

TITLE XI: BUSINESS REGULATIONS

Chapter

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CHAPTER 110: ALCOHOLIC BEVERAGES

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GENERAL PROVISIONS

§ 110.01 LICENSE; CLASSIFICATION; FEES.

(A) *Purpose.* The purpose of this section is to implement the provisions of Ch. 211, Laws of 1971, amending SDCL Title 35 and to provide for a classification of distilled spirit establishments in the municipality which shall be permitted to operate therein through the purchase of alcoholic beverages.

(B) *Classification and fees.* The following classification and fees are established for retail dealers in alcoholic beverages:

- (1) On-sale dealer: any person who sells, consumption on the premises where sold: \$1,200 per year fee;
- (2) Off-sale dealer: any person who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold: \$400 per year fee; and
- (3) Full-service on-sale restaurant: any person who sells, or consumption on the premises where sold under and having the facilities referred to therein: \$1,200 per year fee.

(C) *Number of licenses.* The number of licenses for on-sale and off-sale that are issues by the city shall not exceed the state's statutes.

(Prior Code, § 5.08.040) (Ord. 253, passed - -1971; Ord. 2019-7-12, passed 9-4-2019)

§ 110.02 PUBLIC POSSESSION OF ALCOHOL; PERMITS.

(A) It is unlawful for any person to have in his or her possession any unsealed can, bottle, glass pitcher, container or package of any kind containing wine, or beer upon any public street, alley, park, playground or any public place or building not having at the time a valid license for the sale and drinking or consuming of such beer or wine on the premises.

(B) Upon application duly made, the Mayor or Chief of Police may issue a temporary permit for a specific time and public place, when and where possession of an unsealed can, bottle, glass, pitcher, container or package may be temporarily permitted as the special occurrence may require; such special permit shall be in writing, signed by the Mayor or Chief of Police.

(Prior Code, § 5.08.050) (Ord. 257, passed - -1973; Ord. 2006-1-1, passed 1-16-2006) Penalty, see § 110.99

§ 110.03 MINORS; PROHIBITIONS.

(A) No person under the age of 21 years of age shall visit or remain in any place within the city where alcoholic beverages are sold or kept for sale to be consumed in the premises without being accompanied by his or her parent or guardian.

(Prior Code, § 5.08.070)

(B) No person shall sell or give any intoxicating liquor to any person under the age of 21 years of age.

(Prior Code, § 5.08.080)

Penalty, see § 110.99

§ 110.04 SUNDAY SALES AND MEMORIAL DAY SALES.

The city authorizes on sale or off sale licensees to sell, serve and consume alcoholic beverages pursuant to SDCL § 35-4-81 on Sundays and Memorial Day. Such sales can be for on- or off-sale pursuant to the license issued to the licensee.

(Prior Code, § 5.08.090) (Ord. 335, passed - -1989; Ord. 2010-10-12, passed 12-6-2010)

§ 110.05 FULL-SERVICE ON-SALE RESTAURANTS.

(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 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 alcohol or 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 non-alcoholic 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.

(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 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-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 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 \$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.

(3) Fair market value for full-service restaurant license shall be established as follows.

(a) Within 90 days of the effective date of this section and as required by state statute, each licensee within the city who owns an on-sale license issued pursuant to SDCL § 35-4-2(4) or (6) shall report the amount originally paid for the on-sale license to the city's Finance Department on forms provided by the city. Any form submitted pursuant to this provision shall be signed under oath and shall include the documents establishing the amount originally paid for the on-sale license. If the transaction for the purchase of the on-sale license included real or personal property, the full market value of the real or personal property on the date of the original sale shall be deducted from the total transaction price to determine the amount paid by the licensee for the on-sale license. The burden of establishing the amount paid for the license shall be on the licensee. Any licensee contesting the fair market value of the real or personal property may appeal the valuation adopted by the city to circuit court.

(b) For purposes of this section, pursuant to SDCL § 35-4-117, 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 municipality or county may request from any on-sale license holder within the municipality or county, the date and price originally paid for its on-sale license to determine the current fair market value.

(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.
(Ord. 2019-7-11, passed 9-4-2019)

BEER AND MALT BEVERAGES

§ 110.20 LICENSE REQUIRED.

(A) The Council shall have the authority to regulate and limit the number of malt beverage licenses to be issued within the corporate limits of the city.

(B) The Council establishes that no more than nine malt beverage licenses shall be issued.
(Prior Code, § 5.12.010) (Ord. 315, passed - -1985; Ord. 329, passed - -1989)

§ 110.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating the provisions of § 110.02 of this chapter shall be subject to a fine of \$100 or 30 days imprisonment in the city, or to both such fine and imprisonment.
(Prior Code, § 5.08.050)

(C) A violation of § 110.04 of this chapter is a Class 2 misdemeanor.
(Prior Code, § 5.08.090)
(Ord. 257, passed - -1973; Ord. 335, passed - -1989; Ord. 2006-1-1, passed 1-16-2006; Ord. 2010-10-12, passed 12-6-2010)

CHAPTER 111: GARBAGE BUSINESSES

Section

- 111.01 License required
- 111.02 Fees to be set by City Council

- 111.99 Penalty

§ 111.01 LICENSE REQUIRED.

No person, firm or corporation shall engage in the business for hire of collecting, transporting, and disposing of garbage or waste material including, but not limited to, rocks, lumber, concrete, building materials of any kind, abandoned furniture, household equipment, motor vehicle parts or bodies from within the city limits or dispose of or dump the same in the city dump located in the northwest quarter of section 36, township 118 north, range 76 west of the 5th prime P.M., Potter County, South Dakota, without license from the Council to collect, transport and dispose of such materials from within the city limits. The Council shall have authority to determine and establish standards and conditions for issuance of permits and determine the annual fees for such permit.

(Prior Code, § 5.16.010) (Ord. 243, passed - -1969; Ord. 1999-5-1, passed - -1999) Penalty, see § 111.99

§ 111.02 FEES TO BE SET BY CITY COUNCIL.

The Council may grant licenses or permits to such persons, firms or corporations whom the Council may authorize to collect salvage material from the city dump ground, as described in § 111.01 of this chapter, and to assess, levy and collect annually such fees or charges for such licenses or permits as the Council shall from time to time by resolution establish.

(Prior Code, § 5.16.020) (Ord. 243, passed - -1969; Ord. 1999-5-1, passed - -1999)

§ 111.99 PENALTY.

It is unlawful for any person, firm or corporation not specifically authorized by resolution of the Council to engage in commercial garbage hauling from within the city limits of the city or to transport

and deposit the same in the city dump grounds, as described in § 111.01 of this chapter, or to collect, salvage or remove any metal or wood, or any other substances or material of any kind whatsoever, from the premises described in § 111.01 of this chapter, unless authorized as provided in § 111.01 of this chapter, and that the violation of either §§ 111.01 and 111.02 of this chapter shall be deemed a misdemeanor and punishable by a fine of not to exceed \$100 for each offense.

(Prior Code, § 5.16.030) (Ord. 243, passed - -1969)

CHAPTER 112: PEDDLERS AND TRANSIENT MERCHANTS

Section

Peddlers

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- 112.02 Permit and license required
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PEDDLERS

§ 112.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PEDDLER. Includes any person, whether a resident of the city or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car or other vehicle or conveyance; and, further provided that, one who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the provisions of this chapter shall be deemed a **PEDDLER** subject to the provisions of this subchapter; provided, however, that, this subchapter shall not apply to any person selling food or dairy products of their own production. **PEDDLER** includes "hawker" and "huckster".

PERSON. Includes the singular and the plural and shall also mean and include any person, firm or corporation, association, club, copartnership or society or any other organization.
(Prior Code, § 5.20.010)

§ 112.02 PERMIT AND LICENSE REQUIRED.

It is unlawful for any person to engage in the business of peddler, as defined in § 112.01 of this chapter, within the corporate limits of the city without first obtaining a permit and license therefor as provided in this subchapter.

(Prior Code, § 5.20.020) Penalty, see § 112.99

§ 112.03 APPLICATION.

Applicants for permit and license under this subchapter must file with the city's Finance Officer a sworn application in writing (in duplicate) on a form to be furnished by the city's Finance Officer, which shall give the following information:

(A) Name and description of the applicant;

(B) Address (legal and local);

(C) A brief description of the nature of the business and the goods to be sold;

(D) If employed, the name and address of the employer, together with credentials establishing the exact relationship;

(E) The length of time for which the right to do business is desired;

(F) If a vehicle is to be used, a description of the same, together with license number or other means of identification; and

(G) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.

(Prior Code, § 5.20.030)

§ 112.04 INVESTIGATION AND ISSUANCE.

(A) Upon receipt of such application, the original shall be referred to the Chief of Police, who shall cause such investigation of the applicant's business and moral character to be made as he or she deems necessary for the protection of the public good.

(B) If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his or her disapproval and his or her reasons for the same, and return the application to the city's Finance Officer, who shall notify the applicant that his or her application is disapproved and no permit and license will be issued.

(C) If, as a result of such investigation, the applicant's character or business responsibility is found to be satisfactory, the Chief of Police shall endorse on such application his or her approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return the permit, along with the application to the city's Finance Officer, who shall, upon payment of the prescribed license fee, deliver to the applicant his or her permit and issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling. The city's Finance Officer shall keep a permanent record of all licenses issued.

(Prior Code, § 5.20.040)

§ 112.05 FEES.

The fee for engaging in the business of a peddler, as defined in § 112.01 of this chapter, shall be \$25 per day and any licenses issued to any person under this subchapter shall show the number of days for which the license is valid.

(Prior Code, § 5.20.050)

§ 112.06 EXHIBITION OF LICENSE.

Peddlers are required to exhibit their licenses at the request of any citizen.

(Prior Code, § 5.20.060) Penalty, see § 112.99

§ 112.07 DUTY OF POLICE TO ENFORCE.

It shall be the duty of any police officer of the city to require any person seen peddling, and who is not known by such officer to be duly licensed, to produce his or her peddler's license and to enforce the provisions of this subchapter against any person found to be violating the same.

(Prior Code, § 5.20.070)

§ 112.08 RECORDS OF LICENSES.

The Chief of Police shall report to the city's Finance Officer all convictions for violation of this subchapter and the city's Finance Officer shall maintain a record for each license issued and record the reports of violations therein.

(Prior Code, § 5.20.080)

§ 112.09 REVOCATION OF LICENSE.

(A) Permits and licenses issued under the provisions of this subchapter may be revoked by the City Council after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on his or her business as peddler;
- (3) Any violation of this subchapter;
- (4) Conviction of any crime or misdemeanor involving moral turpitude; and
- (5) Conducting the business of peddling in an unlawful manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(B) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his or her last known address at least five days proper to the date set for hearing.

(Prior Code, § 5.20.090)

§ 112.10 APPEAL.

(A) Any person aggrieved by the action of the Chief of Police or the city's Finance Officer in the denial of an application for permit or license as provided in § 112.03 of this chapter, or in the decision

with reference to the revocation of a license as provided in § 112.09 of this chapter, shall have the right of appeal to the Council. Such appeal shall be taken by filing with the Council, within 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal.

(B) The Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in § 112.09 of this chapter for notice of hearing on revocation. The decision and order of the Council on such appeal shall be final and conclusive.

(Prior Code, § 5.20.100)

TRANSIENT MERCHANTS

§ 112.25 DEFINITIONS.

(A) For the purpose of this subchapter, a *TRANSIENT MERCHANT* or *ITINERANT MERCHANT* is defined as any person, firm or corporation whether as owner, agent, consignee or employee who engages in temporary business of selling and delivering goods, wares and merchandise within the city and who in furtherance of such purpose hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar or any street, alley, lot or other place within the city for the exhibition and sale of such goods, wares and merchandise either privately or at public auction; provided that, such definitions shall not be construed to include any person, firm or corporation who while occupying such temporary location does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only.

(B) The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with or as part of or in the name of any local dealer, trader, merchant or auctioneer; provided further that, such definition shall not be construed to include any person retailing merchandise or products of his or her own manufacture or production.

(Prior Code, § 5.24.010)

§ 112.26 LICENSE REQUIRED.

It is unlawful for any person, firm or corporation to engage in business in the city as a transient retail merchant or an itinerant merchant, as defined in § 112.25 of this chapter, without first having obtained a license therefor in compliance with the provisions of this subchapter.

(Prior Code, § 5.24.020) Penalty, see § 112.99

§ 112.27 APPLICATION.

Applicants for license under this subchapter whether a person, firm or corporation shall file a written, sworn application signed by the applicant if an individual or by a partner if a partnership or by an officer if a corporation, with the city's Finance Officer showing:

(A) The name or names of the applicant for license;

(B) The name or names of the person or persons having the management or supervision of applicant's business during the time it is proposed that it will be carried on in the city and the permanent address and addresses of such person or persons, the capacity in which such person or persons will act; that is, whether proprietor, agent or otherwise;

(C) The place or places in the city where it is proposed to carry on applicant's business and the length of time it is proposed that the business shall be conducted;

(D) A statement of the nature and character and quality of the goods, wares, and merchandise to be sold or offered for sale by applicant whether the same are proposed to be sold from stock in possession or by sample, at auction by direct sale or by taking orders for future delivery, where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time the application is filed; and

(E) At least three references as to the integrity of the applicant.
(Prior Code, § 5.24.030)

§ 112.28 INVESTIGATION AND ISSUANCE.

(A) Upon receipt of such application, the city's Finance Officer shall refer such application to the Chief of Police of the city, who shall cause such investigation of such person's or persons' business responsibility or moral character to be made as he or she deems necessary to the protection of the public good.

(B) The Chief of Police shall, as soon as such investigation can be made, return such application to the city's Finance Officer with his or her recommendations as to whether or not such application should be granted and, in the event of his or her recommendation that such application be refused, his or her reasons therefor.

(C) Upon the receipt of such application with the endorsement of the Chief of Police as set forth above, the Finance Officer shall present such application to the City Council at its next meeting, at which time, the Council shall act upon such application and in its discretion, either approve or disapprove the same.

(Prior Code, § 5.24.040)

§ 112.29 BONDS.

Before any license as provided in this subchapter shall be issued for engaging in any transient or itinerant business, as defined by § 112.25 of this chapter, in the city, such applicant shall file with the city's Finance Officer a bond running to the city in the sum of \$1,000 executed by the applicant as principal and two sureties upon which service of process will be made in the state, the bond to be approved by the Council and conditioned that the applicant shall comply fully with all ordinances of the city and the statutes of the state regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against the applicant for any violation of the ordinances or statutes or any of them together with all judgments and costs that may be recovered against him or her by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting such business with such applicant, his or her agent, servants or employees.

(Prior Code, § 5.24.050)

§ 112.30 SERVICE OF PROCESS.

(A) Before any license as herein provided shall be issued for engaging in business as a transient or itinerant merchant, such applicant shall also file with the city's Finance Officer an instrument nominating and appointing the city's Finance Officer as true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transaction under the license, and the bond as heretofore required. Immediately upon service of process upon the city's Finance Officer as herein provided, the city's Finance Officer shall send to the licensee to his or her last known address by registered mail a copy of the process.

(B) The instrument shall also contain recitals to the effect that the applicant for the license consents and agrees that service of any notice or process may be made upon the agent, and when so made shall be taken and held to be as valid as if personally served upon the person or persons applying for the license under this subchapter, according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service.

(Prior Code, § 5.24.060)

§ 112.31 FEES.

(A) The fee required to be paid by such transient merchant or itinerant merchant, as defined in § 112.25 of this chapter, for the procuring of such license shall be at no fee charged per day, but the required paperwork shall be filled out and given to the Finance Officer in a timely manner.

(B) The application and license issued shall state the time for which the license is granted and the expiration date.

(Prior Code, § 5.24.070) (Ord. 2011-2-2, passed 3-7-2011)

§ 112.32 REVOCATION OF LICENSE.

(A) The permits and licenses issued pursuant to this subchapter may be revoked by the City Council after notice of hearing for any of the following causes:

(1) Any fraud, misrepresentation or false statement contained in the application for license;

(2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;

(3) Any violation of this subchapter;

(4) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude;

or

(5) Conducting the business licensed under this subchapter in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.

(B) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee, at his or her last known address, at least five days prior to the date set for the hearing.

(Prior Code, § 5.24.080)

§ 112.33 APPEALS.

Any person aggrieved by the decision of the City Council in regard to the denial of application for license, as provided in § 112.27 of this chapter, shall have the right to appeal to the Council. Such appeal shall be taken by filing with the Council within ten days after notice of the decision of the Council, a written statement showing the ground for the appeal, the Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to such person in the same manner as provided in § 112.32 of this chapter for notice of hearing on revocation. The order of the Council on such appeal shall be final.

(Prior Code, § 5.24.090)

§ 112.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating any of the provisions of §§ 112.01 through 112.10 of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$100 or by imprisonment not to exceed 30 days or both such fine and imprisonment.
(Prior Code, § 5.20.110)

(C) Any person violating provisions of §§ 112.25 through 112.33 of this chapter relating to transient and itinerant merchants shall, upon conviction thereby, be punished by a fine of not exceeding \$100 or by imprisonment in the city jail for a period of not to exceed 30 days or by both such fine and imprisonment, and that every day such violation exists shall constitute a separate offense and be punishable as such hereunder.
(Prior Code, § 5.24.100)

