

ORDINANCE NO. 17

AN ORDINANCE ESTABLISHING PROCEDURE FOR THE ISSUANCE AND REGULATION OF ON-SALE LICENSES FOR FULL-SERVICE RESTAURANTS IN THE CITY OF SUMMERSET, MEADE COUNTY, SOUTH DAKOTA.

BE IT ORDAINED AND ENACTED BY THE COMMISSION OF THE CITY OF SUMMERSET, MEADE COUNTY, STATE OF SOUTH DAKOTA, AS FOLLOWS:

I.

Sec. 17-50. Full-Service On-Sale Restaurant Licenses.

a. Definitions of Terms:

Terms used in this ordinance mean:

- (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 not more than forty percent 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 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.

(2) An application for any license shall be on the form prescribed by the Department of Revenue. All applications for retail licenses shall be submitted to the governing body. The municipality shall approve or disapprove the application based on the grounds that the applicant is a suitable person and that the proposed location is suitable. Location is defined as one contiguous piece of real estate on which sales are generated.

(3) At any location only one liquor license per type may be issued per person, partnership, firm, corporation or agency. A background check of the applicant is required.

(4) Any licensee under this chapter and Title 35 of the SDCL must be a person of good moral character, never convicted of a felony, and, if a corporation, the managing officers thereof must have like qualifications.

(5) A publication fee of \$30.00 shall be charged with each license application.

(Section 17.50 Amended November 4, 2010 by Ordinance 17-A effective November 27, 2010)

(Section 17.50 Amended November 15, 2012 by Ordinance 17-B effective December 6, 2012)

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:

- (i) Food and nonalcoholic beverage sales; and
- (ii) 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 forty percent of gross sales from the preceding twelve months operation of the full-service restaurant is derived from the sale of alcohol or alcoholic beverages.

(2) An application for any license shall be on the form prescribed by the Department of Revenue. All applications for retail licenses shall be submitted to the governing body. The municipality shall approve or disapprove the application based on the grounds that the applicant is a suitable person and that the proposed location is suitable. Location is defined as one contiguous piece of real estate on which sales are generated.

- (3) At any location only one liquor license per type may be issued per person, partnership, firm, corporation or agency. A background check of the applicant is required.
- (4) Any licensee under this chapter and Title 35 of the SDCL must be a person of good moral character, never convicted of a felony, and, if a corporation, the managing officers thereof must have like qualifications.

(Section 17.50 Amended November 4, 2010 by Ordinance 17-A effective November 27, 2010)

(Section 17.50 Amended November 15, 2012 by Ordinance 17-B effective December 6, 2012)

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) Within 90 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) or (6) 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 of Summerset 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, 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.

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.

- j. No on-sale licensee may sell any alcoholic beverages:
 - (1) To any person under the age of twenty-one years;
 - (2) To any person who is obviously intoxicated at the time;

k. No person shall have an unsealed package or any receptacle containing an alcoholic beverage in his possession in a public place within the City, except as may be allowed by Title 35 of the South Dakota Codified Laws.

l. Every on-sale licensee shall maintain upon his licensed premises, toilets properly connected with the City sewer system, and he shall maintain thereon separate restroom facilities for men and women; in each restroom room, there shall be

maintained a suitable wash bowl and there shall be maintained in each of the restrooms toilets, running water and towels for use by the users of such facilities. Every on-sale licensee shall have his bar equipped with, and use, drain boards and sinks for the washing of glasses and bar equipment; the same shall be constructed of copper or monel metal; the sink and drain board shall be connected with the City sewer system; and there shall be installed and maintained in each sink running water for use therein; all glassware and other containers used in serving liquor shall be rinsed in a disinfectant solution; and same shall then be thoroughly washed, rinsed, and dried before being reused.

(Section 17.50 Amended November 4, 2010 by Ordinance 17-A effective November 27, 2010)

II.

Any or all ordinances in conflict herewith are hereby repealed.

Dated this 11th day of September , 2008.

ATTEST:

Rebecca J. Phillips
Finance Officer

Brad Shelly
Mayor

Vote:

Butler: Aye

Shelly: Aye

Wagner: Aye

First Reading: _August 21, 2008

Second Reading: September 11, 2008

Publication Date: _____

