



**MEMORANDUM**

**TO:** Cass County Commissioners

**FROM:** Birch P. Burdick  
Cass County State's Attorney *Borzell*

**DATE:** February 9, 2018

**RE:** Options Regarding Alcoholic Beverage Licenses –  
Upcoming Commission Agenda

**State's Attorney**

Birch P. Burdick

**Assistant State's Attorneys:**

- Mark R. Boening
- Tracy J. Peters
- Leah J. Viste
- Reid A. Brady
- Kara Schmitz Olson
- Kimberlee J. Hegvik
- Tristan J. Van de Streek
- Ryan J. Younggren
- Renata J. Selzer
- Tanya Johnson Martinez
- Katherine M. Naumann
- Joshua J. Traiser
- Tracy E. Hines

**Victim/Witness Coordinators:**

- Brenda Olson-Wray
- Debbie Tibiatowski
- Lori Lawson

**Check Division/ Restitution:**

- Charlotte Eversvik
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The Commission has an existing policy for alcoholic beverage retail licensing fees (Enclosure 1). That policy contemplates a 12-month license for a set fee. It provides for paying ½ of the fee for any license after July 1.

Last year an applicant sought a license essentially for the warm months, meaning May – October. The meeting minutes from that meeting are enclosed (Exhibit 2).

At that meeting you expressed interest in modifications to the existing policy. ASA Tracy Peters has prepared 2 options (Enclosure 3). As to those options:

- Option 1 provides for a 6-month license for any consecutive 6-month floating period within a calendar year. The fee would be ½ the annual fee.
- Option 2 provides for any consecutive period of months within a calendar year. The fee would be a proration of the annual fee for whatever number of months the applicant sought.
- Both options utilize the same base fees as the existing policy.
- Both options eliminate the \$5 fee for a Sunday permit because the Legislature repealed the statute requiring a Sunday permit. N.D.C.C. §5-02-05.1.
- Both options refer to the statutory penalty for violating the policy, rather than providing a separately-defined penalty within the ordinance. N.D.C.C. §5-02-01(1) makes it a Class A misdemeanor to sell alcoholic beverages without first securing a license from the attorney general and the local governing body (Enclosure 4). A Class A misdemeanor is punishable by up to a maximum of 360 days incarceration and/or a fine of \$3,000.

If the Commission adopts Option 1 or Option 2, or some modified version of those options, the February 20 meeting could be considered a 1<sup>st</sup> reading of the ordinance. Pursuant to Article 3 of the Home Rule Charter, a summary of the proposed ordinance would then be published in the newspaper, followed by a second reading usually a month later. If the Commission does not choose to adopt either Option 1 or Option 2, or some modified version, then the existing policy (Enclosure 1) will remain in effect.

- Encl: 1) Existing fee policy  
2) Commission meeting notes, 5/17/17  
3) Options 1 & 2 for new ordinance  
4) N.D.C.C. §5-02-01

**Proposed Motion:**

**Move to approve the First Reading of Ordinance #2018-3 (Option 1 or Option 2) for alcoholic beverage retail licensing fees, direct that the appropriate notices be published in the official county newspaper and schedule the second reading of the Ordinance for March 19, 2018.**

SUBJECT: ALCOHOLIC BEVERAGE RETAIL LICENSING FEES

ADOPTED DATE: DECEMBER 15, 2008

PAGE 1 OF 1

A RESOLUTION RELATING TO THE RETAIL LICENSING FEE FOR AN ANNUAL LICENSE TO SELL ALCOHOLIC BEVARAGES IN CASS COUNTY, NORTH DAKOTA, OUTSIDE OF INCORPORATED CITIES.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CASS COUNTY, NORTH DAKOTA, that the following fee schedule shall govern all alcoholic beverage retail licenses in Cass County, North Dakota, outside of incorporated cities. Chapter 5 of the North Dakota Century Code authorizes the Board of County Commissioners to set alcoholic beverage retail license fees.

**SECTION 1: Definitions**

The terms in this Resolution are defined in Chapter 5 of the North Dakota Century Code.

**SECTION 2: Fee Schedule**

On & Off-Sale Alcoholic Beverage . . . . .	\$1000
On <u>OR</u> Off-Sale Alcoholic Beverage. . . . .	\$1000
Beer and Wine . . . . .	\$ 500
Sunday Permit (Per Sunday) . . . . .	\$ 5

\* { The term of the license shall be on a calendar-year basis from January 1<sup>st</sup> through December 31<sup>st</sup>.

\* { Fees will be pro-rated at one-half of the annual fee for anyone applying for a license after July 1<sup>st</sup> of the current year. Fees for the full calendar year shall apply when an applicant(s) wants a current year license beginning before July 1<sup>st</sup>.

**SECTION 3: Effective Date**

This resolution shall take effect January 1, 2009.

**SECTION 4: Saving Clause**

Should any provision (including, but not limited to, any word, phrase, clause, sentence, or paragraph) of this Resolution be adjudged to deprive any person of constitutional or state rights, the remaining provisions of this Resolution would have been adopted and shall remain in full force and effect. All rights, privileges, and prohibitions of the North Dakota Century Code not provided for in this Resolution shall be considered a part of this Resolution.

HISTORICAL REFERENCE DATE: DECEMBER 15, 2008



6. **WILD RICE RIVER ESTATES PAVING DISTRICT NO. 2016-1, Public hearing held; special assessments confirmed for district**

Wild Rice River Estates is a small, rural subdivision that petitioned to have its road paved. The commission adopted resolutions in June of 2016 to create the special assessment district and move forward with the process. Attorney John Shockley said a public hearing was held by the Cass County Special Assessment Commission last month. No residents appeared at the hearing or have submitted written protests regarding the assessment district. The Special Assessment Commission approved the assessments to be levied. He said property owners were notified of the public hearing scheduled for today to confirm the special assessments.

The chairman opened the public hearing for comments and hearing none, closed the public hearing.

**MOTION, passed**

**Mr. Rasmussen moved and Mr. Bennett seconded to confirm the special assessments for Wild Rice River Estates Paving District No. 2016-1 as approved by the Cass County Special Assessment Commission. On roll call vote, the motion carried unanimously.**

Michael Montplaisir, County Auditor, said letters will be sent to residents in the subdivision informing them the special assessments have been confirmed by the County Commission and offering them the opportunity to pay off the balance. The first installment of specials will be assessed this fall.

7. **ABATEMENT HEARING FOR RABBIT RIVER LLC, Value reduced**

Paul Fracassi, County Tax Director of Equalization, was present to discuss an abatement application submitted by Rabbit River LLC. The applicant requested the 2016 valuation for a thirty-unit apartment complex located at 3500 38<sup>th</sup> Avenue South in Fargo be lowered from \$3,436,000 to \$3,000,000. After review of the application, it was found that the true and full value of the property is \$3,667,000, not \$3,436,000 as stated in the application. Mr. Fracassi met with Mark Weston, owner and manager of the property for an on-site visit. Mr. Weston provided construction costs and a pro-forma income and expense statement. The Fargo Assessment Department reviewed the property and provided a report analyzing all three approaches used for property valuations. The cost approach was used as it provides uniformity with similar competing properties. Fargo recommends the 2016 value be reduced slightly to \$3,627,000. Mr. Fracassi agrees with the recommendation and believes the value is assessed fairly and equitably.

The chairman opened the public hearing for comments and hearing none, closed the public hearing.

**MOTION, passed**

**Mrs. Scherling moved and Mr. Bennett seconded that Abatement #4460 be reduced to a value of \$3,627,000 for the 2016 tax year as recommended by the City of Fargo Assessor and Director of Tax Equalization. On roll call vote, the motion carried unanimously.**

8. **BEER LICENSE FEES FOR SEASONAL BUSINESSES, Ordinance to be drafted**

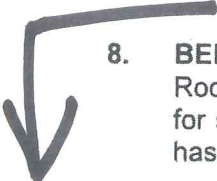
Rodney Hogen, owner of Red River Trail Vineyard, was present to request prorating beer license fees for seasonal businesses in Cass County. His business is open from May to October. In the past he has applied for a six-month license in July as county policy only allows pro-rated fees after July 1<sup>st</sup>.

State's Attorney Birch Burdick said it may be difficult to monitor a "floating" six-month license. He said the current policy could be modified to include this option, but questioned who would monitor the licensees to ensure they are open only during the six months approved.

Mr. Peterson wants to be fair but is also concerned with how this type of license would be monitored.

**AMENDED MOTION, passed**

**Mr. Bennett moved and Mrs. Scherling seconded to grant a six-month license for Red Trail Vineyard from May 1<sup>st</sup> to October 1<sup>st</sup>.**





**Discussion:** There was a question as to whether the policy should be amended before approval of this request. Mr. Burdick said it may be a better practice to amend the policy; however, the board could approve the request today and review changes to the policy at the next meeting.

Mr. Bennett and Mrs. Scherling made a friendly amendment to the motion for the State's Attorney to amend the policy to allow for a six-month license to be applied for at any time of the year.

Mr. Rasmussen asked how the county will address a request from someone who may want an eight or nine-month license and asked whether licenses should be prorated by month. Mr. Rasmussen also questioned how the policy would be policed and if there would be a fine if a licensee is not in compliance.

Mr. Burdick said if the commission wishes to implement a penalty or fine, an ordinance should be created. The commission approved a resolution in 2008 regarding alcoholic beverage license fees along with a policy for license holders.

Mr. Peterson is hesitant to change the policy because of questions on how it will be administered.

On roll call vote, the motion carried with Mr. Bennett, Mrs. Scherling and Mr. Rasmussen voting "Yes"; Mr. Peterson voting "No".

Mr. Burdick asked for direction on whether to amend the resolution or draft an ordinance. Mr. Peterson believes the intent is for him to draft an ordinance which includes the option for a six-month license and penalties for non-compliance.

9. **FLOOD DIVERSION, Project update**

Jason Benson, County Engineer, provided an update on activities related to the FM Metro Flood Diversion project. He introduced Jeff Ebsch, who began working for the county on May 1<sup>st</sup> as the Assistant County Engineer for the FM Diversion. Mr. Benson provided a brief update on the removal of the Wild Rice Dam, which will improve passage for fish and provide environmental mitigation for the diversion project. The structure is aged and does not provide any type of flood control. The construction contract for this project is scheduled to be awarded this fall. He said one-on-one meetings will be held with P3 teams and different entities and utility companies next week.

Dean Vetter from AE2S was present to provide an update on biotic and geomorphic surveys being conducted in the area by the Army Corps of Engineers. The data will provide the Corps with baseline information on the biological and geological environment before construction of the diversion channel. The goal is to minimize environmental impacts to land.

Eric Dodds from AE2S was present to discuss key property acquisition areas and the acquisition process. Senate Bill 2047 recently passed by the legislature involves quick take eminent domain procedures and timelines. The new law becomes effective August 1<sup>st</sup>. The Cass County Joint Water Resource District (CCJWRD) handles land acquisitions for the diversion project. As part of the new law, the CCJWRD will need to request approval by the County Commission for quick takes. He said if a quick take is needed prior to August 1<sup>st</sup>, the County Commission will be invited to attend the CCJWRD meetings to be informed.

10. **FLOOD CONTROL, State Water Commission reimbursement request approved for Metro Flood Diversion Authority**

The state legislature approved a total of \$450 million during the last three legislative sessions to be spent on flood control costs. For consideration today is the 41<sup>st</sup> request from the Metro Flood Diversion Authority for eligible costs incurred from February 25, 2017, to March 31, 2017, for local matching



Option 1

CASS COUNTY  
COMMISSION POLICY MANUAL 38. \_\_

SUBJECT: ORDINANCE #2018-\_\_ (ALCOHOLIC BEVERAGE RETAIL LICENSING FEES)

ADOPTED DATE: \_\_\_\_\_ PAGE 1 OF \_\_

AN ORDINANCE RELATING TO THE RETAIL LICENSING FEE FOR AN ANNUAL LICENSE TO SELL ALCOHOLIC BEVERAGES IN CASS COUNTY, NORTH DAKOTA, OUTSIDE OF INCORPORATED CITIES.

WHEREAS, Chapter 5 of the North Dakota Century Code authorizes the Board of County Commissioners to set alcoholic beverage retail license fees,

NOW, THEREFORE, be it ordained by the Cass County Board of Commissioners that the retail fee schedule shall govern all alcoholic beverage retail licenses in Cass County, North Dakota, outside of incorporated cities shall be as follows:

**SECTION 1: Definitions**

The terms in this Ordinance are defined in Chapter 5 of the North Dakota Century Code.

**SECTION 2: Annual Fee Schedule**

On & Off Sale Alcoholic Beverage . . . . .	\$1000
On OR Off-Sale Alcoholic Beverage . . . . .	\$1000
Beer and Wine . . . . .	\$500

The term of the license shall be on a calendar-year basis from January 1<sup>st</sup> through December 31<sup>st</sup>.

An applicant may apply for a six (6) month retail license. Such a license shall be valid during any consecutive six (6) month period within the calendar year. The fee for a six (6) month license shall be ½ of the annual fee stated above.

The penalty for a violation of this ordinance is set forth in Chapter 5 of the North Dakota Century Code.

Approved:

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\_\_\_\_\_  
Rick Steen – Chair,  
Board of Commissioners  
Cass County

ATTEST:

\_\_\_\_\_  
Michael Montplaisir  
County Auditor

First Reading:  
Second Reading:  
Final Passage:  
Publication:

HISTORICAL REFERENCE DATE:



CASS COUNTY  
COMMISSION POLICY MANUAL

38. \_\_

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The term of the license shall be on a calendar-year basis from January 1<sup>st</sup> through December 31<sup>st</sup>.

An applicant may apply for a license for any period of consecutive months within the calendar year. Such a license shall be valid during those consecutive months. The fee for such license shall be pro-rated on a per-month basis consistent with the annual fees stated above.

The penalty for a violation of this ordinance is set forth in Chapter 5 of the North Dakota Century Code.



Approved:

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\_\_\_\_\_  
Rick Steen – Chair,  
Board of Commissioners  
Cass County

ATTEST:

\_\_\_\_\_  
Michael Montplaisir  
County Auditor

First Reading:  
Second Reading:  
Final Passage:  
Publication:

HISTORICAL REFERENCE DATE:

CHAPTER 5-02  
RETAIL LICENSING

4

**5-02-01. State and local retail license required - Penalty - Exception.**

1. Except as otherwise provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and a local license from the governing body of any city, or if the business is located outside the corporate limits of a city, the board of county commissioners or the governing body of an Indian tribe, as the location requires, is guilty of a class A misdemeanor.
2. This section does not apply to public carriers engaged in interstate commerce.
3. This section does not apply to a nonprofit organization that sells an alcoholic beverage as part of a fundraising activity. As used in this subsection, fundraising activity includes an auction, raffle, or other prize contest for which consideration is given. If the alcoholic beverage is sold as part of a fundraising event, the sale may not be for consumption at that event.

**5-02-01.1. Event permit authorized - Penalty.**

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county, a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
  - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
  - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine; and
  - c. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

**5-02-02. Qualifications for license.**

A retail license may not be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than an organization, must be a legal resident of the United States and be a person of good moral character.
2. If the applicant is:
  - a. A corporation, then:
    - (1) The manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and
    - (2) The shareholders: