

Alcoholic Beverage Licensing

A **L** **C** **O** **H** **O** **L**

WINE **PUB** **SUNDAY** **SALES** **OFF-SALE** **RETAIL** **LICENSE** **ON-SALE** **CASINO** **CONSUMPTION** **FEE** **SDCL** **MALT**

B **E** **E** **R** **LAW**

SPIRITS **VIDEO** **LOTTERY** **CIDER** **PACKAGE** **AGE** **LIQUOR** **BEVERAGE** **CITY** **CODE** **SAMPLES** **EVENT**

ALCOHOL LICENSE TYPES

On-Sale: consumption on the licensed premise (retail)

Example – Bar, Restaurant, or Video Lottery suite

Off-Sale: consumption off the licensed premise (package)

Example – Municipal Liquor Store, Gas Station, Grocery Store

LICENSE TYPES

State issued / regulated

- The State of SD regulates licenses for:
 - Manufacturers
 - Microcideries
 - Microbreweries
 - Artisan Distillers
 - Wholesalers
 - Transporters
 - Carriers
 - And more

MALT LICENSES

(RB) On-Off Sale Malt & SD Farm Wine License

- Fee: \$300 (new license AND annual renewal)
- License issued: July 1 - June 30
- 62 licensees – unlimited by state – no restrictions based on population

DEFINITIONS:

- **Malt Beverage:** a beverage made by the alcoholic fermentation ..., in potable brewing water, of malted barley with hops, ... for human consumption containing not less than one-half of one percent of alcohol by weight.
- **Farm Winery:** a manufacturer located in this state producing wine, as defined in SDCL 35-1-1, in a total quantity not in excess of 150,000 gallons within a calendar year, where at least 50% of the raw materials used in the finished product are grown or produced in this state, and without the use of wine imported from outside this state.

WINE LICENSES

(RW) On-Off Sale Wine License

- Fee: \$500 (new license AND annual renewal)
- License issued: January 1 - December 31
- Operating Agreements: 10-year, with a 5-year mid-term renewal
- 26 licensees – unlimited by state – no restrictions based on population

DEFINITION:

- **Wine:** beverage made from the fermentation of grapes, grape juice, other fruit bases, or honey, with or without adding alcoholic beverages; ... ; and contains not less than ½% and not more than 24% alcohol by volume.

LIQUOR LICENSES

HISTORY:

- Vote of the electors of the City of Brookings held April 19, 1955
 - Election Canvass first declared the issue defeated – difference of 4 votes.
 - Brookings County Recount Board filed on May 31, 1955, determined the measure passed.
- “Shall a license or licenses for the sale of intoxicating liquor be issued to the City of Brookings?”
- PASSED: Resolution 839 - “to allow for the sale of intoxicating liquors within the City of Brookings and to provide funds as is necessary to establish and maintain such business.” (as a package dealer)
- City-held license effective as of July 1, 1955.

LIQUOR LICENSES

(PL) Off-Sale License

- 1 licensee – Brookings Municipal Liquor Store
- Fee: \$250 (annual renewal)
- Licenses Issued: January 1 - December 31

(RL) On-Sale License

- 18 licensees – limited by population
- Fee: \$1,500 (annual renewal)
- Licenses Issued: January 1 - December 31
- Operating Agreements: 10-year, with a 5-year mid-term renewal

On-Sale Liquor Licenses - Restricted by Population

SDCL 35-4-11. Municipal determination of number of licenses and amount of fees--Maximum number of on-sale licenses.

- The number of on-sale licenses issued
 - may not exceed three each for the first 1,000 of population or fraction thereof and
 - may not exceed **one each for each additional 1,500** of population or fraction thereof
- The municipal governing body shall also establish the fee for on-sale licenses pursuant to subdivisions 35-4-2(4) and (13).
 - fee applies to all such on-sale licenses issued in the ensuing calendar year
- Population is equal to the population estimates published by the United States Census Bureau for each even-numbered year, except for the decennial year.
 - for a decennial year, population is equal to the amount determined by the decennial federal census

US Census Bureau Census Data

Brookings, SD

2000 – 18,560 (decennial year)

2010 – 22,056 (decennial year)

2020 – 23,377 (decennial year)

2022 – 23,993

2024 – ???

2030 – ??? (decennial year)

Population is equal to 90% of the population estimates published by the United States Census Bureau for each even-numbered year, except for the decennial year.

For a decennial year, population is equal to the amount determined by the decennial federal census.

LIQUOR LICENSES

(CL) Convention Liquor

- 2 licenses – limited by state law (SDCL 35-4-2(13), 35-4-11.2)
- Fee: \$1,500 (annual renewal fee cannot exceed \$1,500)
- Initial Fee: not less than \$1 for each person residing within the municipality as measured by the last preceding federal census.
- Requirements:
 - hotel-motel convention facility
 - minimum of 100 rooms for lodging accommodations
 - convention facilities with seating for at least 400

LIQUOR LICENSES

(RR) Full-Service Restaurant Liquor License

- 2 Licensees
- Initial Fee: \$100,000
 - Fees (SDCL 35-4-116): shall charge at least \$1 for each person residing within the municipality as measured by the last preceding decennial federal census.
 - Resolution 98-11 (2011) established the fee at \$100,000. Effective for 10 years.
 - Request received to reconsider the initial license fee.
- Annual Renewal Fee: \$1,500

DEFINITIONS:

- Full-Service Restaurant (SDCL 35-4-110): 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.
- Renewal Requirements (SDCL 35-4-113): 60% gross revenue from sale of food and nonalcoholic beverages. Annual Report filed stating food and nonalcoholic beverage gross revenues and total gross revenues (report is confidential).

LIQUOR LICENSES

On-Sale Municipality-Owned Facility License (NEW 2023 -- SDCL 35-4-14.1)

- City Staff is in process of implementing these licenses – will require future Council action.
- No Fee.
- Not transferrable.
- Video Lottery not authorized.
- Must be a municipality-owned entertainment venue, event venue, event center, arena, performance hall, theater, outdoor amphitheater, convention center, stadium, athletic venue, recreation facility, municipal auditorium operated pursuant to Chapter 9-52, or public convention hall operated pursuant to Chapter 9-53.
- To support the primary public purpose of the facility during the hours the facility is open for its primary purpose.
- Must not be used at any facility for the primary purpose of only providing food and beverage services to the public.
- The governing body may contract with any person or entity for purposes of providing food and beverage services at the facility.

New Licenses / Transfers

SDCL 35-2-1.2 Applications submitted to local governing body – Fee – Approval or disapproval.

Any application for a new retail license, except as set forth in § 35-2-1.1, or the transfer of an existing license shall be submitted to the governing board of the municipality within which the applicant intends to operate... The applicant shall submit the required fee with the application. The governing board may approve ...if the governing body **considers the applicant suitable to hold the license** and the **proposed location is suitable**.

Suitable Person is not clearly defined, except that SDCL 35-2-6.2 states: Any licensee under this title shall be a person of good moral character, never convicted of a felony, and, if a corporation, the managing officers of the corporation shall meet the same qualifications.

Suitable location is not clearly defined; However, things to consider might be:

- type of business which applicant proposes to operate
- the extent to which minors frequent or are employed by such business
- adequacy of law enforcement to properly police the proposed location
- potential parking and traffic issues.

New Licenses / Transfers

SDCL 35-2-1.2 Applications submitted to local governing body – Fee – Approval or disapproval.

The governing body may disapprove an application for a new retail license or the transfer of an existing license issued under subdivision 35-4-2(4), (6), or (13) if:

- 1) The approval of the application permits a person, corporation, or business entity to possess more than one-third of the licenses available to be issued in the jurisdiction; and
- 2) The governing body determines that possession of more than one-third of licenses available is not in the public interest.

ADDITIONAL CRITERIA: Video Lottery Establishments

SDCL 42-7A-64 Additional criteria for on-sale alcoholic beverage licensees in video lottery licensed establishments. ...Criteria for authorizing video lottery machine placement in establishments issued an on-sale alcoholic beverage license pursuant to subdivisions 35-4-2(12) and (16):

- 1) The number of establishments currently licensed for video lottery;
- 2) The proximity of the business to other establishments licensed for video lottery;
- 3) The type of business and manner in which the applicant proposes to operate it;
- 4) The location of the business in relation to other businesses, residential areas, or activities within the same general area;
- 5) The extent to which minors frequent a business connected to the one proposed; and
- 6) The effect the proposed business has on economic development.

An existing video lottery license may not be denied renewal or transfer based upon the criteria set forth in this section.

SPECIAL ONE-DAY LICENSES

SDCL 35-4-124. Special alcoholic beverage licenses – Special Events.

- Fee: \$50 / event day
- Applicant:
 - current license holder
 - civic, charitable, educational, fraternal, or veterans organization.
- Public Hearing & Council Action: current license holder / qualifying organization - event held at a privately owned facility
- Public Hearing & Council Action: qualifying organization - event held at a publicly owned facility
- Request placed on Consent Agenda for Council Action - no public hearing requirement: current license holder - event held at a publicly owned facility
- Area defined on the application becomes the licensed premise.

HOURS OF SALES / CONSUMPTION

No sales / serving / consumption for On-Sale or Off-Sale licensees between the hours of 2:00 a.m. and 7:00 a.m. (SDCL 35-4-81.2)

Municipalities may restrict consumption on Sundays, Christmas Day, or Memorial Day (SDCL 35-4-81).

Christmas Day

Brookings has not restricted sales.

Memorial Day (City Code Section 6-9)

Licensees whom may sell:

- Operating Agreement holder (Liquor / Wine)
- On-Off Sale Malt Beverage
- On-Off Sale Wine or Farm Wine
- Municipal Off-Sale Licensee

HOURS OF SALES / CONSUMPTION

No sales / serving / consumption for On-Sale or Off-Sale licensees between the hours of 2:00 a.m. and 7:00 a.m. (SDCL 35-4-81.2)

Sunday Sales (City Code Section 6-4).

Sell / Serve / Consumption on the premises:

- (a) **Operating Agreement holder (Wine / Liquor):** between 10:00 a.m. and 12:00 midnight on Sunday with the serving of food.
 - Must have facilities for the serving of prepared meals from a fixed restaurant with the simultaneous seating capacity of at least 50 patrons.
- (b) **On-Sale Malt Beverage or Wine Licensee:** between the hours of 10:00 a.m. and 12:00 midnight on Sunday.
- (c) **Special Event On-Sale Malt Beverage or Wine Licensee:** between the hours of 10:00 a.m. and 12:00 midnight on Sunday.

Sell for Consumption off the premises:

- (a) **Municipal Off-Sale Licensee:** after 7:00 a.m. on Sunday.
- (b) **Off-Sale Malt Beverage and Wine Licensee:** after 7:00 a.m. on Sunday.
- (c) **Special Event Off-Sale Package Wine Licensee** (wine manufactured by a farm winery): after 7:00 a.m. on Sunday.

LICENSE RENEWALS – Compliance Checks

License renewals **without** convictions in the past 12 months:

- approved by the City Council without a public hearing
- renewals are placed on the Consent Agenda
- staff support documentation to include a 5-year history of compliance check failures

License renewals **with** convictions in the past 12 months:

- required to be acted upon with a public hearing and Council action
- the licensee (or their designee) can be asked to speak to the circumstances of the violation and any steps taken to assure another violation does not occur in the future
- staff support documentation to include a 5-year history of compliance check failures

LICENSE RENEWALS – Compliance Checks

SDCL 35-2-10.3. Compliance checks of prohibited alcohol sales to persons under age 21. Any enforcement entity that conducts compliance checks using underaged informants to determine if a licensee will sell an alcoholic beverage to a person under the age of 21 shall inform the licensee in writing of the results of any compliance check within 48 hours after the compliance check takes place. **No licensed premises may be subject to more than one compliance check within a 48-hour period.**

SDCL 35-2-10.1. Conditions under which license may not be revoked or suspended for sale to persons under 21--Penalty. No retail license may be revoked or suspended ... if the violation was committed by an employee or agent of the licensee, and the **licensee has not had more than two violations ...in the previous 24 months.**

LICENSE SUSPENSION / REVOCATION

SDCL 35-2-11.1. Recommendation by local governing body for suspension or revocation of license--Grounds--Action by secretary.

The governing body of a municipality ... may recommend to the secretary following a hearing, that any license issued under this title be suspended or revoked for violation of any of the provisions of this title, or for violations of any ordinance or regulation of the governing body relevant to alcoholic beverage control that occurs on the premises of the licensee. Upon receipt of the recommendation, the secretary shall proceed as provided in SDCL 35-2-10 and 35-2-21.

This recommendation can only occur after:

- notice has been mailed to the licensee at least 30 days prior to the hearing date;
- public notice is published in the official newspaper at least one week prior to the hearing date; and
- public hearing is held

ALCOHOL MARK-UP PERCENTAGE

City Code Section 6.5 – Markup percentage on sale of alcoholic beverages.

- a) **On-Sale or Off-Sale Malt beverages** – 10% markup
- b) **On-Sale or Off-Sale Malt Beverages manufactured and sold on the premises of a licensed malt beverage manufacturer** – 10% markup
- c) **On-Sale or Off-Sale Wine and Farm Wine** – 11% markup
- d) **Liquor** – 11% markup (as stated in the Operating Agreement)

All alcohol billing is handled through the City Finance Office.

(SDCL 35-4-21, 35-4-23.)

VIDEO LOTTERY

Allowed with on-sale alcohol licenses: Malt, Wine, Liquor

- Malt / Wine Licenses – municipality can limit
- Liquor Licenses – municipality cannot limit

Liquor Licenses which cannot hold video lottery:

- Convention Liquor
- Full-Service Restaurant On-Sale
- Package Liquor
- Municipality-owned Facility Liquor

VIDEO LOTTERY

July 25, 2023 – Council approved Ordinance 23-020

Ordinance 23-020 – On-Sale Malt / Wine license video lottery authorizations limits set by population

- 30 video lottery authorizations for 26,377 population
- Increase of one authorization per 1,000 population increase

At present, there are no Video Lottery authorizations available.

Total # of Video Lottery machines as of 9/12/2023: 334



Questions?