, any person or persons now or hereafter engaging in business or merchandising shall, when so engaged for one (1) year or more, be refunded the license fee in full.

**6-307 Police Officials to Enforce**

The police officers of the City of Beulah are hereby required and directed to suppress the same and to abate any such nuisance or violations which are not exempted or licensed.

**ARTICLE IV. PENALTY**

**6-401 Injurious Acts Not Expressly Forbidden**

Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency and is injurious to public morals, although no punishment is expressly prescribed therefore by this compilation, is guilty of a misdemeanor.

**6-402 Penalty for Violation of Chapter**

Unless a penalty is otherwise specified herein, any person, firm, or corporation violating any of the terms or provisions of this chapter shall, upon conviction, be punished by a fine not to exceed One Thousand Five Hundred Dollars (\$1,500.00), or imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment in the discretion of the Court.

SAVINGS CLAUSE. provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

SEVERABILITY. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed, including, but not limited to, Ordinance No. 105, 121, 125, 130, 148A, 237, 261, 268, 277, 295, 322, 326, 333, 351, 391, 426, and 447.

EFFECTIVE DATE. The Ordinance shall be in full force and effect on January 1, 2023, after its final passage and approval and publication of its title and penalty clause.

DATED this 21<sup>st</sup> day of November, 2022.

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JEFFREY GOOSS  
Mayor

ATTEST:

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HEATHER FEREBEE  
City Auditor

Introduction and First Reading: November 9, 2022

Second Reading: November 18, 2022

Final Passage: November 21, 2022

Publication Date: December 1, 2022

Effective Date: January 1, 2023