

**ORDINANCE NO. \_\_\_\_\_**

An ordinance to amend Grand Forks City Code §§ 21-0201, 21-0205, 21-0214, and 21-0221, 21-0224 to include and add term “canned cocktail,” and to make other miscellaneous changes to clarify and clean up language within Article 2 of Chapter XXI of the Grand Forks City Code for Alcoholic Beverage Control.

**BE IT ORDAINED** by the City Council of the City of Grand Forks, North Dakota, pursuant to its home rule charter, Grand Forks City Code and N.D.C.C. ch. 40-11 that:

**Section 1: Amending Clause to Amend Grand Forks City Code § 21-0201.**

Grand Forks City Code § 21-0201 relating definitions applicable to Article 2 of Chapter XXI of the Grand Forks City Code for Alcoholic Beverage Control is amended to read as follows (the amending language is in bold, with deletions stricken through and additions underlined):

21-0201. – Definitions

For purposes of this article, the following words and phrases shall have the meanings ascribed to them in this section:

- (1) *Alcoholic beverages.* Any liquid suitable for drinking by human beings, which contains one-half (½) of one (1) percent or more of alcohol by volume.
- (2) *Beer.* Any malt beverage containing more than one-half (½) of one (1) percent 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.
- (3) *Canned Cocktails.* A mixed drink or cocktail, the alcohol component of which is primarily composed of liquor that is premixed and packaged by the manufacturer in a sealed container that is not more than sixteen (16) fluid ounces in size and contains more than one-half of one percent of alcohol by volume but not more than fifteen percent of alcohol by volume.**
- ~~(3)~~**(4)** *Consume.* The actual drinking of an alcoholic beverage, whether in its original form or mixed with any other ingredient, for the purpose of consumption.
- ~~(4)~~**(5)** *Interest.* Includes any pecuniary interest in the ownership, operation, management or profits of a retail ~~liquor~~ **alcoholic beverage** establishment, but does not include: bona fide loans; bona fide fixed sum rental arrangements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business or selling or leasing merchandise, fixtures or supplies to such establishment; or any interest of ten (10) percent or less in any corporation possessing a license. A person who receives moneys from time to time directly or indirectly from a license holder,

in the absence of a bona fide consideration therefor and excluding bona fide gifts or donations, shall be deemed to have a pecuniary interest in such retail license. In determining "bona fide," the reasonable value of the goods or things received as consideration for any payment by the license holder and all other facts reasonably tending to prove or disprove the existence of any purposeful scheme or arrangement to evade the prohibitions of this section shall be considered.

- ~~(5)~~(6) *Licensed premises.* The premises on which alcoholic beverages are normally sold or dispensed. Licensed premises includes all areas where alcoholic beverages are routinely stored, displayed, opened or mixed, and all lounges, bars and restaurants where alcoholic beverages are dispensed or such other location or area as authorized by the Grand Forks City Council, and shall be designated by diagram or blueprint which shall be included with the license application or the license renewal application.
- ~~(6)~~(7) *Liquor.* Any alcoholic beverage except beer, ~~and~~ wine and canned cocktails.
- ~~(7)~~(8) *Off-sale.* The sale of alcoholic beverages in original packages for consumption off or away from the premises where sold and off-sale shall occur only at the place designated in such license and not elsewhere, and no opening of the package sold on the premises where sold shall be permitted. Such sale must, in each case, be completed by delivery of the ~~liquor~~ alcoholic beverage sold to the actual purchaser thereof on the licensed premises. However, if a full bottle of wine has been opened and the contents partially consumed on the licensed premises of a restaurant whose gross sales of food are at least thirty (30) percent of the establishment's gross sales on the premises, the person purchasing the wine in conjunction with the purchase of a meal may remove the bottle from the licensed premises if the license holder recorks 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 shall not constitute an off-sale transaction.
- ~~(8)~~(9) *On-sale.* The sale of alcoholic beverages for consumption only on the premises where sold, and subject to the provisions of section 21-0212. An on-sale license shall authorize the license holder to conduct such on-sales only at the place designated in such license and not elsewhere.
- ~~(9)~~(10) *Package and original package.* Any container or vessel containing an alcoholic beverage, which container or vessel is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser. The terms also include a reusable or single use container or vessel, commonly known as a growler, containing no more than sixty-four (64) U.S. fluid ounces for the purposes of off-sale beer sales. The growler shall be corked or sealed by the licensed retailer at the point of

sale. The cork or seal must remain intact until removed from the licensed premise making the sale.

~~(10)~~(11) *Person.* Any individual, firm, corporation, limited liability company, association, club, partnership, limited partnership, limited liability limited partnership, limited liability partnership, society, or any other entity or organization. The term shall also include the singular and the plural.

~~(11)~~(12) *Retail sale.* The sale of alcoholic beverages for use or consumption and not for resale.

~~(12)~~(13) *Sale and sell.* All manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of, and keeping for sale of such alcoholic beverages. The term also includes 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.

~~(13)~~(14) *Service, convenience, or "mini" bar.* A closed container in a hotel guest room with access to the interior of the container restricted by a locking device which requires the use of a key, magnetic card, or similar device.

~~(14)~~(15) *Service, convenience, or "mini" bar key.* The key, magnetic card, or similar device which permits access to the interior of a service, convenience, or "mini" bar.

~~(15)~~(16) *Transfer.* 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 fifty (50) percent or more of the interest in a license holder partnership or stock in a license holder corporation, whether such assignment, sale, exchange or other conveyance occurred in one (1) single transaction or multiple transactions. However, the term "transfer" shall not apply to the following described conveyances:

(A) When an individual possessing 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.

(B) When any corporation possessing a license issued pursuant to the provisions of this article voluntarily dissolves, the license may be issued to any individual shareholder in such corporation who held the 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 the 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 the qualifications of license holder.

- (C) When an individual license holder desires to transfer a license to a corporation in which the license holder is the owner of at least a majority of the outstanding shares of stock in the corporation; provided, however, that such license holder's stock ownership in the transferee corporation does not fall below the majority of the outstanding stock in the corporation without the prior approval of the city council and reapplication for license by the transferee corporation. 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 license holder.
- (D) When a license holder 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 license holder.
- (E) When an individual license holder desires to transfer a license to a blood relative of the first degree, as defined by the North Dakota Century Code, or to a grandchild of the individual license holder if the grandchild's parents are deceased. For purposes of this subsection only, a similar conveyance of shares of stock in a license holder corporation shall not be considered a "transfer" if the person seeking to convey shares of stock owns at least a majority of the outstanding shares of stock in the corporation or is seeking to convey shares or stock to a blood relative of the first degree as defined by the North Dakota Century Code, or to a grandchild if the grandchild's parents are deceased.
- (F) When a majority of the entire city council adopts a resolution and declares the conveyance not to be a transfer for the purposes of this article.

~~(16)~~(17) *Twenty-one years of age* means it is after 8:00 a.m. on the date twenty-one (21) years after a person's date of birth.

~~(17)~~(18) *Wine*. The alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four (24) percent alcohol by volume.

**Section 2: Amending Clause to Amend Grand Forks City Code § 21-0205 for Class 2 Off-sale alcoholic beverage licenses.**

Grand Forks City Code § 21-0205 relating to Class 2 Off-sale alcoholic beverages license is amended to read as follows (the amending language is in bold, with deletions stricken through and additions underlined – unless specifically provided herein, all other terms, conditions and provisions of said license, as described in Grand Forks City § 21-0205 is unchanged by this amendment):

21-0205. Same—Classifications

The following classes of retail licenses are hereby established:

\* \* \* \*

III. Class Descriptions and Requirements

*Class 2. Off-sale alcoholic beverages.* The Grand Forks City Council may issue an unlimited number of off-sale alcoholic beverage licenses to permit the sale of alcoholic beverages off-sale. A license holder possessing such a license may, in addition to off-sales of **alcoholic beverages, liquor, wine, and beer**, be permitted to provide to their customers, free of charge, samples of alcoholic beverages as a promotion for the sale of the same so long as each sample does not exceed **two (2) ounces per serving**, ~~one (1) ounce in volume per customer.~~

**Section 3: Amending Clause to Amend Grand Forks City Code § 21-0205 for Class 4 Food and beverage establishment licenses.**

Grand Forks City Code § 21-0205 relating to Class 4 Food and beverage establishment license is amended to read as follows (the amending language is in bold, with deletions stricken through and additions underlined – unless specifically provided herein, all other terms, conditions and provisions of said licenses as described in Grand Forks City § 21-0205 are unchanged by this amendment):

21-0205. Same—Classifications

The following classes of retail licenses are hereby established:

\* \* \* \*

III. Class Descriptions and Requirements

*Class 4. Food and beverage establishment.* The Grand Forks City Council may issue an unlimited number of food and beverage establishment licenses to permit the sale of alcoholic beverages on-sale. Such a license may be issued only upon the following conditions:

\* \* \* \*

- (C) No sale of **alcoholic beverages** ~~liquor, beer or wine~~ may be made to a customer who does not also order at least one (1) food course from the menu unless no more than fifty (50) percent of the annual gross income of the establishment is derived from the sales of alcoholic beverages. Upon renewal of any class 4 license, the applicant shall certify, under penalty of perjury, the total annual gross sales at the licensed premises and the total annual gross sales of alcoholic beverages for the most recent calendar year. The city may, in its discretion, require certification, under penalty of perjury, by a certified public accountant retained and paid by the license holder of the total annual gross sales at the licensed premises and the total gross sales of alcoholic beverages for the most recent calendar year.

**Section 4: Amending Clause to Amend Grand Forks City Code § 21-0205 for Class 5 Hotel-motel alcoholic beverage license.**

Grand Forks City Code § 21-0205 relating to Class 5 Hotel-motel alcoholic beverage license is amended to read as follows (the amending language is in bold, with deletions stricken through and additions underlined – unless specifically provided herein, all other terms, conditions and provisions of said licenses as described in Grand Forks City § 21-0205 are unchanged by this amendment):

21-0205. Same—Classifications

The following classes of retail licenses are hereby established:

\* \* \* \*

*Class 5. Hotel-motel alcoholic beverages.*

\* \* \* \*

- (4) A class 5 license allows the sale of alcoholic beverages to the hotel or motel guests through the operation of a service, convenience or "mini" bar located in the guest rooms, subject to the following conditions:
- (A) All service, convenience, or "mini" bars shall be located only in guest rooms.
- (B) All service, convenience, or "mini" bars shall be designed to prevent access to alcoholic beverages to all persons not having a key. The access to and/or issuance of service, convenience, or "mini" bar keys must be limited to the license holder, an employee of the license holder, or a registered adult guest of the hotel. The

service, convenience, or "mini" bar key shall be different from the hotel guest room key, access by or issuance to persons not of legal drinking age shall be prohibited at all times.

- (C) Only the following alcoholic beverages may be sold out of the service, convenience or "mini" bar:
- (i) Liquor in containers of not less than one (1) ounce nor more than two (2) ounces;
  - (ii) Wine in containers of not more than thirteen (13) fluid ounces;~~and~~
  - (iii) Beer in containers of not more than twelve (12) fluid ounces;~~;~~  
and
  - (iv) Canned cocktails in containers of not more than twelve (12) fluid ounces

**Section 5: Amending Clause to Amend Grand Forks City Code § 21-0214.**

Grand Forks City Code § 21-0214 for Area Limitation is amended to read as follows (the amending language is in bold, with deletions stricken through and additions underlined):

21-0214. – Area limitation.

No license shall be effective beyond the location and area identified in the license for which it was granted. Sales of alcoholic beverages, ~~beer or wine~~ by delivery pursuant to Grand Forks City Code section 21-0224 shall be treated as sales that occurred within the location and area identified in the license for which it was granted.

**Section 6: Amending Clause to Amend Grand Forks City Code § 21-0221.**

Grand Forks City Code § 21-0221 for Restrictions on sale, service or dispensing of alcoholic beverages is amended to read as follows (the amending language is in bold, with deletions stricken through and additions underlined):

21-0221. – Restrictions on sale, service or dispensing of alcoholic beverages.

\* \* \* \*

- (2) It shall be unlawful for any license holder, individually or by or through any officer, employee, or agent, to:

- (A) Sell, offer to sell or deliver to any person an unlimited number of alcoholic beverages for a fixed price or an "all you can drink" basis except, however, this prohibition shall not apply to:
- i. Private functions or events not open to the general public such as weddings, receptions, private dances, fundraising functions or meetings;
  - ii. Occasions when alcoholic beverages are included with the purchase of a meal;
  - iii. Occasions when alcoholic beverages are provided as part of a contract between a hotel or a multi-use establishment and another organization for the holding of a function, event, meeting, convention or trade show at such hotel or multi-use establishment;
  - iv. Events or functions involving the tasting of wines, cordials, ~~or~~ beers or canned cocktails where the individual servings do not exceed two (2) fluid ounces; or
  - v. Civic functions or events where alcoholic beverages are incidentally provided or available.

**Section 7: Amending Clause to Amend Grand Forks City Code § 21-0224.**

Grand Forks City Code § 21-0224 for Delivery of alcoholic beverages prohibited; exception is amended to read as follows (the amending language is in bold, with deletions stricken through and additions underlined):

21-0224. – Delivery of alcoholic beverages prohibited; exceptions.

\* \* \* \*

- (B) Exception: A class 1 (general on- and off-sale alcoholic beverages), class 3 (off and/or on-sale of beer and wine), class 4 (food and beverage establishment), class 16 (brewer taproom) and class 17 (manufacturing distillery — satellite restaurant location) licensed retailer may make deliveries of sealed alcoholic beverages, beer, ~~or~~ wine, or canned cocktails subject **to the type of the alcoholic beverages that may be sold by the licensed retailer under the retailer's alcoholic beverage license and subject** to the following requirements and limitations:
- (1) Deliveries of alcoholic beverages, beer, ~~or~~ wine, or canned cocktails is only permitted to customers purchasing and being

delivered food or meals prepared by the licensed establishment on its premises.

- (2) The licensed establishment must operate a restaurant, as defined in Grand Forks City Code section 21-0701 in which the licensed premises has a designated and permanent kitchen where cooks and/or chefs fully prepare and cook meals and food, and the licensed premises employees then serve such prepared and cooked meals for consumption by its patrons within the licensed premises, including multi-course meals of steak, fish, seafood and other similarly menued main courses as well as hors d'oeuvres and deserts.
- (3) The licensed establishment must have a seating capacity for the consumption of meals and food upon the licensed premises of at least forty (40) persons and the total annual gross sales of meals and food consumed within the licensed premises is at least sixty (60) percent of total annual of gross sales of meals and food of the licensed premises (both consumed within the licensed premises and delivered under this section). Upon license renewal, the licensed establishment shall certify, under penalty of perjury, its total annual gross sales of meals and food consumed within the licensed premises and its total annual of gross sales of meals and food of the licensed premises (both consumed within the licensed premises and delivered under this section).
- (4) Only employees of the licensed establishment over the age of twenty-one (21) having completed server training may make delivery of the sealed alcoholic beverages, beer, ~~or~~ wine **or canned cocktails**.
- (5) Any vehicle used to make deliveries, as permitted by this section, shall have the name of the licensed establishment painted or attached in contrasting color on the side of such delivery vehicle with such letters being no less than two (2) inches high and of corresponding proportionate width.
- (6) No third-party delivery services or agents are permitted to make delivery of alcoholic beverages, beer, ~~or~~ wine **or canned cocktails**.
- (7) Individuals that make order and/or receive delivery of sealed alcoholic beverages, beer, ~~or~~ wine **or canned cocktails** with prepared food or a meal must be at least twenty-one (21) years of age.

- (8) For each delivery, the licensed establishment shall secure a receipt from the purchaser with the following information contained thereon:
- (a) The name of the licensee making the sale.
  - (b) The name and age of the purchaser.
  - (c) The name and age of the person making the delivery.
  - (d) The date of the delivery and the quantity and description of the alcoholic beverage, beer, ~~or~~ wine or canned cocktails and the description of the meal and food delivered.
  - (e) The signature of the recipient of the beverage so sold and delivered.
  - (f) It shall be the responsibility of the licensed establishment to retain the above prescribed receipt which shall be open to inspection by the police department. The licensed establishment shall be fully responsible for all deliveries made by and for the licensee.
- (9) Delivery of sealed alcoholic beverages, beer, ~~or~~ wine or canned cocktails pursuant to this section may only occur if the order is received between the hours 11:00 a.m. and 11:00 p.m. on days the licensed premises may dispense on-sale alcoholic beverages, except no deliveries shall be permitted on Christmas Day and orders must be received by 5:00 p.m. on Christmas Eve.
- (10) The following quantity limits are hereby imposed upon the sale and delivery of all sealed alcoholic beverages, beer, ~~or~~ wine or canned cocktails for any single delivery:
- (a) No more than 72 U.S. fluid ounces of beer.
  - (b) No more than 750 milliliters of wine.
  - (c) No more than 32 U.S. fluid ounces of any mixed drink or cocktail.
  - (d) No more than 36 U.S. fluid ounces of canned cocktails.**
  - ~~(d)~~**(e)** No more than two items described in Grand Forks City Code section ~~21-0224(B)(11)(a)~~ **(e) 21-0224(B)(10)(a)-(d)** may be included in any single delivery.

- (11) Sealed alcoholic beverages, beer, ~~or~~ wine or canned cocktails sold in this manner shall be deemed to have been consumed on the licensed premises.
- (12) Nothing in this section is intended to waive the application of any state or local laws regarding open containers or the consumption of alcoholic beverage in public parks, public streets or alleys, or other public right-of-way.

**Section 8: Effectivity**

This ordinance shall be in full force and effect after its final passage and approval as provided by law.

\_\_\_\_\_  
 Brandon Bochenski, Mayor  
 Dated: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
 Maureen Storstad, City Auditor  
 Dated: \_\_\_\_\_  
 Introduction and first reading: \_\_\_\_\_  
 Public Hearing: \_\_\_\_\_  
 Second reading and final passage and approval: \_\_\_\_\_  
 Approved: \_\_\_\_\_  
 Published: \_\_\_\_\_