

ORDINANCE NO. 5399

AN ORDINANCE UPDATING THE ALCOHOL SALES REGULATIONS BY AMENDING CHAPTER 5.12 OF THE RAPID CITY MUNICIPAL CODE.

WHEREAS, the State of South Dakota regulates the sale and consumption of alcoholic beverages and authorizes municipalities to do the same; and

WHEREAS, the City of Rapid City has adopted ordinances regulating the sale and consumption of alcoholic beverages in accordance with its statutory authority; and

WHEREAS, the system of dual regulation has the potential to create conflicting regulations that cause confusion to licensees, consumers and law enforcement; and

WHEREAS, the State Legislature has enacted a number of bills to modify the regulation of the sale of alcoholic beverages in South Dakota; and

WHEREAS, the Rapid City Common Council deems it to be in the best interest of the City of Rapid City to update the chapter of the Rapid City Municipal Code that addresses the sale and consumption of alcoholic beverages to conform to the new regulation and to eliminate redundancy with state law.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that all sections of Chapter 5.12 of the Rapid City Municipal Code are hereby repealed and Chapter 5.12 is hereby amended to read as follows:

5.12.010 Definitions.

Terms used in this chapter, unless the context otherwise plainly requires, shall mean:

A. **ALCOHOLIC BEVERAGE.** Any distilled spirits, wine and malt beverages as defined in this chapter.

B. **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.

C. **DISTILLED SPIRITS.** Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, containing not less than 0.5% of alcohol by weight.

D. **RESERVED 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 and victuals such as sandwiches, hamburgers, or salads is not a full-service restaurant.

E. **MALT BEVERAGE.** A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption, containing not less than 0.5% of alcohol by weight.

F. **OFF-SALE.** The sale of any alcoholic beverage, for consumption off the premises where sold.

G. **ON-SALE.** The sale of any alcoholic beverage for consumption only upon the premises where sold.

H. **ON-SALE DEALER.** Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

I. **PACKAGE.** The bottle or immediate container of any alcoholic beverage.

J. **PACKAGE DEALER.** Any person, other than a distiller, manufacturer or wholesaler who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

K. **PUBLIC PLACE.** Any place, whether in or out of a public building, commonly and customarily open to or used by the general public and any street or highway.

L. **RETAIL LICENSE.** Any on-sale or off-sale license issued under the provisions of this chapter.

M. **RETAILER** or **RETAIL DEALER.** Any person who sells alcoholic beverages for other than resale.

N. **SALE.** The transfer, for a consideration, of title to any alcoholic beverage.

O. **TO SELL AND SERVE ALCOHOLIC BEVERAGES.** Means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages.

P. **WINE.** Any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of

fruits or other agricultural products containing sugar and containing not more than 24% of alcohol by weight.

5.12.020 Transaction of business authorized by chapter—License required.

It is a violation of this ordinance to transact any business involving the sale of alcohol beverages with out first obtaining a license required by this Chapter and Title 35 of the South Dakota Codified Laws. Any violation is subject to the General Penalty of section 1.12.010

5.12.030 Alcoholic beverages, malt beverages and wine license requirements and fees.

A. The following classifications and fees are established for on-sale dealers in distilled spirits, wines, and malt beverages:

<u>Class of License</u>	<i>Initial Fee</i>	<u>Renewal Fee</u>
1. On-Sale Dealer: Any person who sells or keeps for sale any alcoholic beverage, other than pursuant to another license under this chapter, for consumption on the premises where sold	\$100,000	\$1,500
2. RESERVED	Reserved	Reserved
3. Sunday Retail Dealer: Any on sale dealer licensed under subsection (A)(1) of this section, if licensee meets the requirements of subsection 5.12.030(B).	\$200	\$200
4. Off Sale Dealer: Any person who sells or keeps for sale any alcoholic beverage for consumption off the premises where sold	\$500 (not less according to 35-4-2)	\$500
5. Malt Beverage Retailer: Any person who sells or keeps for sale, other than resale, malt beverages as both package dealers and on-sale dealers	\$250	\$250
6. Off-Sale Malt beverage	\$250	\$250

package dealer: Any person who keeps for sale or sells malt beverages for consumption off the premises where sold		
7. Wine Retailers, being both Package Dealers and On-Sale Dealers	\$500.00	\$500.00
8. Special Malt Beverage or On Sale Wine License (Non-profit, civic, charitable or fraternal organizations only)	\$50.00 per day up to 15 consecutive days	N/A
9. Special Off-Sale Wine Dealers License (Fair Board, public, civic, charitable, educational or fraternal organization in conjunction with special event within city, selling licensed South Dakota Wines only)	\$50.00 per day up to 15 consecutive days	N/A
10. Special Malt Beverage Retailer and/or On Sale Wine Retailer License (Community playhouse for non-profit organization in conjunction with a theatrical production only)	\$50.00 per day up to 60 days in a 1 year period	N/A

B. The Common Council 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 11:00 a.m. and 12:00 midnight on Sunday with the serving of food from a fixed-restaurant, where the licensee has the facilities for the serving of prepared meals from a fixed restaurant with a simultaneous seating capacity of at least 50 patrons.

C. An off-sale license may be authorized for premises where the sale of liquor constitutes less than 40% of the gross business transacted on the premises, provided that:

1. The area in which liquor is displayed for sale is located within a building located on the premises and is separated from the remaining premises by partitions or walls at least 7 feet in height, and that the liquor display area shall be physically closed during times when off sale service is prohibited by the South Dakota Liquor Control Law;

2. Store personnel shall be physically present within the confines of the Liquor Sales Department at all times it is open to the public; and

3. The licensee shall not permit any person less than 21 years old to loiter in the liquor display and sale area.

5.12.040 Reserved.

5.12.050 Malt beverages–Identification of containers–Recordkeeping requirements.

A. No retail licensee selling malt beverages for off-sale consumption in a container having a liquid capacity greater than 8 gallons shall sell such a container without placing a distinctive symbol, notation or mark on the container which uniquely identifies the licensee and without registering his or her unique identification symbol, notation or mark with the Rapid City Police Department or its designee.

B. Business records shall be kept by the licensee providing the following information: the date of the sale, and the name, address, driver’s license number and social security number of the person to whom the malt beverage in the designated containers was sold. Licensees shall retain these records for 1 year following the last sale of malt beverages in the above-designated containers, and shall provide the records upon request to any duly authorized officer or representative of any city, county or state agency responsible for enforcing this section or for enforcing South Dakota Codified Laws pertaining to consumption of alcohol.

5.12.060 Hours of Operation.

A. The following table establishes the hours during which alcoholic beverages may be sold and the holidays when alcoholic beverages may not be sold for each class of license:

Type of License	Hours	Days	Holidays
1. On-Sale Dealer	12 Midnight to 2:00 a.m.	Monday through Sunday	No Christmas Day Sales or after 1:00 a.m. on Memorial Day
	7:00 a.m. to 12 Midnight	Monday through Saturday	No Christmas Day Sales or after 1:00 a.m. on Memorial Day
2. RESERVED	RESERVED	RESERVED	RESERVED
	RESERVED	RESERVED	RESERVED
3. Sunday Retail Dealer	11:00 a.m. to 12 Midnight	Sunday	No Christmas Day Sales
4. Off-Sale Dealer	7:00 a.m. to 12 Midnight	Monday through Sunday	No Christmas Day Sales or Memorial

			Day Sales
5. Malt Beverage Retailer	Midnight to 2:00 a.m. & 7:00 a.m. to 12 Midnight	Monday through Sunday	N/A
6. Off-Sale Malt Beverage Package Dealer	12 Midnight to 2:00 a.m. & 7:00 a.m. to 12 Midnight	Monday through Sunday	N/A
7. Wine Retailers, being both Package Dealers and On-Sale Dealers	12 Midnight to 2:00 a.m. & 7:00 a.m. to 12 Midnight	Monday through Sunday	N/A
8. Special Malt Beverage or On-Sale Wine License	Set by Council, not to exceed times for On-sale licensee		N/A
9. Special Off-Sale Package Wine Dealers License (SD Farm Winery)	Set by Council, not to exceed times for On-sale licensee		N/A
10. Special Malt Beverage Retailer and/or On Sale Wine Retailer License (Community playhouse for non-profit organization in conjunction with a theatrical production only)	Not more than 1 hour prior to commencement of a performance or at any time after performance is concluded.		N/A

5.12.070 Weapons prohibited on premises where sold.

All license holders except those engaged solely in the off-sale of malt beverages, shall post the following notice at all entrances to their establishment in bold capital letters at least 3/4 of an inch high:

IT IS UNLAWFUL TO ENTER THIS ESTABLISHMENT WITH ANY KNIFE OR OTHER WEAPON.

5.12.080 Consuming, mixing or possession of alcoholic beverages in public places.

A. It is unlawful for any person to consume any intoxicating liquor or malt beverage or to mix or blend any alcoholic beverage with any other beverage, regardless of whether the beverage is an alcoholic beverage, in any public place, other than upon the premises of a licensed on-sale retailer where the alcoholic beverage was purchased from the dealer for on-sale purposes.

B. It is unlawful for any person to possess an alcoholic beverage, in an unsealed container or in an open receptacle, in any public place other than upon the premises of a licensed on sale retailer where the alcoholic beverage was purchased from the retailer for on sale purposes.

C. Nothing in this section shall be construed to prohibit the sale or consumption of malt beverages on the licensed premises of a park concessionaire as long the malt-beverages are purchased from the concessionaire.

D. Notwithstanding Subsections A., B. and C, The City Council may authorize consumption or blending of alcoholic beverages in a public place, but not the sale of the same, in or upon property described by the City Council, which property is publicly owned, or owned by a nonprofit corporation. The authorization shall not exceed twenty-four hours and hours of consumption shall not exceed those permitted for on-sale licensees.

5.12.090 Distribution of on-sale alcoholic beverages and vehicular fuel prohibited.

It is unlawful for a licensee or his or her employees to offer for sale alcoholic beverages to be consumed on the licensed premises, if motor fuel is also sold to motor vehicles engaged in intrastate or interstate transportation on the same licensed premises, unless the structure or building in which the alcoholic beverages are sold and consumed is separated by at least 100 feet from the building or structure where motor vehicle fuel is sold.

5.12.100 Penalty.

Any person violating any portion of this chapter is subject to the general penalty set out in Section 1.12.010 of this code.

CITY OF RAPID CITY

ATTEST:

Mayor

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: