

# City Council Agenda Item Memo

**From:** Bonnie Foster, City Clerk

**Council Meeting:** April 23, 2024

**Subject:** Licensing Fees: On-Sale Liquor and Full-Service Restaurant On-Sale Liquor

**Presenter:** Bonnie Foster, City Clerk

**Summary:**  
Discussion and possible action on liquor license fees.

**Background:**  
It was requested by City Council at the February 20, 2024 Study Session to have additional discussion and possible action on liquor license fees.

2/20/2024 CC Study Session Minutes Excerpt: "Discussion: On-Sale Liquor License and Full-Service Restaurant Liquor License Fees. City Clerk Bonnie Foster presented information on the fees for On-Sale Liquor and Full-Service On-Sale Liquor Restaurant License Fees. Public Comment: Tim Reed, Kevin Raab and Jim Gardner.

A motion was made by Council Member Tilton Byrne, seconded by Council Member Specker, to hold additional discussion and possible action on the on-sale liquor license fees at the first meeting of April. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell."

## On-Sale Operating Agreements

The City enters into Operating Agreements with on-sale liquor license holders. Agreements are for 10-years, with a 5-year mid-term renewal.

Resolution 38-2011 established the On-Sale Liquor License Fee for new Operating Agreements at \$25,000.

State Law (SDCL 35-4-2(4)) requires a municipality to set the fee for the initial issuance of an operating agreement at not less than \$1 for each person residing within the municipality as measured by the last preceding Federal Census. State law does not set the maximum fee for the issuance of Operating Agreements, and accordingly, the fee may be set by the City Council provided the fee equals or exceeds the minimum fee, which would be \$23,377.

The Federal Census in decennial years states the population of the City of Brookings has been:

- 2000 – 18,560 population
- 2010 – 22,056 population
- 2020 – 23,377 population

A survey of 1<sup>st</sup> Class municipalities and liquor license fees is attached.

#### Full-Service Restaurant Liquor Licenses

Resolution 98-2011, established the fee for the issuance of Full-Service Restaurant On-Sale Licenses at \$100,000; and set a moratorium of the fee for 10 years. This fee was based on the price attributed to the sale and transfer of an operating agreement occurring between 1/1/2003 and 1/1/2008.

A) The Full-Service On-Sale Liquor Restaurant License comes with a requirement of 60% gross revenues from sale of food or non-alcoholic beverages. The gross revenue percentage can be more restrictive than state law, but not less restrictive than state law. For example, the percentage could be increased to 75%, but not lowered to 40%.

B) SDCL 35-4-110. Definition of terms pertaining to full-service restaurant on-sale licenses. Terms used in this section and §§35-4-111 to 35-4-120, inclusive, 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 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 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: SL 2008, ch 189, §2; SL 2009, ch 177, §1.

#### **Item Details:**

This item provides an opportunity for the City Council to further publicly discuss the fees associated with the City's liquor licenses. After discussion and deliberation, the City Council may choose to take action to adjust the liquor license fees as desired.

#### **Strategic Plan Consideration:**

Fiscal Responsibility – discuss an updated on-sale liquor license fee appropriate for the community. This may include fees for Liquor Operating Agreement and Full-Service Restaurant Liquor Licenses.

**Financial Consideration:**

Current On-Sale Liquor Fee (new license): \$25,000

Current Full-Service Restaurant Liquor Fee (new license): \$100,000

Current renewal fees: \$1,500

**Supporting Documentation:**

Resolution 38-11 – On-Sale Liquor License Fee

Resolution 98-11 – Full-Service On-Sale Liquor Restaurant License Fee

Existing Liquor Licenses - 2023

Survey – First Class Municipalities

Survey – Chamber Liquor License Opinions

Census Information

State Law 35-3-7 – Local Option

State Law 35-4 – Sale of Beverages

Presentation – 2/20/2024 Study Session