

ORDINANCE NO.

AN ORDINANCE REPEALING AND REENACTING SECTIONS 2-26, 2-27, 2-28, 2-29, 2-30, 2-126, 2-157, 4-16, 5-25, 5-32, 9-135, 18-193, 18-196, AND 18-197 AND ADDING SECTION 2-28.1 OF THE CITY OF MINOT CODE OF ORDINANCES

WHEREAS, the City of Minot is a political subdivision lawfully recognized in the state of North Dakota as a Home Rule City and possessing municipal powers and authority pursuant to its Home Rule Charter and the provision of North Dakota Century Code (NDCC) § 40-05.1, as well as statutory provisions codified in NDCC 40-05-01,

WHEREAS, the City Council now desires to repeal and reenact its current ordinances relating to meetings of the City Council to address, among other things, the change from one regular City Council meeting to two regular City Council meetings per month;

WHEREAS, the City Council desires to repeal and reenact sections 2-126, 2-157, 4-16, 5-25, 5-32, 9-135, 18-193, 18-196, and 18-197 of the City of Minot Code of Ordinances in order to reflect the City Council's decision to discontinue the regular use of the committee of the whole and, instead, have two regular City Council meetings each month;

§1. That Section 2-26 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

2-26. – Regular Meetings – Days Held.

The city council shall meet in regular meetings on the first (1st) and third (3rd) Monday of each month. If the first (1st) or third (3rd) Monday of the month falls on a holiday, the city council shall hold its regular meeting on the next city business day immediately following the holiday.

§2. That Section 2-27 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

2-27. – Regular Meetings – Time and Place.

All regular meetings of the city council shall be at 5:30 P.M. in the council chambers of the city hall unless an alternative time or place is previously approved by the city council.

§3. That Section 2-28 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

2-28. – Regular Meetings – Rescheduling or Cancelling.

- (a) A regular meeting of the city council may be canceled, or may be rescheduled to a date within eight (8) days of the date the meeting would, pursuant to section 2-26, otherwise occur in the absence of such rescheduling. In calculating the eight (8) days for purposes of the prior sentence, the date the meeting would occur in the absence of rescheduling

shall not be counted. Any action of cancellation or postponement taken under the authority of this subsection must be authorized by a majority of the council at a regular or special meeting.

- (b) If the city manager, the mayor, and the council president agree, in writing, that a regular meeting should be rescheduled due to inclement weather or a public safety concern, the meeting shall be rescheduled to a date within eight (8) days of the date the meeting would, pursuant to 2-26, have occurred in the absence of such rescheduling. In calculating the eight (8) days for purposes of the prior sentence, the date the meeting would have occurred in the absence of rescheduling shall not be counted. Notice of rescheduling shall be given in the same manner as required for a special meeting and shall provide the rescheduled meeting date, time, and location.

§4. That the Code of Ordinances, City of Minot, North Dakota, is hereby amended by adding a section to be numbered 2-28.1, which section shall read as follows:

2-28.1. – Special Meetings.

A special meeting of the city council may be called by the city manager, the mayor, or any two (2) aldermen. Written notice of any special meeting shall be given to each member of the city council, the city manager, and the city attorney. Such meetings shall be held at the date, time, and location as designated in the notice.

§5. That Section 2-30 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

2-30. – Order of business.

- (a) Except as may be provided by a special rule adopted at the meeting in question, the order of business at a meeting of the city council to the extent which circumstances permit shall be as follows:
- 1) Roll call conducted by the city clerk, who shall record those present and absent in the minutes.
 - 2) Pledge of allegiance to the flag of the United States of America.
 - 3) Approval (with such corrections, if any, as may be necessary) of the minutes of the prior meetings which have not yet been already approved.
 - 4) Consideration and approval of bill payments, transfers, and payroll.
 - 5) Personal appearances (other than those relating to matters on the agenda for the meeting).
 - 5)6) Public hearings on items of business for which a public hearing is required as a matter of law.
 - ~~6)1) Personal appearances (other than those relating to matters on the agenda for the meeting).~~
 - 7) Oral reports by the mayor, city manager, ~~mayor~~, and city attorney.
 - 8) Action items.
 - ~~8)9) Reports of commissions and committees with priority given to standing bodies over ad hoc bodies.~~

~~9)10)~~ Miscellaneous business.

~~10)11)~~ Adjournment.

~~(b) Ordinarily, the consideration of an ordinance or resolution will occur in the context of a committee report. However, nothing herein is to be construed as invalidating an ordinance or resolution which is acted upon at any other time in the course of a meeting prior to adjournment. The prior sentence is not intended to diminish the authority of the presiding officer to rule a matter out of order, as being inconsistent with the order of business, but rather it is intended only to validate the action of the council if the ruling of the presiding officer is appealed to the council as a whole, and it overrules the presiding officer and proceeds to consider and adopt the matter without the formality of making a special rule.~~

§6. That Section 2-126 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

2-126. - Warrants: Countersigning; payment; records.

- (a) The city treasurer shall countersign all warrants of the city.
- (b) All warrants shall be paid from the fund upon which they are drawn and in the order in which they are presented for payment. On the back of each warrant presented to him, the city treasurer shall note the date of presentation, and when payment is made, he shall note the date of payment. If a warrant is not paid for want of funds, the city treasurer shall state that fact on the warrant and it shall bear interest until called for payment.
- (c) The treasurer shall keep a register of all warrants redeemed and paid during the year, describing the warrants, their respective dates, amounts, numbers, of the funds on which they were paid, the persons to whom paid and the times of payment.
- (d) All warrants redeemed and paid by the city treasurer, as disclosed by the monthly city treasurer's report to the city council, shall be examined by the city council ~~or by the committee of the whole thereof.~~

§7. That Section 2-157 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 2-157. - Review ~~by the finance committee~~ and approval by the city council.

The ~~committee of the whole or the~~ city council shall review a list of the checks issued in payment of bills, claims and accounts under this section ~~before they are referred to the city council.~~ The review ~~of the committee of the whole~~ shall be indicated by a signature of a majority of the members of the ~~committee~~ city council on the list of checks issued under this section. ~~The list shall then be referred to the city council for its review, and t~~The city council minutes shall show the itemized list of checks issued.

§8. That Section 4-16 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 4-16. - General rules.

- (a) *Severability of provisions.* Should any section or part of these rules be held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity of such section or part shall in no way affect, impair or invalidate the remaining sections or portions hereof, but as to such remainder the same shall remain in full force and effect.
- (b) *Airworthiness certificate; certificate of competency.* Only aircraft bearing a currently valid airworthiness certificate, and airmen holding a valid certificate of competency for the type of aircraft being flown, as issued by the Federal Aviation Administration of the United States Department of Transportation, and in conformity with the laws of the State of North Dakota, shall operate on, from or over the airport; provided however, that this restriction shall not apply to public aircraft of the federal government, or of a state, territory or possession, or of a political subdivision thereof, or to aircraft licensed by a foreign country with which the United States has reciprocal agreement covering the operation of such licensed aircraft.
- (c) *Federal and state rules applicable to operation of aircraft.* No person shall navigate any aircraft over, land upon, or fly the same from, or service, maintain, or repair any aircraft on the airport otherwise than in conformity with the requirements of the Federal Air Regulations established by the Federal Aviation Administration of the United States Department of Transportation, and such rules and regulations as may be enacted and/or amended, by the Aeronautics Commission of the State of North Dakota.
- (d) *Qualifications for doing business on airport premises.* No person other than those in the regular employ of a fixed base or local operator, scheduled or nonscheduled air carrier shall offer themselves for hire as an instructor, mechanic, repairman or technician, nor shall any person other than those authorized to do, sell or offer for sale, any aircraft, aircraft part or accessory, at, upon or from the airport, except owners of private aircraft may perform mechanical work upon their own aircraft if qualified to do so.
- (e) *When license required for use of airport.* No person shall use the airport as a base or terminal for the carrying on of commercial aviation, or the carrying of passenger, freight, express or mail, or for student flying, communications, spraying or other commercial or private purpose or transportation without first securing a license from the City of Minot and/or paying the fees and charges prescribed for such privileges, the use of the airport, its facilities, and for services rendered; as set forth in section 4-25 of this article.
- (f) *Permit required to sell goods and services; issuance of liquor licenses.* No person shall engage in the sale of refreshments or any other commodity or service, within the confines of the airport, without previously having secured a permit from the proper authority and having paid, or made satisfactory arrangements to pay such fees or other sums of money as agreed for such privilege. A liquor license may be issued to the airport cafe operator allowing permission to operate a small bar within the present cafe lease area. The said liquor license shall be issued for airport

terminal building use only and shall be nontransferable. The license fee and/or any other fees shall be credited to the airport operating fund.

- (g) *Registration of persons employed, etc. at airport.* The names, addresses, telephone numbers, and nature of business or occupation of all persons stationed or employed upon the airport, or receiving instruction thereon or operating therefrom, shall be registered at the administration office at the airport.
- (h) *Authority of airport manager in respect to public.* The airport manager shall at all times have authority to take such action as may be necessary in the handling, conduct, and management of the public in attendance at the airport.
- (i) *Hours of operation.* The airport shall be opened to render service twenty-four (24) hours per day.
- (j) *Lighting requirements.* Lighting of the airport for night flying shall be done in accordance with the requirements of the Federal Aviation Administration of the United States Department of Transportation for airport lighting equipment.
- (k) *Logs required; contents.* Each fixed base or local operator shall keep a log of the visiting or itinerant aircraft serviced or handled by him on the airport. The log shall contain the following information:
 - (1) Aircraft number and description.
 - (2) Pilot's and/or owner's name and address.
 - (3) Date of arrival and departure.
- (l) *Visiting pilots.* Prior to his departure, each visiting pilot shall inform himself from the proper authority, the current taxi and take-off procedure. Satisfactory arrangements, or payments in full, for all storage, supplies, repairs, and other services rendered by the airport or its operators shall be made to the proper person or his duly authorized representative before clearance from the airport is granted.
- (m) *Repairs to be made in designated areas.* All repairs to aircraft and engines shall be made in the space designated for this purpose and not on the area reserved for landing and taking off.
- (n) *Accidents—Disposal of wrecked aircraft.* The aircraft owner, his pilot or agent, shall be responsible for the prompt disposal of wrecked aircraft, and the parts thereof, to avoid all interference with field operations, unless directed to delay such action pending investigation of the accident.
- (o) *Same—Report.* Witnesses of, and participants in, accidents on or near the airport shall be requested to report to the administration office as soon after accidents as possible, leaving their names and addresses and rendering such reports as may be required.
- (p) *First-aid kits.* Each fixed base or local operator shall provide and be responsible for the constant maintenance of a suitable first-aid kit.
- (q) *Unsafe landing areas to be marked; report of unsafe, hazardous conditions.* Any part of the landing area temporarily unsafe for use, or which is not available for any cause, shall be clearly marked in an approved manner. All persons using the airport shall report any unsafe or hazardous conditions on the airport to the airport manager or his duly authorized representative.
- (r) *Use of taxi strips, ramps, parking areas for takeoffs, landings prohibited.* No person shall use taxi-strips, ramp or parking areas for takeoffs or landings.

- (s) *Registration of aircraft.* All owners, lessees and/or those having under control through consignment or similar arrangements of aircraft using the airport as a base of operation shall register the same with the airport manager, giving such information as may be required for the keeping of airport records.
- (t) *Self-fueling.* Self-fueling shall be regulated as follows:
- (1) Any person who fuels his own aircraft, vehicles or ground equipment at the airport may do so only after obtaining a permit from the airport manager, which shall be granted conditionally subject to the continuing adherence by the permittee to the provisions of this subsection and to the rules and regulations established from time to time by the airport manager relating to self-fueling. The airport manager is hereby delegated the authority to establish such rules and regulations, including the authority, at his own discretion, to designate and to post a particular portion of the airport as being set aside for self-fueling. If such designation is made, it shall thereafter be unlawful to conduct self-fueling operations anywhere except in the area so designated. Likewise, the airport manager is authorized to designate a parking place for fuel trucks which shall be the only lawful parking place on airport property for fuel trucks when they are not being used in the course of ongoing fueling operations.
 - (2) The permittee shall pay the city a self-fueling fee as follows:
 - a. If the permittee is a fixed base operation the fee shall be five cents (\$0.05) a gallon for all fuel loaded onto aircraft under the authority of the permit and such payment shall be made no less frequently than once a month. The flowage fee shall be paid on a self-reporting basis but the permittee must allow agents of the city to inspect the permittee's books and records in order to audit payment for fees. Any flowage fee owing to the city and not timely paid shall constitute a debt collectable at law.
 - b. If the permittee is not a fixed base operator the permittee shall pay the city an annual nonrefundable fee of fifty dollars (\$50.00).
 - c. Nothing herein shall be construed as absolving the permittee from paying federal excise taxes on the fuel used in self-fueling.
 - (3) The permittee must also maintain continually in effect liability insurance with combined single limits of one million dollars (\$1,000,000.00) bodily injury and property damage and with coverage satisfactory to the airport manager to insure against liability arising out of self-fueling operations. The coverage must include both motor vehicle operations and aircraft liability insurance. Proof of insurance must be supplied to the airport manager along with a commitment from the insurer that it will notify the airport manager in writing prior to canceling the insurance coverage.
 - (4) The application for a permit and the acceptance thereof shall be considered as giving rise to an implied agreement on the part of the permittee that he will indemnify the city against all claims and damages, including the costs of defense arising out of the permittee's self-fueling operations, which implied agreement shall survive any revocation or abandonment of the permit.
 - (5) The permittee shall comply with the requirements of subsection (n) of section 4-21 of the Code of Ordinances.

- (6) Upon demand, the permittee shall provide the airport manager with proof that he had ownership of or an ownership interest in the aircraft, vehicle or ground equipment which the permittee has fueled or wishes to fuel.
- (7) Upon notice and hearing, the airport manager may revoke or suspend a permit if the permittee violates the provisions of this subsection or of the rules and regulations established pursuant to subsection (1) above.
- (u) *Loudspeakers, sound trucks, etc.* Loudspeakers by operators of aircraft, sound trucks and amplified record-playing machines shall be prohibited on the airport except when required for special occasions and ordered by the proper city authorities. Only such public address systems as are commonly employed, announcing the arrival and departure of scheduled airline flights, shall be permitted on the airport.
- ~~(v) *Committee of the whole; recommendations.* The committee of the whole shall provide recommendations for council consideration on the various phases of airport operations.~~
- (~~v~~w) *Nondiscrimination.* No person, owner, operator, grantee, licensee, lessee, permittee, nor his personal representatives, successors in interest, or assigns, shall:
 - (1) Exclude any person from participation in, deny any person the benefits of, or otherwise subject any person to discrimination in the use of said facilities on the grounds of race, color or national origin.
 - (2) Exclude from participation in, deny the benefits of, or otherwise subject any person to discrimination in the construction of any improvements on, over, or under such land and the furnishing of services thereon, on the grounds of race, color or national origin.

Any building, lot or other premises located on the Minot International Airport whether the same be leased, licensed, owned, or otherwise used must be operated and used in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964 and any amendments thereto.

§9. That Section 5-25 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 5-25. - City clerk to submit application to the ~~committee of the whole~~city council; approval.

- (a) The city clerk shall submit the application to the city council for its consideration.
~~committee of the whole for its recommendation.~~
- ~~(b) Upon receiving the recommendation of the committee of the whole, the city clerk shall then submit the application to the city council for its consideration.~~
- (c) Every application for a license required by this article shall be approved by the city council before the license shall be issued.

§10. That Section 5-32 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 5-32. - Suspension or revocation of a license.

- (a) The ~~committee of the whole~~city council shall have the power to suspend or revoke any license issued under the authority of this chapter for any of the following reasons:
- (1) The licensee violates the laws of this state or of any of the provisions of this chapter.
 - (2) The licensee willfully makes a false statement or a misrepresentation as to a material fact in the application for the issuance or transfer of the license.
 - (3) The licensee knowingly permits the occurrence of a pattern or practice of disorderly or immoral acts upon the licensed premises.
 - (4) The licensee does not conduct the activity for which the license was issued at the licensed premises for a period of twelve (12) consecutive months.
 - (5) The licensee or its manager or both no longer meet the requirements of section 5-18 for the issuance of the license.
 - (6) The licensee does not hold a necessary permit or license issued by another governmental entity, which license or permit is required by that governmental entity as a precondition to the carrying on by the license of the activity authorized by the City of Minot license.
- (b) No license shall be suspended or revoked without providing the licensee with notice and an opportunity for hearing before the ~~committee of the whole~~city council with regard to the suspension or revocation of the license. The city clerk shall provide the licensee with written notice of the date, time, and place of the hearing. The notice shall inform the licensee that its license may be suspended or revoked and it shall set forth the factual allegations which form the basis for doing so under this section. The city clerk may provide notice by mailing a copy thereof to the licensee's last known address as indicated in the licensee's most recent application filed with the clerk under this chapter. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.
- (c) If the licensee does not appear at the hearing provided for in subsection (b), or if he does not dispute them, the factual allegations in the complaint shall be deemed to be admitted. Otherwise the city shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.
- (d) If the licensee requests that the originally scheduled hearing date be continued the ~~committee of the whole~~city council shall grant a continuance to a time mutually convenient to the licensee and the city council, but the ~~committee-city council shall have the discretion to suspend the license from the date for which the hearing was originally scheduled to the date of the continued hearing.~~
- (e) The decision of the ~~committee of the whole~~city council shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, ~~and there shall be no right of appeal from the decision of the committee to the city council as a whole.~~
- (f) The Minot Police Department will be responsible for conducting compliance checks to determine whether the licensees are in compliance with the provisions of subsection (a)(1). If (1) the licensee admits a violation occurred, (2) fails to

appear at the scheduled hearing relating to the alleged violation, or (3) the ~~committee of the whole city council~~ determines a violation under subsection (a)(1) occurred after a hearing, the licensee is subject to the following penalties, in addition to any other civil or criminal penalties a licensee may be subject to for violation of any provision of state or local law:

First violation: Letter of warning

Second violation: Business closed for three (3) consecutive days

Third violation: Business closed for seven (7) consecutive days

Fourth violation: Business closed for thirty (30) consecutive days

Fifth violation: Business liquor license recommended to be revoked

The penalties described above shall be for violations that occur within a period of twenty-four (24) months. The twenty-four-month time period commences to run and is calculated from the first offense by the licensee.

- (g) The Minot Police Department will be responsible for monitoring compliance with the provisions of subsections (a)(2)—(6). If (1) the licensee admits a violation occurred, (2) fails to appear at the scheduled hearing relating to the alleged violation, or (3) the ~~committee of the whole city council~~ determines a violation under subsections (a)(2)—(6) occurred after a hearing, the licensee is subject to suspension or revocation, as determined by the ~~committee of the whole city council~~, in addition to any other civil or criminal penalties a licensee may be subject to for a violation of subsections (a)(2)—(6).

§11. That Section 9-135 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 9-135. - Oversight committee.

An oversight committee, consisting of ~~committee of the whole city council~~ is hereby created. The oversight committee shall receive quarterly, semiannual and annual reports from the program administrator, if any. The oversight committee shall review these reports to determine whether or not the purpose of this article is being carried out as defined in section 9-126 and other sections of the article. ~~The committee shall report its findings to the Minot City Council.~~

§12. That Section 18-193 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 18-193. - Issuance of license.

- (a) Upon the filing of an application for a sexually oriented business employee license, the city shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of filing of the completed application. After the investigation, the city shall issue an employee license,

unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

- (1) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (2) The applicant is under the age of eighteen (18) years (twenty-one (21) years if the business has an alcoholic beverage license);
- (3) The applicant has been convicted of a "specified criminal activity" as defined in this division; or
- (4) The applicant has had a sexually oriented business employee license revoked by the city within two (2) years of the date of the current application.

In the event that the city determines that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division.

If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as hereinafter set forth.

- (b) An employee license shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.
- (c) An employee license shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the filing of the completed application. The renewal of a license shall be subject to the fee as set forth in section 18-194. Non-renewal of a license shall be subject to appeal as hereinafter set forth.
- (d) Upon application for a sexually oriented business operator's license, the city shall approve or deny issuance of the license within thirty (30) days of filing of the completed application. The city shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:
 - (1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (2) An applicant is under the age of eighteen (18) years (twenty-one (21) years if the business has an alcoholic beverage license);

- (3) An applicant has been denied a license by the city to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
 - (4) An applicant is overdue in payment to the city for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or taxes or special assessments are overdue for the property on which the sexually oriented business is located or will be located;
 - (5) An applicant has been convicted of a "specified criminal activity" as defined in this division;
 - (6) The premises to be used for the sexually oriented business have not been approved as being in compliance with applicable laws and ordinances;
 - (7) The license fee required under this division has not been paid;
 - (8) An applicant of the proposed establishment is in violation of or is not in compliance with one (1) or more of the provisions of this division.
- (e) An operator's license shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- (f) If so required under other sections of this division, the inspection department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the city. Failure of an appropriate department to timely certify its inspection shall not be grounds for refusing to issue a license within the mandatory time period. In the event the city fails to render a decision on the application within the time specified herein, the operator shall be permitted to commence operation of a sexually oriented business.
- (g) In the event that the city determines that an applicant is not eligible for a sexually oriented business operator's license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division. Denial of a license shall be subject to appeal as hereinafter set forth.
- (h) An operator's license shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in section 18-195. Non-renewal shall be subject to appeal as hereinafter set forth.
- (i) An applicant may appeal the denial or non-renewal of a license to the ~~committee of the whole~~city council by filing a written notice of appeal with the city clerk within ten (10) days after service of the notice of the denial or non-renewal. The city

clerk shall provide the applicant(s) with written notice of the date, time, and place of the hearing. The notice shall inform the applicant(s) of the factual allegations which form the basis for denial or non-renewal. The city clerk may provide notice by mailing a copy thereof to the applicant's last known address as indicated in the applicant's application. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.

If the applicant does not appear at the hearing, or if he does not dispute the factual allegations, the factual allegations shall be deemed to be admitted. Otherwise the city shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.

If the applicant requests that the originally scheduled hearing date be continued, the ~~committee of the whole city council~~ shall grant a continuance to a mutually convenient time. The decision of the ~~committee of the whole city council~~ shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, ~~and there shall be no right of appeal from the decision of the committee to the city council as a whole.~~

§13. That Section 18-196 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 18-196. - Suspension or revocation of a license.

- (a) The ~~committee of the whole city council~~ shall have the power to suspend or revoke any license issued under the authority of this division for any of the following reasons:
- (1) The licensee violates the laws of this state or of any of the provisions of this division;
 - (2) The licensee willfully makes a false statement or a misrepresentation as to a material fact in the application for the issuance of the license;
 - (3) The licensee knowingly engages in or permits the occurrence of a pattern or practice of disorderly or immoral acts upon the licensed premises;
 - (4) The licensee is convicted of a "specified criminal activity";
 - (5) A licensee has, with knowledge, engaged in or permitted prostitution on the premises;
 - (6) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (7) A licensee is delinquent in payment to the city or state for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;
 - (8) A licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter or remain in the establishment;
 - (9) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;
 - (10) A licensee has, with knowledge, engaged in or permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business;

- (11) A licensee has, with knowledge, consumed or permitted the consumption of alcoholic beverages on the premises;
- (12) The licensee does not hold a necessary permit or license issued by another governmental entity, which license or permit is required by that governmental entity as a precondition to the carrying on by the licensee of the activity authorized by the City of Minot license.
- (b) No license shall be suspended or revoked without providing the licensee with notice and an opportunity for hearing before the ~~committee of the whole city council~~ with regard to the suspension or revocation of the license. The city clerk shall provide the licensee with written notice of the date, time, and place of the hearing. The notice shall inform the licensee that the license may be suspended or revoked and it shall set forth the factual allegations which form the basis for doing so under this section. The city clerk may provide notice by mailing a copy thereof to the licensee's last known address as indicated in the licensee's most recent application filed with the clerk under this division. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.
- (c) If the licensee does not appear at the hearing provided for in subsection (b), or if the licensee does not dispute them, the factual allegations in the complaint shall be deemed to be admitted. Otherwise the city shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.
- (d) If the licensee requests that the originally scheduled hearing date be continued the ~~committee of the whole city council~~ shall grant a continuance to a time mutually convenient to the licensee and the city council, but the ~~committee city council~~ shall have the discretion to suspend the license from the date for which the hearing was originally scheduled to the date of the continued hearing.
- (e) The decision of the ~~committee of the whole city council~~ shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, ~~and there shall be no right of appeal from the decision of the committee to the city council as a whole.~~
- (f) When a license is revoked, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date revocation became effective.

§14. That Section 18-197 of the Code of Ordinances, City of Minot, North Dakota, is hereby repealed and reenacted to read as follows:

Sec. 18-197. - Judicial review.

Within thirty (30) days of a decision denying an initial or renewal application by the ~~committee of the whole city council~~, or suspending or revoking a license by ~~committee of the whole city council~~, the applicant or licensee may seek judicial review of such administrative action in the district court. The administrative action shall then be reviewed by the court for a prompt judicial determination. Pending the completion of the appeal process, the city shall issue a temporary license unless the licensing decision is based in whole or in part upon a

finding that a condition exists upon the premises which constitutes a threat of immediate serious injury or damage to persons or property.

§15. This Ordinance shall become effective upon final passage and approval.

PASSED FIRST READING: _____

PASSED SECOND READING: _____

ATTEST:

APPROVED:

Kelly Matalka, City Clerk

Shaun Sipma, Mayor