

Chapter 5.08

ALCOHOLIC BEVERAGES

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5.08.010 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

"Alcoholic beverages," "wine," "malt beverage," and "distilled spirits" and other such words and terms mean the same as definitions given them by SDCL 35-1-1. (Ord. 383 § 1, 2002; Ord. 362 § 1, 2002)

5.08.020 Minors.

No person under the age of twenty-one (21) years shall purchase or attempt to purchase alcoholic beverages, nor shall any person under the age of twenty-one (21) years drink any alcoholic beverage in a public place or have any alcoholic beverage in his or her possession in a public place, except as may be permitted by state law.

No licensee of any class shall sell or give for use as a beverage any alcoholic beverage to any person under the age of twenty-one (21) years. (Ord. 383 §§ 2, 3, 2002; Ord. 362 §§ 2, 3, 2002)

5.08.030 Sunday sales permitted by certain on-sale dealers and off-sale package dealers. Memorial Day sales permitted.

Notwithstanding any of the other provisions of this chapter, any on-sale liquor dealer that applies, qualifies and receives a Sunday retail dealer classification may sell, serve, and allow to be consumed, on the premises covered by their license, alcoholic beverages between the hours of seven a.m. on Sunday with the serving of food through two a.m. on the following Monday.

Any licensed off-sale package dealer may sell alcoholic beverages on Sunday between the hours of seven a.m. through two a.m. on the following Monday.

Any on-sale liquor dealer or off-sale package dealer may sell, serve and allow to be served (as applicable) on Memorial Day from seven a.m. through two a.m. on the following day. (Ord. 383 § 4, 2002: Ord. 362 § 4, 2002) (Amended July, 2010)

5.08.040 Hours of sale for light wine dealers.

(Ord. 383 § 5, 2002: Ord. 362 § 5, 2002)

(Repealed July, 2010)

5.08.050 Sunday hours of sale of malt beverages.

Any licensed on-sale or off-sale dealer of alcoholic beverages may sell or allow to be sold malt beverages on Sunday between the hours of seven a.m. through two a.m. on the following Monday. (Ord. 383 § 6, 2002: Ord. 362 § 6, 2002) (Amended July, 2010)

5.08.060 Indecent exposure, sexual conduct or simulation in or upon premises and duty of licensee to prevent said act.

A. Indecent exposure, certain sexual conduct or simulation thereof, licensee's duty to prevent.

1. It is unlawful for any person on premises licensed for the sale of alcoholic beverages knowingly or intentionally while in the presence of any other person:

a. To fail to conceal with a fully opaque (not transparent) covering, the sexual parts of his or her body, to include the genitals, pubic hair and anus of any person, or the nipple and areola of the female breast, or to depict covered male genitals in a discernibly turgid state; such failure to conceal shall include the use of body paint;

b. To expose any device, costume or covering which gives the appearance of or simulates the genitals or pubic area of the male or female body, or the nipple or areola of the female breast;

c. To simulate or engage in any sexual act, including sexual intercourse, deviate sexual conduct, masturbation, flagellation, bestiality or any sexual acts prohibited by law; or

d. To touch, caress or fondle the buttocks, anus, or genitals of himself or any person or a female breast, provided however this subdivision shall not proscribe such conduct by patrons using urinals and toilets in premise's restrooms.

2. It is unlawful for any licensee of alcoholic beverages to cause, allow or permit any person on said licensed premises to violate any portion of this chapter.

B. Any licensee, its agents, servants, or employees who violate any part of the foregoing ordinance may have its alcoholic beverage license suspended or revoked and/or fined for each violation, fine not to exceed five hundred dollars (\$500.00). (Ord. 383 § 11, 2002; Ord. 362 § 11, 2002) (Amended July, 2010)

5.8.65 On Sale Licenses – Full Service Restaurants

A. Definitions.

1. "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;
2. "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;
3. "Restaurant," any area in a building 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 at least sixty percent of the gross revenue of the restaurant is derived from the sale of food and nonalcoholic 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:

- Food and nonalcoholic beverage gross revenues; and
- Total gross revenues.

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 forty percent (40%) of gross sales from the preceding twelve months operation of the full-service restaurant is derived from the sale of alcohol or alcoholic beverages.

E. Only Retail On-Sale Service Permitted:

A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premise 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 required by State law, the license fee charged for a full-service restaurant on-sale license shall be at or above the current fair market value for such license as determined herein. However, any fair market value so established shall be a minimum of one dollar 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 ninety (90) days of the initial adoption of this ordinance. Subsequent changes in the license fee shall not be made for a period of ten (10) years from the effective date of adoption of this ordinance unless a population growth reported by the Federal decennial census requires an increase in the fee.
3. Fair Market Value for full-service restaurant license shall be established as follows:
 - a. For a period of ten years following adoption of this ordinance, the price of a new full-service restaurant on-sale license shall be set pursuant to § 35-4-116, at or above the current fair market value. However, the full-service restaurant on-sale license fee may not be less than the minimum on-sale license fee as provided in subdivision 35-4-2(4) or (6). For purposes of this section, the term, current fair market value, means the documented price of the on-sale license most recently sold through an arm's-length transaction, less the value of any real or personal property included in the transaction. If there are no documented sales of on-sale licenses, the City may request from any on-sale license holder within the City the date and price originally paid for its on-sale license to determine the current fair market value.
 - b. Any person who purchased an on-sale license issued pursuant to subdivision 35-4-2(4) or (6) within the last five years shall report to the City the amount paid for the license. If the City requests from any other licensee the amount originally paid for any other on-sale license pursuant to § 35-4-117, the licensee shall report that amount to the City. The declared purchase price shall be made under oath and shall include the documents establishing the amount paid for the on-sale license. If the transaction included other personal property or real property, the full market value of the other property on the date of the transaction shall be deducted from the total purchase price to establish the amount paid for the license. The person who owned the license as of the date of the adoption of the ordinance has the burden of establishing the amount paid for the license. If the amount reported is used to determine current fair market value pursuant to § 35-4-117, any licensee who contends that the amount does not accurately reflect the fair market value of the license on the date of purchase may file an objection to

the report. The objection shall be filed with the City within thirty days of the date the license fee is set pursuant to § 35-4-116. If an objection is filed, the City Council shall conduct a hearing to determine the fair market value of the license. The determination of the City Council may be appealed to circuit court.

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 ordinance 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 section G of this ordinance 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 section G (2) of this ordinance.

Any or all ordinances in conflict herewith are hereby repealed. (Inserted 2018)

5.08.070 ON-SALE DEALERS.

The number of on-sale dealers in alcoholic beverages other than wine retailers and malt beverage retailers and dealers licensed by the city shall be issued based on the maximum number of on-sale licenses allowed by SDCL 35-4-11.

5.08.080 OFF-SALE DEALERS.

The number of off-sale dealers in alcoholic beverages other than wine retailers and malt beverage retailers and dealers licensed by the city shall not exceed the maximum number allowed by SDCL 35-4-10.

5.08.090 FEES.

The fees for each alcoholic beverage license shall be set by the City Council by resolution.

5.08.100 UNLICENSED BUSINESS PROHIBITED.

No person, unless he or she first obtains a license provided by SDCL Title 35, shall transact any business authorized by this title to be conducted by the licensee within the city limits.

5.08.110 PLACE OF BUSINESS OF LICENSEE.

The place of business of an alcoholic beverage licensee shall be within the premises as described in the legal description provided on the application for the license. The premises must conform to all requirements of the state and the city.

5.08.120 SPECIAL EVENT LICENSES

- A. Special event alcoholic beverage licenses, under South Dakota Codified Laws 35-4-124, may be issued by the City Council in conjunction with special events held within the City of North Sioux City. Any license issued pursuant to this section may be issued a special event license for a period of time established by the City Council, not to exceed fifteen (15) consecutive days. The license shall be applied for and issued in the same manner as other alcohol licenses issued by the City of North Sioux City, except as further provided in this section.
1. **Special Application Requirements:** Any application for a special event alcoholic beverage license shall include the class of special alcoholic beverage license applied for and contain a map of the intended location for use of the special event alcoholic beverage license.
 2. **Effect of Boundaries for Licenses:** The sale of alcoholic beverages pursuant to a special event alcoholic beverage license shall not take place beyond the boundaries shown on the map. Alcoholic beverages sold pursuant to an off-sale special event alcoholic beverage license shall not be consumed at the location of the sale. Consumption of alcoholic beverages sold pursuant to an on-sale special event alcoholic beverage license may occur within the same boundaries as contained on the map in the application.
 3. **Hours of Effect:** The City Council, when granting a special event alcoholic beverage license, shall set the hours for which the special event alcoholic beverage license shall be effective with such hours never to exceed those for an on-sale alcoholic beverage dealer.
 4. **Fees Set by City Council:** The fees for each special event alcoholic beverage license shall be set by the City Council by resolution. No fee shall be charged for a special event license issued to a civic, charitable, educational, fraternal, or veterans' organization.
 5. **Limits on Issuance:** No applicant may be issued more than 30 special event alcoholic beverage licenses within any calendar year. For calculation purposes, any combination of licenses issued to the same person, at the same place, for the same time, and for the same special event, shall be counted only as one license for purposes of the annual license limit. Any civic, charitable, educational, fraternal, or veterans' organization may apply for a license or licenses up to 1 year in advance. All other applicants may apply for only 1 license at a time no more than 90 days in advance.

B. Types of Special Event Alcoholic Beverage Licenses and Classes of Eligibility: The following types of special event alcoholic beverage licenses are available to the corresponding classes of applicants for use in conjunction with a special event in the City of North Sioux City:

1. Special Malt Beverage Retailer's License: Available to any civic, charitable, educational, fraternal, or veterans' organization or any licensee licensed pursuant to South Dakota Codified Laws 35-4-2(4), (6), or (16).
2. Special On-Sale Wine Retailer's License: Available to any civic, charitable, educational, fraternal, or veterans' organization or any licensee licensed pursuant to South Dakota Codified Laws 35-4-2(4), (6), or (12) or any farm winery license.
3. Special On-Sale License: Available to any civic, charitable, educational, fraternal, or veterans' organization or any licensee licensed pursuant to South Dakota Codified Laws 35-4-2(4) or (6).
4. Special Off-Sale Package Wine Dealer's License: Special off- sale package wine dealer's licenses are available in the following situations:
 - a. Any civic, charitable, educational, fraternal, or veterans' organization or any licensee licensed pursuant to South Dakota Codified Laws 35-4-2(3), (5), or (12), or any farm winery license. A special off-sale package wine dealer's licensee may only sell wine manufactured by a farm winery license; or
 - b. Any civic, charitable, educational, fraternal, or veterans' organization in conjunction with a special event conducted pursuant to subsection (A) of this section.
5. Special Off-Sale Package Malt Beverage Dealer's License: Available to any civic, charitable, educational, fraternal, or veterans' organization in conjunction with a special event, conducted pursuant to subsection (A) of this section.
6. Special Off-Sale Package Dealer's License: Available to any civic, charitable, educational, fraternal, or veterans' organization in conjunction with a special event, conducted pursuant to subsection (A) of this section.
7. Special Off-Sale Restrictions: A civic, charitable, educational, fraternal, or veterans' organization holding a special event license pursuant to subsection (A) of this section may sell wine, malt beverages, or alcoholic beverages, as applicable to the license, that have been donated by members of the public. Any donated alcoholic beverage must have been purchased by the donor from a licensed South Dakota retailer.

5.08.130 VIOLATIONS

Any person or entity convicted of a violation of any provision of this Chapter shall be deemed guilty of a misdemeanor and shall be subject to a fine of up to Five Hundred Dollars (\$500.00). Each violation or continuing violation shall be considered a separate offense subject to the maximum fine of Five Hundred Dollars (\$500.00). (Added July, 2010) (Renumbered from 5.08.070 October 2021)

