

~ Chapter 3A ~

ALCOHOLIC BEVERAGES

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Section 3A:01

DEFINITIONS

3A.01.010 Definition of Terms.

Terms used in this chapter, unless the context otherwise plainly requires, shall mean:

- (1) **Alcohol Beverage** - Any distilled spirits, wine, and malt beverages as defined in this Chapter. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1
- (2) **Distilled Spirits** - Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use, containing not less than one-half of one percent (0.5%) of alcohol by weight. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(6).
- (3) **Malt Beverage** - A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley and hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of un-malted or prepared cereals, other carbohydrates or products prepared there from, and with or without the addition

of carbon dioxide, and without or without other wholesome products suitable for human consumption, containing not less than one-half of one percent of alcohol by weight. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(8).

- (4) **Off-sale** - The sale of any alcoholic beverage, for consumption off the premises where sold. Source: Ord. 1142; Statutory Authority: (SDCL 35-1-1(12).
- (5) **On-sale** - The sale of any alcoholic beverage for consumption only upon the premises where sold. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(13).
- (6) **On-sale Dealer** - Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(14).
- (7) **Package** - The bottle or immediate container of any alcoholic beverage. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(15).
- (8) **Package Dealer** - Any person, other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(16).
- (9) **Retail License** - Any on- or off-sale license issued under the provisions of this Chapter. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(18).
- (10) **Retailer or Retail Dealer** - Any person who sells alcoholic beverages for other than resale. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(19).
- (11) **Sale** - The transfer, for a consideration, of title to any alcoholic beverage. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(20).
- (12) **Wholesaler** - Any person who sells alcoholic beverages to retailers for resale. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(24).
- (13) **Wine** - Any liquid either commonly used or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent of alcohol by weight but not more than twenty-four percent (24%) of alcohol by weight. Source: Ord. 1142; Statutory Authority: SDCL 35-1-1(25).

3A.01.020 General Provisions.

- (1) No person shall produce, transport, store or sell any alcoholic beverage except as authorized under the provisions of this Chapter and SDCL Title 35. Source: Ord. 1142; Statutory Authority: SDCL 35-1-4.
- (2) No person may transact any business authorized by this Chapter without a license as provided by this Chapter and SDCL Title 35. Source: Ord. 1142; Statutory Authority: SDCL 35-1-5.
- (3) A bottle club, being an establishment not licensed for the sale of alcoholic beverages, which allows persons to bring their own alcoholic beverages on the premises for the purpose of consumption and where the proprietor sells or provides soft drinks, mix, or ice on the premises, or charges for bringing such alcoholic beverages, soft drinks, or ice on the premises, is prohibited. Source: Ord. 1142; Statutory Authority: SDCL 35-1-5.1.
- (4) No person shall consume distilled spirits in any public place, other than upon the premises of an on-sale dealer that is licensed to sell distilled spirits or upon the location set forth in a permit granted by Section 3A-06-061. For the purpose of this section "public place" means any place, whether in or out of a building,

commonly and customarily open to or used by the general public and any street or highway. Source Ord. 1142; Statutory Authority: SDCL 35-1-5.3.

- (5) Prior authorization for persons to consume or blend alcoholic beverages, but not to engage in the sale thereof, in or upon property described by the municipality, which property is publicly owned, or owned by a nonprofit corporation, may be authorized by the governing body for a period not to exceed twenty-four hours, and hours of authorized consumption shall not exceed those permitted for on-sale licensees. Source Ord.1142; Statutory Authority: SDCL 35-1-5.5.
- (6) It shall be unlawful for any person occupying a motor vehicle located upon a public highway or the right of way of a public highway of a public highway to consume any alcoholic beverage or have a package or any receptacle containing any alcoholic beverage in his possession in a motor vehicle unless the seal of the original package remains unbroken or the alcoholic beverage is so removed that no occupant of the motor vehicle shall have access to it while the vehicle is in motion. Source: Ord. 1142; Statutory Authority: SDCL 35-1-9.1.

3A:01:030 "Operating Agreement" defined.

For the purposes of this Chapter, an entity that has entered into an operating agreement with a municipality pursuant to Section 3A:11.113 shall be deemed a licensee. The number of operating agreements that a municipality may enter into may not exceed the maximum number of retail licenses that may be issued pursuant to SDCL Title 35. Source: Ord. 1142; SDCL 35-1-1.

3A:02 CLASSES

3A.02.010 Alcoholic Beverages.

The provisions of this section, unless the context otherwise clearly requires, shall be construed to relate to all alcoholic beverages, including distilled spirits, wines and malt beverages. Source: Ord. 1142;

3A:02:020 Classifications and Fees.

Classifications and fees for on-sale and off-sale dealers, shall be as follows:

- (1) Off-sale dealer, any person who sells or keeps for sale any alcoholic beverage, for consumption off the premises where sold. License fee is not more than four hundred dollars. Source: Ord. 1142; Statutory Authority: SDCL 35-4-2(3).
- (2) On-sale dealer, any person who sells or keeps for sale any alcoholic beverage, other than pursuant to another license under this Chapter, for consumption on the premises where sold. License fee is one thousand two hundred dollars. Source: Ord. 1142; Statutory Authority: SDCL 35-4-2(4).
- (3) Wine retailers, being both package dealers and on-sale dealers. License fee is five hundred dollars. Source: Ord. 1142; Statutory Authority: SDCL 35-4-2(12).
- (4) Malt beverage retailers - Any person who sells or keeps for sale, other than resale, malt beverages as both package dealers and on-sale dealers. The license fee is three hundred dollars. Source: Ord. 1142; Statutory Authority: 35-4-2(16).
- (5) Malt beverage package dealers. Any person who keeps for sale or sells malt beverages for consumption off the premises where sold. The license fee is two hundred dollars. Source: Ord. 1142; Statutory Authority: SDCL 35-4-2(17).
- (6) Off sale package wine dealers in table wines, sparkling wines, sacramental wines, and distilled spirits produced from product provided to an artesian distiller by the

respective farm winery to be operated in conjunction with a farm winery established pursuant to Section 3A:09:091. License fee is not more than one hundred and fifty dollars. Source: Ord. 1142; Statutory Authority SDCL 35-4-2(19).

3A:02:021 No Delivery outside Premises.

No off-sale licensee shall make any delivery of alcoholic beverages outside of the premises described in his license. Source: Ord. 1142; Statutory Authority: SDCL 35-4-74.

3A:02:022 Service on Licensed Premises only.

No on-sale licensee shall serve alcoholic beverages except on the premises authorized by his license. Source: Ord. 1142; Statutory Authority: SDCL 35-4-75.

3A:02:023 Service by Persons Eighteen and Older.

No on-sale licensee shall permit any person less than twenty-one (21) years old to loiter on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such premises. However, an on-sale licensee licensed pursuant to Section 3A:02:020(2), (3) and (16) may permit persons eighteen years old or older to sell or serve or dispense alcoholic beverages if less than fifty percent of the gross business transacted by the establishment is from the sale of alcoholic beverages and the licensee or an employee that is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or dispensed. For the purposes of this section, the term, to sell and serve alcoholic beverages means to take order for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages. Source: Ord. 1142; Statutory Authority: SDCL 35-4-79.

3A:02:024 Service by Persons Eighteen and Older. No off-sale licensee, licensed pursuant to Section 3A:02:020(1), (4), shall permit any person less than twenty-one (21) years old to sell, serve, or dispense alcoholic beverages on the licensed premises unless such sales of alcoholic beverages constitutes less than fifty percent of the gross business transacted by that establishment. If alcoholic beverage sales constitute less than fifty percent of the gross business transacted by the establishment, the licensee may permit person eighteen years old or older to sell, serve or dispense alcoholic beverages. Source: Ord. 1142; Statutory Authority: SDCL 35-4-79.1.

3A:02:025. Hours and Days of Sale for Alcoholic Beverages includes Memorial Day and Sundays.

No on-sale or off-sale licensee licensed under 3A:02:020(1) and 3A:02:020(2) may sell serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of two a.m. and seven a.m. or any time on Christmas Day. The sale, service and consumption of alcoholic beverages on Sunday and Memorial Day is allowed. Source: Ord. 1142; Statutory Authority: SDCL 35-4-81.

3A:02:026 Hours of Sale for Malt Beverage and Wine Dealers.

No on-sale or off-sale licensee licensed under 3A:02:020(3), (4), may sell serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of two a.m. and seven a.m. Source: Ord. 1142; Statutory Authority: SDCL 35-4-81.2.

3A:02:027. On-sale dealer cannot Sell Packaged Alcohol.

No person shall buy from any on-sale dealer any alcoholic beverage, except for malt beverage retailers being both package dealers and on-sale dealers, in a package, whether sealed or unsealed, or whether full or partially full. Source: Ord. 1142; Statutory Authority SDCL 35-4-85.

3A:02:028. Sales to Intoxicated Person Prohibited.

No licensee shall sell any alcoholic beverage to any person who is obviously intoxicated at the time. Source: Ord. 1142; Statutory Authority: SDCL 35-4-78.

3A:02:029. Licensee Prevent Intoxication.

No licensee may permit any person to become intoxicated on the premises described on the license. Source: Ord. 1142; Statutory Authority: SDCL 35-2-6.6.

3A:04 SALE AND PURCHASE

3A:04:040. Sale of Alcoholic Beverages under Age Eighteen Years.

It is a Class 1 Misdemeanor, pursuant to SDCL 35-9-1, to sell or give for use as a beverage any alcoholic beverage to any person under the age of eighteen years unless;

- (1) It is done in the immediate presence of a parent or guardian or spouse, who is at least twenty one years of age, while not on the premises of an establishment licensed for the retail sale of alcoholic beverages pursuant to SDCL 35-4-2 or at a special event for which an alcoholic beverage license has been issued: or
- (2) It is done by prescription or direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes.

Source: Ord. 1142; Statutory Authority: SDCL 35-9-1.

3A:04:041 Sale of Alcoholic Beverages Age Eighteen Years but Less than Twenty-one Years of Age. It shall be unlawful to sell or give for use as a beverage any alcoholic beverage to any person who is eighteen years of age or older but less than twenty-one years of age unless;

- (1) It is done in the immediate presence of a parent or guardian or spouse over twenty-one years of age; or
- (2) It is done by prescription or direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes.

Source: Ord. 1142; Statutory Authority: SDCL 35-9-1.1.

3A:04:042 Unlawful for any Person under the Age of Twenty-one Years of Age.

It shall be unlawful for any person under the age of twenty-one years of age to purchase, attempt to purchase, or possess or consume alcoholic beverages except pursuant to Section 3A:04:041 or when consumed in a religious ceremony and given to the person by an authorized person, or to misrepresent his or her age with the use of any document for the purpose of purchasing or attempting to purchase alcoholic beverages for any licensee licensed under this Chapter. Source: Ord.1142; Statutory Authority: SDCL 35-9-2.

3A:05 SPECIAL SALE LICENSE

3A:05:050. Special alcoholic beverage licenses.

Special alcoholic beverage licenses may be issued in conjunction with special events:

- (1) A special malt beverage retailers license may be issued in conjunction with a special event with the municipality to any civic, charitable, educational, fraternal or veterans organization or any licensee licensed pursuant to Sections 3A:02:020(1) or 3A:03:030(1) in addition to any other license held by the special events license applicant;
- (2) A special on-sale wine retailers license in conjunction with a special event within the municipality to any civic, charitable, educational, fraternal or veterans organization or any licensee licensed pursuant to Sections 3A:02:020(1) or 3A:02:020(2) in addition to any other licenses held by the special events license applicant;
- (3) A special on-sale license in conjunction with a special event within the municipality to any civic, charitable, educational, fraternal or veterans organization or any licensee licensed pursuant to Sections 3A:02:020(1) in addition to any other licenses held by the special events license applicant; or
- (4) A special off-sale package wine dealers license in conjunction with a special event within the municipality to any civic, charitable, educational, and fraternal or veteran organizations or any licensee licensed pursuant to Sections 3A:02:020(2) or 3A:02:02(3) in addition to any other licenses held by the special events license applicant.

Source: Ord. 1142; Statutory Authority: SDCL 35-4-124.

3A:05:051 License Fee.

A licenses issued pursuant to this section shall be issued to the organization and location specified on the application. The fee for this license is Twenty Five Dollars per day. Source: Ord. 1142; Statutory Authority SDCL 35-4-125.

3A:05:052 Period Not to Exceed Fifteen Days.

A license issued pursuant to this section shall be for a period not to exceed fifteen consecutive days. Source: Ord. 1142; Statutory Authority: SDCL 35-4-124.

3A:05:053 Application from City Finance Office.

Applications for special licenses shall be made on forms available from the City Finance Office. The application shall be verified by the oath of the applicant, if an individual, and if a business entity, by an officer of the business entity. The applicant must provide documentation that it is eligible for the license for which application is being made. The application shall be submitted to the City Finance Officer or City Administrator, who shall submit such application to the Common Council. The Common Council may approve or disapprove the application based on the suitability of the applicant and the location of the proposed license.

Source: Ord. 1142; Statutory Authority: SDCL 35-4-124.

3A:05:053.1 Sale by Non-profit on Public Property under Temporary License.

The municipality may permit the sale of alcoholic beverages on publicly owned property or property owned by a nonprofit corporation if it is during a special event for which a temporary license has been issued pursuant to this Section.

Source: Ord. 1142; Statutory Authority: SDCL 35-4-124.

3A:05:053.2 Limit on Number of Special License.

The number of special licenses that may be issued to any person or business entity within any calendar year is thirty. Source: Ord. 1142; Statutory Authority: SDCL 35-4-124.

3A:05:054 Street Dance Organizer Responsible for Security Personnel.

If an organization receiving a license pursuant to this Section conducts a street dance in conjunction with the special event, the organization shall provide qualified security personnel to maintain order during the dance. Source: Ord. 1142; Statutory Authority: SDCL 9-34-15.

3A:06 CONSUMPTION LICENSE

3A:06:060 Consumption on Public Property.

Upon application the municipality may allow the consumption of alcoholic beverage on property owned by the public or by a nonprofit corporation within the municipality. The permit period may not exceed twenty-four hours and the hours of authorized consumption may not exceed those permitted for on-sale licensees. There will be no application fee.

Source: Ord. 1142; Statutory Authority: SDCL 35-1-5.3.

3A:06:061 Consumption License Procedure.

The application process for the license to consume on property owned by the public or nonprofit corporation is the same as for a special license in Section 3A:05:053.

Source: Ord. 1142; Statutory Authority: SDCL 35-1.5.3.

3A:07 ABUTTING SIDEWALK LICENSE

3A:07:070 Abutting Sidewalk.

The consumption and sale of alcoholic beverages on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises, provided that the license holder derives more than fifty percent of its gross receipts from the sale of prepared food for consumption on the premises, is permitted under certain conditions:

- 1) The hours of authorized sale and consumption are the same as the licensed premises;
- 2) The sidewalk or right of way abuts the licensed premises; and
- 3) The sidewalk or right of way does not abut a federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid.

Source: Ord. 1142; Statutory Authority: SDCL 35-4-77.1.

3A.08 RESTAURANT LICENSE

3A:08:080 Restaurant License. The terms used in this section, mean:

- (1) **Bar** - any permanently installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person which 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 foodstuffs 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 processed 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 servicing of meals.

Source: Ord. 1142; Statutory Authority: SDCL 35-4 -110

- (4) **Current Fair Market Value** - 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 with the transaction. Source: Ord. 1142; Statutory Authority: SDCL 35-4-117

3A:08:081 Confidential Documents Regarding Primary Source of Revenue.

An applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the governing body upon 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. 1142; Statutory Authority: SDCL 35-4-112;

3A:08:082 Annual Report Required.

The full-service restaurant licensee shall submit on forms provided by the municipality an annual report. Forms shall include 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 include the annual gross sales of the licensee for the following two categories:

- (a) Food and nonalcoholic beverage sales; and
- (b) Total gross revenues.

Source: Ord. 1142; Statutory Authority: SDCL 35-4-113.

3A:08:083 Renewal.

When renewing a full-service restaurant on-sale license, the municipality shall condition the license renewal upon documents that at least sixty percent of gross revenue from the preceding twelve months operation of the full-service restaurant was derived from the sale of food and nonalcoholic beverages. Source: Ord. 1142; Statutory Authority: SDCL 35-4-113

3A:08:084 On-premise Consumption.

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. Source: Ord. 1142; Statutory Authority: SDCL 35-4-114

3A:08:085 No Smoking.

No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises. A restaurant that has a full service restaurant on-sale license may only be advertised or held out to the public as primarily a food eating establishment.

Source: Ord. 1142; Statutory Authority: SDCL 35-4-115

3A:08:086 License Fee Charge.

The license fee charge 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 municipality at measured by the last preceding decennial federal census.

- (a) The license fee shall be initially established by Resolution of the Common Council within ninety days of the adoption of Ordinance 1142; Subsequent changes to the license fee shall not be made for a period of ten (10) years from the effective date of Ordinance 1142 unless a growth in population reported by the federal decennial census requires an increase in the fee.
- (b) Within 90 days of the effective date of Ordinance 1142, each licensee within the municipality 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 Hot Spring Finance Officer 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 licensee. 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 license on the date of purchase may file an objection to the report. The objection shall be filed with the municipality within thirty days of the date the license fee is set. The determination of the governing board may be appealed to the circuit court. Source: Ord. 1142; Statutory Authority: SDCL 35-4-120.

3A:08:087 License Registry.

As required by SDCL 35-4-118, the municipality shall maintain a registry of each full-service on-sale restaurant license that is being offered for sale and the municipality 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 municipality that the full-service restaurant on-sale license is for sale.

Source: Ord. 1142; Statutory Authority: SDCL 35-4-118; SDCL 35-4-119

3A:08:088 New Restaurant License.

The municipality may only issue a new license under 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 Section 3A:03:086 of this Code and on terms satisfactory to both the potential buyer and seller. The price of any on-sale license registered with the municipality under Section 3A:03:087 shall be sold at the current fair market price set by the City pursuant to the Resolution adopted in accordance with Section 3A:08:086 of this Code.

Source Ord. 1142; Statutory Authority: SDCL 35-4-118

3A:09 FARM WINES

3A:09:090 Farm Wines: The terms used in this section mean:

1. **Farm Winery** - any winery producing table, sparkling, or sacramental wines as defined in subdivision (2) or wine as defined in subdivision (3), with a majority of the ingredients grown or produced in South Dakota: Source Ord. 1142; Statutory Authority: SDCL 35-12-1(1)

2. **Table, Sparkling, and Sacramental Wines** - any beverage made without rectification or fortification and containing not more than twenty –four percent alcohol by volume and made by the fermentation of grapes, grape juice, other fruits, or honey: Source Ord. 1142; Statutory Authority: SDCL 35-12-1(2)
3. **Wine** - any beverage made without rectification, except for the purpose of fortification, from the fermentation of grapes, grape juice, other fruit bases, or honey without adding brandy or alcohol, and containing not less than one half percent and not more than twenty-four percent alcohol by volume. Source Ord. 1142; Statutory Authority: SDCL 35-12-1(3)

3A:09:091 Farm Winery License:

The Secretary of the Department of Revenue may issue a farm winery license to the owner or operator of a farm winery located in South Dakota producing wines as defined in Section 3A:09:090(2)or(3). Source Ord. 1142; Statutory Authority: SDCL 35-12-2

3A:09:092 On Sale License:

The holder of a farm winery license is eligible for an on-sale license issued pursuant to Section 3A:02:020 subject to the quota established by municipal ordinance. Source Ord. 1142; Statutory Authority: SDCL 35-12-11.

3A:09:093 Off-Sale License:

The holder of a farm winery license may also hold on the premises where the wine is produced, an off-sale license issued pursuant to Section 3A:02:020(4). Source Ord. 1142; Statutory Authority: SDCL 35-12-12.

3A:10 ARTESIAN DISTILLER

3A:10:100 Artesian Distiller Definitions: The terms used in this Section mean:

- (1) **Artesian Distiller** - any distiller located in South Dakota that produces, rectifies, or blends fifty thousand gallons or less of distilled spirits annually. Source Ord. 1142; Statutory Authority: SDCL 35-13-1(1).

3A:10:101 Artesian Distiller License:

The Secretary of the Department of Revenue may issue an artesian distiller license to an artesian distiller. Source Ord. 1142; Statutory Authority: SDCL 35-13-2.

3A:10:102 On Sale License:

The holder of an artesian distiller license may hold on the premises where the distilled spirits are produced, an on sale license issued pursuant to Section 3A:02:020 subject to the quota established by municipal ordinance. Source Ord. 1142; Statutory Authority: SDCL 35-12-12

3A:11 MUNICIPAL LICENSES

3A:11:110 Duration of License:

- A. The period covered by licenses under this chapter is from twelve o'clock midnight on December 31 to twelve o'clock midnight December 31 of the next year. However, the license is valid for an additional three days if a proper application for a new license is in the possession of the secretary before midnight on the

period, except as provided in subdivision Source Ord. 1142; Statutory Authority SDCL 35-4-41

- B. The sale of malt beverages licenses shall be valid from twelve o'clock midnight on June 30 to twelve o'clock midnight on June 30 of the following year. Source Ord. 1142; Statutory Authority: SDCL 35-4-2.5

3A:11:111 Municipal Application and Renewal:

- A. Any application under SDCL Title 35 for a manufacturer, distiller, wholesaler, solicitor, transporter, carrier, or dispenser license, and any application for a license to be issued to a municipality shall be initially submitted to the secretary who may approve or disapprove the application depending on whether the secretary deems the applicant a suitable person to hold the license and whether the secretary considers the proposed location suitable. Source Ord. 1142; Statutory Authority: SDCL 35-2-1.1
- B. Any application for a retail license, except as set forth in SDCL Title 35, shall be submitted to the governing board of the municipality within which the applicant intends to operate, the board may approve or disapprove the application depending on whether the governing board deems the applicant a suitable person to hold the license and whether the governing board considers the proposed location suitable. Source Ord. 1142; Statutory Authority: SDCL 35-2-1.2

3A:11:112 Management of Municipal Liquor Licenses:

- A. The governing body shall operate and conduct the municipal liquor establishment and if necessary, shall set the prices to be charged on all sales of liquor.
- B. Gross receipts are to be submitted to the municipal finance officer and disbursements from the fund shall only be made with presentation of verified vouchers.
- C. The municipality shall keep a separate accounting of all transactions involving purchases, sales, and inventories conducted under each license.
- D. A municipality that holds an off-sale license pursuant to SDCL 35-4-2(5) is eligible for a license under SDCL 35-4-2(16) or (17) and any municipality holding a license under SDCL Chapter 35-4 is eligible for a retailers license under SDCL 35-4-2(17).
- E. Upon termination of the license, the governing board shall liquidate the business operated and the assets of the business in such a manner as may be determined by resolution, and is consistent with law.

3A:11:113 Operating Agreements:

- A. Licenses
 - 1. On-sale and Off-sale Licenses: No retailer under this SDCL Chapter 35-4, except for licenses issued pursuant to SDCL 35-4-2(16) and 35-4-2(17), other than to the municipality, may be granted to operate in any municipality which has obtained a license under SDCL Chapter 35-4 except that:
 - (a) If a municipality has been issued an off-sale license only, then the governing board may approve or disapprove applications for an on-sale license as may be provided in SDCL Title 35; and
 - (b) The municipality, if it has both an on-sale and off-sale liquor license, may by resolution enter into an operating agreement with any person

- for the specific purpose of operating the on-sale establishment or the off-sale establishment, or both for the municipality. SDCL 35-4-19
2. Malt Beverage License: The municipality may also enter into an operating agreement with an individual to operate a malt beverage license that the municipality owns.
 3. Off-Sale License Only: If the municipality has only an off-sale license, it may, by resolution, enter into an operating agreement with a manager of a legitimate operating business concern for the specific purpose of operating the off-sale establishment for the municipality. Source Ord. 1142; Statutory Authority: SDCL 35-4-22
- B. Provisions of Agreement: The operating agreement must contain the following provisions:
1. The manager shall be responsible for all operating expenses including, but not limited to, taxes, insurance, and license fees;
 2. The manager will dispense only liquors dispensed by the municipal off-sale establishment;
 3. The agreement will be for a period not to exceed five years with an extension of five more years at the discretion of the governing body;
 4. Cancellation of the agreement is made upon 90-days written notice by either party;
 5. The manager will pay for all the liquors supplied by the off-sale establishment at actual cost including transportation charges, markup, and such additional compensation or fee as may be agreed upon;
 6. A complete and detailed record shall be maintained by the municipality of all liquors supplied the on-sale and such liquors so supplied shall be evidenced by pre-numbered invoices prepared in triplicate showing the date, quantity, brand, size, and actual cost as set forth in division (B)(5). Such invoices shall bear the signature of the on-sale manager or his or her authorized representative. One copy thereof shall be retained by the off-sale establishment, one copy shall be retained by the on-sale establishment, and one copy shall be filed with the municipal auditor or clerk. All copies shall be kept as permanent records and made available for reference and audit purposes. Source Ord. 1142; Statutory Authority: SDCL 35-4-21
- C. Purchase on Credit: An operator may not purchase alcoholic beverages on credit.
- D. Number of Operating Agreements: The number of operating agreements the municipality may have is limited to the number of licenses a municipality can issue.

3A:11:114 Municipality Holding Required License Authorized to Serve Food, Prepared Food, and Beverages: Any municipality holding a license pursuant to SDCL Title 35 may serve or provide for the service of food, prepared food, and beverages at any establishment operating under such license. Source Ord. 1142; Statutory Authority: SDCL 35-4-19.1.

[Ord. 1142, Eff. September 9, 2014]