

FALL RIVER ORDINANCE NO: 2013-01
**AN ORDINANCE CREATING AN ON-SALE LICENSE FOR ALCOHOLIC
BEVERAGE FOR FULL SERVICE RESTAURANTS**

Section 1. Full Service On-Sale Restaurant License: The terms used in this section, mean:

1. "Bar," and permanently installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person which 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, boots or the bar. Any restaurant that only serves fry orders of foodstuffs 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 processes meals are prepared and served primarily for consumption in such area and where at least sixty percent of the gross revenue of the restaurant is derived from the sale of food and nonalcoholic 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 servicing of meals. Source: Statutory Authority; SDCL 35-4-110.
4. "Current Fair market Value," 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 with the transaction. Source: Statutory Authority; SDCL 35-4-117.

Section 2. Documentation in Support of Initial Application for Full- Service Restaurant On-Sale License. An applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the governing body upon 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. Source: Statutory Authority; SDCL 35-4-112.

Section 3. Renewal of Full-Service Restaurant On-Sale License- Annual Report. The full-service restaurant licensee shall submit on forms provided by the County an annual report. Forms shall include an oath verifying the validity of the information providence in the report. The report and the supporting documentation submitted pursuant to this section are confidential. The report shall include the annual gross sales of the license for the following two categories:

1. Food and nonalcoholic beverage sales

2. Total Gross Revenues

Source: Statutory Authority: SDCL 35-4-113

Section 4. Conditions of Renewal. When renewing a full-service restaurant on-sale license, the County shall condition the license renewal upon documents that at least sixty percent of gross revenue from the preceding twelve months operation of the full-service restaurant was derived from the sale of food and nonalcoholic beverages. Source: Statutory Authority: SDCL 35-4-114.

Section 5. On-Premises 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. Source: Statutory Authority 35-4-114.

Section 6. Advertisement of Full-Service Restaurant. No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises. 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. Source: Statutory Authority: SDCL 35-4-115.

Section 7. Certain Licensees to Report Amount Paid for Other Licenses. The license fee charge 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 at measured by the last preceding decennial federal census.

1. The license fee shall be initially established by Resolution for the County Commissioners within ninety days of the adoption of Ordinance 2013-01. Subsequent changes to the license fee shall not be made for a period of ten (10) years from the effective date of Ordinance 2013-01 unless a growth in population reported by the federal decennial census requires an increase to the fee.

2. Within 90 days of the effective date of Ordinance 2013-01, each licensee within the County who owns an on-sale license pursuant to SDCL 35-4-2(4) and (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 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 license on the date of purchase may file an objection to the report. The objection shall be filed with the County within thirty days of the date the license fee is set. The determination of the governing board may be appealed to the circuit court. Source: Statutory Authority: SDCL 35-4-117.

Section 8. Registration that Full-Service Restaurant On-Sale License is for Sale. 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 license is responsible for registering with the County that the full-service restaurant on-sale license is for sale. Source: Statutory Authority SDCL 35-4-117;

Section 9. Registry of Full-Service Restaurant On-Sale Licenses. The County may only issue a new license under this action 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 _____ of this Ordinance and on terms satisfactory to both the potential buyer and seller. The price of any on-sale license registered with the County under this Ordinance shall be sold at the current fair market price set by the County Commission pursuant to the Resolution adopted in accordance with Section Seven of this Ordinance. Source: Statutory Authority: SDCL 35-4-118.

Adopted this ____ day of _____, 2013.

First Reading: 6/6/13

Second Reading: _____

Fall River County Commissioner

Michael P. Ortner, Chairman

ATTEST:

Sue Ganje, County Auditor