
CITY OF BOX ELDER ORDINANCE # 724

WHEREAS, the 2022 estimated population of the City of Box Elder U.S. census identified extensive population growth within the City of Box Elder resulting in the availability of additional on-sale and off-sale liquor licenses within the City; and,

WHEREAS, the City Council of the City of Box Elder desires to authorize the maximum number of on and off sale liquor licenses available by law; and,

WHEREAS, additional updates to South Dakota statute regarding alcoholic beverage licensing have made additional changes to Chapter 8, Article II of the City of Box Elder codified ordinances;

NOW THEREFORE BE IT ORDAINED by the City of Box Elder that Article II of the City of Box Elder codified ordinances be amended as follows:

ARTICLE II. ALCOHOLIC BEVERAGE SALES¹

DIVISION 1. GENERALLY

Sec. 8-19. On-sale retail liquor, on-sale retail convention and off-sale package store license

- (a) *Maximum number of licenses.* Pursuant to the 2022 estimated population of the City , according to the U.S. Census Bureau, the number of city liquor licenses authorized, used and available in the city are as follows:

<i>License Type</i>	<i>Authorized</i>	<i>Currently Used</i>	<i>Available</i>
On-sale retail liquor license	11	6	5
On-sale retail convention license	2	1	1
Off-sale package store license	10	5	5

- (b) *Application for city license; fees.* Applications for city liquor licenses shall be submitted to the city on a form provided by the city and accompanied by a license fee in the amount provided in the city fee schedule. License application fees will not be refunded once the license is approved by the city commission and issued by the state.

¹State law reference(s)—Alcoholic beverages, SDCL ch. 35-1; local option and municipal powers, SDCL ch. 35-3.

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- (c) *Compliance with zoning regulations required.* Under no circumstances will an alcoholic beverage license of any kind be approved, renewed or transferred to any premises upon which a zoning ordinance violation has been identified until such time as the premises is brought into full compliance with all applicable provisions of city zoning regulations.
 - (d) *Proof of sufficient sales structure required for on-sale liquor license.* Applicants for retail on-sale liquor licenses shall provide proof of a sufficient structure or plan for construction of a structure in which to conduct the operation. Proof of such structure may include, but not necessarily be limited to, pictures (inside and out) of any existing structures or plans and specifications of proposed structures along with proof of ownership or a valid lease of the premises.
 - (e) *Conditional approval to allow construction of sales structure.* Conditional approval may be given to an applicant for on-sale liquor license and the license held by the city for up to one year to allow for the construction of an approved structure. Conditional approval may also be granted if the applicant needs additional time to rezone the premises for compliance with city zoning requirements. If the license has not been issued within one year due to the applicant's failure to meet the requirements of this chapter, the city may, upon request of the applicant, extend the conditional approval for up to six additional months if it finds that the delay is not the fault of the applicant. Under no circumstance shall a license be held on conditional approval in excess of 18 months.

(Ord. No. 520, 2-21-2012; Ord. No. 521, § III, 2-21-2012; Ord. No. 548, 6-17-2014; Ord. No. 624, §§ I, II, 4-22-2020)

State law reference(s)—Classes of licenses, SDCL 35-4-2; restriction by ordinance of sales, service and consumption on certain days, SDCL 35-4-81; convention facility on-sale licenses issued by municipalities, SDCL 35-4-11.2; licensed municipalities permitted to issue certain licenses, SDCL 35-4-19.

Sec. 8-20. Video lottery machine fee.

Any person who is licensed pursuant to SDCL 35-4-2(4), (6), (11), (14) or (17) and is issued a video lottery establishment license pursuant to SDCL 42-7A-41 shall pay an annual additional license fee, in the amount provided in the city fee schedule, for the privilege of locating video lottery machines on the licensed premises. The fee shall be paid at the same time and in the same manner as the fees paid in SDCL 35-4-2. All fees received under this section shall be deposited into the general fund.

State law reference(s)—Similar provision, SDCL 35-4-103.

Sec. 8-21. Possession of weapons in licensed alcohol establishment prohibited.

- (a) It is unlawful for any person to enter or have in his possession while on the premises of any alcohol establishment licensed in the City having any firearm or any knife, or any sharp or dangerous weapon such as is usually employed in attack or defense of the person.
- (b) This section shall not apply to a folding knife that has a blade less than three inches in length, providing said knife is in a closed position.
- (c) Nothing in this section shall prohibit the owner or employee of any licensed establishment to maintain an otherwise legal weapon on the premises or to prohibit any duly appointed law enforcement officer from entering said premises in the line of his duty while bearing arms.
- (d) Any person found guilty of a violation of this article is guilty of a Class 1 misdemeanor.

(Ord. No. 198, 12-23-1986)

Secs. 8-22—8-45. Reserved.

Code -
Chapter 8 - BUSINESSES
ARTICLE II. - ALCOHOLIC BEVERAGE SALES
DIVISION 2. FULL-SERVICE RESTAURANT ON-SALE LIQUOR LICENSE

DIVISION 2. FULL-SERVICE RESTAURANT ON-SALE LIQUOR LICENSE²

Sec. 8-46. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar means 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.

Full-service restaurant means 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.

Restaurant means 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 40 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 kind of employees necessary for the preparing, cooking, and serving of meals.

(Ord. No. 470, § I(b), 8-5-2008)

Sec. 8-47. Authorized; registry; maximum number; sales price.

- (a) In addition to the on-sale liquor licenses authorized pursuant to SDCL 35-4-11, the city council has established full-service restaurant on-sale liquor licenses which may be issued according to the provisions of this article and state law.
- (b) The city shall maintain a registry of each on-sale liquor license that is being offered for sale and shall furnish a copy of the registry to anyone who requests a new full-service restaurant on-sale liquor license. The existing on-sale liquor licensee is responsible for registering with the city that the on-sale liquor license is for sale.
- (c) The city may only issue a new license under this article if no on-sale liquor license is on the registry or a person desiring to purchase an on-sale liquor license listed on the registry provides documentation showing that the person is unable to purchase the on-sale liquor license on terms satisfactory to both the potential buyer and seller.
- (d) The price of any on-sale liquor license registered as "for sale" with the city shall be sold at the current fair market price set by the city pursuant to a resolution adopted in accordance with this article.

(Ord. No. 470, § I(a), (i), (j), 8-5-2008)

State law reference(s)—Municipal determination of number of licenses and amounts of fees, SDCL 35-4-11.

²State law reference(s)—Municipal full-service restaurant on-sale liquor licenses, SDCL 35-4-19.1.

Sec. 8-48. Application; proof of primary source of revenue.

An applicant for a full-service restaurant on-sale liquor license shall make application to the city on a form provided by the city accompanied by a license fee in the amount provided in the city fee schedule. The application shall include sufficient documentation to prove to the city 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.

(Ord. No. 470, § I(c), 8-5-2008)

Sec. 8-49. Annual reports.

The full-service restaurant on-sale liquor licensee shall submit an annual report and supporting documentation to the city on forms provided by the city 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 food and nonalcoholic beverage sales and for alcoholic beverage sales.

(Ord. No. 470, § I(d), 8-5-2008)

Sec. 8-50. Renewals.

Licenses shall expire and be renewable annually. When renewing a full-service restaurant on-sale liquor license, the city shall condition the license renewal upon receiving documentation that not more than 40 percent of gross sales from the preceding 12 months of operation of the full-service restaurant is derived from the sale of alcohol or alcoholic beverages. Renewal fees shall be as provided in the city fee schedule.

(Ord. No. 470, § I(e), 8-5-2008)

Sec. 8-51. Service area; smoking prohibited.

A full-service restaurant on-sale liquor licensee may only serve alcoholic beverages for on-premises consumption in the bar and dining room areas of the restaurant. No smoking shall be permitted on the licensed premises.

(Ord. No. 470, § I(g), 8-5-2008)

Secs. 8-52—8-75. Reserved.

Dated this 20th day of June, 2023.

CITY OF BOX ELDER

ATTEST:
(SEAL)

Garry Larson

Mayor

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Nicole Schneider, Chief Financial Officer/
City Administrator

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