

Memorandum #10-133A

To: City Commission
From: Finance Officer
Date: 8/2/2010
Subject: Memorandum Supporting Second Reading and Public Hearing of Ordinance #934

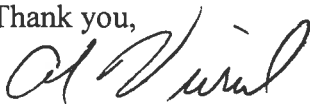
The 2010 South Dakota Legislature enacted amendments to South Dakota Codified Law (SDCL) Chapter 35-4 dealing with hours of sale for on- and off-sale alcohol licensees. The amendment changed the "hours of sales" for an off-sale liquor licensee to make the hours consistent with an on-sale licensee's hours. This ordinance became effective July 1, 2010. There were two basic changes to state law:

- 1) It allows sales up to 2:00 AM where previously they had to discontinue sales at Midnight, and
- 2) This same ordinance also allows sales on Memorial Day for on and off-sale licensees if the municipality by ordinance allows it.

Our current local Ordinance still restricts off-sale licensee hours to Midnight daily and we don't allow on- or off-sale liquor licensees to sell anything on Memorial Day. Attached to this memorandum is the new current SDCL that refers to the hours of sale. Also attached is Ordinance #934 that if enacted would amend the Yankton Code of Ordinances dealing with hours of sales for alcoholic beverages. Deletions are noted with ~~strikethroughs~~ and additions are noted with **bold, underlined and italics.**

It is recommended that the City Commission conduct the second reading and public hearing of Ordinance #934 and adopt said Ordinance.

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 #934

AN ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES OF THE CITY OF YANKTON BY AMENDING VARIOUS SECTIONS THEREIN

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

CHAPTER 3, ALCOHOLIC BEVERAGES, BE AMENDED AS FOLLOWS:

Chapter 3 ALCOHOLIC BEVERAGES*

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

No on-sale *or off-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 ~~or on Memorial Day after 2:00 a.m.~~ or at any time on Christmas Day.

(Ord. No. 381, 7-23-73; Ord. No. 923, 6-22-09)

State law references: Similar provisions, SDCL ~~1967~~ 2010, § 35-4-81.

Sec. 3-10. ~~Times when off-sale sales are prohibited.~~ Repealed

~~No off-sale liquor licensee shall sell or allow to be sold any distilled spirits or wine between the hours of 12:00 midnight and 7:00 a.m. of the following day or sell or allow to be sold distilled spirits or wine on Memorial Day or Christmas Day.~~

~~(Ord. No. 616, § 1, 7-3-89; Ord. No. 917, 12-8-08)~~

First Reading: July 26, 2010

Second Reading and Adoption: August 9, 2010

Publication:

Effective Date:

David D. Knoff, Mayor

Attest: _____

Al Viereck, Finance Officer

SDCL 35-4-2.1. Local approval of Sunday sales by on-sale licensees. 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.

Source: SL 1973, ch 237, § 2; SL 1974, ch 247; SL 1975, ch 229; SL 1990, ch 297; SL 2003, ch 192, § 1; SL 2009, ch 173, § 1.

SDCL 35-4-81. Times when on- and off-sale service prohibited--Violation as misdemeanor. No on-sale or off-sale licensee, licensed under subdivisions 35-4-2(3), (4), (5), (6), (9), (11), (13), or (18), 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. However, any municipality or county may, by ordinance, allow the sale, service, and consumption of alcoholic beverages on Sundays and Memorial Day. A violation of this section is a Class 2 misdemeanor.

Source: SDC 1939, § 5.0226 (3), (4); SL 1961, ch 16; SL 1963, ch 14; SDCL § 35-4-80; SL 1971, ch 211, § 72; SL 1987, ch 261, § 32; SL 1992, ch 158, § 60; SL 2009, ch 173, § 2; SL 2010, ch 183, § 1.

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

(3) Off-sale--not less than five hundred dollars in municipalities of the first class, not more than four hundred dollars in municipalities of the second class, and not more than three hundred dollars in municipalities of the third class. The renewal fee for such licenses may not exceed five hundred dollars in municipalities of the first class, four hundred dollars in municipalities of the second class, and three hundred dollars in municipalities of the third class;

(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;

(5) Off-sale licenses issued to municipalities under local option--not less than two hundred fifty dollars;

(6) On-sale licenses issued outside municipalities--except as provided in § 35-4-11.9, not less than the maximum that the municipality to which the applicant is nearest is charging for a like license in that municipality, the renewal fee shall be the same as is charged for a like license in the nearest municipality. However, if the nearest municipality is more than fifteen miles from the on-sale license, the fee shall be established pursuant to § 35-4-11.10. If the municipality to which the applicant is nearest holds an on-sale license, pursuant to § 35-3-13 and does not charge a specified fee, then the fee shall be the maximum amount that could be charged as if the municipality had not been authorized to obtain on-sale licenses pursuant to § 35-3-13. However, if the nearest municipality is a municipality of the first class and is authorized to hold an on-sale license pursuant to § 35-3-13, such fee may not be more than one hundred fifty percent of the minimum a municipality not so authorized may charge for a like license. The renewal fee shall be the same as could be charged for a like license in the nearest municipality;

(9) Carrier--one hundred dollars, which fee entitles the licensee to sell or serve alcoholic beverages on all conveyances the licensee operates within the state;

(11) On-sale dealers at publicly operated airports--two hundred fifty dollars;

(13) Convention facility on-sale--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, in municipalities of the first class, is fifteen hundred dollars; the renewal fee for such license, in

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

(18) On-sale dealers in light wine containing not more than six percent alcohol by weight for each day of the week between the hours of seven a.m. and two a.m. to nonprofit corporations established pursuant to chapter 7-7--two hundred dollars; and

Source: SDC 1939, § 5.0203; SL 1945, ch 17, § 2; SL 1947, ch 19; SDC Supp 1960, § 5.0204 (13), (14) as enacted by SL 1961, ch 14; SL 1964, ch 9; SL 1965, ch 12; SL 1966, ch 10; SDC Supp 1960, § 5.0204 (15) as enacted by SL 1967, ch 6; SL 1968, ch 2, § 1; SL 1970, ch 206, § 1; SL 1970, ch 207, § 1; SL 1971, ch 211, §§ 40, 41, 121; SL 1973, ch 236, § 1; SL 1975, ch 228; SL 1981, ch 270, § 1; SL 1985, ch 291, §§ 1, 3, 4A; SL 1986, ch 300; SL 1987, ch 261, § 16; SL 1988, ch 292, § 1B; SL 1989, ch 312; SL 1990, ch 296; SL 1993, ch 265; SL 1994, ch 285, § 1; SL 1995, ch 207, § 2; SL 2001, ch 194, § 1; SL 2003, ch 190, § 1; SL 2003, ch 191, § 1; SL 2006, ch 194, § 12; SL 2008, ch 182, § 1; SL 2008, ch 183, § 1; SL 2009, ch 48, § 3.

SDCL 35-4-81.1. Repealed by SL 2010, ch 183, § 2.

SDCL 35-4-81.1. Times when off-sale service prohibited. No off-sale licensee, licensed under subdivisions 35-4-2(3), (5), and (19), may sell, or allow to be sold, alcoholic beverages between the hours of twelve midnight and seven a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, alcoholic beverages on Sunday unless the municipality or the county by ordinance allows such sales on Sunday.

Source: SDC 1939, § 5.0226 (3), (4); SL 1961, ch 16; SL 1963, ch 14; SDCL, §§ 35-4-80, 35-4-81; SL 1971, ch 211, § 73; SL 1987, ch 261, § 34; SL 1989, ch 316; SL 2001, ch 194, § 4.