

## ***Memorandum #08-140***

**To:** *City Commission*  
**From:** *Finance Officer*  
**Date:** *7/23/2008*  
**Subject:** *Memorandum Supporting Introduction and First Reading of Ordinance #912*

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Attached to this memorandum is Ordinance #912, an ordinance creating Section 3-16 of Chapter 3 of the Yankton Code of Ordinances. This Section would allow the City Commission to issue new full-service restaurant on-sale liquor licenses above and beyond the limit previously imposed on Yankton by South Dakota Codified Law (SDCL) 35-4-11. There is also an attachment of the newly passed South Dakota Codified Laws that enable the City to consider the local ordinance. I have cross-referenced both of the corresponding ordinances so that you can scan back and forth for your own referencing.

It is recommended that the City Commission introduce Ordinance #912 and set August 11, 2008 as the second reading and public hearing of said ordinance.

Thank you,

Al Viereck  
Finance Officer

\_\_\_\_\_ I concur with the above recommendation

\_\_\_\_\_ I do not concur with the above recommendation

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Doug Russell, City Manager

**SDCL 35-4-2.10. Report to municipality of on-sale license transferred between January 1, 2003 and January 1, 2008.** Each licensee who owns an on-sale license issued pursuant to subdivision 35-4-2(4) or (6) 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 license to the municipality or county that issued the license. The declared purchase price shall be made under oath and shall include the documents establishing the amount paid for the on-sale license to the municipality or county that issued the license. If the transaction for the purchase of the on-sale 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 license. The burden of establishing the amount paid for the license shall be on the licensee. Any licensee contesting the fair market value of the real and personal property may appeal the valuation to circuit court. [Yankton Section 3-16 g. \(3\) \(a\)](#)

**Source:** SL 2008, ch 189, § 8.

**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 35-4-119, inclusive, mean: [Yankton Section 3-16 a. \(1-3\)](#)

(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 and victuals 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 kinds of employees necessary for the preparing, cooking, and serving of meals.

**Source:** SL 2008, ch 189, § 2.

**SDCL 35-4-111. Full-service restaurant on-sale licenses.** Notwithstanding the provisions of § 35-4- 11 or 35-4-11.1 or the on-sale license fees established pursuant to subdivisions 35-4-2(4) and (6), the governing board of any incorporated municipality or the board of county commissioners of any county may, by ordinance, issue additional on-sale licenses for full-service restaurants if the municipality or county charges at least the minimum fee required by § 35-4-116. [Yankton full Ordinance 912, Section 3-16](#)

**Source:** SL 2008, ch 189, § 1.

**SDCL 35-4-112. Documentation in support of application for full-service restaurant on-sale license.** An applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality 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. [Yankton Section 3-16 b.](#)

**Source:** SL 2008, ch 189, § 3.

**SDCL 35-4-113. Renewal of full-service restaurant on-sale license--Annual report.** When the municipality is renewing a full-service restaurant on-sale license, the municipality 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. The full-service restaurant on-sale licensee shall submit an annual report to the municipality on the sales for the full-service restaurant that 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: [Yankton Section 3-16 c. and d.](#)

- (1) Food and nonalcoholic beverage sales; and
- (2) Alcoholic beverage sales.

**Source:** SL 2008, ch 189, § 4.

**SDCL 35-4-114. On-premise consumption required.** A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premise consumption in the bar and dining room area of the restaurant. [Yankton Section 3-16 e.](#)

**Source:** SL 2008, ch 189, § 5.

**SDCL 35-4-115. Advertisement of full-service restaurant.** A restaurant that has a full-service restaurant on-sale license may only be advertised or held out to the public as primarily a food eating establishment. No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises. [Yankton Section 3-16 f.](#)

**Source:** SL 2008, ch 189, § 6.

**SDCL 35-4-116. Fees for additional on-sale licenses to full-service restaurants.** Any municipality or county adopting the ordinance pursuant to § 35-4-111 may issue additional on-sale licenses to full-service restaurants. Any municipality adopting such ordinance shall charge at least one dollar for each person residing within the municipality as measured by the last preceding decennial federal census. Any county adopting such ordinance shall charge at least one dollar for each person residing within the county but outside the boundary of any municipality as measured by the last preceding decennial federal census. [Yankton Section 3-16 g.](#)

(1)

Each municipality or county shall set the on-sale license fee within ninety days of adopting the ordinance pursuant § 35-4-111 or within thirty days after the resolution

of any appeal pursuant to § 35-4-112. After the fee for an on-sale license issued pursuant to §§ 35-4-110 to 35-4-119, inclusive, has been determined, no municipality or county may change the fee for a period of ten years unless a growth in population reported by the federal decennial census requires an increase in the fee. [Yankton Section 3-16 g. \(2\)](#)

**Source:** SL 2008, ch 189, § 7.

***SDCL 35-4-117. Price of full-service restaurant on-sale license set at or above current fair market value.*** Any municipality or county adopting the ordinance pursuant to § 35-4-111 shall set the price of a new full-service restaurant on-sale license, pursuant to § 35-4-116, at or above the current fair market value. However, such full-service restaurant on-sale license fee may not be less than the minimum on-sale license fee established pursuant to subdivision 35-4-2(4) or (6). For purposes of this section, the term, current fair market value, means the documented price of the on-sale 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 in the transaction. Each on-sale license holder as of January 1, 2008, who acquired the on-sale license within the last five years shall report to the municipality or county the date and price paid for its on-sale license. [Yankton Section 3-16 g. \(3\) \(a and b\)](#)

**Source:** SL 2008, ch 189, § 9.

***SDCL 35-4-118. Registry of full-service restaurant on-sale licenses.*** Each municipality or county adopting an ordinance pursuant to § 35-4-111 shall maintain a registry of each on-sale license that is being offered for sale at the price established in § 35-4-117 and furnish a copy of the registry to anyone who requests a new full-service restaurant on-sale license. The municipality or county may only issue a new license pursuant to §§ 35-4-110 to 35-4-119, inclusive, if no on-sale license is on the registry or a person desiring to purchase an on-sale license listed on the registry provides documentation showing that the person is unable to purchase the on-sale license at the price established in § 35-4-117 and on terms satisfactory to both the potential buyer and seller. The price of any on-sale license registered as, for sale, with the municipality or county shall be sold at the current fair market price set by the municipality or county pursuant to § 35-4-117. Nothing in §§ 35-4-110 to 35-4-119, inclusive, precludes the sale of an on-sale license by a licensee not listed on the registry. [Yankton Section 3-16 h. and i.](#)

**Source:** SL 2008, ch 189, § 10.

***SDCL 35-4-119. Registration that full-service restaurant on-sale license is for sale.*** The existing on-sale license holder is responsible for registering with the municipality or county that the on-sale license is for sale pursuant to § 35-4-118. [Yankton Section 3-16 h.](#)

**Source:** SL 2008, ch 189, § 11.

ORDINANCE # 912

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

BE IT ORDAINED AND ENACTED BY THE CITY COMMISSION OF THE CITY OF YANKTON, STATE OF SOUTH DAKOTA, AS FOLLOWS:

**Sec. 3-16. Full-Service On-Sale Restaurant Licenses.**

a. Definitions of Terms: [SDCL 35-4-110](#)

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

b. License Application Requirements: [SDCL 35-4-112](#)

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

c. Annual Reports: [SDCL 35-4-113](#)

The full-service restaurant on-sale 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 beverages sales.

d. License Renewals: [Also SDCL 35-4-113](#)

When renewing a full-service restaurant on-sale 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.

e. Only Retail, On-Sale Service Permitted: [SDCL 35-4-114](#)

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

f. Smoking Prohibited: [SDCL 35-4-115](#)

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

g. Full-Service Restaurant License Fees:

- (1) As required by State law, the license fee charged for a full-service restaurant on-sale 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 decennial federal census. [SDCL 35-4-116](#)
- (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. [SDCL 35-4-116](#)
- (3) Fair Market Value for full-service restaurant 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 license issued pursuant to SDCL 35-4-2 (4) or (6) 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 license to the City of Yankton 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 license. If the transaction for the purchase of the on-sale 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 license. The burden of establishing the amount paid for the license shall be on the licensee. Any licensee contesting the fair market value of the real or personal property may appeal the valuation adopted by the City to circuit court. [SDCL 35-4-116](#), [SDCL 35-4-117](#), and [SDCL 35-4-2.10](#)
- (b) For purposes of this section, the term, “Current Fair Market Value” means the documented price of the on-sale 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. [SDCL 35-4-117](#)

h. Registry of Full-Service Restaurant On-sale Licensees:

The City shall maintain a registry of each full-service on-sale restaurant 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 license. The existing full-service restaurant on-sale licensee is responsible for registering with the City that the full-service restaurant on-sale license is for sale. [SDCL 35-4-118](#) and [SDCL 35-4-119](#)

i. Issuance of new Full-Service Restaurant Licenses restricted:

The City may only issue a new license pursuant to this ordinance if no on-sale license is on the registry or a person desiring to purchase an on-sale license listed on the registry provides documentation showing that the person is unable to purchase the on-sale license at the price established in section g of this ordinance and on terms satisfactory to both the potential buyer and seller. The price of any on-sale 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 g (2) of this ordinance. [SDCL 35-4-118](#)

II.

Any or all ordinances in conflict herewith are hereby repealed.

First Reading: July 28<sup>th</sup>, 2008  
Second Reading and Adoption:  
Published:  
Effective:

CITY OF YANKTON, SOUTH DAKOTA

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Daniel L. Specht, Mayor

ATTEST:

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Al Viereck, City Finance Officer