

**TITLE XI: BUSINESS REGULATIONS**

Chapter

**110. ALCOHOLIC BEVERAGES**

**111. FULL-SERVICE RESTAURANTS**

**112. PEDDLERS AND VENDORS**



## CHAPTER 110: ALCOHOLIC BEVERAGES

Section

### *General Provisions*

110.01 Off-sale alcoholic beverage; Sundays

### *Special Event Alcohol Licenses*

110.15 Definition

110.16 Licenses

110.17 Fee

110.18 Three days

110.19 Requirements

### **GENERAL PROVISIONS**

#### **' 110.01 OFF-SALE ALCOHOLIC BEVERAGE; SUNDAYS.**

Those persons, firms or corporations which hold current operating agreements with the city for the retail off-sale of alcoholic beverages may sell such alcoholic beverages off-sale on all Sundays during the year, unless Christmas Day or Memorial Day falls on a Sunday, in which case the sale of alcoholic beverages shall be prohibited. Sunday off-sales of alcoholic beverages are allowed between the hours of 11:00 a.m. and 12:00 midnight.

(Prior Code, ' 6.0113)

### **SPECIAL EVENT ALCOHOL LICENSES**

#### **' 110.15 DEFINITION.**

## Whitewood - Business Regulations

For purposes of this subchapter, a *SPECIAL EVENT* within the municipality is defined as an event or activity by any generally recognized civic, charitable, educational, fraternal or veterans organization with an active chapter located within the city, or an event at a specified location within the city, pursuant to SDCL ' 35-1-5.5. To obtain the special event alcohol license, a license holder having a license already issued by the city pursuant to SDCL ' 35-4-2(4), (12) or (16) shall submit an application stating their qualifications for a special event alcohol license on a form consistent with the requirements of SDCL ' 35-4-124 and providing all additional information required by the city finance office to meet the requirements of this chapter and pertinent resolutions. A special event alcohol license can only be issued to a current city alcohol license holder and only for the same class of license previously issued to the licensee by the city.

(Prior Code, ' 5.0901)

### ' 110.16 LICENSES.

(A) A special event on-sale license may only be issued to a current city alcohol license holder and only for the same class of license previously issued to the licensee by the city, for any special event, as defined in ' 110.15, in a controlled environment.

(Prior Code, ' 5.0902)

(B) A special event malt beverage retailer=s license may only be issued to a current city alcohol license holder and only for a special event held by any generally recognized civic, charitable, educational, fraternal or veterans organization for a special event as defined in ' 110.15, in a controlled environment.

(Prior Code, ' 5.0903)

### ' 110.17 FEE.

The fee for each special event on-sale license and special event malt beverage retailer=s license will be not more than \$500 per day and will be not less than \$20 per day.

(Prior Code, ' 5.0904)

### ' 110.18 THREE DAYS.

Any licenses issued pursuant to this section may be issued for a period of time established by the Common Council not exceeding three consecutive days.

(Prior Code, ' 5.0905)

### ' 110.19 REQUIREMENTS.

The license may be issued pursuant to all additional requirements of SDCL ' 35-4-124, including any procedural regulations adopted by a resolution of the Common Council.

(Prior Code, ' 5.0906)

## CHAPTER 111: FULL-SERVICE RESTAURANTS

### Section

- 111.01 Operating agreement application
- 111.02 Definitions
- 111.03 Annual review
- 111.04 Operating agreement renewals
- 111.05 Only retail on-sale service permitted
- 111.06 Smoking prohibited
- 111.07 Full-service restaurant license fees
- 111.08 Registry of full-service restaurant operating agreements
- 111.09 Issuance of new full-service operating agreement restricted

#### ' 111.01 OPERATING AGREEMENT APPLICATION.

An applicant may apply to the city for an operating agreement for a full-service restaurant on-sale license. The applicant shall provide sufficient documentation to the city 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. This supporting documentation concerning the primary source of revenue submitted to the city shall be deemed confidential and shall not be available for inspection by the general public.

(Prior Code, ' 5.0801)

#### ' 111.02 DEFINITIONS.

For the purpose of this chapter, 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.  
(Prior Code, ' 5.0802)

' **111.03 ANNUAL REVIEW.**

(A) The operating agreement for a full-service restaurant on-sale licensee shall have a term of one year. Each year, prior to renewal of the operating agreement, the manager shall submit an annual report and supporting documentation to 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.

(B) The report and the supporting documentation shall be confidential and not available to the general public.

(C) 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.

(Prior Code, ' 5.0803)

' **111.04 OPERATING AGREEMENT RENEWALS.**

The manager shall provide documentation to the city that not more than 40% of gross sales from the preceding 12 months operating agreement is derived from the sale of alcohol or alcoholic beverages. If this condition is met, and there are not any other problems with the operation of the manager, the city shall renew the operating agreement for an additional one-year term.

(Prior Code, ' 5.0804)

' **111.05 ONLY RETAIL ON-SALE SERVICE PERMITTED.**

An operator of a full-service restaurant on-sale license may only serve alcoholic beverages for on-premises consumption in the bar and dining room area of the restaurant.

(Prior Code, ' 5.0805) Penalty, see ' 10.99

**' 111.06 SMOKING PROHIBITED.**

No operator of a full-service restaurant on-sale license may allow smoking on the licensed premises. (Prior Code, ' 5.0806) Penalty, see ' 10.99

**' 111.07 FULL-SERVICE RESTAURANT LICENSE FEES.**

(A) As required by state law, the fee charged for the grant of an operating agreement for a full-service restaurant on-sale license shall be at or above the current fair market value 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.

(B) The fee for an operating agreement for a full-service restaurant on-sale license shall be initially established by resolution within 90 days of the initial adoption of this chapter. Subsequent changes in the fee shall not be made for a period of ten years from the effective date of adoption of this chapter unless a population growth reported by the federal decennial census requires an increase in the fee.

(C) Fair market value for an operating agreement for a full-service restaurant license shall be as follows.

(1) Within 90 days of the effective date of this chapter and as required by state statute, each manager within the city who has an operating agreement for on-sale license and who purchased the operating agreement or had the operating agreement transferred to the manager anytime between January 1, 2003, and January 1, 2008, shall report the amount originally paid for the operating agreement to the finance office 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 operating agreement. If the transaction for the purchase of an operating agreement 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 applicant for the operating agreement. The burden of establishing the amount paid for the operating agreement shall be on the manager. Any manager contesting the fair market valuation of the real or personal property may appeal the valuation adopted by the city to Circuit Court.

(2) For purposes of this section, the term **CURRENT FAIR MARKET VALUE** means the documented price of the on-sale operating agreement 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.

(Prior Code, ' 5.0807)

**' 111.08 REGISTRY OF FULL-SERVICE RESTAURANT OPERATING AGREEMENTS.**

The city shall maintain a registry of each full-service on-sale restaurant operating agreement that is being offered for sale and the city shall furnish a copy of the registry to anyone who requests an operating agreement for a full-service restaurant on-sale operating agreement. The existing full-service restaurant manager is responsible for registering with the city that the operating agreement is for sale.  
(Prior Code, ' 5.0808)

**' 111.09 ISSUANCE OF NEW FULL-SERVICE OPERATING AGREEMENT RESTRICTED.**

The city may only issue a new operating agreement pursuant to this chapter if no on-sale operating agreement is on the registry or a person desiring to purchase an operating agreement listed on the registry provides documentation showing that the person is unable to purchase the operating agreement at the price established pursuant to this chapter and on terms satisfactory to both the potential buyer and seller. The price of any on-sale operating agreement registered as Afor 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 this chapter.  
(Prior Code, ' 5.0809)

## CHAPTER 112: PEDDLERS AND VENDORS

### Section

- 112.01 Definitions
- 112.02 Exception to this chapter
- 112.03 Permit required
- 112.04 Application for permit
- 112.05 Fee for permit
- 112.06 Display
- 112.07 Revocation of permit
- 112.08 Permit expiration date
- 112.09 Waiver
  
- 112.99 Penalty

### ' 112.01 DEFINITIONS.

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

***PEDDLER.*** Any person, whether a resident of this city or not, traveling from place to place, from house to house, or from street to street, for the purpose of selling or soliciting for sale goods, wares, merchandise or services, other than agricultural products produced or processed in this state.

***TEMPORARY BUSINESS.*** One which operates for less than one month continuously during any one calendar year.

#### ***TRANSIENT MERCHANT.***

(1) Includes any person, firm or corporation, engaging in a temporary business within the city limits.

(2) The term shall not include any resident of the city, or any firm or corporation in which the principal owner is a resident of the city.  
(Prior Code, ' 6.0112-1)

### ' 112.02 EXCEPTION TO THIS CHAPTER.

(A) The provisions of this chapter shall not apply to solicitation, sales or distributions made by charitable, educational or religious organizations which have registered each sales project with City Hall administrative staff on forms provided by that office.

(B) There shall be no fee for such registration.  
(Prior Code, ' 6.0112-2)

**' 112.03 PERMIT REQUIRED.**

All peddlers and transient merchants, as defined above, shall be required to obtain from the city a permit to operate within the city.  
(Prior Code, ' 6.0112-3) Penalty, see ' 112.99

**' 112.04 APPLICATION FOR PERMIT.**

The application for a permit required by the provisions of this chapter shall:

(A) Require proof that the application has received the license required by the state;

(B) Contain a statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed thereof; if previously convicted and the place of conviction;

(C) Whether the applicant, upon any sale or order, shall demand, accept or receive payment, or deposit, of money in advance of final delivery;

(D) The period of time the applicant wishes to engage in business within the city;

(E) The local and permanent addresses of the applicant and other persons who will be selling within the city limits;

(F) The local and permanent addresses and the name of persons, if any, that the applicant represents;

(G) The kind of goods, wares, merchandise or services the applicant wishes to engage in such business within the city;

(H) The last five cities or towns wherein the applicant has worked before coming to the city; and

(I) Such other relevant information as the Chief of Police may require for the investigation of the applicant.

(Prior Code, ' 6.0112-4) Penalty, see ' 112.99

**' 112.05 FEE FOR PERMIT.**

Before any permit shall be issued under the provision of this chapter, the applicant shall pay a fee which shall be set annually by the Common Council. One-half of the fee shall be paid to the City Building Inspector, who shall ensure that the vendor location meets city zoning and building ordinances and codes.

(Prior Code, ' 6.0112-5) Penalty, see ' 112.99

**' 112.06 DISPLAY.**

Every peddler or transient merchant having a permit issued under the provisions of this chapter and doing business within the city shall display the permit upon the request of any person, and failure to do so shall be deemed a violation of this chapter.

(Prior Code, ' 6.0112-6) Penalty, see ' 112.99

**' 112.07 REVOCATION OF PERMIT.**

A permit issued under the provisions of this chapter may be revoked for the violation by the permittee of any provision of this code, state law or city ordinance. Upon such revocation, such permit shall immediately be surrendered to the Chief of Police, and failure to do so shall be a violation of this chapter.

(Prior Code, ' 6.0112-7)

**' 112.08 PERMIT EXPIRATION DATE.**

All permits issued under the provisions of this chapter will expire on December 31 of the year of issuance, regardless of the month and day of issue.

(Prior Code, ' 6.0112-8)

**' 112.09 WAIVER.**

The Common Council reserves the right to waive payment of the fee when the Common Council deems it in the best interests of the public to waive the fee.

(Prior Code, ' 6.0112-10)

**' 112.99 PENALTY.**

Violation of this chapter shall be punishable by a fine of up to \$200.  
(Prior Code, ' 6.0112-9)