

ORDINANCE NO. 35

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

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

I.

Sec. 6-50. Full-Service On-Sale Restaurant Licenses.

a. Definitions of Terms:

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:

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

The full-service restaurant on-sale licensee shall submit an annual report and supporting documentation to the County on forms provided by the County 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:

When renewing a full-service restaurant on-sale license, the County 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:

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:

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 County as measured by the last preceding decennial federal census.
- (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.
- (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 County 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 Marshall County Auditor on forms provided by the County. 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.
- (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.

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

The County shall maintain a registry of each full-service on-sale restaurant license that is being offered for sale and the County 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 County that the full-service restaurant on-sale license is for sale.

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

The County 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 County shall be sold at the current fair market price set by the County pursuant to a Resolution adopted in accordance with section g (2) of this ordinance.

Any or all ordinances in conflict herewith are hereby repealed.

FIRST READING: July 7, 2009

SECOND READING: July 21, 2009

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MARSHALL COUNTY , SOUTH DAKOTA

Keith O. Hyske
Commission Chairman

ATTEST:

Julie Hagen
County Auditor