

Memorandum #09-85

To: City Commission
From: Finance Officer
Date: 5/18/2009
Subject: Sunday Alcohol Sales

I recently received a letter (see attachment) from Kim Braunesreither, Boomer's Lounge, "requesting that the City change Yankton Ordinance Chapter 3, Section 3-6 to allow Sunday sales that are the same as the State Law".

The Legislature of the State of South Dakota recently passed a bill effective July 1, 2009, amending a law that previously restricted on-sale licensees from serving alcoholic beverages on Sunday unless they had the ability to serve food. They removed the restrictions tying Sunday sales to serving of food. They also changed the hours of service to be consistent with all other days. The original wording and the amended versions are below:

Original

SDCL 35-4-2.1. Local approval of Sunday sales by on-sale licensees--Fee--Property tax paid. *Notwithstanding § 35-4-81, the governing body of any municipality or county may, in its discretion, provide in any on-sale license the right to sell, serve, or allow to be consumed alcoholic beverages between the hours of eleven a.m. and twelve midnight on Sunday with the serving of food if the licensee has facilities for the serving of prepared meals from a fixed restaurant with the simultaneous seating capacity of at least:*

- (1) Fifty patrons in municipalities of the first class;*
- (2) Thirty-five patrons in municipalities of the second class; and*
- (3) Twenty-five patrons in municipalities of the third class.*

If such establishments are outside the corporate boundaries of a municipality, the population of the nearest municipality shall govern the minimum seating capacity of an establishment so located. The governing body may require such licensee to pay an additional fee of not more than two hundred dollars. The provisions of this section apply only to facilities upon which property taxes, if assessed, are currently paid.

Amended Version

SDCL 35-4-2.1. *Notwithstanding § 35-4-81, the governing body of any municipality or county may in its discretion, provide in any on-sale license the right to sell, serve, or allow to be consumed alcoholic beverages on Sunday except between the hours of two a.m. and seven a.m.*

SDCL 35-4-81. *No on-sale licensee, licensed under subdivisions 35-4-2(4), (6), (11), and (13), 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 on Sunday after two a.m., on Memorial Day after two a.m., or at any time on Christmas Day. A violation of this section is a Class 2 misdemeanor.*

SDCL 35-4-2. Classes of licenses enumerated--Fees. *Classes of licenses, with the fee of each class, follow:*

- (4) On-sale--in municipalities of various classes: municipalities of the first class, not less than one dollar for each person residing within the municipality as measured by the last preceding federal*

census, the renewal fee for such license is fifteen hundred dollars; municipalities of the second class, no more than twelve hundred dollars; municipalities of the third class, no more than nine hundred dollars;

Note: (6, 11, and 13) are specific licenses that do not currently exist in Yankton, so I have left these out of this memo.

I took the liberty of bolding and underlining the word **may** to make sure you understand this change. First of all, the State still restricts on-sale licensees from selling on Sunday (**SDCL 35-4-81**), **unless** the municipality allows it (**SDCL 35-4-2.1**). The City "**may or may not**" allow it at your discretion as the governing body empowered to adopt local ordinances. We currently have a local ordinance that restricts Sunday sales **unless food is served** and even then, it restricts the hours of service to 11:00 AM to 12:00 Midnight. You have the ability to change that by amending the local ordinance through the normal process (first and second reading, publication, and effective date if not referred) or you may leave it as is.

Our Local Yankton Ordinance

Sec. 3-5. Times when on-sale service is prohibited.

No on-sale licensee shall sell, serve, or allow to be consumed on the premises covered by the license any alcoholic beverage between the hours of 2:00 a.m. and 7:00 a.m. daily on Sunday after 2:00 a.m. or on Memorial Day after 1:00 a.m. or at any time on Christmas Day. However, licensees who qualify under the provisions of section 3-6 shall be permitted to serve alcoholic beverages as permitted by that section. (Ord. No. 381, 7-23-73)

State law references: Similar provisions, SDCL 1967, § 35-4-81.

Sec. 3-6. When Sunday sales permitted.

On-sale licensees who operate a bona fide restaurant capable of seating fifty (50) patrons at one and the same time and with kitchen facilities capable of serving fifty (50) patrons at one and the same time may apply for special license provision to permit sale of alcoholic beverages on Sunday. If said special license provision is granted by the board of city commissioners, said licensee shall have the right to serve alcoholic beverages on Sunday only during the hours of 11:00 a.m. until 12:00 midnight with the serving of food. Said Sunday service shall be permitted notwithstanding the provisions of section 3-5 of this Code.

(Ord. No. 381, 7-23-73; Ord. No. 466, 1-9-78; Ord. No. 917, 12-8-08)

Sec. 3-7. Application, fee for Sunday sale license.

All applications shall be made to the board of city commissioners on forms and under such procedures as they shall require. The issuance of said Sunday sale license shall be in the same manner as other alcoholic beverage licenses and shall be the sole determination of the board of city commissioners. The annual fee for a Sunday sale licensee shall be two hundred dollars (\$200.00), which shall be in addition to the fees detailed in section 3-2 of this Code. It is the intent of the board of city commissioners that Sunday sale licenses shall be in all respects, except hours and day of operation and fee, considered on a like basis and under the same factors as all other alcoholic beverage licenses.

(Ord. No. 381, 7-23-73)

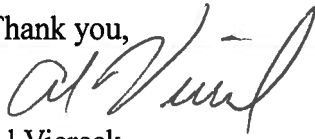
It is recommended that the City Commission discuss these State Codified Law changes and direct staff to either leave the local restrictions or to introduce an amendment with any changes that the Commission would like to see in relation to Sunday alcohol sales.

05/18/09

MEMORANDUM

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Thank you,



Al Viereck
Finance Officer

I concur with the above recommendation

I do not concur with the above recommendation



Doug Russell, City Manager

May 14, 2009

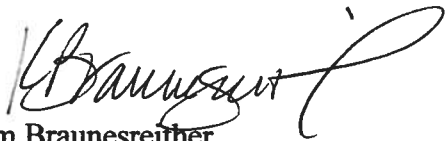
Al Viereck
Finance Office
City of Yankton

Dear Mr. Viereck,

As you probably know, the South Dakota Legislature passed HB 1211 which takes affect July 1, 2009. HB 1211 revises the time frame and requirements for certain alcoholic beverage licenses to provide on sale service of alcoholic beverages on Sunday. This act makes the hours on Sunday the same as Monday through Saturday and changes the time on Memorial Day from one a.m. to two a.m.

I am requesting that we change the Yankton Ordinance Chapter 3, Section 3-6 to allow Sunday sales that are the same as the State Law. This change would increase revenues for establishments selling alcoholic beverages and eliminate any confusion on the part of law enforcement.

Thank you for your consideration.



Kim Braunesreither
Boomer's Lounge
Director SD Licensed Beverage Dealers

Enc: HB 1211