

CHAPTER 112: ALCOHOLIC BEVERAGES

Section

- 112.01 License required
- 112.02 Application for license
- 112.03 Hours of operation for the sale or service of all alcoholic beverages licensees
- 112.03.1 Regulation of the transaction of any business in, and use and consumption, including on and off sale, of malt beverages, wine, cider, spirits, and alcoholic beverages
- 112.04 Possession of alcoholic beverages
- 112.05 Permit public location
- 112.06 Issuance of licenses and sale of alcoholic beverages by city
- 112.07 Maximum number of on- off-sale malt beverage licenses and maximum number of wine dealers being both package dealers and on-sale dealers
- 112.08 Full-service on-sale restaurant licenses
- 112.09 Sidewalk café alcoholic beverage sales and consumption regulations
- 112.10 Special permit licenses
- 112.11 Sanitation
- 112.12 Maximum number of on-sale and off-sale alcohol licenses

- 112.99 Penalty

§ 112.01 LICENSE REQUIRED.

(A) No person shall sell, offer for sale, keep for sale, exchange, distill, manufacture, produce, bottle, blend, or otherwise concoct, within the city any alcoholic beverage as defined by statute, without having a license therefore as required by state law.

(B) No licensed retailer may make any delivery of alcoholic beverages outside of the premises authorized by the license. No licensed retailer with any type of on-sale license shall serve alcoholic beverages outside the premises authorized by the license, unless otherwise provided herein.

(C) No license may be reissued or transferred to another entity or person until all municipal and state sales and use taxes owed by the licensee have been paid and all property taxes then due, which the licensee is liable for, have been paid or are not delinquent.

(Prior Code, § 5.08.010) Penalty, see § 112.99

§ 112.02 APPLICATION FOR LICENSE.

Application for alcoholic beverage licenses shall be made in accordance with SDCL Chapter 35.

(Prior Code, § 5.08.020)

§ 112.03 HOURS OF OPERATION FOR THE SALE OR SERVICE OF ALL ALCOHOLIC BEVERAGES LICENSEES.

It is unlawful for any alcoholic beverage licensee to sell or serve any alcoholic beverage at any time other than as provided herein. It shall be lawful for all alcoholic beverage licensees to sell or serve alcoholic beverages between the hours of 7:00 a.m. and 2:00 a.m. every day of the year. All sales or service of alcoholic beverages shall be in strict compliance with the laws of the State of South Dakota.

(Ord. 1050, passed 4-16-2018) Penalty, see § 112.99

Alcoholic Beverages

§ 112.03.1 REGULATION OF THE TRANSACTION OF ANY BUSINESS IN, AND USE AND CONSUMPTION, INCLUDING ON AND OFF SALE, OF MALT BEVERAGES, WINE, CIDER, SPIRITS, AND ALCOHOLIC BEVERAGES.

The City Commission by resolution or pursuant to the terms and conditions of any operating agreement entered into by the City may regulate the transaction of business concerning the sale of malt beverages, wine, cider, spirits, and alcoholic beverages, including on-sale and off-sale thereof, and may regulate the use and consumption of malt beverages, wine, cider, spirits, and alcoholic beverages, including on-sale and off-sale use or consumption thereof.

(Ord. 1052, passed 5-7-2018)

§ 112.04 POSSESSION OF ALCOHOLIC BEVERAGES.

(A) *Generally.* Unless a special permit license shall have been obtained from the city pursuant to § 112.01, it is unlawful to possess in any public place, street, alley, sidewalk, public park, place of amusement or business establishment not authorized to sell alcoholic beverages, pursuant to state law and the ordinances of the city, any bottle, whether or not containing alcoholic beverages, on which the seal has been broken and which bottle either did or does contain alcoholic beverages, or any glass, can or other container containing an alcoholic beverage.

(B) *Carry out of partially consumed, sealed bottle of wine permitted under certain circumstances.* A licensee that is licensed to sell wine on-sale may permit a customer to carry out the unconsumed portion of a bottle of wine if the customer purchased the bottle of wine from the licensee and consumed a portion of it with a meal that was prepared and served by the licensee at a table on the licensed premises. The licensee shall securely reseal the bottle of wine with a cork or other similar cap and place the bottle in a sealed bag or other container. The licensee shall also attach a receipt for the meal and the wine to the bag or container.

(Prior Code, § 5.08.040) Penalty, see § 112.99

§ 112.05 PERMIT PUBLIC LOCATION.

Notwithstanding § 112.04 a person, organization or entity may consume alcoholic beverages at a public location on terms and conditions authorized by the City Commission pursuant to a written permit. A permit fee or security deposit may at the discretion of the City Commission be charged.

(Prior Code, § 5.08.050) (Ord. 1051, passed 4-16-2018)

§ 112.06 ISSUANCE OF LICENSES AND SALE OF ALCOHOLIC BEVERAGES BY CITY.

(A) All licenses for the sale of alcoholic beverages authorized by this chapter shall be issued in accordance with the laws of the state, and all alcoholic beverages, including malt beverages, shall be purchased from the city for resale by parties having operating agreements with the city, including malt beverage retailers or malt beverage package dealers, and the price to be charged by the city for all such purchases of malt beverages shall be at a price of 5% above the city's cost plus freight, and for such purchases of other alcoholic beverages the price to be paid shall be that which is negotiated at the time of entering into any operating agreement.

(B) The fees for all alcohol beverage licenses shall be set by resolution of the city annually on or before September 30 for the ensuing calendar year, with said fees not to exceed the maximum amount allowed by statute.

(Prior Code, § 5.08.060) (Ord. 1023, passed 4-7-2014; Ord. 1050, passed 4-16-2018)

Alcoholic Beverages

§ 112.07 MAXIMUM NUMBER OF ON- OFF-SALE MALT BEVERAGE LICENSES AND MAXIMUM NUMBER OF WINE DEALERS BEING BOTH PACKAGE DEALERS AND ON-SALE DEALERS.

(A) The maximum number of on- off-sale malt beverage licenses, as defined by SDCL § 35-4-2(16), to be authorized by the city, in any given year shall not exceed the total number of 15 licenses.

(B) The maximum number of wine retailers being both package and on-sale license dealers as defined in SDCL § 35-4-2(12) to be authorized by the city in any given year shall not exceed the total number of ten licenses. A wine retailer being both package dealers and on-sale dealers may not be licensed as a video lottery established pursuant to SDCL § 42-7A-41. The maximum number of malt beverage and wine produced pursuant to SDCL Chapter 35-12 package dealers (SDCL § 35-4-2(17A)), off-sale package wine dealers in table wines, sparkling wines, sacramental wine and distilled spirits produced from product provided to an artisan distiller by the respective farm winery to be operated in conjunction with a farm winery established pursuant to SDCL Chapter 35-12 (SDCL § 35-4-2(19)), to be authorized by the city in any given year shall not exceed the total number of zero licenses.

(Prior Code, § 5.08.070) (Ord. 1040, passed 4-3-2017)

§ 112.08 FULL-SERVICE ON-SALE RESTAURANT LICENSES.

(A) *Definitions of terms.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. Any permanently installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages.

FULL-SERVICE RESTAURANT. Any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths or the bar. Any restaurant that only serves fry orders or food such as sandwiches, hamburgers or salads is not a **FULL-SERVICE RESTAURANT**.

RESTAURANT. Any area in a building which is maintained, advertised and held out to the public as a place where individually priced meals are prepared and served primarily for consumption in such area and where not more than 40% of the gross revenue of the restaurant is derived from the sale of alcoholic beverages. The **RESTAURANT** shall have a dining room or rooms, a kitchen and the number and kinds of employees necessary for the preparing, cooking and serving of meals.

(B) *License application requirements; documentation.* An applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality with an application form provided by the municipality to prove that the primary source of revenue from the operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

(C) *Annual reports.* The full-service restaurant on-sale licensee shall submit an annual report and supporting documentation to the city on forms provided by the city of the annual sales of the full-service restaurant, which includes an oath verifying the validity of the information provided in the report. The report and the supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross sales of the licensee for the following two categories:

- (1) Food and nonalcoholic beverage sales; and
- (2) Alcoholic beverages sales.

Alcoholic Beverages

(D) *License renewals.* When renewing a full-service restaurant on-sale license, the city shall condition the license renewal upon receiving documentation that not more than 40% of gross sales from the preceding 12 months operation of the full-service restaurant is derived from the sale of alcoholic beverages.

(E) *Only retail, on-sale service permitted.* A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premises consumption in the bar and dining room area of the restaurant.

(F) *Smoking prohibited.* No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises.

(G) *Full-service restaurant license fees.*

(1) As there has not been a record of any sales of licenses or operating agreements between January 1, 2003, and January 1, 2008 to determine a fair market value, the license fee charged for a full-service restaurant on-sale license shall be a minimum of \$1 for each person residing within the city as measured by the last preceding decennial federal census.

(2) The license fee shall be initially established by resolution within 90 days of the initial adoption of this section. Subsequent changes in the license fee shall not be made for a period of ten years from the effective date of adoption of this section unless a population growth reported by the federal decennial census requires an increase in the fee.

(H) *Registry of full-service restaurant on-sale licensees.* The city shall maintain a registry of each full-service on-sale restaurant license that is being offered for sale and the city shall furnish a copy of the registry to anyone who requests a new-full service restaurant on-sale license. The existing full-service restaurant on-sale licensee is responsible for registering with the city that the full-service restaurant on-sale license is for sale.

(I) *Issuance of new full-service restaurant licenses restricted.* The city may only issue a new license pursuant to this section if no on-sale license is on the registry or a person desiring to purchase an on-sale license listed on the registry provides documentation showing that the person is unable to purchase the on-sale license at the price established in division (G) above and on terms satisfactory to both the potential buyer and seller. The price of any on-sale license registered as "for sale" with the city shall be sold at the current fair market price set by the city pursuant to a resolution adopted in accordance with division (G)(2) above.

(Prior Code, § 5.08.080) (Ord. 1029, passed 2-27-2015)

§ 112.09 SIDEWALK CAFÉ ALCOHOLIC BEVERAGE SALES AND CONSUMPTION REGULATIONS.

(A) *General provisions.*

(1) Any holder of an on-sale operating agreement or on-sale malt beverage license may apply for a sidewalk café permit for the sale and consumption of alcoholic beverages which the licensee is authorized to sell on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises, provided that the license holder derives more than 50% of its gross receipts from the sale of prepared food for consumption on the licensed premises.

(2) The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and abutting the licensed premises.

(3) This section does not apply to any federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid.

(4) The hours of authorized sale and consumption on the sidewalk or walkway subject to a public right-of-way as provided by this section shall be consistent with the hours permitted for the license held by the sidewalk café permittee.

Alcoholic Beverages

(5) A violation of any provision of SDCL Title 35 by an alcoholic beverage license holder conducting business on a sidewalk or walkway subject to a public right-of-way pursuant to this section constitutes a violation of SDCL Title 35 as if the violation had occurred in or on the licensed premises.

(B) *Definition of sidewalk café.* A **SIDEWALK CAFÉ** is an outdoor area located on a public sidewalk or walkway which is operated and maintained by an establishment, coffeehouse, tea shop, restaurant or bar.

(C) *Applicable procedure.*

(1) An application for a sidewalk café permit shall be filed with the Finance Officer. There shall be a one-time application fee of \$100. The application shall include a site plan which identifies the location of tables, chairs, umbrellas, trash receptacles, heaters and barricades.

(2) (a) The location of the sidewalk café must be directly in front of the business operating the café, and may not extend beyond the side property lines. Tables, chairs, benches and food and beverage carts and equipment shall be located so that they do not impede, endanger or interfere with pedestrian traffic, with a minimum width of three feet of unobstructed passage for pedestrian traffic on Fifth Street and a minimum width of three feet of unobstructed passage for pedestrian traffic on side streets.

(b) No fixtures or devices on which food or beverages are sold or consumed shall be attached to the sidewalk or other public property. The property owner is responsible for the restoration of the sidewalk or public right-of-way if any damage is caused by the sidewalk café. Physical barriers may not exceed four feet in height.

(c) Lighting for sidewalk cafés is subject to approval during the permitting process. Tabletop lighting may include candles and battery-operated fixtures.

(d) Physical barricades are required if alcoholic beverages are sold at the sidewalk café.

(3) All services provided to the sidewalk café patrons as well as all patron activity must occur within the designated sidewalk café area.

(4) The permit holder is responsible for proper supervision of the sidewalk café in order to ensure the requirements of this section are met.

(5) Every sidewalk café permit holder shall furnish a certificate of insurance proving commercial insurance coverage of at least \$1,000,000 for bodily injury, death, disability and property damage liability. The city shall be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the operation of a sidewalk café. In the event that the insurance is cancelled, the permit holder has 24 hours to reinstate the insurance or the permit shall be revoked.

(6) (a) Permit holders must ensure that the requirements for the operation are met.

(b) These include:

1. Patrons must wear shoes and shirts at all times; and

2. All sidewalk cafés must maintain at least one opening for ingress and egress at all times. All sidewalk cafés shall abide by all requirements of the currently adopted International Building Code and the American's Disabilities Act, being 42 USC 12101 et seq.

Alcoholic Beverages

(7) All areas within and surrounding a sidewalk café must be maintained in a clean, neat and sanitary condition.

(8) All permit holders shall be required to abide by all federal, state and local laws.

(9) A sidewalk café permit may be revoked for failure to maintain the standards required for the initial permit. A notice of intent to revoke a sidewalk café permit shall be given in writing ten days prior to actual revocation and shall specify the area or areas of continued failure to meet requirements and maintain conditions the city may have imposed. If, during that period, proof of compliance is made by the permit holder, the permit shall be continued in force. (Prior Code, § 5.03.090) (Ord. 1051, passed 4-16-2018)

§ 112.10 SPECIAL PERMIT LICENSES.

(A) The city may issue:

(1) A special permit malt beverage retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal or veterans organization or any licensee licensed pursuant to SDCL § 35-4-2(4) or SDCL § 35-4-2(16) in addition to any other licenses held by the special events license applicant;

(2) A special permit on-sale wine retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal or veterans organization or any licensee licensed pursuant to SDCL § 35-4-2(4);

(3) A special permit on-sale license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal or veterans organization or any licensee licensed pursuant to SDCL § 35-4-2(4) or SDCL § 35-4-2(16) in addition to any other licenses held by the special events license applicant; or

(4) A special permit off-sale package wine dealer's license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL § 35-4-2(5), in addition to any other licenses held by the special events license applicant.

(B) Any special permit license issued pursuant to this section may be issued for a period of time established by the municipality. However, no period of time may exceed 15 consecutive days.

(C) Any special permit license issued pursuant this section shall be issued to the person and the location specified on the application. The governing body of the municipality shall determine the fee for this special permit license. Each application shall be accompanied by the fee prior to consideration by the City Commission. The fee provided for in this section shall be retained by the Finance Officer.

(D) The issuance of the special permit license is limited and restricted as follows:

(1) Alcoholic beverages for the purposes of this section include, malt beverages, wines and distilled spirits;

(2) Applications for a special permit license shall be submitted in writing to the Finance Officer and shall be submitted at least 20 days prior to the day on which the permit is to be effective; and

(3) The special permit license period may not exceed 15 days, and hours of authorized consumption may not exceed those permitted for on-sale licenses.

(E) Permit fees are established at an amount of not less than \$100 for each special permit license. The permit fee may be waived by the City Commission for civic, charitable, educational and governmental groups.

Alcoholic Beverages

(F) Such application shall be accompanied by a payment in cash or guaranteed funds of such special permit license fees and security deposits as the City Commission shall establish from time to time, the special permit license fee to be retained by the city to cover the expenses of processing the application and the security deposit to be returned to the applicant organization if the property affected by issuance of such special permit license shall be returned to the condition thereof which existed at the time special permit license was issued, and if this is not done within two days after expiration of such special permit license, the city shall retain the security deposit in partial payment of its expenses in connection therewith, which shall be in addition to any other recourse the city may have by way of criminal proceedings or civil action for the damage of public property or the violation of any law

(G) Special permit license requests and/or applications may be obtained from the Finance Officer.
(Prior Code, § 5.08.100) (Ord. 1051, passed 4-16-2018)

§ 112.11 SANITATION.

Every on-sale business shall maintain upon its licensed premises, toilets properly connected with the city water and sewer system with separate facilities for men and women. In each such facility there shall be maintained running water and approved sanitary drying facilities. Every licensee shall have such facilities equipped and maintained so as to pass state and/or local health requirements at all times.

(Prior Code, § 5.03.110)

§ 112.12 MAXIMUM NUMBER OF ON-SALE AND OFF-SALE ALCOHOL LICENSES.

(A) The number of on-sale alcoholic beverage licenses that may be issued by the city shall not exceed five.

(B) The number of off-sale alcoholic beverage licenses that may be issued by the city shall not exceed four.
(Ord. 1024, passed 4-7-2014)

§ 112.99 PENALTY.

(A) An alcohol licensee that violates any law or regulation governing licensees is subject to revocation or suspension of its alcohol license.

(B) An alcohol licensee whose agents or employees make a sale of alcohol to a person under the legal age is subject to mandatory civil penalty. The civil penalty is \$500 for a first offense within 24 months and is \$1,000 for a second offense within 24 months. The civil penalty is doubled if the agent or employee making the illegal sale has not been certified by an alcohol training program approved by the Department of Revenue. A third or subsequent violation subjects the licensee to revocation or suspension.

(C) Any person, firm or licensee in violation of any of the provisions of this chapter shall be deemed guilty of a misdemeanor. For failure to correct any offense when applicable, after conviction, each day of failure to do so shall constitute an additional separate offense. Whenever any person shall as clerk, servant, agent or employee of any other person or establishment violates any of the provisions of this chapter he or she shall also be deemed as guilty as a principal. Failure to comply with all existing requirements, including the provisions in this chapter, shall provide cause for revocation of any licenses granted under the provisions of state law.

(Prior Code, § 5.08.130)

(D) It is a Class 2 misdemeanor for any person to consume any distilled spirits in any public place, other than upon

Alcoholic Beverages

the premises of licensed on-sale dealers, or on the premises of a special permit license holder.
(Prior Code, § 5.08.100)