

ORDINANCE NUMBER 470

AN ORDINANCE ESTABLISHING THE PROCEDURE FOR THE ISSUANCE AND REGULATION OF ON-SALE LIQUOR LICENSES FOR FULL-SERVICE RESTAURANTS IN THE CITY OF BOX ELDER, SOUTH DAKOTA.

BE IT ORDAINED AND ENACTED BY THE COMMON COUNCIL OF THE CITY OF BOX ELDER, SOUTH DAKOTA, AS FOLLOWS:

I.

Full-Service Restaurant On-Sale Liquor Licenses.

a. Authorization:

In addition to the on-sale liquor licenses authorized pursuant to SDCL 35-4-11, there are hereby established full-service restaurant on-sale liquor licenses which may be issued according to the provisions of this Ordinance and state law.

b. 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 kind of employees necessary for the preparing, cooking, and serving of meals.

c. Full-Service Restaurant On-Sale Liquor License Application Requirements:

Documentation: An applicant for a full-service restaurant on-sale liquor license shall provide sufficient documentation for the City with an application form provided by the City 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.

d. Annual Reports:

The full-service restaurant on-sale liquor 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 beverage sales.

e. Full-Service Restaurant On-Sale Liquor License Renewals:

When renewing a full-service restaurant on-sale liquor 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.

f. Only Retail, On-Sale Service Permitted:

A full-service restaurant on-sale liquor licensee may only serve alcoholic beverages for on-premise consumption in the bar and dining room areas of the restaurant.

g. Smoking Prohibited:

No licensee that has a full-service restaurant on-sale liquor license may allow smoking on the licensed premises.

h. Full-Service Restaurant On-Sale Liquor License Fees:

- (1) As required by State Law, the license fee charged for a full-service restaurant on-sale liquor 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 Federal decennial 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 a full-service restaurant on-sale liquor 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 liquor license issued pursuant to SDCL 35-4-11 and 35-4-2 (4) 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 liquor license to the City of Box Elder 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 liquor license. If the transaction for the purchase of the on-sale liquor 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 liquor license. The burden of establishing the amount paid for the license shall be the responsibility of the licensee. Any licensee contesting the fair market value of the real or personal property may appeal the valuation adopted by the City to the Circuit Court.

(b) For purposes of this Section, the term, "Current Fair Market Value" means the documented price of the on-sale liquor 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.

i. Registry of On-Sale Liquor Licensees:

The City shall maintain a registry of each on-sale liquor 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 liquor license. The existing on-sale liquor licensee is responsible for registering with the City that the on-sale liquor license is for sale.

j. Issuance of new Full-Service Restaurant On-Sale Liquor Licenses restricted:

The City may only issue a new license pursuant to this Ordinance if no on-sale liquor license is on the registry or a person desiring to purchase an on-sale liquor license listed on the registry provides documentation showing that the person is unable to purchase the on-sale liquor license at the price established in Section h of this Ordinance and on terms satisfactory to both the potential buyer and seller. The price of any on-sale liquor 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 h (2) of this Ordinance.

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CITY OF BOX ELDER, SOUTH DAKOTA

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ATTEST:

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