

**TITLE 3
LICENSING AND REGULATION OF ALCOHOL, MALT BEVERAGES AND
DRINKING ESTABLISHMENTS**

(This Title was replaced in its entirety by Ordinance 2004-19, effective Nov. 5, 2004)

Chapters:

- 3.01: General Provisions
- 3.02: Licensing and Sales of Malt Beverages
- 3.03: Temporary Drinking Establishments
- 3.04: Permanent Drinking Establishments
- 3.05: Fairground Alcohol Sales

**CHAPTER 3.01
GENERAL PROVISIONS**

SECTIONS:

- 3.01.01: Scope and Purpose
- 3.01.02: Definitions
- 3.01.03: Penalty

3.01.01: SCOPE AND PURPOSE

This Title shall set forth licensing requirements related to the sale of alcohol and malt beverages and shall regulate drinking establishments and the sale of alcohol and malt beverages within the City.

3.01.02: DEFINITIONS

BUILDING/STRUCTURE: Structure having a roof supported by columns or walls for the shelter, support or enclosure for persons, animals or chattels. A building may be precut or prefabricated, or it may be made up of mobile modules or sections, factory fabricated and transportable by rail or truck to a building site, and designed to be incorporated into a structure upon a permanent foundation on the said site. For the purpose of this Title said structure shall not be less than 1,500 square feet in area.

BUSINESS: The activity of buying and selling.

DECK: Any walking surface, covered or uncovered, which is on the exterior of a structure and is elevated above finish grade. When utilized in conjunction with a drinking establishment, the walking surface shall not be elevated more than 30" above finish grade. Decks shall have at least one access attached to a permanent structure for which malt beverage or alcohol is served or consumed.

EVENT: An organized occurrence or happening where the City provides extraordinary services, including but not limited to sanitation services, law enforcement or traffic control.

FLOOR: An area that is surrounded by exterior walls and a roof of the building or portion thereof.

MINOR: Any person who is under the age of twenty-one (21).

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

ON-SALE: The sale of any alcoholic beverage for consumption only upon the premises for which it is sold.

OPERATION: In action, functioning.

PATIO: Any finished walking surface which is at grade and is covered or uncovered. Patios shall have one access attached to a permanent structure for which malt beverage or alcohol is served or consumed.

PERMANENT DRINKING ESTABLISHMENT: Any permanent structure for which a malt beverage or alcohol license has been issued.

RESTAURANT: A room and/or structure regularly, and in bona fide manner, used and kept open for the serving and/or preparing of meals to guests for compensation which has suitable table accommodations for at least fifty (50) guests therein at one and the same time; and a kitchen connected therewith containing conveniences for cooking sufficient to provide preparation and cooking of meals in a bona fide manner for fifty (50) or more guests at one and the same time. Facilities who serve only prepackage foods or items that can be heated in a microwave or small pizza or toaster ovens will not be considered a restaurant.

ROOF: Any structural element or group of elements which are structural in nature and are covered with a material(s) that is (are) weather resistant. The roof shall be the top most element of the structure that meets the requirements of the current adopted building code.

TEMPORARY DRINKING ESTABLISHMENT: A fenced area, which is no larger than 100% of the square footage of the permanent structure for which it is associated; commonly referred to as a beer garden.

WALL: Any wall or element of a wall, or any member or group of members, structural or non-structural, which defines the boundaries of a building and which is opaque in nature with the exception of windows or doors and supports a roof and/or floor above.

3.01.03: PENALTY

Any violation of the provisions of this Title is a Class 2 Misdemeanor punishable by a maximum fine of two hundred dollars (\$200.00) and/or incarceration in the County jail for a period not to exceed thirty (30) days.

In addition, any person holding a license under this Title who is found to be in violation of any provisions of this Title shall face the possibility of revocation or non-renewal of any license.

**CHAPTER 3.02
LICENSING AND SALES OF ALCOHOL AND MALT BEVERAGES**

SECTIONS:

- 3.02.01: License Required for Sale of Alcoholic or Malt Beverage
- 3.02.02: Fee
- 3.02.03: Submission of Invoices and Assessment of Fees
- 3.02.04: Delivery and Sale Required Within City
- 3.02.05: Consequences for Failure to Timely Pay City
- 3.02.06: Maintenance of Records and Inspection by Dealer
- 3.02.07: Limitation of One License per Location
- 3.02.08: Classifications
- 3.02.09: Licenses' Fees
- 3.02.10: Requirements for Restaurant Malt Beverage License
- 3.02.11: Scope of Restaurant Malt Beverage License
- 3.02.12: Authorized Number of On Sale Malt Beverage Licenses
- 3.02.13: Status of Existing Restaurant Holding On-Sale Malt Beverage License
- 3.02.14: Off Sale Sales on Sunday Pursuant to Statute
- 3.02.15: Annual Review of Licenses
- 3.02.16: Annual Review of Applications
- 3.02.17: Sales With License Only
- 3.02.18: Additional Fee for Video Lottery Machine Holders

3.02.01: LICENSE REQUIRED FOR SALE OF ALCOHOLIC OR MALT BEVERAGE

No person shall sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage without having obtained a license pursuant to the provisions of the State Liquor Control Law SDCL Title 35 and Sturgis City Ordinance, Title 3.

Any person who intends to sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage shall make an application for license under provisions of the State Liquor Control Law, SDCL 35 to the City of Sturgis Finance Officer.

Upon issuance of said license, the licensee shall be given a copy of Sturgis City Ordinance Title 3 and sign a statement verifying that he or she received Title 3. It shall be the responsibility of each licensee to read Title 3 and present any questions to the Finance Officer who shall either answer the licensee's question or refer the licensee to the proper City official.

3.02.02: FEE

The City does hereby impose a fee of five percent (5%) of the wholesale purchase price, plus freight, for all malt beverages as defined by SDCL 35-1-1, as amended, delivered to the following persons:

- A. Any person holding a Malt Beverage Retailer's License, issued pursuant to SDCL 35-4-2 (16);
- B. Any person holding a Malt Beverage Package Dealer's License, issued pursuant to SDCL 35-4-2 (17); or
- C. Any person holding a Special Malt Beverage Retailer's License, issued pursuant to SDCL 35-4-11.4.

The authority for the imposition of this fee is contained in SDCL 35-4-60.2.

3.02.03: SUBMISSION OF INVOICES AND ASSESSMENT OF FEES

All malt beverage wholesalers, as defined by SDCL 35-1-1, and licensed, pursuant to SDCL 35-4-2, shall provide a copy to the Finance Officer of all invoices for sales of malt beverages delivered to the malt beverage dealers, as described in Section 3.02.02 herein, within the City, on or before the 5th day of each month for all sales made in the City for the prior month.

The Finance Officer shall on the 15th day of each month, or on the first working day thereafter, send a statement to each malt beverage dealer, assessing the fee required hereunder, based upon all invoices received by the City for malt beverages delivered to the dealer for the prior calendar month. The dealer shall have a period of ten (10) days within which to pay to the City the fee required hereunder. In the event of the failure by the dealer to pay the required fee within said ten (10) day time period, the Finance Officer shall notify the malt beverage wholesalers, in writing, by first-class mail, postage prepaid at Sturgis, South Dakota, of the fact that this fee has not been paid and that the license holder is in violation of the terms of this Title. A copy of the notice sent to the malt beverage wholesaler shall be sent to the dealer who is in default. The wholesalers shall not deliver any malt beverage to the dealer who is in default under the terms of this Title until such time as the wholesalers are notified by the City that all fees owing to the City have been paid in full.

3.02.04: DELIVERY AND SALE REQUIRED WITHIN CITY

No malt beverage dealer, as described in Section 3.02.02 herein, shall sell any malt beverages that have not been delivered to the malt beverage dealer within the City for sale within the City.

3.02.05: CONSEQUENCES FOR FAILURE TO TIMELY PAY CITY

No malt beverage dealer's license, as described in Section 3.02.02 herein, shall be renewed until all fees owing pursuant to this Title have been paid in full.

In addition to the termination of the malt beverage sales to the premises affected and/or non-renewal of a license, the City may take any civil action authorized by the statutes of the State of South Dakota to collect the charges imposed by this Chapter.

3.02.06: MAINTENANCE OF RECORDS AND INSPECTION BY DEALER

The Finance Officer shall maintain an accurate record, using the information supplied by the malt beverage wholesaler of the sales made to the individual malt beverage dealers in the City. The records, including copies of wholesalers' invoices, maintained by the Finance Officer concerning any malt beverage dealer shall be open to inspection only by that dealer or his or her designee during normal business hours.

3.02.07: LIMITATION OF ONE LICENSE PER LOCATION

No person shall hold both an On-Sale Liquor Dealer's License, issued pursuant to SDCL 35-4-2 (4) and a Malt Beverage Retailer's License or Malt Beverage Package Dealer's License, issued pursuant to SDCL 35-4-2 (16) and (17), for the same location.

3.02.08: CLASSIFICATIONS

The following classifications are established for malt beverage licenses:

- A. On-sale Malt Beverage License: on-sale license which authorizes the licensee to sell malt beverages for consumption upon the premises where sold.
- B. Off-Sale Malt Beverage License: off-sale license which authorizes the licensee to sell packaged malt beverages for consumption off of premises where sold.
- C. Restaurant Malt Beverage License: on-sale license which authorizes the licensee to sell malt beverages for consumption in licensee's restaurant.

3.02.09: LICENSES' FEES

Fees for malt beverage licenses shall be as follows:

- A. On-sale malt beverage license: \$250.00
- B. Off-Sale Malt Beverage License: \$150.00
- C. Restaurant Malt Beverage License: \$250.00

3.02.10: REQUIREMENTS FOR RESTAURANT MALT BEVERAGE LICENSE

A Restaurant Malt Beverage License shall only be issued to the owner of a permanent business whose business qualifies as a bona fide restaurant. A bona fide restaurant shall at a minimum meet the following requirements:

- A. Provide and keep open seating for at least fifty (50) people at all times;

- B. Have a kitchen therein with sufficient equipment to prepare and provide meals in a bona fide manner for fifty (50) people at all times. Facilities that only have a grill and/or serve only prepackaged foods or items that can be heated in grease, a microwave, crock pot or small pizza or toaster ovens will not be considered to have sufficient equipment; and

(A & B changed effective 8/5/06, Ordinance 2006-16)

- C. Provide and keep open seating for at least seventy (70) people at all times;
- D. Have a kitchen therein with sufficient equipment to prepare and provide meals in a bona fide manner for seventy (70) people at all times. Facilities that only have a grill and/or serve only prepackaged foods or items that can be heated in grease, a microwave, crock pot or small pizza or toaster ovens will not be considered to have sufficient equipment; and
- E. Employ and have on hand at all times bona fide restaurant personnel of at least one cook or chef, one waitress and one host or hostess.

3.02.11: SCOPE OF RESTAURANT MALT BEVERAGE LICENSE

A Restaurant Malt Beverage License shall authorize the restaurant to sell malt beverages from its permanent, year-round premises only. The license shall not authorize the restaurant to sell malt beverages from an expanded area of its premises, including but not limited to the sale of malt beverages from an attached or unattached temporary drinking establishment or beer garden.

3.02.12: AUTHORIZED NUMBER OF ON SALE MALT BEVERAGE LICENSES

The number of On Sale Malt Beverage Licenses authorized by the City shall be 21. Said limitation shall not include any on-sale licenses issued as a Restaurant Malt Beverage License.

3.02.13: STATUS OF EXISTING RESTAURANT HOLDING ON-SALE LICENSE

Any person holding an on-sale license at the time of enactment of the amendments to this Chapter creating the Restaurant Malt Beverage License shall be deemed to be a holder of an on-sale license subject to the limitation set forth in Section 3.02.12 regardless of whether said licensee qualifies as a restaurant under the requirements of Section 3.02.10.

3.02.14: OFF SALE SALES ON SUNDAY PURSUANT TO STATUE

Off sale malt beverage Licensees holding such valid licenses within the City may, pursuant to SDCL 35-4-81.1 sell alcoholic beverages on Sunday within the municipality during hours otherwise allowed by South Dakota statute.

3.02.15: ANNUAL REVIEW OF LICENSES

Annually, the City Public Safety Committee and the City Council shall review all liquor and/or malt beverage licenses issued by the City. Any person not complying with all applicable provisions of Title 3 and any other Sturgis City Ordinance may be subject to revocation or non-renewal of license.

Upon renewal of any license, the licensee shall be given a copy of Sturgis City Ordinance Title 3 and sign a statement verifying that he or she received Title 3. It shall be the responsibility of each licensee to read Title 3 and present any questions to the Finance Officer who shall either answer the licensee's question or refer the licensee to the proper City official.

3.02.16: ANNUAL REVIEW OF APPLICATIONS

Annually, the City Public Safety Committee and the City Council shall review applications for malt beverage and/or alcohol licenses. Issuance of any license shall be subject to a determination by City Council as to whether or not the proposed location is fitting for the type of business that has been presented and is proposed to be operated at the legal description set forth in the application submitted pursuant to Section 3.02.01. The City Council shall take into consideration the location of any new or transferred license and its location in relationship to any residentially zoned area, school, daycare, church, place of worship, and/ or similar uses and such other location issues as the City Council may deem appropriate in reviewing and issuing a new or transferred license.

3.02.17: SALES WITH LICENSE ONLY

Malt beverage and/or alcohol may be sold and/or consumed only at locations shown on the license issued by the City and is on file with the City Finance Officer and the Department of Revenue of the State of South Dakota. Property for which a permanent license is in existence at the time of adoption of this Title shall be permitted to continue their operations as they have in the past until said time that the license has been transferred or revoked by the City Council. In addition, these properties shall comply with the regulations, which were in effect at the time of issuance of their license.

3.02.18: ADDITIONAL FEE FOR VIDEO LOTTERY MACHINE HOLDERS

An additional license fee is hereby imposed in the amount of \$50.00 for each video lottery machine on the licensed premises, which fee shall be applicable to all classes of licenses enumerated under SDCL 35-4-2(4), 35-4-2(11), 35-4-2(14) and 35-4-2(17), which involve convention facility, on-sale and malt beverage retailers, provided that not more than one fee shall be imposed per location.

CHAPTER 3.03
TEMPORARY DRINKING ESTABLISHMENTS

SECTIONS:

- 3.03.01: Mandatory Compliance with State and Local Licensing Laws
- 3.03.02: Mandatory Compliance with Chapter 3.04
- 3.03.03: Exits
- 3.03.04: Fencing Requirement with Authorized Exceptions
- 3.03.05: Patios
- 3.03.06: Time Period
- 3.03.07: Construction Requirements
- 3.03.08: Restroom Requirements
- 3.03.09: Occupancy Requirements/Limitations
- 3.03.10: General Requirements and/or Limitations
- 3.03.11: Appeal Process

3.03.01: MANDATORY COMPLIANCE WITH STATE AND LOCAL LICENSING LAWS

No person shall sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage without having obtained a license pursuant to the provisions of the State Liquor Control Law SDCL Title 35 and Sturgis City Ordinance, Title 3.

Any person who intends to sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage shall make an application for license under provisions of the State Liquor Control Law, SDCL 35 to the City Finance Officer.

3.03.02: MANDATORY COMPLIANCE WITH CHAPTER 3.04

No person shall be permitted to operate a temporary drinking establishment without first complying with all the requirements of City Ordinance Chapter 3.04 “Permanent Drinking Establishments”.

3.03.03: EXITS

All exits of any temporary drinking establishment must meet or exceed the requirements, which are laid out in the Uniform Building Code adopted by the City.

3.03.04: FENCING REQUIREMENT WITH AUTHORIZED EXCEPTIONS

Any fence located in or around a temporary drinking establishment shall not be less than 7’-0” in height and shall be constructed of material which is not easily cut by a knife and shall have openings which are less than 2” in either direction.

The area where malt beverage and/or alcohol is sold or consumed must be entirely surrounded by a seven (7) foot high fence, except areas for entrance and exit. This is to prevent unintentional violations of the open container ordinance. In addition, it is to prevent persons from standing outside the area where malt beverage/alcohol is allowed to be sold and/or consumed and prohibit persons outside the drinking establishment to obtain malt beverage/alcohol from persons inside the establishment. The City realizes that there can be exceptions to the above policy because of unique circumstances existing at each location where malt beverage/alcohol is sold or consumed. The Chief of Police and the Building Inspector shall have the authority to make exceptions to the policy when said exception meets or exceeds the intent of the regulations. The Chief of Police and the Building Inspector must physically inspect and approve all temporary drinking establishments prior to the sale or consumption of malt beverage or alcohol.

3.03.05: PATIOS

Any patio located in or attached to a temporary drinking establishment shall have one access attached to a permanent structure from which malt beverages and/or alcohol is sold, served or consumed.

3.03.06: TIME PERIOD

In no case shall a temporary drinking establishment be erected for more than thirty (30) days. This time frame shall include set up and tear down of the temporary drinking establishment.

No temporary drinking establishment shall be erected more than seven (7) days prior to the official starting date of the Sturgis Motorcycle Rally.

Any temporary structure, addition, sign, or related item associated with the temporary drinking establishment shall be removed from the property within seven (7) days from the official final day of the event for which it was installed.

3.03.07: CONSTRUCTION REQUIREMENTS

Any temporary structure, including a temporary drinking establishment, shall in all cases be attached to a permanent structure. Any temporary structure constructed shall comply with any applicable provisions of Sturgis City Ordinance Title 2.

3.03.08: RESTROOM REQUIREMENTS

The owner of any temporary drinking establishment shall provide portable or permanent restroom facilities within the confines of the temporary drinking establishment at a rate of one (1) restroom fixture per each fifty (50) occupants. (see below of occupant load factor). The occupants of the temporary drinking establishment shall not be required to exit the establishment to gain access to restroom facilities.

3.03.09: OCCUPANCY REQUIREMENTS/LIMITATIONS

The owner of any temporary drinking establishment shall not allow the temporary drinking establishment to exceed the occupant load issued by the building Inspector or Fire Chief. The occupant load shall be figured at a rate of 7 square feet per occupant. This figure shall not include stages, restrooms, and work areas for employees. (reference: Table 10-A, 1997 Uniform Building Code)

Any temporary drinking establishment shall not be occupied until an occupant load has been issued and the owner has posted an occupancy certificate.

3.03.10: GENERAL REQUIREMENTS AND/OR LIMITATIONS

- A. All Federal, State and Local laws shall be complied with at all times.
- B. In the event a fight or civil disturbance occurs within the temporary drinking establishment where police are called to assist, the establishment shall cease selling of all malt beverage/alcohol, on a temporary basis, until the disturbance is under control and the Police Department of the City has granted permission to reestablish sales.
- C. Beverage cans, trash and other debris, which is collected during an event, shall be removed from the property on a daily basis to prevent the accumulation of pests and to deter unwanted smell.
- D. Any structures, which are erected to accommodate temporary drinking establishments, shall be constructed in compliance with this ordinance unless otherwise regulated within City Ordinances or Building and/or Fire Codes.
- E. No person who has been permitted to erect a temporary drinking establishment shall permit any illegal activity within said person's business.
- F. It shall be unlawful for any person to permit illegal nudity, lewd or indecent acts, exhibitions, or any other behavior in violation of City Ordinance Chapter 12.08 and/or Chapter 12.10 to take place within their establishment.
- G. In exception to the above, sexually oriented dancing or exhibition as regulated by City Ordinance Title 12.10 may be permitted.
- H. No person who has been issued a malt beverage and/or alcohol license shall permit prostitution as in City Ordinance Chapter 13.06. In addition to the penalty set forth in this Title, any person who permits illegal prostitution to take place within their drinking establishment shall be subject to possible revocation or non-renewal of their malt beverage and/or alcohol license.

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- O. It shall be unlawful for any person to allow the distribution, sale and/or consumption of malt beverage and/or alcohol by a minor in their establishment.
 - P. It is the policy of the City Council that no on-sale malt beverage and/or alcohol license will be issued to any business where gasoline, blended gasoline and/or diesel fuel is stored, sold and/or dispensed.

3.03.11: APPEAL PROCESS

Any person aggrieved by a decision of the Chief of Police, Building Inspector or Fire Chief made under this Chapter shall be entitled to have said decision reviewed by the Chief of Police, Building Inspector or Fire Chief. If after review the said person is unsatisfied, he or she may appeal the decision to the City Council. The process shall be as follows:

- A. An aggrieved person shall first file a written request for review with the Chief of Police, Building Inspector or Fire Chief setting forth the basis for which he or she believes the Chief of Police, Building Inspector or Fire Chief's decision to be in error. The writing shall also include the person's name and mailing address.
- B. Upon receipt of a written request for review, the Chief of Police, Building Inspector or Fire Chief shall review his or her decision and mail a written response to the aggrieved person within twenty (20) days.
- C. If the aggrieved person is not satisfied with the decision of the Chief of Police, Building Inspector or Fire Chief following review, he or she may file a notice of appeal with the Finance Officer. There shall be a twenty five-dollar (\$25.00) fee assessed for filing an appeal, which shall be paid to the Finance Office at the time of filing the notice of appeal.
- D. Upon receipt of a notice of appeal, the Finance Officer shall notify the City Council and a public meeting shall be held within thirty (30) days after the date said appeal was filed. The City Council shall provide notice to the person specifying the time, date, and location of the hearing.
- E. The City Council may notify the aggrieved person of its decision following the hearing, however, the Council shall issue a written decision to the person within twenty (20) days of the hearing. The Council may affirm or reverse the decision of the Chief of Police, Building Inspector or Fire Chief.

CHAPTER 3.04
PERMANENT DRINKING ESTABLISHMENTS

SECTIONS:

- 3.04.01: Mandatory Compliance with State and Local Licensing Laws
- 3.04.02: Wall, Floor, and Roof Requirements
- 3.04.03: Window Requirements
- 3.04.04: Deck and Patio Requirements
- 3.04.05: Deck and Patio Requirements Applicable During the Time Period of the Sturgis Motorcycle Rally.
- 3.04.06: Location of Drinking Establishments
- 3.04.07: Location/Areas of Sale and Consumption
- 3.04.08: Inspection Required Prior to Sales
- 3.04.09: Occupancy Requirements/Limitations
- 3.04.10: Construction Requirements
- 3.04.11: Restroom Requirements
- 3.04.12: General Requirements and/or Limitations
- 3.04.13: Exits
- 3.04.14: Appeal Process

3.04.01: MANDATORY COMPLIANCE WITH STATE AND LOCAL LICENSING LAWS

No person shall sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage without having obtained a license pursuant to the provisions of the State Liquor Control Law S.D.C.L. 35 and this Ordinance.

Any person, who intends to sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage shall make an application for license under provisions of the State Liquor Control Law, S.D.C.L. 35 to the City Finance Officer.

3.04.02: WALL, FLOOR AND ROOF REQUIREMENTS

Any floor of any permanent drinking establishment shall be constructed of elements, which are structural or non-structural in nature and covered by material(s) which create a hard non-absorbent surface.

Any roof of any permanent drinking establishment may not be occupied or utilized as a floor.

Any walls of any permanent drinking establishment shall be solid in nature with the exception of areas for windows and exits. Walls shall run from grade to the roof of the structure. Any walls shall be constructed to comply with the requirements of the Uniform Building Code.

3.04.03: WINDOW REQUIREMENTS

If windows are installed on the main/ground floor, they may be operable, but if operable, they shall be screened so that no malt or alcoholic beverage may be transferred through the opening. Said screening shall be made of metal fabric, which may not be cut by a knife.

For the purpose of this Section, windows also may be located on the second floor, mezzanine area or upper floors of the structure but they shall be fixed in place and non-operable.

As an exception to the above, permanent drinking establishments, which are two (2) or more stories in height and are placed more than twenty (20) feet away from property lines may have operable windows. All operable windows shall be screened with metal fabric, which may not be cut by a knife. In no case shall license holders permit anything to be dropped or thrown from windows of structures. All glazing within a drinking establishment shall be either tempered safety glass or non-breakable safety glass.

3.04.04: DECK AND PATIO REQUIREMENTS

Malt beverage and/or liquor shall only be served upon decks and/or patios permanently connected to the structure of a permanent drinking establishment. The requirements for service of alcohol upon a permanent deck and/or patio for all times of the year except during the Sturgis Motorcycle Rally and seven days prior to the official start of the Sturgis Motorcycle Rally and seven days after the official final day of the Sturgis Motorcycle Rally shall be as follows:

- A. Any deck and/or patio shall be surrounded by a physical barrier, which is continuous with the exception of the exit and entrance points;
- B. Any patio shall be constructed of concrete, rock, asphalt or similar non-absorbent hard surface materials;
- C. Any deck shall be constructed as per the adopted Building Code;
- D. Any deck and/or patio shall have a minimum of one entrance/exit, which has access to the structure to which it is attached; and
- E. Compliance with all applicable provisions of this Title.

3.04.05: DECK AND PATIO REQUIREMENTS APPLICABLE DURING TIME PERIOD OF THE STURGIS MOTORCYCLE RALLY

The requirements for service of alcohol upon a permanent deck and/or patio during the Sturgis Motorcycle Rally and seven days before the official start of the Sturgis Motorcycle Rally and seven days after the final day of the Sturgis Motorcycle Rally shall be as follows:

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- A. Any deck and/or patio shall be surrounded by a 7'0" high fence which complies with Title 3.03 unless the edge of the deck and/or patio walking surface is more than 20'0" from the property line in all directions or the deck and/or patio is surrounded by a 42" high continuous railing, with the exception that the railing may have a break for approved ingress and egress points. One of the ingress or egress points shall be attached to the attached permanent structure.
 - B. Any Patio shall be constructed of concrete, rock, asphalt or similar non-absorbent hard surface materials;
 - C. Any deck must be constructed as per the adopted Building Code;
 - D. Any deck and/or patio shall have a minimum of one entrance/exit, which has access to the structure for which it is attached; and
 - E. Compliance with all applicable provisions of this Chapter

3.04.06: LOCATION OF DRINKING ESTABLISHMENTS

The issuance of any new or transferred license for the sale and/or consumption of alcohol or malt beverage shall be subject to a determination by the City Council as to whether or not its location is fitting for the type of business that has been presented and is proposed to be operated at the legal description set forth in the application submitted pursuant to Section 3.04.01. The City Council shall take into consideration the location of said new or transferred license and its location in relationship to any residentially zoned area, school, daycare, church, place of worship, and/or similar uses and such other location issues as the City Council may deem appropriate in reviewing and issuing a new or transferred license.

No malt beverage and/or alcohol licenses will be issued in zoning districts other than Highway Service or General Commercial.

Licensed malt beverage and/or alcohol facilities, which are in operation on the date of the adoption of this Section may be allowed to continue their operation at its existing location subject to a review by the City Council upon the issuance of a new or transferred license or renewal of a license of the existing conditions, location, and relationship of said property to residentially zoned areas, schools, daycare, churches, places of worship, and/or similar uses and such other matters as the City Council may deem appropriate in reviewing said issuance of the license.

3.04.07: LOCATION/AREAS OF SALE AND CONSUMPTION

Malt beverage and/or alcohol shall only be sold, served and consumed within the confines of a structure or on a permanent deck or patio attached to the structure, which complies with this Title, subject to limitations set forth in this Chapter applicable during the Sturgis Motorcycle

Rally and seven days prior to the official start of the Sturgis Motorcycle Rally and seven days after the official final day of the Sturgis Motorcycle Rally.

As an exception to the above, malt beverage and/or alcohol may be sold, served and consumed within the confines of a temporary drinking establishment/beer garden pursuant to Chapter 3.03 "Temporary Drinking Establishments".

Alcohol may be sold only at the location described on the license, which is on file with the City Finance Officer and the State Department of Revenue. Any questions concerning the legal description of the license should be answered by obtaining a copy of the license from the City Finance Officer.

3.04.08: INSPECTION REQUIRED PRIOR TO SALES

Before the owner/operator may begin sale of alcohol, he/she shall be required to have the establishment inspected by the Chief of Police and the Building Inspector.

3.04.09: OCCUPANCY REQUIREMENTS/LIMITATIONS

At no time shall the owner/operator exceed the occupant load, which is issued by the Building Inspector and/or Fire Chief. Due to public safety issues, if at any time the Chief of Police, Building Official, Fire Chief or their designees finds that the permitted occupant load has been exceeded, he/she may have the sale of alcohol stopped until the occupant load is decreased to the permitted occupant load.

The occupant load for permanent drinking establishments and decks/patios shall be figured as follows:

Maximum occupant load: One (1) occupant per each seven (7) square feet of interior floor area or exterior deck or patio.
[Reference: Table 10-A, 1997 Uniform Building Code (Drinking Establishments)]

This formula will not include areas such as restrooms, employee work or service areas or other areas, which are not commonly visited by the public.

3.04.10: CONSTRUCTION REQUIREMENTS

All structures utilized for drinking establishments after the adoption of this Ordinance shall comply with the current adopted addition of the Uniform Building Code.

As an exception to the above, establishments, which are in existence at the time of the adoption of this ordinance, will be permitted to continue their use without complying with the current adopted building code. But at any time said establishment becomes unsafe and/or a permit is

taken out to remodel, alter or add on to any portion of said facility, the entire establishment shall be brought into compliance with the current adopted codes and this ordinance.

3.04.11: RESTROOM REQUIREMENTS

It is recognized by the City Council that during the Sturgis Motorcycle Rally permanent drinking establishments have a substantially larger need for sanitary plumbing fixtures than during normal operations, and in consideration of the same, the following requirements are hereby established to determine the number of permanent restroom fixtures and temporary restroom fixtures that will be required of a permanent drinking establishment:

Restrooms for permanent structures and patios and/or decks for which alcohol and/or malt beverage is served or consumed will be determined as follows (in no case shall there be less than two permanent restroom fixtures for each sex):

- A. One restroom fixture shall be added for each sex per each additional 50 occupants within the structure and on the deck/patio combination. The occupancy load shall be based upon the Uniform Plumbing Code wherein occupancy is determined on the basis of 1 person per 15 square feet within the structure and on the deck/patio combined.
- B. When three or more fixtures are required for each sex, the women's restroom shall be required to have one additional fixture more than the men's.
- C. All restroom's hand sinks shall be installed at the ratio as determined by the Uniform Plumbing Code.

For determining the number of temporary restroom facilities to be added during the Sturgis Motorcycle Rally, one week prior to the Sturgis Motorcycle Rally, and for one week after the Sturgis Motorcycle Rally the occupancy rate for the permanent structures and the deck/patio combined shall be determined as 1 person per 7 square feet. The same ratios as above shall then be applied and any additional fixtures required by the occupancy rate shall be provided in the form of portable restroom facilities. Portable restroom facilities shall be located upon the real property of the permanent drinking establishment as pursuant to their license agreement.

3.04.12: GENERAL REQUIREMENTS AND/OR LIMITATIONS

- A. No person, firm or corporation may possess more than one (1) malt beverage and/or alcohol license per location or parcel of land.
- B. In the event that a civil disturbance occurs within the establishment where police are called to assist, the establishment shall cease the sale of alcohol on a temporary basis until the disturbance is under control and the police department has granted permission to reestablish sales.

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- C. Beverage cans, trash and other debris created by the establishment must be cleaned –up and removed on a daily basis to avoid the accumulation of pest and to detour unwanted odor.
 - D. It shall be unlawful for any person to allow the distribution, sale and/or consumption of malt beverage and/or alcohol by a minor in their establishment.
 - E. The City Council will not issue any on-sale malt beverage and/or alcohol license to any business where gasoline, blend gasoline and/or diesel fuel is stored, sold and/or dispensed.
 - F. No person licensed to sell malt beverage and/or alcohol shall sell to any person who at the time is intoxicated or who is known to be a habitual drunkard.
 - G. No person who has a permanent drinking establishment shall permit any illegal activity within said person’s business.
 - H. It shall be unlawful for any person to permit illegal nudity, lewd or indecent acts, exhibitions, or any other behavior in violation of City Ordinance Chapter 12.08 and/or 12.10 to take place within their establishment
 - J. In exception to the above sexually oriented dancing or exhibition as regulated by City Ordinance Title 12.10 may be permitted.
 - K. No person who has been issued a malt beverage and/or alcohol license shall permit prostitution as in City Ordinance Chapter 13.06. In addition to the penalty set forth in this title, any person who permits illegal prostitution to take place within their drinking establishment shall be subject to possible revocation or non-renewal of their malt beverage and/or alcohol license.

3.04.13: EXITS

All exits of any permanent drinking establishment must meet or exceed the requirements, which are laid out in the Uniform Building Code adopted by the City.

3.04.14: APPEAL PROCESS

Any person aggrieved by a decision of the Chief of Police, Building Inspector or Fire Chief made under this Chapter shall be entitled to have said decision reviewed by the Chief of Police, Building Inspector or Fire Chief. If after review the said person is unsatisfied, he or she may appeal the decision to the City Council. The process shall be as follows:

- A. An aggrieved person shall first file a written request for review with the Chief of Police, Building Inspector or Fire Chief setting forth the basis for which he or she

believes the Chief of Police, Building Inspector or Fire Chief's decision to be in error. The writing shall also include the person's name and mailing address.

- B. Upon receipt of a written request for review, the Chief of Police, Building Inspector or Fire Chief shall review his or her decision and mail a written response to the aggrieved person within twenty (20) days.
- C. If the aggrieved person is not satisfied with the decision of the Chief of Police, Building Inspector or Fire Chief following review, he or she may file a notice of appeal with the Finance Officer. There shall be a twenty five-dollar (\$25.00) fee assessed for filing an appeal, which shall be paid to the Finance Office at the time of filing the notice of appeal.
- D. Upon receipt of a notice of appeal, the Finance Officer shall notify the City Council and a public meeting shall be held within thirty (30) days after the date said appeal was filed. The City Council shall provide notice to the person specifying the time, date, and location of the hearing.
- E. The City Council may notify the aggrieved person of its decision following the hearing, however, the Council shall issue a written decision to the person within twenty (20) days of the hearing. The Council may affirm or reverse the decision of the Chief of Police, Building Inspector or Fire Chief.

**CHAPTER 3.05
FAIRGROUND ALCOHOL SALES**

SECTIONS:

- 3.05.01: Mandatory Compliance with State and Local Licensing Laws
- 3.05.02: Location of Fairgrounds
- 3.05.03: Requirements
- 3.05.04: Certain Ordinances Not Applicable

3.05.01: MANDATORY COMPLIANCE WITH STATE AND LOCAL LICENSING LAWS

No person shall sell, keep for sale, exchange, barter manufacture, blend or distribute any alcoholic or malt beverage without having obtained a license pursuant to the provisions of the State Liquor Control Law SDCL Title 35 and this ordinance.

Any person, firm, or corporation who intends to sell, keep for sale, exchange, barter or distribute any alcoholic or malt beverage shall make an application for license under provisions of the State Liquor Control Law, SDCL 35 to the City of Sturgis Finance Officer.

3.05.02: LOCATION OF FAIRGROUNDS

The fairgrounds consist of that area described as Lot 6, NW1/4 SE ¼, Section 9, Township 5 North, Range 5 East of the Black Hills Meridian, Meade County, South Dakota, owned and maintained by the City of Sturgis, for public events.

3.05.03: REQUIREMENTS

The fairgrounds, located within the municipality of Sturgis, Meade County, South Dakota, may be used in conjunction with the sale of malt beverages or alcohol, provided that the following requirements are met:

- A. All statutory requirements must be met by the persons seeking to sell, exchange, barter, or distribute an alcohol or malt beverage prior to the use of said fairgrounds.
- B. The said persons seeking to distribute alcohol or malt beverage at said fairgrounds shall provide such additional bathrooms as the City Council deems necessary.
- C. Said persons who seek to distribute an alcohol or malt beverage at said fairgrounds shall provide proof to the City Council that said persons are providing adequate security for the event.

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- D. Beverage cans, trash, or debris, which is collected during the event, shall be removed from the property to prevent the accumulation of pests and deter unwanted smell within 48 hours of the conclusion of the event. Prior to the event, said person seeking to distribute alcohol or malt beverages at the fairgrounds shall submit a plan to the City Council showing adequate solid waste disposal.
 - E. Hours of operation of the event, in conjunction with the sale or distribution of alcohol or malt beverage, shall go no later than eleven o'clock p.m. (11:00 p.m.)
 - F. There shall be no sales or distribution of alcohol or malt beverage before the hour of eight o'clock a.m. (8:00 a.m.) and after the hour of eleven o'clock p.m. (11:00 p.m.)
 - G. No person who is permitted to use the fairgrounds, in conjunction with the sale or distribution of alcohol or malt beverages, shall permit any person to commit any illegal, lewd or indecent acts or exhibition. No person who is using the fairgrounds, in conjunction with the sale or distribution of alcohol or malt beverages, shall permit any illegal nudity, which is in violation of City Ordinance Chapter 12.08. Any person who allows the same is subject to a fine or, in addition, the possibility of a revocation or non-renewal of any malt beverage and/or alcohol license.
 - H. It shall be unlawful for any person, firm or corporation to allow the distribution, sale, and/or consumption of a malt beverage, and/or alcohol by a minor at the fairgrounds.
 - I. Any area where a malt beverage and/or alcohol is sold or consumed must be entirely surrounded by adequate fence, except for areas for entrances and exits. This is to prevent the unintentional violation of the open container ordinance. In addition, alcohol may be sold in the grandstand areas. The chief of police shall have the authority to make exceptions to the policy when said exception meets or exceeds the intent of the regulations and is due to unique circumstances.

3.05.04: CERTAIN ORDINANCES NOT APPLICABLE TO FAIRGROUND

Ordinance Chapters 3.03 and 3.04 shall not apply to the fairground property.

(Title 3 was replaced in its entirety by Ordinance 2004 19, effective 11/4/04)