

Memorandum #08-139

To: *City Commission*
From: *Finance Officer*
Date: *8/6/2008*
Subject: *Memorandum Supporting Second Reading and Public Hearing of Ordinance #911*

Attached to this memorandum is Ordinance #911, an ordinance creating Section 3-15 of Chapter 3, and amending Chapter 13, Article I, Section 13-2-(c) (2) of the Yankton Code of Ordinances. This Section would allow the sale and consumption of alcoholic beverages on the public sidewalk immediately abutting licensed premises subject to the restrictions set by the State of South Dakota and those imposed locally by the City of Yankton in Section 13-2. I have also attached a complete whole copy of the current Section 13-2 of the City of Yankton Code of Ordinances so that you may review what has been previously adopted by the City Commission to regulate sidewalk cafes.

It is recommended that the City Commission adopt Ordinance #911.

Thank you,

Al Viereck
Finance Officer

_____ I concur with the above recommendation

_____ I do not concur with the above recommendation

Doug Russell, City Manager

ORDINANCE #911

AN ORDINANCE CREATING SECTION 3-15 OF CHAPTER 3 AND AMENDING CHAPTER 13, ARTICLE I, SECTION 13-2, (d) (2) OF THE CODE OF ORDINANCES OF THE CITY OF YANKTON BY AMENDING VARIOUS SECTIONS THERIN

BE IT ORDAINED, BY THE CITY COMMISSION OF THE CITY OF YANKTON, SOUTH DAKOTA THAT:

CHAPTER 3, SECTION 3-15, BE CREATED AS SUCH:

Sec. 3-15. Sale or Consumption of Alcoholic Beverages on Public Sidewalk .

Created to read as follows: The City Commission of the City of Yankton charged with the approval of alcoholic beverage license issuance may permit the sale and consumption of alcoholic beverages on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises, provided that the license holder derives more than fifty percent of its gross receipts from the sale of prepared food for consumption on the licensed premises. The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and abutting the licensed premises. This section does not apply to any federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid.

The City Commission further imposes the conditions or restrictions that appear in Chapter 13, Article I, Section 13-2. **Sidewalk cafes permitted in certain areas; regulations.**

The sidewalk or walkway subject to a public right-of-way where the sale and consumption of alcoholic beverages is permitted does not constitute a public place as defined in SDCL 35-1-5.3, if the sidewalk or walkway subject to a public right-of-way has been properly authorized for sale and consumption of alcoholic beverages pursuant to this section. The hours of authorized sale and consumption on the sidewalk or walkway subject to a public right-of-way as provided by this section shall be consistent with the hours permitted for the on-sale license.

A violation of any provision of SDCL Title 35 by an alcoholic beverage license holder conducting business on a sidewalk or walkway subject to a public right-of-way pursuant to this section constitutes a violation of SDCL Title 35 as if the violation had occurred in or on the licensed premises.

BE IT FURTHER ORDAINED THAT CHAPTER 13, ARTICLE I, SECTION 13-2, (d) (2) BE AMENDED TO WIT:

Chapter 13, Article I, Section 13-2, (d) (2) Pursuant to South Dakota Codified Law, no alcoholic beverages may be sold, served or consumed on a public sidewalk, unless the City Commission of the City of Yankton has authorized the licensed premise to allow this.

First Reading: July 28, 2008

Second Reading and Adoption: August 11, 2008

Publication:

Effective Date:

Daniel L. Specht, Mayor

Attest: _____
Al Viereck, Finance Officer

Current Yankton Sidewalk Café Ordinance

Sec. 13-2. Sidewalk cafes permitted in certain areas; regulations.

(a) *Outdoor food and beverage service and dining in the defined area of the B-3, central business district.* Permits are available on an annual basis following the calendar year.

(b) *Outdoor food and beverage service and dining areas permitted along and on both sides of those portions of the identified rights-of-way located in the city's B-3 central business district.* Only those areas being both in the B-3 district and identified below are allowed to request a sidewalk cafe permit.

Area identified as:

1. Third Street from Broadway Avenue, east to Burleigh Street.
2. Second Street from Broadway Avenue, east to Burleigh Street.
3. Riverside Drive and Levee Street from Broadway Avenue, east to Burleigh Street.
4. Cedar Street, Walnut Street, Douglas Avenue, Capital Street, Pine Street, Mulberry Street Pearl Street and Picotte Street from Riverside Drive/Levee Street, north to Fourth Street.

Outdoor food and beverage service and dining is permitted on sidewalks in the defined area of the central business district by the owner or operator whose business is adjacent to the sidewalk upon which the food and beverages are to be sold, served or consumed. Outdoor sales and service of food, beverages and outdoor dining in the central business district shall be subject to the regulations set forth in this section.

(c) *Definitions.*

The following definitions shall apply when used in this section.

B-3 central business district means the zoning district defined by that name in the zoning ordinance.

Outdoor dining area means an area on a public sidewalk in front of and adjacent to a licensed business where food or beverages are sold, served or consumed.

Public sidewalk use zones shall be defined as:

- (1) *Curb zone:* Two feet from the face of the curb toward the private property line.
- (2) *Pedestrian zone:* Five feet adjacent to the curb zone toward the private property line.
- (3) *Frontage zone:* remaining area of the public sidewalk between the pedestrian zone and the private property line. All permitted sidewalk cafes shall be located in this zone.

Sidewalk means all that area legally open to public use as a pedestrian public way between the curb line and the public right-of-way boundary along the abutting property.

(d) *Regulations pertaining to outdoor food and beverage service and dining areas in the central business district.*

(1) No person shall sell or serve food or beverages or permit outdoor dining on a sidewalk in the defined area unless they comply with the requirements of this section.

(2) Pursuant to South Dakota Codified Law, no alcoholic beverages may be sold, served or consumed on a public sidewalk.

(3) Outdoor food or beverage sales and outdoor dining shall be located so that such service and dining does not impede, endanger or interfere with pedestrian traffic. Tables, chairs and benches shall be located so that they do not impede, endanger or interfere with pedestrian traffic, with a minimum of five feet of passage for pedestrian traffic as defined in the above described public sidewalk use zones. Sidewalk cafes shall only be allowed in the "frontage zone" of the public sidewalk.

(4) No fixtures or devices on which food or beverages are sold or consumed shall be attached to the sidewalk or other public area.

(5) Outdoor food or beverage sales and outdoor dining will be permitted only adjacent to the building or structure in which the business providing the outdoor food and beverage service is located.

(6) Tables, chairs and benches shall not block regulatory signs, crosswalks or intersections and shall be sufficiently lit during times of low light in order to provide for safe pedestrian passage alongside the outdoor dining area. All tables, chairs and benches shall not have sharp edges, protrusions, or other features which may be hazardous to the public.

(7) All equipment used for food and beverage sales or consumption shall be moved inside the building wherein the business is located during hours the business is not in operation, unless the tables and chairs are secured to the building or secured together in a pre-approved fashion.

(8) All tables, chairs and benches must be managed so that they may not be dislodged during windy or stormy weather.

(9) The business owner or operator who conducts outdoor food or beverage sales and outdoor dining shall be responsible for the maintenance, upkeep and security of all tables, chairs and benches.

(10) The business owner or operator who conducts outdoor food or beverage sales and outdoor dining shall be responsible for keeping the outdoor service area clean of

garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor dining area.

(11) Signs used to advertise to the outdoor food or beverage sales and the outdoor dining area shall meet all applicable sign regulations and be secured so that they are not dislodged during windy or stormy weather.

(12) The applicant requesting the permit agrees to assume all liability associated with the sidewalk cafe activities and hold the city "harmless" in matters associated with the operation of said cafe.

(13) The city has established a fee for a sidewalk cafe permit by resolution. Said resolution may be amended as determined by the board of city commissioners without impacting the provisions of this section.

(Ord. No. 886, § 1, 4-10-06)