

AN ORDINANCE TO AMEND CHAPTER 5.12 OF THE RAPID CITY MUNICIPAL CODE TO INCORPORATE CHANGES TO STATE LAWS REGARDING ALCOHOLIC BEVERAGES

WHEREAS, the City of Rapid City has adopted provisions regulating alcoholic beverages in Chapter 5.12 of the Rapid City Municipal Code; and

WHEREAS, the 2018 South Dakota legislature passed HB 1070 which, among other things, consolidated and simplified the alcohol licenses available in the state; and

WHEREAS, HB 1070 also adopted changes to various definitions and amended the restricted hours and dates for selling alcohol; and

WHEREAS, HB 1070 and SB 178, both passed by the 2018 South Dakota legislature, made amendments to the special event alcohol permit provisions in state law; and

WHEREAS, the City of Rapid City wishes to update its alcohol beverage statutes found in RCMC Chapter 5.12 to incorporate the changes to state law adopted in 2018; and

WHEREAS, the 2017 South Dakota legislature adopted a license for an off-sale delivery license for the existing off-sale licensees who wish to obtain an additional delivery license; and

WHEREAS, the City of Rapid City wishes to amend its regulations to incorporate an off-sale delivery license; and

WHEREAS, the City of Rapid City finds that amending sections in R.C.M.C. Chapter 5.12 to incorporate changes to state laws governing alcohol beverages is in the best interests of the health, safety, and welfare of its citizens.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that R.C.M.C. 5.12.010 is hereby amended in its entirety to read as follows:

5.12.010 Definitions.

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

A. **ALCOHOLIC BEVERAGE.** Any distilled spirits, wine, ciders, and malt beverages as defined in this Chapter.

B. **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.

C. ***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 nonindustrial use, containing not less than 0.5% of alcohol by weight.

D. ***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 served fry orders or food and victuals such as sandwiches, hamburgers, or salads is not a full-service restaurant.

E. ***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 with hops, or their parts, or their products, or any other similar product, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption, containing not less than 0.5% of alcohol by weight.

F. ***OFF-SALE.*** The sale of any alcoholic beverage, for consumption off the premises where sold.

G. ***ON-SALE.*** The sale of any alcoholic beverage for consumption only upon the premises where sold.

H. ***ON-SALE DEALER.*** Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

I. ***PACKAGE.*** The bottle or immediate container of any alcoholic beverage.

J. ***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.

K. ***PUBLIC PLACE.*** Any place, whether in or out of a public building, commonly and customarily open to or used by the general public and any street or highway.

L. ***RETAIL LICENSE.*** Any on-sale or off-sale license issued under the provisions of this Chapter.

M. ***RETAILER*** or ***RETAIL DEALER.*** Any person who sells alcoholic beverages for other than resale.

N. ***SALE.*** The transfer, for a consideration, of title to any alcoholic beverage.

O. ***TO SELL AND SERVE ALCOHOLIC BEVERAGES.*** To take an orders for an alcoholic beverages and to intentionally deliver the alcoholic beverages to a customers for the purpose of consumption on the licensed premises and the customer takes physical possession of the

~~alcoholic beverages as a normal adjunct of waiting tables.~~ The term does not include tending bar or drawing or mixing alcoholic beverages.

P. ~~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 more than 24% of alcohol by weight~~ beverage made from the fermentation of grapes, grape juice, other fruit bases, or honey, with or without adding alcoholic beverages; without rectification, except for the purpose of fortification; and contains not less than .5% and not more than 24% alcohol by volume.

(Ord. 5399, 2008: prior code § 4-1(a))

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that R.C.M.C. 5.12.030 is hereby amended in its entirety to read as follows:

5.12.030 Alcoholic beverages, malt beverages and wine license requirements and fees.

A. The following classifications and fees are established for ~~on-sale~~ dealers in distilled spirits, wines, and malt beverages:

| <i>Class of License</i> | <i>Initial Fee</i> | <i>Renewal Fee</i> |
|---|---|--------------------|
| 1. 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 | \$100,000 <u>See fee resolution adopted by Council</u> | \$1,500 |
| 2. On-sale dealer (full- service restaurant) | Market price as set by City Council | \$1,500 |
| 3. Convention facility on-sale dealer: A hotel or motel convention facility used and kept open for the hosting of large groups of guests for compensation with at least one hundred lodging rooms and convention facilities seating at least four hundred persons | \$100,000 <u>See fee resolution</u> | \$1,500 |
| 4. Municipal auditorium on-sale dealer: A municipal auditorium operated pursuant to SDCL eCh. <u>Ch.</u> 9-52 | \$100,000 <u>See fee resolution</u> | \$1,500 |
| 5. Off-sale dealer: Any person who sells or keeps for sale any alcoholic beverage for consumption off the premises where sold | An amount not less than \$500 as determined pursuant to subsection C. | \$500 |
| 6. Malt beverage retailer and wine produced by a farm winery licensee: <u>Any person who sells or keeps for sale, other than resale, malt beverages and wine produced by a farm winery as both package dealers and on-sale dealers</u> | \$300 <u>See fee resolution</u> | \$300 |

| | | |
|--|------------------|------------------|
| 7. Off-sale malt beverage package dealer: Any person who keeps for sale or sells malt beverages for consumption off the premises where sold | \$200 | \$200 |
|--|------------------|------------------|

| <i>Class of License</i> | <i>Initial Fee</i> | <i>Renewal Fee</i> |
|---|---------------------------------|--------------------|
| 8. Off-sale malt beverage and off-sale South Dakota wine package dealer: an off-sale malt beverage package dealer who also keeps for sale or sells wines produced pursuant to SDCL chapter 35-12 for consumption off the premises where sold | \$225 | \$225 |
| 97. Wine and <u>cider</u> retailers, being both package dealers and on-sale dealers | \$500 <u>See fee resolution</u> | \$500 |
| 10. Malt beverage retailer and South Dakota wine retailers: Any person who sells or keeps for sale malt beverages and wines produced pursuant to SDCL chapter 35-012 as both package dealers and on-sale dealers | \$325 | \$325 |
| 8. <u>Off-sale delivery: Any person licensed under Section 5 who also delivers alcohol in compliance with SDCL Title 35</u> | <u>See fee resolution</u> | |

B. An off-sale license may be authorized for premises where the sale of liquor constitutes less than 40% of the gross business transacted on the premises, provided that:

1. The area in which liquor is displayed for sale is located within a building located on the premises and is separated from the remaining premises by partitions or walls at least 7 feet in height, and that the liquor area shall be physically closed during times when off-sale service is prohibited by state law or City ordinance~~the South Dakota Liquor Control Law~~;

2. Store personnel shall be physically present within the confines of the Liquor Sales Department at all times it is open to the public; and

3. The licensee shall not permit any person less than 21 years old to loiter in the liquor display and sale area.

C. Off-sale dealer licenses, when they become available, shall be issued according to the following policy:

1. The Finance Office shall cause to be published a Notice of Public Sale at least twice in a legal newspaper with general circulation in the area, with the first publication not less than ten days prior to the date of the sale. The notice shall state that an off-sale dealer license is to be sold by sealed bids, the time, date and place for the opening of bids, and that bids shall be made on a form available from the Finance Office. The notice shall also state that the city reserves the right

to reject any or all bids, and that a bidder must conform to the requirements of state law and city ordinance to qualify as an alcoholic beverage licensee.

2. Sealed bids shall be made using a form provided by the Finance Office, and shall be filed with the Finance Office prior to the time and date specified in the notice. Each bid shall be required to contain a completed Uniform Alcoholic Beverage License Application in addition to the bid form.

3. The person or firm providing the highest bid shall be notified in writing of their conditional award. The issuance of the license shall be conditioned upon the eligibility of the person or firm to hold the license, suitability of proposed premises upon which alcoholic beverages will be sold, active use of the license within 90 days of issuance, and compliance with all other state law and city ordinance requirements, including but not limited to applicable zoning, building, and property maintenance codes. The Common Council reserves the right to stipulate such other and further conditions for issuance of the license as may be necessary and proper.

4. If the highest bidder does not meet all conditions of subsection C.3. above within 90 days, the second-highest bid may be conditionally accepted in the same manner as the highest bid.

D. All fees for renewal of licenses under this Section shall be set by resolution of the Common Council.

(Ord. 5879, 2012:Ord. 5813 (part), 2012: Ord. 5544, 2009: Ord. 5400, 2008: Ord. 5399, 2008: Ord. 3834, 2002: Ord. 3278,1996: Ord. 3243, 1995: Ord. 3090, 1994: Ord. 3089,1994: Ord. 2969 (part), 1992: Ord. 2844, 1990: Ord. 2789 (part), 1990: prior code § 4-2)

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that R.C.M.C. 5.12.035 is hereby amended in its entirety to read as follows:

5.12.035 Special event alcoholic beverage licenses.

A. Special event alcoholic beverage licenses may be issued by the Common Council in conjunction with special events held within the City of Rapid City. Any license issued pursuant to this section may be issued for a period of time established by the Common Council, not to exceed 15 consecutive days. The license shall be issued to a person at a specific place in the same manner as licenses issued pursuant to § 5.12.030.

B. The special alcoholic beverage licenses available are as follows:

1. *Special event malt beverage retailer.* Special event malt beverage retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 5.12.030 A. subsections 1. and 6.

2. *Special event on-sale wine retailer.* Special on-sale wine retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 5.12.030 A. subsections 1. or ~~97.~~, or to a person licensed by the Department of Revenue ~~under SDCL ch. 35-12~~ as a farm winery licensee.

3. *Special event on-sale dealer.* Special on-sale dealer licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 5.12.030 A. subsection 1.

4. *Special event off-sale package wine dealer.* Special off-sale package wine dealers licenses are available in the following situations:

a. Any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 5.12.030A. subsections ~~5., 8., 9. and 7.,~~ or licensed as a farm winery licensee pursuant to SDCL 35-4-2(19) or SDCL ch. 35-12. A special off-sale package wine dealer licensee under this section may only sell wine manufactured by a farm winery licensee that is licensed pursuant to SDCL ch. 35-12; or

b. Any civic, charitable, educational, fraternal, or veterans organization in conjunction with a special event conducted pursuant to section E.

5. *Special event off-sale package malt beverage dealer.* Special off-sale package malt beverage dealer licenses are available to any civic, charitable, educational, fraternal, or veterans organization in conjunction with a special event conducted pursuant to section E.

6. *Special event off-sale package dealer.* Special off-sale package dealers licenses are available to any civic, charitable, educational, fraternal, or veterans organization in conjunction with a special event conducted pursuant to section E.

C. Persons requesting a special event alcoholic beverage license shall make application on forms available from the Finance Office; and shall be subject to the same background check, notice and public hearing requirements as an applicant for a license under § 5.12.030. No public hearing is required for the issuance of a special event license pursuant to this ~~s~~Section if the person applying for the special event license holds an eligible permanent license and the special event license is to be used on publicly-owned property.

D. The hours of operation of each special event alcoholic beverage license shall be as set by the Common Council, but in no event shall the special event license hours exceed those for an on-sale dealer provided by § 5.12.060.

E. ~~An civic, charitable, educational, fraternal, or veterans~~ organization holding a special event license pursuant to ~~s~~Sections B.4.b., B.5., or B.6. shall only sell wine, malt beverages, or alcoholic beverages, as applicable to the license, that have been donated by members of the public to be sold at the special event so long as the donor purchases any donated alcoholic beverage from a licensed South Dakota retailer, or that have been donated by a licensed

~~manufacturer or licensed wholesaler. Any donated alcoholic beverage must have been purchased by the donor from a licensed South Dakota retailer.~~

F. Persons applying for a special event alcoholic beverage license shall pay a non-refundable application fee as set by resolution of the Common Council follows:

- ~~—1. Special event malt beverage retailer — \$50.~~
- ~~—2. Special event on sale wine retailer — \$50.~~
- ~~—3. Special event on sale dealer — \$150.~~
- ~~—4. Special event off sale package wine dealer — \$50.~~
- ~~—5. Special event off sale package malt beverage dealer — \$50.~~
- ~~—6. Special event off sale package dealer — \$150.~~

G. No person may be issued more than 20 special event alcoholic beverage licenses within any calendar year. Notwithstanding the foregoing, any combination of licenses issued to the same person, at the same place, for the same time, and for the same special event, shall be counted only as 1 license for purposes of the 20-license limit.

(Ord. 6075, 2015; Ord. 5813 (part), 2012)

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that R.C.M.C. 5.12.060 is hereby amended in its entirety to read as follows:

5.12.060 Hours of operation.

A. No on-sale or off-sale licensee may sell, serve, or allow to be consumed on the premises any alcoholic beverages between the hours of 2 a.m. and 7 a.m.

B. Additional limits on hours of operation:

- 1. Off sale dealers may only sell alcoholic beverages between 7:00 a.m. and 12 midnight.
- 2. Municipal auditorium on-sale dealers may only sell alcoholic beverages 1 hour prior to an event until the end of event, and not during any time prohibited in Section A.

~~—The following table establishes the hours during which alcoholic beverages may be sold and the holidays when alcoholic beverages may not be sold for each class of license:~~

| <i>Type of License</i> | <i>Hours</i> | <i>Days</i> | <i>Holidays</i> |
|------------------------|---|-------------|-----------------|
| 1. On-sale dealer | 12 midnight to 2:00 a.m. and | Monday | No Christmas |

| | | | |
|---|---|-----------------------------|---------------------------|
| | 7:00 a.m. to 12 midnight | through Sunday | Day sales |
| 2. On-sale dealer (full restaurant licensee) | 12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight | Monday through Sunday | No Christmas Day sales |
| 3. Convention facility on-sale dealer | 12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight | Monday through Sunday | No Christmas Day sales |
| 4. Municipal auditorium on-sale dealer | 1 hour prior to event until end of event; not outside hours of 5.12.060(1) on-sale dealer | Monday through Sunday | No Christmas Day sales |
| 5. Off-sale dealer | 7:00 a.m. to 12 midnight | Monday through Sunday | No Christmas Day sales |
| 6. Malt beverage retailer | 12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight | Monday through Sunday | N/A |
| 7. Off-sale malt beverage package dealer | 12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight | Monday through Sunday | N/A |
| 8. Off-sale malt beverage and off-sale South Dakota wine package dealer | 12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight | Monday through Sunday | N/A |
| 9. Wine retailers, being both package dealers and on-sale dealers | 12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight | Monday through Sunday | N/A |
| 10. Malt beverage retailer and South Dakota wine retailers | 12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight | Monday through Sunday | N/A |

(Ord. 5813 (part), 2012: Ord. 5544, 2009: Ord. 5400, 2008: Ord. 5399, 2008)

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

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