

ORDINANCE NO. 2019-003

AN ORDINANCE AMENDING AND RE-ENACTING PARTICULAR SECTIONS OF THE CITY CODE OF THE CITY OF KILLDEER, NORTH DAKOTA AS HEREINAFTER SET FORTH

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

Section 1: Section 1.0605, entitled "Conveyance, Sale, Lease or Disposal of Real Property" is hereby amended and re-enacted as follows:

1.0605(A) Real property belonging to the municipality shall be conveyed, sold, leased or disposed of only as approved by a two-thirds vote of all members of the governing board. Instruments affecting such conveyance, sale, lease or disposal shall be valid only when duly executed by the mayor (or president of the Board of City Commissioners) and attested by the City Auditor. It shall be at the discretion of the governing body as to whether or not there shall be advertisement for bids for such conveyance, sale, lease or disposal; whether or not advertisement shall be made in other states of the fact that certain real property is available for such disposition; and whether or not sale shall be made at a public auction; such decision by the governing body to be made by majority vote of the members present. Bids for the purchase of lease for real property belonging to the municipality, whether or not advertisement therefore has been made, shall be directed to the governing body and submitted to the City Auditor, who shall present any and all such bids to the governing body at its next regularly scheduled meeting.

1.0605B RELATING TO THE SALE OF RECAPTURED LOTS. A lot located within the City which is obtained by the City because of delinquent taxes and/or special assessments may not be resold to such delinquent previous owner until after the taxes and/or special assessments then due have been paid to the City by the delinquent previous owner. If the delinquent taxes and/or special assessments are not paid by the delinquent previous owner, the city may refuse to sell to the delinquent previous owner and may sell, convey, dispose of, or lease the City lot as provided by State law.

1.0605(C) TAXES AND/OR SPECIAL ASSESSMENT PAYMENT STATUS. A purchaser of a property obtained from the City must at all times within the three (3) year period following the purchase maintain current on the payment of taxes and/or special assessments for the property purchased. Any delinquent account of taxes and/or special assessments within the three (3) years following purchase shall be forfeited to the City pursuant to the tax title repossession process.

Section 2: Section 5.0604, entitled "STOPPING – PARKING – NOT OBSTRUCTING TRAFFIC" is hereby amended and re-enacted as follows:

5.0604(A) STOPPING - PARKING - NOT OBSTRUCTING TRAFFIC. No person shall park or leave standing on any public street or highway in the city any vehicle for a period of more than 48 consecutive hours, provided this section shall not include any area where a shorter time is provided for parking, nor shall this section be construed to permit parking for a longer time than is provided in such areas.

The Superintendent of Streets or street commission is hereby authorized to determine and designate by proper signs places in which the stopping, standing, or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

When official signs are erected at hazardous or congested places as authorized herein, no person shall stop, stand, or park a vehicle in any such designated place contrary to the restriction set forth on said sign.

5.0604(B) In this ordinance, unless the context of subject matter otherwise requires:

1. "Park" when prohibited, means the standing of a semi-truck, semi-trailer, or truck whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

2. "Semi-trailer" includes every vehicle of the trailer type so designed and used in conjunction with Semi-truck that part of its own weight and that of its own load rests upon or is carried by a truck, except that it does not include a "house-trailer" or "mobile

trailer".

3. "Semi-truck" includes every vehicle of the trailer type so designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

4. "Trucks" include every vehicle of the type: single axle, tandem axle, and triple axle, used to haul a product. This is not limited to farm product but also to include commercial and industrial commerce products. Standard "pick-up" trucks are not included in this classification.

5. Parking of commercial trucks and truck vans, semi-tractors and/or trailers, farm equipment, wheel loaders, excavators and non-recreational trailers or commercial vehicles shall be prohibited except when such vehicles and/or trailers are being used for the purpose of development, improvement, service or demolition on the adjacent site and shall be allowed to park there for only the duration of the work being done.

6. Pickup pulled stock trailers are allowed a 24-hour time limit for parking on residential streets.

7. Furthermore, campers, boats, and other recreational vehicles or trailers for such may be parked upon the public streets between April 1 and October 31.

8. A semi-truck, truck or school bus may park on a street, avenue, or highway within the City of Killdeer when:

1. Parking for delivery, pick up of material and merchandise or, medical service.
2. Owned, leased, or operated by the City of Killdeer
3. Owned or operated by power companies and telephone companies franchised in Killdeer.
4. School bus is owned by Killdeer School
5. Owned or operated by any contractor or material man hired by the City of Killdeer and while engaged in the repair, maintenance, or construction of streets, street improvements, street utilities, or other city work.

6. Mail trucks

9. Commercial trucks or truck vans, semi tractors and/or trailers, and other heavy equipment are prohibited from traveling on any residential street with city limits.

10. Any violation of this ordinance shall be deemed a nuisance. Any person, firm, or corporation violating any provisions of this ordinance shall be guilty of an infraction and subject to a fine of \$100.00 for each violation.

Section 3: Section 7.0302, entitled "Accumulations of Refuse Prohibited" is hereby amended and re-enacted as follows:

7.0302 ACCUMULATION OF REFUSE PROHIBITED

No person shall permit or suffer to accumulate in or about any yard, lot, place or premises; or upon any street or sidewalk, adjacent to or abutting upon any lot, block or place, or premises owned and occupied by him, or for which he may be agent within the City limits, any and all refuse, or rubbish, as those terms are defined herein, nor suffer such street, sidewalk, yard, lot, place or premises to be or remained in such condition. If after receiving a written warning from the City, as delivered by a member of the Killdeer Police Department if the recipient is a resident of Killdeer, or by certified mail with delivery confirmation if living outside the City of Killdeer, a person continues to violate or violates again the provisions of this section, such conduct shall constitute a violation of this Chapter, and shall be punishable by a fine in the amount of One hundred dollars (\$100.00), as described below in 7.0312.

Section 4: Section 9.0501, entitled "Liquor Licenses" is hereby amended and re-enacted as follows:

ARTICLE V. LIQUOR

9.0501 Definitions.

1. "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half (½) of one (1) percent or more of alcohol by volume. Alcohol shall mean neutral spirits distilled

at or above one hundred ninety (190) degree proof, whether or not such product is subsequently reduced, for non-industrial use.

2. "Beer" shall mean any malt beverage containing more than one-half ($\frac{1}{2}$) of one (1) percent of alcohol by volume.

3. "Liquor" shall mean and include any alcoholic beverage except beer and wine.

4. "Person" shall mean and include any individual, firm, corporation, association, club, co-partnership, society, or any other organization; and shall include the singular and the plural.

5. "Sale" and "sell" shall mean all manner or means of furnishing alcoholic beverages, including the sale, exchange, barter, disposition of, and keeping for sale of such alcoholic beverages.

6. "Package" and "original package" shall mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.

7. "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.

8. "Retail sale" shall mean the sale of alcoholic beverages for use or consumption and not for resale.

9. "Off-sale" shall mean the sale of alcoholic beverages in original packages for consumption off or

away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises. If a full bottle of wine has been opened and the contents partially consumed, a licensee whose gross sales of food are at least thirty (30) 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 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 is not an off sale of wine and is permitted without an off-sale license.

10. "On-sale" shall mean the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

11. "Wine" shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar, or such beverage fortified with brandy, and containing not more than twenty-four (24) percent alcohol by volume.

12. "Free Sample" shall mean the gratuitous dispensing of liquor otherwise offered for sale by the holder of an Off-sale license. Free Samples may not be in an amount exceeding three ounces (3oz) per patron per day; and must be consumed inside licensed premises.

9-0502 License Required

No person shall sell at retail within the City limits of this City any alcoholic beverage without first having obtained license therefore as herein provided.

9-0503 License - Term of

1. All licenses issued hereunder shall be for a period of not more than one year and shall expire on the 31st day of December in each year. Where a license is granted for a period less than a year any subsequent renewal thereof must be made for the full annual term.

2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees therefore shall be as follows:

a. If the term be for three months or less, the license therefore shall be 25% of the annual license fee.

b. If the term be for more than three months and less than six months, the license fee therefore shall be 50% of the annual license fee.

c. If the term be for more than six months but less than nine months, the license fee therefore shall be 75% of the annual license fee.

d. For any term in excess of nine months, the full annual license fee shall be paid.

9-0504 License - Classes of

1. Off sale beer and liquor license at an annual fee of \$1,100.00

2. On and off sale beer and liquor license at an annual fee of \$1,300.00

3. Off sale beer only license at an annual fee of \$650.00

4. On sale beer and wine license at an annual fee of \$900.00

5. On sale beer and liquor license for Hotels/Motels at an annual fee of \$ 1,500.00

6. Club or lodge, which serves alcoholic beverages no more than fifty (50) days out of the annual year, may obtain an on-sale beer and liquor license at an annual fee of \$250.00

9-0505 License - Qualifications For

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

1. Applicant, if an individual, must be a citizen of the United States, State of North Dakota, and be a person of good moral character.

2. If applicant is a corporation, the manager of a licensed premises and the officers, directors and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the North Dakota Secretary of State.

3. If applicant is a co-partnership, all the members must be citizens of the United States and residents of North Dakota for a period of more than one (1) year prior to the date of application and be persons of good moral character.

4. Applicant or manager must not have been convicted of a felony.

5. Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.

6. Applicants must not be delinquent in the payment of any property taxes or special assessments.

7. Taxes or special assessments on the property for which an application for a license is made must not be delinquent.

8. If applicant's place of business is to be conducted by a manager or agent, said manager or agent must be identified and must possess the same qualifications as required of the licensee.

9. If the applicant's place of business is not yet constructed or purchased, or if the applicant's place

of business is not within city limits but an annexation application is pending, an advance license may be granted in accordance with all other terms of this Article that will be contingent upon the place of business being constructed or purchased or that will be contingent upon annexation, whatever the case may be. If an advance license is issued, it shall be counted as a license issued for the purposes of determining the number of available licenses under Section 9-0508. If the sale or annexation is not completed within twelve (12) months, or the building permit for the property is not obtained within six (6) months of the issuance of the advance license, it shall be automatically withdrawn. If the advance license is withdrawn due to expiration of time, the applicant shall have full rights to re-apply. Upon completion of the purchase, construction, or annexation, an updated application shall be made to ensure all requirements are met. The cost of this advance license shall be the non-refundable annual cost of the class of license applied for and based on the term as set out in Section 9-0503.

10. If the license application is otherwise approved, Applicant must provide the City Auditor proof that all employees have attended server training, no later than 90 days following issuance of the license. If any new employees are brought on during the year, Applicant is under a continuing obligation to provide proof of server training for those new employees within 90 days the employee's date of hire.

II. The following qualifications must be shown for the following classes of licenses:

1. A license for hotels/motels shall only be available to those hotels or motels that have a minimum of thirty (30) guest rooms. The license will only pertain to a specified room that has the sole purpose of being a lounge or restaurant and is

physically attached to the rest of the hotel or motel. The hotel or motel must be fully staffed with twenty-four (24) hour or on-call front desk reception, along with daily maid service. The holder of a Class A license may not hold an off-sale license at the same licensed premises.

2. A license for restaurants shall only be available to those restaurants that have a minimum inside seating capacity of thirty (30) guests at one (1) time. The food sales must be equal to or greater than fifty (50) percent of the total gross sales of the restaurant. The City may, at its discretion, require certification of any statement of sales by the licensee by a CPA retained and paid by the license holder.

9-0506 License - Application For

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

1. The name and address of the applicant and proposed manager, if any; if the applicant is a co-partnership, the name and address and place of residence of each member of said co-partnership; if the applicant is a corporation, the name and address of the officers of the corporation and the manager of the licensed premises.

2. Whether the applicant is citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a corporation, the date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated, and if such corporation

is a subsidiary of any corporation, the name of the parent corporation.

3. The legal description and the address of the premises for which license is sought.

4. The date on which the applicant acquired title to the premises sought to be licensed, and if the applicant does not have title to said premises, the name and address of the owner of the premises together with a copy of the applicant's lease, if written, under which he holds possession of said premises; if the lease is unwritten, the owner of the premises must file his written consent to the proposed issuance of the license to the applicant.

5. Whether there are any delinquent taxes or special assessments against the premises sought to be licensed.

6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the applicant first began to operate.

7. Whether the applicant has ever had a license revoked or canceled by any municipal, state or federal authority, and if so, the date of such cancellation, the place and authority canceling same, and the reason for such cancellation.

8. Whether the applicant has ever been convicted for the violation of any law of the United States or of any state, or for the violation of any local ordinance, with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names and places, and courts, in which said convictions were had.

9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation, and the reasons assigned therefore.

10. Whether the applicant has ever been convicted of any crime other than stated in subsections (8) and (9) hereof, in this state or any other state, or under any federal law, and if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passed, and the court in which convicted.

11. The name and address and the place of residence for a period of one year prior to the date of application of any person who will have charge, management, or control of the establishment for which license is sought.

12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures, or equipment in the premises for which license is sought, and if so, the name and address of such person, together with a statement of the interest so held.

13. Whether the applicant has any interest whatsoever, directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State of North Dakota, and if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, or within the borders of the United States.

14. The occupations which the applicant has followed during the past five years.

15. The names and addresses of at least three business references.

16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.

17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.

18. The classification of license applied for.

19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized, and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the City Commission a list of the members belonging to such lodge or club.

20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of this City or of the State of North Dakota.

21. Such other and further information as the City Commission may from time to time require.

9-0507 License - Applicant Fitness

The chief of police or such other person or officer as may be designated by the City Commission shall, upon the filing of an application, investigate the facts as stated in the application and the character,

reputation and fitness of the applicant, and shall report on said matters to the City Commission

9-0508 License - Limit to Specific Premises

Each license shall be valid only for the specific premises licensed.

9-0509 License - Limit of Number

There shall be no limit to the number of licenses issued under this Article. The decision to issue any available license under this section shall be in the sole discretion of the City Commission.

9-0510 License - Location of

No license shall be issued or transferred to any person, firm, or corporation to engage in the sale of beer or alcoholic beverages within the City without approval as to the location of said licensed business by the City Commission except for renewals of existing licenses. The application for approval shall be in writing filed with the City Auditor. The City Commission shall in its sole discretion determine if said location is in harmony with the public interest and welfare of the community, and shall consider among other things the following factors:

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

10. Interference with neighboring property.

11. Public convenience and necessity.

9-0511 License - Posting of

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

9-0512 License - Transfer Of

A license issued under this Article shall only be transferable under the following conditions:

1. If the license holder is moving locations, the license holder may apply to the City Commission to move the license from the current location to the new location. This shall not have an effect on any limit on the number of licenses available unless it is in conflict with the number available for the area surrounding the new location. The level of offenses under Section 9-0525 of these ordinances shall transfer with the license.

2. If the license holder is selling the licensed premises, the license holder and the purchaser of the property may apply to the City Commission to allow the license may stay with the licensed premises if the purchaser meets all of the requirements set out in this Article, excluding those for which the licensed premises has been "grandfathered in". However this shall not have an effect on any limit on the number of licenses available. Any transfer of a license will be subject to the review of the City Commission and the City Commission shall have sole discretion in determining whether or not to grant the transfer.

9-0513 License Fees - Disposition Of

All license fees collected under this Article shall be transferable to the treasurer of this City and credited to the general fund of the City.

9-0514 Hours of Time of Sale

No holder of a license under this Article shall sell, deliver, give away, serve, permit to be sold, served or consumed on a licensed premises, any alcoholic beverages between 1:00 AM and 11:00 am on Sundays, or between the hours of 1:00 AM and 8:00 AM, on all other days of the week, or on Christmas Day, or after 6:00 p.m. on Christmas Eve or on any day specifically prohibited by State Law. In addition, a person may not provide off sale after 1:00 A.M. on Thanksgiving Day. A person who violates this ordinance is guilty of a Class A misdemeanor.

9-0515 Licensee's Responsibility

Every licensee is hereby made responsible for the conduct of his place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person, nor shall any intoxicated person be permitted to remain upon the premises.

9-0516 Persons Under Twenty-One Years of Age Prohibited from Entering Licensed Premises - Penalty - Exceptions

Any person under twenty-one (21) years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold, dispensed, or displayed, except a restaurant when accompanied by a parent or legal guardian, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a violation of this ordinance and shall, A

person who violates this ordinance is guilty of a Class B misdemeanor which is an/or30 days in jail.

9-0517 Street Sales Consumption and Possession Limited

Except as allowed by a special permit issued by the City Commission, the sale or consumption of alcoholic beverages or the possession of an open container holding alcoholic beverages upon or across any street, alley, or public way is prohibited.

Anyone found to have violated this ordinance must pay a fee of two hundred fifty dollars (\$250.00).

9-0518 Premises, Equipment of

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

9-0519 Purchase from Licensed Wholesaler

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

9-0520 Toilets Required

The premises where On-sale License is granted must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and

kept in a clean and sanitary condition. The On-Sale License may be revoked when the foregoing requirements, or any other health ordinance or regulation, is not, at all times, strictly observed

9-0521 Deliveries - Off Licensed Premises

1. It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer or alcoholic beverages to make, or cause to be made any deliveries outside of the licensed place of business of beer, liquor or other alcoholic beverages to any purchaser or prospective purchaser.

2. It shall be unlawful for any person, firm or corporation to deliver by foot, carrier or motor carrier, any beer, liquor or alcoholic beverage, to any person within the City limits provided however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.

9-0522 Termination or Revocation of Licenses

1. Licenses issued pursuant to this article shall be deemed canceled and revoked and terminated upon the happening of any one or more of the following contingencies:

a. The death of the licensee, unless upon application to the governing body by the personal representative or administrator of the decedent's estate, the governing body shall consent to the carrying on of the business by the person representative.

b. When the licensee ceases business at the location licensed, unless a new location has been approved.

c. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this Article.

d. When the license or permit of the licensee from the United States Government or the State of North

Dakota to sell alcoholic beverages at the location licensed has been terminated or been revoked.

2. License issued pursuant to this ordinance may, in the discretion of the City Commission, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:

a. When the licensee has been convicted of violating any of the provisions of this Article.

b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the City.

c. When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager of the licensee be a corporation, be convicted in district court of the City of drunkenness or disorderly conduct, of if any appeal be taken from such conviction then when such conviction be sustained by the higher court or courts.

3. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and such license may also be canceled and revoked or suspended at any time by the City Commission for any cause deemed by said City Commission to be sufficient cause and justified by reason of public health or public morals. Such termination shall be subject only to review by the courts of the State of North Dakota.

4. When any license is terminated or revoked for cause, or the licensee voluntarily ceases his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

9-0523 Entertainment

1. No live performances are permitted on a licensed premise which involve the removal of clothing, garments or any other costume. Such prohibition does not include the removal of head wear or foot wear or

the incidental removal of a tie, suit coat, sport coat, jacket, sweater or similar outer garments. Incidental removal for purposes of this section shall mean the removal of a garment or article of clothing which is not a part of the act or performance.

2. No live entertainment on a licensed premise shall contain

(a) The performance of acts or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(b) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals by the actor or another;

(c) The actual or simulated displaying of nude or partially denuded human figures which shall mean less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernible turgid state even if completely and opaquely covered.

3. It shall be the duty and responsibility of the person or entity as an owner or manager of an establishment to insure compliance with this section. The failure to comply with this section shall subject the owner or manager to penalties as provided by law.

4. If any section, subsection, sentence or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

5. Penalty. Each day a person or entity permits or participates in activity prohibited by this ordinance is to be considered a separate offense. Each offense shall subject the guilty person to the following penalty:

(a) A person, or entity as an owner or manager of an establishment licensed pursuant to this Article, who is guilty of permitting a performance prohibited by this ordinance in his establishment may be subject to the following penalties:

(i) A maximum fine of Five Hundred Dollars (\$500.00);

(ii) Termination, revocation or suspension of the license.

(b) A person who is guilty of participating in a performance prohibited by this ordinance may be sentenced to a maximum fine of Five Hundred Dollars (\$500.00).

9-0524 Special Permit

The City Commission may by special permit authorize an on-sale alcoholic beverage licensee to engage in the sale or dispensation of alcoholic beverages at special events on such premises as may be designated by such permit. Application shall be made on forms supplied by the City Auditor's Office. The special permit shall be subject to such rules, regulations and conditions as the City Commission may establish. All applicants must possess a liquor license. The fee for such local special permits shall be twenty-five dollars (\$25.00), and such permits shall not be valid for a period greater than two (2) days and may include Sundays. The City Commission may establish restrictions on the hours of the permit. The City Commission may establish restrictions on the hours of the permit. All applicants for such special event permit shall provide, at the applicant's expense, police for the event for the purpose of restricting the sale or access to alcoholic beverages to persons under the age of 21 and to insure compliance with all City ordinances and state law. The city police chief shall determine the number, if any, of peace officer, deputy sheriff or licensed private security officers needed to police the event properly. The person conducting the event, before it is held, shall pay to the sheriff, city, or licensed private security provider

the expense of any police officer, deputy sheriff, or licensed private security officer required for the proper policing of the approved special event and no special event may be permitted to proceed unless the officer or officers are present and the fees are paid. The holding of a special event without giving notice to the peace officer of the city, and without making provision for policing of the special event is unlawful. No person, directly or indirectly interested or concerned in the giving, holding, or conducting of a special event or connected with the person conducting the same, is eligible to appointment under this section as a special officer.

9-0525 Penalties

Any person, firm, corporation or association, violating any of the provisions of this article shall upon conviction thereof, be subject to a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00); and in addition to which all powers, rights and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with this article.

9-0526 Revocation and Suspension by City Commission

1. Review of License. The City Commission may review the status of any license issued pursuant to this Chapter and take appropriate action against the licensee pursuant to this section. Suspension and Revocation for Cause. Any license issued pursuant to this Article may be revoked or suspended for cause by the City Commission, which cause may include, among other grounds, the following:

- a. When a licensee is adjudged bankrupt.
- b. When a licensee has made any false statement or statements in an application for the issuance of such license.
- c. When the licensee or, in the case of a corporation or other entity, manager of a licensee has

been convicted of a violation of any felony crime under the laws of the United States or of any state.

d. When the licensee or, in the case of a corporation or other entity, manager of a licensee ceases to be a legal, bona fide resident and citizen as required by this chapter to be eligible for a license.

e. When the license or permit of the licensee from the United States government or from the state to sell alcoholic beverages at the location licensed has been terminated or has been revoked.

f. When the business of the licensee at the location licensed has been conducted in violation of the health or sanitary regulations of the city or of the state.

g. When the licensee, if an individual, or one (1) of the partners if the licensee is a partnership, or one (1) of the officers or managers if the licensee is a corporation, is convicted of drunkenness, disorderly conduct or a violation of any law of the United States or of any state (including driving under the influence of intoxicating beverages or illegal drugs) or if an appeal is taken from such conviction, then when such convictions is sustained by the higher court or courts.

h. When the licensee or the agent or employee of the licensee has violated any local ordinance or state law with regard to the manufacture, distribution or possession of alcoholic beverages.

i. When in the opinion of the City Commission, the licensee has conducted business or permitted business to be conducted in a disorderly manner or in a manner that is dangerous or detrimental to the public welfare and morals.

2. Penalty Against Licensee for Ordinance Violations. Any license issued pursuant to this Chapter may be suspended or revoked by the City Commission if a licensee violates any of the provisions of this Chapter. Any licensee who has violated any provisions of this Chapter shall be

subject to the following penalties in addition to possible license revocation:

a. First Offense: One thousand dollar (\$1,000.00) administrative penalty.

b.

Second Offense: Two thousand five hundred-dollar (\$2,500.00) administrative penalty, plus one (1) day suspension of alcoholic beverage license. Said suspension shall be served within seven (7) days (not including weekends and holidays) after notification of finding of guilt. The date shall be reported to the chief of police prior to serving the suspension.

c.

Third Offense: Five thousand dollar (\$5,000.00) administrative penalty, plus a three-day suspension of alcoholic beverage license. Said suspension shall be served within seven (7) days (not including weekends and holidays) after notification of finding of guilt. The dates shall be reported to the chief of police prior to serving the suspension.

d.

Fourth Offense: Loss of license. The alcoholic beverage license will be revoked immediately upon finding of guilt. The licensee shall not have an opportunity to reapply for the license for a period of thirty (30) days after revocation. If a license is reissued, it will have requirements and contingencies placed on it as deemed appropriate by the City Commission

3. Notice and Suspension. The notice of violation or any suspension shall be handled as follows:

a. Notice-Public hearing. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the licensee. Upon written notification to the licensee by the City Administrator that a penalty is being sought under this section, the licensee may notify the City Administrator's office within ten (10) days of the date of such written notification and request a hearing on the proposed

penalty. Failure to notify the City Administrator within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing. A hearing shall be set before the City Commission specifying the time and place of the hearing and shall be served on the 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 (15) days after the date of service of the notice. If, upon such hearing, it appears to a majority of the City Commission that sufficient cause exists for the penalty sanctions, the City Commission shall make its order in accordance with the provisions of this Ordinance. The City Commission shall further issue its findings, conclusion and order which shall be served upon the licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

b. Suspensions. Any mandatory suspension of alcoholic beverage license will have the date set by the Chief of Police and City Administrator unless a hearing is required, in which case, the City Commission will set the date(s) of suspension. Any suspension of alcoholic beverage license shall relate to liquor sales only so that non-liquor sales, if applicable, may continue on the licensed premises.

c. No Refunds on Suspension. When any license is revoked or suspended for any reason, no portion of the license fee shall be returned to the licensee.

Section 5: Section 13.0101, entitled “Fireworks defined – Sale of Fireworks”, is hereby amended and re-enacted as follows:

1. The term fireworks means any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation.

The term includes any blank cartridge, toy pistol, toy cannon, toy cane, or toy gun in which an explosive other than a toy paper cap is used, balloon that requires fire underneath to propel the balloon; firecracker, torpedo, skyrocket, Roman candle, daygo bomb, sparkler, or other item of the construction; item containing any explosive or flammable compound; or any tablet or other device containing any explosive substance. This section does not apply to any toy paper cap containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.

2. Fireworks may be sold within the boundaries of the City of Killdeer, ND from June twenty-seventh through July fifth between the hours of 8:00 a.m. and 11:00 p.m.

Section 6: Section 13.0102, entitled "Time of discharge", is hereby amended and re-enacted as follows:

Fireworks may be discharged on private property only or on public property with approval from the Killdeer City Commission. After discharge, persons discharging fireworks shall be responsible for the removal of any debris and also responsible for any damage occurring by those fireworks on properties. Fireworks can be discharged between the hours of 8:00 a.m. and 11:00 p.m. on each of the following dates: July third through July fifth of each year.

Section 7: Section 13.0103, entitled "Permit", is hereby amended and re-enacted as follows:

1. All fireworks sold by any organization, persons, or club must have a permit or order from the Board of City Commission.

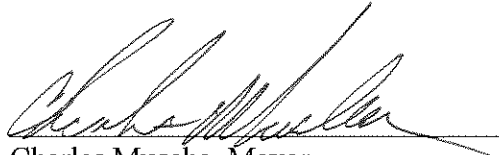
2. No public display of fireworks shall be at any time of the year given by a municipality, fair association, amusement park, or other organizations within the boundaries of the City of Killdeer unless a permit therefore has been first secured and approved by the City Commission of the City of Killdeer. Every application for such permit must be made in writing to the City Auditor of the City of Killdeer at least fifteen days in advance of the date of the display.

The Killdeer City Commission shall make an investigation to determine whether the operator of the display is competent and whether the display is of such character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. If the investigation shows that the operator is competent and that the display as planned will conform to safety requirement, including the rules and regulations of the state fire marshal, the Killdeer City Auditor shall issue a permit for the display when the applicant pays a permit fee of twenty dollars (\$20.00).

Section 8: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 9: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Ordinance shall continue in full force and effect.

Section 10: Effective Date: This Ordinance shall be in full force and effect from and after final passage.



Charles Muscha, Mayor

ATTEST:



Matt Oase, City Auditor

First Reading: 8-5-2019

Ayes: Rohr, Praus, Candrian, Summerfield, Muscha

Second Reading: 8-19-2019

Ayes: Summerfield, Candrian, Praus, Muscha. Nays: None. Absent: Rohr.

Final Passage: 8-19-2019

