

## CHAPTER 10 –GENERAL LICENSING & LICENSING BOARDS

### ARTICLE 2 - ALCOHOLIC BEVERAGES

#### SECTIONS:

Sections 10-2-101 to 199, inclusive. Alcoholic beverages - general provisions.

Section 10-2-101. Alcoholic beverage license provisions of state law must be complied with.

Section 10-2-102. Number of alcoholic beverage licenses allowed and fee. (REPEALED)

Section 10-2-103. Video lottery machine.

Section 10-2-104. Sunday Sale of Alcoholic Beverages Authorized.

Section 10-2-105. Definitions.

Section 10-2-106. License application requirements.

Section 10-2-107. Annual reports.

Section 10-2-108. License renewals.

Section 10-2-109. Only retail, on-sale service permitted.

Section 10-2-110. Smoking prohibited.

Section 10-2-111. Full-service restaurant license fees.

Section 10-2-112. Price of full-service restaurant on-sale license – current fair market value.

Section 10-2-113. Licensee’s right to contest price established for license fee.

Section 10-2-114. Registry of on-sale licenses.

Section 10-2-115. Issuance of new full-service restaurant licenses restricted.

Section 10-2-116. City’s fee for the issuance of on-sale licenses for full-service restaurants.

Section 10-2-117. Sidewalk alcoholic beverage sales and consumption regulations.

118 to 199, inclusive. Reserved.

---

**Section 10-2-101 to 199, inclusive. Alcoholic beverages - general provisions.**

**Section 10-2-101 Alcoholic beverage license provisions of state law must be complied with.**

No person, firm or corporation shall sell, offer for sale, keep for sale, exchange, distill, manufacture, produce, bottle, blend or otherwise concoct or transport, for other than personal use, within the city or within one mile of its territorial limits any alcoholic beverage as defined by statute without having a license therefore as required by or authorized by SDCL Title 35, as amended.

**Source:** R.O. Pierre, 1957, 9.0101; Rev. of Ord., 1990.

**Section 10-2-102 Number of Licenses. (REPEALED)**

**Source:** Ord. No. 942, 1976; 947, 1976; 1130, 1984 (Repealed).

**Statutory reference:** SDCL 9-26-6, alcoholic beverage trade.

**Section 10-2-103 Video Lottery Machines.**

There is hereby imposed on any person who is licensed pursuant to subdivisions 4, 13 or 16 of SDCL 35-4-2 and who is issued a video lottery establishment license pursuant to SDCL 42-7A-41 an annual license fee for the privilege of locating video lottery machines on the licenses premises. The fee for each video lottery machine is \$50.00 per year. This ordinance shall be effective on January 1, 1993.

**Source:** Ord. No. 1300, 1992; Ord. No. 1309, 1992.

**Section 10-2-104 Sunday Sale of Alcoholic Beverages Authorized.**

Any establishment operating as an on-sale or off-sale licensee under an alcoholic license within the city of Pierre may offer alcoholic beverages for sale on Sundays and Memorial Day between the hours of seven (7) a.m. and two (2) a.m.

**Source:** Ord. No. 1572, 2005; Ord. No. 1776, 2017.

**Statutory reference:** SDCL 35-4-81.1.

**Section 10-2-105 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 beverage, wine, malt beverage, and distilled spirits* and other such words and terms mean the same as the definitions given them by SDCL 35-1-1.

*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;

*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 foodstuffs 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 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.

**Source:** Ord. No. 1664, 2010.

#### **Section 10-2-106 License application requirements.**

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.

**Source:** Ord. No. 1664, 2010.

#### **Section 10-2-107 Annual reports.**

When renewing, 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 revenues of the licensee for the following two categories:

- (i) Food and nonalcoholic beverage gross revenues; and
- (ii) Total gross revenues.

**Source:** Ord. No. 1664, 2010.

#### **Section 10-2-108 License renewals.**

The license will need to be renewed annually and shall be subject to license renewal fees as provided in SDCL §35-4-2(4). The renewal shall be conditioned upon the city receiving documentation deemed adequate by it that at least sixty percent of the total gross revenue of the full service restaurant within the preceding twelve (12) months operation was derived from the sale of food and nonalcoholic beverages. This percentage must be met or the license will not be renewed.

**Source:** Ord. No. 1664, 2010.

**Section 10-2-109 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 of area of the restaurant.

**Source:** Ord. No. 1664, 2010.

**Section 10-2-110 Smoking prohibited.**

No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises.

**Source:** Ord. No. 1664, 2010.

**Section 10-2-111 Full-service restaurant license fees.**

Pursuant to state law, the city may issue additional on-sale licenses to full-service restaurants for a fee of at least one dollar for each person residing within the municipality as measured by the last preceding decennial federal census. The license fee shall be established by ordinance within ninety (90) days of the initial adoption of this ordinance or within thirty (30) days after the resolution of any appeal provided for in 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.

**Source:** Ord. No. 1664, 2010.

**Section 10-2-112 Price of full-service restaurant on-sale license – current fair market value.**

- (1) As required by state law, the price charged for a full-service on-sale restaurant 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) For purposes of this ordinance, the term “current fair market value” means the documented price of the on-sale license most recently sold between January 1, 2003, and January 1, 2008, through an arm’s length transaction, less the value of any real or personal property included within the transaction. Any existing license can contest the fair market value determination to circuit court.

The City may, in its sole discretion, also consider the information reported in subpart (3) hereof in its establishment of fair market value.

- (3) Within 30 days of the effective date of this ordinance 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) as of January 1, 2008, and who purchased the license or had the license transferred to such licensee at any time between January 1, 2003, and January 1, 2008, shall report the amount originally paid for the on-sale license to the city's auditor's office on forms provided by the city. The city may in its discretion also request other licensees to also report under oath the amount it originally paid for the on-sale license. 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 documentation submitted pursuant to this section shall remain confidential, unless and until a hearing is conducted pursuant to Section 10-2-113. Any licensee contesting the fair market value of the real and personal property may appeal the valuation adopted by the city to circuit court.

**Source:** Ord. No. 1664, 2010.

### **Section 10-2-113 Licensee's right to contest price established for license fee.**

If the amount reported by the licensee or licensees under Section 10-2-112 is used to determine current fair market value of a restaurant license to be issued under this ordinance, 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 Section 10-2-111 or Section 10-2-112 hereof. If an objection is filed, the City Commission shall conduct a hearing to determine the fair market value of the license. The determination of the City Commission may be appealed to circuit court.

**Source:** Ord. No. 1664, 2010.

### **Section 10-2-114 Registry of on-sale licenses.**

The city shall maintain a registry of each on-sale license that is being offered for sale at the price established in Section 10-2-111 or Section 10-2-112 of the Revised Ordinances of the City of Pierre, and the city shall furnish a copy of the registry to anyone who requests a new full-service restaurant on-sale license. The existing on-sale licensees are responsible for registering with the city that an on-sale license is for sale.

**Source:** Ord. No. 1664, 2010.

**Section 10-2-115 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 established by Section 10-2-114 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 10-2-111 or 10-2-112 of the Revised Ordinances of the City of Pierre, and on terms satisfactory to both the potential buyer and seller. Any on-sale license registered as “for sale” with the city shall be sold at the current fair market value price set by the city pursuant to an ordinance adopted in accordance with Section 10-2-111 or 10-2-112 of the Revised Ordinances of the City of Pierre.

**Source:** Ord. No. 1664, 2010.

**Section 10-2-116 City’s fee for the issuance of on-sale licenses for full-service restaurants.**

Full-service restaurant on-sale license.

Initial fee ..... \$110,000.00

Annual fee ..... \$ 1,500.00

**Source:** Ord. No. 1665, 2010.

**Section 10-2-117. Sidewalk Alcoholic Beverage Sales and Consumption regulations.**

(a) General Provisions.

1. Any holder of any on-sale alcohol license may apply for a sidewalk sales 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.
2. The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and abutting the licensed premises.
3. The location of the sidewalk sales permit must be directly in front of the business operating the establishment, 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 five (5) feet of unobstructed passage for pedestrian traffic. Umbrellas should be designed to be secure during windy conditions and must be 8 feet above the sidewalk when open.
4. No fixtures or devices on which food or beverages are sold or consumed shall be attached to the sidewalk or other public area. The property owner is responsible for the restoration of the sidewalk or public right-of-way if any damage is caused by the sidewalk sale area. Physical barriers may not exceed four feet in height.

5. Lighting for sidewalk sales area is subject to approval during the permitting process. Tabletop lighting may include battery-operated fixtures.
6. Physical barricades are required if alcoholic beverages are sold at the sidewalk sales area. Such barricades shall be designed to control access to areas where alcoholic beverages are consumed or sold.
7. Any signs advertising the sidewalk sales must comply with applicable ordinance.
8. 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.
9. 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 sale permittee.
10. A violation of any provision of 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 Title 35 as if the violation had occurred in or on the licensed premises.

(b) Definition.

Sidewalk Sale Area. A sidewalk sale permit relates to an outdoor area located on a public sidewalk or walkway which is operated and maintained by an establishment, coffeehouse, tea shop, restaurant, or bar. The area in which sidewalk sale permits may be allowed within City limits of Pierre is the area identified as Central Business Zoning District.

(c) Applicable Procedure.

1. An application for a sidewalk sale permit shall be filed with the City Finance Officer. There shall be an initial application fee of \$250.00 and annual renewal fee of \$100. The initial application shall include a site plan which identifies the location of tables, chairs, umbrellas, trash receptacles, heaters, and barricades.
2. All services provided to sidewalk sale area patrons as well as all patron activity must occur within the designated sidewalk sales area. No alcoholic beverages may be stored or mixed in the sidewalk sale area.
3. The permit holder is responsible for proper supervision of the sidewalk sale area in order to ensure the requirements of this section are met.
4. Every sidewalk sales 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 of Pierre 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 sales area. In the event that the insurance is cancelled, the permit holder has 24 hours to reinstate the insurance or the permit shall be revoked.

5. Permit holders must ensure that the requirements for operation are met. These include:
  - A. Patrons must wear shoes and shirts at all times.
  - B. All sidewalk sales areas must maintain at least one opening for ingress and egress at all times. All sidewalk sales area shall abide by all requirements of the currently adopted International Building Code and the American's with Disabilities Act.
6. All areas within and surrounding a sidewalk sales area must be maintained in a clean, neat, and sanitary condition.
7. All permit holders shall be required to abide by all federal, state, and local laws.
8. A sidewalk sales permit may be revoked for failure to maintain the standards required for the initial permit. A notice of intent to revoke a sidewalk sales permit shall be given in writing by the Building Official 10 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 holder of the permit, the permit shall be continued in force.

**Source:** Ord. No. 1768, 2016.

**Sections 10-2-118 to 199, inclusive. Reserved.**