

BROOKINGS COUNTY ORDINANCE 2015-01

AN ORDINANCE ESTABLISHING THE REQUIREMENTS, FEES, AND REGULATIONS FOR THE ISSUANCE OF ALCOHOLIC BEVERAGE LICENSES WITHIN BROOKINGS COUNTY.

BE IT ORDAINED BY BROOKINGS COUNTY, SOUTH DAKOTA:

WHEREAS, the Brookings County Board of County Commissioners (hereinafter "Board") believes that alcoholic beverage licenses are a privilege and not a right, and the County reserves the right to refuse the approval, renewal, or transfer of any license in the event an applicant refuses to comply with the requirements of this Ordinance or other applicable local, state, or federal laws; and

WHEREAS, Brookings County issues multiple types of alcoholic beverage licenses, as those terms are defined by SDCL 35-1-1, and that it would be to the benefit of the County to specify by Ordinance the requirements, fees, and regulations for certain alcoholic beverage licenses; and

THEREFORE, BE IT ORDAINED BY BROOKINGS COUNTY, SOUTH DAKOTA, that the requirements, fees, and regulations for the issuance of certain alcoholic beverage licenses within the County be adopted as follows:

SECTION A. ON-SALE LIQUOR LICENSE.

I. Availability and Notice of New License

1. By February 1 of each year, the Brookings County Finance Office (hereinafter "Finance Office") shall determine the number of on-sale liquor licenses available for the ensuing calendar year and report the same to the Board.
2. The number of on-sale liquor licenses available shall be based upon the population of Brookings County as set forth in South Dakota Codified Law.
3. If an additional on-sale liquor license becomes available in Brookings County, a notice will be published in the legal newspapers of the County for at least two (2) consecutive weeks, stating that the Board will be accepting applications for the new license, and setting a deadline for applications to be submitted.
4. After the deadline has passed, all applications submitted to the Finance Office shall be submitted to the Board for consideration.

II. Application Process

1. The application for an on-sale liquor license, or the transfer of an existing license, intending to operate outside the corporate limits of a municipality within Brookings County, shall be submitted to the Board for approval pursuant to SDCL 35-2-1.2.
2. The application shall be accompanied by the required fee.
3. Applicants shall provide appropriate proof, as required by the Board, that the premises to which the license is being issued or transferred has or shall have (within

the time period stated below) a sufficient structure in which to conduct the operation of an on-sale liquor business.

4. Such proof may include, but is not necessarily limited to, pictures (inside and outside) of any existing structures, and plans and specifications of proposed structures along with proof of ownership or a valid lease of the premises.
5. Under no circumstance will an alcoholic beverage license of any kind be approved or transferred to any premises upon which a zoning ordinance violation has been identified until such time as the premises is brought into full compliance with all applicable provisions of the Brookings County Zoning Ordinance.
6. An on-sale liquor license shall not be issued or transferred to any premises or parcel of land where there is not an approved structure located. Conditional approval may be given to an applicant and the license will be held by the County for up to one year to allow for the construction of an approved structure. The license will then be issued to the applicant upon the completion of such structure. Conditional approval may also be granted if the applicant needs additional time to rezone the premises for compliance with county zoning requirements. If the license has not been issued within one year due to the applicant failing to comply with this Ordinance, the county may, upon request of the applicant, extend the conditional approval for up to six (6) additional months if it finds that the delay is not the fault of the applicant. Under no circumstance shall a license be held on conditional approval in excess of eighteen (18) months.
7. An application for the transfer of an existing license to a new location or to another person shall comply with the requirements of SDCL 35-2-7.

III. Approval Process

1. The Board shall fix the time and place for hearing upon all such applications that come before the Board.
2. The Finance Officer shall publish notice once in the legal newspapers of the County after a hearing date has been set. The notice shall be headed "Notice of Hearing Upon Applications for Sale of Alcoholic Beverages." The notice shall state the time and place when and where such applications will be considered by the Board, and shall state that any person interested in the approval or rejection of any such application may appear and be heard. The notice shall be published at least one (1) week before the hearing, pursuant to SDCL 35-2-5.
3. At the time and place stated in the notice, the Board shall consider each application and any objection to the application before making its final decision on the application.
4. The Board may approve or disapprove the application for an on-sale liquor license, or the transfer of an existing license, depending on whether the Board deems the applicant a suitable person to hold the license and whether the Board considers the proposed location suitable, pursuant to SDCL 35-2-1.2.
5. License application fees will not be refunded once the license is approved by the Board and issued by the State.
6. If the Board does not approve an application, it shall endorse on the application the reasons for the denial and return the application and fee to the applicant. No further

application may be received from the applicant until after the expiration of one (1) year from the date of a denied application. However, if the application was denied based on the suitability of the location for the license, no further application may be received from the applicant until after the expiration of three (3) months from the date of the denied application only if the application is for a different location, pursuant to SDCL 35-2-5.1.

IV. Renewal Process

1. Applicants for the renewal of an on-sale liquor license shall follow the same application process as set forth above.
2. An application for the reissuance of an on-sale liquor license may be approved by the Board without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation of the alcoholic beverage control law or the license has been suspended, pursuant to SDCL 35-2-1.2.
3. The Board may not reissue any on-sale liquor license issued pursuant to subdivision 35-4-2(4), (6), or (13) to the same licensee or the licensee's transferee if the license has not been actively used by the applicant during the two years preceding the date of the current application, pursuant to SDCL 35-2-5.3.
4. The term, actively used, as defined in SDCL 35-2-5.3, means that the licensed premise was open to the public during regular business hours for the sale and consumption of distilled spirits for at least sixty days during the two preceding years. However, the licensed premise is only required to be open five days per year if it is open to the public during a special event that has at least twenty-five thousand visitors.
5. No license granted under this title may be reissued until all taxes incurred by the licensee as a result of the operation of the licensed premises, including municipal and state sales and use taxes, unemployment insurance tax, or any other state tax, are paid or are not delinquent. No license granted under this title may be reissued until all property taxes which are the liability of the licensee levied on the licensed premises are paid or are not delinquent. No license granted under this title may be reissued to an Indian tribe operating in Indian country controlled by the Indian tribe or to an enrolled tribal member operating in Indian country controlled by the enrolled tribal member's tribe until the Indian tribe or enrolled tribal member remits to the Department of Revenue all use tax incurred by nonmembers as a result of the operation of the licensed premises, and any other state tax has been remitted or is not delinquent.

SECTION B. OTHER ALCOHOLIC BEVERAGE LICENSES.

Applicants for any other alcoholic beverage license, excluding on-sale liquor licenses, issued by the County shall follow the requirements as set forth above, unless otherwise specified by South Dakota Codified Law or the South Dakota Department of Revenue.

SECTION C. PROVISIONS PERTAINING TO ALL LICENSES.

All alcoholic beverage licenses issued by Brookings County shall be subject to the following provisions:

I. Special Event Licenses

1. Applications for special events licenses shall only be received by civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(4), (6), or (16).
2. No fee is required with the application for a special events license.
3. Any license issued pursuant to SDCL 35-4-124 shall be issued for a period of time established within the sole discretion of the Board, not to exceed fifteen (15) consecutive days.
4. No person or organization may be issued a permit pursuant to SDCL 35-4-124 more than three times in any one calendar year.
5. No public hearing is required for the issuance of a license pursuant to this section if the person applying for the license holds an on-sale alcoholic beverage license or a retail malt beverage license in the municipality or county or holds an operating agreement for a municipal on-sale alcoholic beverage license, and the license is to be used in a publicly-owned facility.
6. The licensee must comply with all applicable state laws concerning the consumption of alcoholic beverages as set forth in SDCL Ch. 35-4.
7. Special events licenses may be issued for different alcoholic beverage licenses as specified in SDCL 35-4-124.

II. Time for Selling or Serving

1. No on-sale licensee, licensed under SDCL 35-4-2, 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 at any time on Christmas Day, pursuant to SDCL 35-4-2.1, except for holders of on/off sale malt beverage licenses and on/off sale wine licenses which shall be permitted to sell, serve and allow consumption on the premises covered by the license on Christmas Day.
2. The sale, service, and consumption of alcoholic beverages shall be permitted on Sundays and Memorial Day, except between the hours of two a.m. and seven a.m., pursuant to SDCL 35-4-81.
3. A violation of this section is a Class 2 misdemeanor, punishable by up to thirty (30) days imprisonment in the county jail or a five hundred dollar (\$500.00) fine, or both.

III. Consumption on County Property

1. The consumption of alcoholic beverages upon property owned, leased or rented by Brookings County shall be prohibited unless authorized by this Ordinance.

2. Nothing in this Ordinance impacts the right to consume alcoholic beverages under such conditions and at such locations as is authorized by Agreement #12-61 between Brookings County, South Dakota, and the Swiftel Center.
3. Persons who wish to dispense alcoholic beverages upon county property must submit an application to the Board, who shall thereafter advise the applicant of the applicable restrictions, locations or activities permitted for the possession, sale or consumption of alcoholic beverages applicable to such location and/or function. The applicant is thereafter required to post written notice of such restriction in a conspicuous manner, at each location where alcoholic beverages are dispensed.
4. Applications to dispense alcoholic beverages in locations under the joint control of the City of Brookings and Brookings County will be reviewed and approved by the Joint Powers Board.
5. A violation of this section is a Class 2 misdemeanor, punishable by up to thirty (30) days imprisonment in the county jail or a five hundred dollar (\$500.00) fine, or both.

SECTION H. MISCELLANEOUS.

This Ordinance shall replace any and all prior ordinances or resolutions adopted by the Brookings County Board of County Commissioners regarding the regulations, requirements, or distribution of alcoholic beverage licenses within the County, except Resolution #15-04 establishing the current number of on-sale liquor licenses available for calendar year 2016.

Any provision regarding the requirements, fees, regulation, or distribution of alcoholic beverage licenses not addressed within this Ordinance shall be followed pursuant to South Dakota Codified Law.

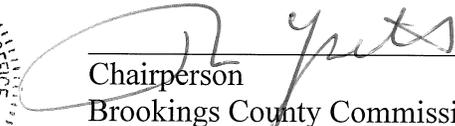
Adopted this 19 day of May, 2015.

BROOKINGS COUNTY:

ATTEST:


 Brookings County Finance Officer




 Chairperson
 Brookings County Commission

First Reading: May 5, 2015
 Second Reading: May 19, 2015
 Adopted: May 19, 2015
 Publications: May 28, 2015
 Effective Date: June 17, 2015