

## Chapter 4

### Alcoholic Beverages

#### **Section 4-1 Definition of terms.**

For the purposes of this Chapter, all of the terms used herein are defined as they are defined in SDCL Title 35.

#### **Section 4-2 Required license.**

No person shall engage in business as a distiller, wholesaler, package dealer, a club, dining car company, a transportation company, or solicitor of intoxicating liquor until he shall have procured a license covering the class of business operation to be engaged in by him within the city, except as provided by law.

#### **Section 4-3 Number of licenses.**

There shall be issued within the municipality not to exceed three (3) on-sale and two (2) off-sale licenses. All club licenses shall be counted as on-sale licenses for purpose of limitation of the number of licenses. (SDCL 35-4-10 & 35-4-10)

#### **Section 4-4 Classifications and fees.**

The following classifications are established for on and off-sale dealers in distilled spirits, wines, and malt beverages:

- A. On-sale license shall entitle the owner to sell any alcoholic beverage for consumption only upon the premises where sold;
- B. Off-sale license shall entitle the owner to sell any alcoholic beverage for consumption off the premises where sold;
- C. Malt beverage on-sale license shall entitle the owner to sell malt beverages for consumption only upon the premises where sold;
- D. Malt beverage off-sale license shall entitle the owner to sell malt beverages for consumption off the premises where sold.

The fees for the licenses to engage in the selling of alcoholic beverages shall be set by resolution of the city council.

#### **Section 4-5 License removal.**

No licenses under any class may be moved from the location for where it was issued to another location within the corporate limits of the city without permission of the council.

#### **Section 4-6 No deliveries of liquor.**

No package dealer as defined by law shall be permitted, within the city, to make any deliveries of intoxicating liquor outside of his place of business. (SDCL 35-4-74)

**Section 4-7 Possession in a public place.**

No person shall be permitted to have an unsealed original package in his possession in a public place within the city. Provided, however, that this shall not apply to an on sale dealer who shall have unsealed packages with proper stamps on his premises from which to serve his customers; and provided, further, that for the purpose of this provision a hospital or sanitarium shall not be considered to be a public place and patients in said hospital or sanitarium may have unsealed original packages.

**Section 4-8 Selling hours.**

No licensee of any class within the city shall sell any intoxicating liquor outside of the hours in which his license permits him to sell.

**Section 4-9 Selling liquor on Sundays.**

The council may at its discretion provide any on-sale liquor establishment the right to sell, serve, or allow to be consumed alcoholic beverages between the hours of eleven o'clock a.m. and twelve midnight on Sunday with the serving of food where said licensee has facilities for the serving of prepared meals from a fixed restaurant with the simultaneous seating capacity of at least thirty-five (35) patrons; and (SDCL 35-4-2.1)

Pursuant to the authority granted by SDCL 35-4-81.1, the city hereby permits the sale of alcoholic beverages by off-sale licensees on Sundays. No sales of alcoholic beverages by off-sale licensees may be made on Sundays between the hours of twelve o'clock midnight and seven o'clock a.m. of the following day.

**Section 4-10 Off-sale sales.**

No package or off-sale licensee within the city shall sell or allow to be sold alcoholic beverages between the hours of twelve o'clock midnight and seven o'clock a.m. of the following day. No distilled spirits or wine may be sold on Memorial Day or Christmas Day. (SDCL 35-4-81.1)

**Section 4-11 On-sale sales.**

No on-sale licensee within the city shall sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of two o'clock a.m. and seven o'clock a.m. or on Sunday after two o'clock a.m., or on Memorial Day after one o'clock a.m. or at any time on Christmas Day. The Sunday exclusion contained above shall not apply to those licensee's who shall obtain a license for the sale of alcoholic beverages on Sunday as provided in Section 4-9 of this Ordinance. It shall be unlawful for any licensee, employee, agent, or servant of an on-sale liquor establishment whose principle business is the sale of alcoholic beverages to allow any patron or customer to remain on the premises after the above designated closing time. (SDCL 35-4-81)

**Section 4-12 Central Standard Time and Central Standard Daylight Savings Time.**

All times for opening and closing hours prescribed in Sections 4-8, 4-9, 4-10, and 4-11 shall be Central Standard Time or Central Standard Daylight Savings time when such time is in effect in the city.

**Section 4-13 Serving liquor outside of establishment.**

No on-sale dealer shall be permitted to serve within the city any intoxicating liquor outside of the premises for which his license was issued. (SDCL 35-4-75)

**Section 4-14 Unsealed container.**

It shall be unlawful for any person to possess an alcoholic beverage in an unsealed container or in an open receptacle either within or without a motor vehicle, on any sidewalk, street, alley, or highway within the city limits.

This Section shall not apply:

- A. In or upon described property which is publicly owned, or owned by a non-profit corporation, when the governing body of this municipality has authorized by permit, pursuant to SDCL 35-1-5.3, persons to consume or blend alcoholic beverages, but not to engage in the sale thereof, for a period not to exceed twenty-four (24) hours. Hours of authorized consumption shall not exceed those permitted for on-sale licenses.
- B. In or upon described property which is publicly owned, or owned by a non-profit corporation, when the governing body of this municipality has authorized by permit, pursuant to SDCL 35-4-11.4, a special malt beverage retailers license to any civil, charitable, educational, or fraternal organization in conjunction with a special event within the municipality. If an organization receiving a license pursuant to this section conducts a street dance in conjunction with a special event, the organization shall provide qualified security personnel as deemed necessary by the governing body to maintain order during the street dance.

**Section 4-15 Possession of open bottle or can.**

It shall be unlawful for any person to consume or have in his possession an opened bottle or can of alcoholic liquor, as defined in SDCL 35-1-9.1 through 35-1-9.3, upon any public street or alley either within or without a motor vehicle within the city limits or upon any public right-of-way or highway within one (1) mile of the city limits. (SDCL 35-3-1)

**Section 4-16 Beer Garden.**

- A. A beer garden is defined for purposes of this Section as an area adjacent to an establishment which has been issued an on-sale beer or liquor license where patrons of said establishment may consume alcoholic beverages sold by the establishment in an area outside of the establishment but adjacent thereto.
- B. Any on-sale liquor or beer licensee may operate a beer garden so long as the beer garden is adjacent and connecting to the licensed establishment and the only entry into the beer garden is from an entry way into the licensed establishment. Any beer garden shall have a fence at least six (6) feet high around the beer garden constructed in such a way that no person may crawl through or under said fence. Further, if there are any outside bands, jukeboxes, or loud speakers in a beer garden the same shall cease playing or operating at 1:00 a.m.
- C. Any licensee operating a beer garden shall abide by all rules and regulations as set out by state or local statutes involving the sale of said alcoholic beverages.
- D. The only alcoholic beverages to be consumed within the premises defined as a beer garden shall be those alcoholic beverages sold by the licensed establishment operating the beer garden.

E. This Section does not apply to those establishments that are issued a special event license.

**Section 4-17 Entertainment.**

It shall be unlawful for any person owning, renting, leasing, operating, or managing any establishment that sells, by the drink or for consumption on the premises, intoxicating liquor or alcoholic beverages, wine or beer, in which the establishment has had a license application approved or recommended to be approved by the governing body of the city, to cause, allow, or permit any person in or about such establishment, while in the presence of any other person in such establishment, to fail to conceal with fully opaque covering, the sexual or genital parts of his or her body.

It shall also be unlawful for any patron to have physical contact with an entertainer during the course of a performance on a licensed premise except under the following conditions:

- A. The entertainer shall have invited the patron to participate in the performance; and
- B. The contact that takes place does not involve any act by the patron and the entertainer that could be characterized as a sexual act.

Any entertainer performing in an establishment, as defined above, must be at least twenty-one (21) years of age and have proper identification.

In addition, upon proof of violation of this Section, any license approved or recommended to be approved by the governing body of the city, may be revoked or suspended.