

**MINNEHAHA COUNTY ORDINANCE #21-59**

**AN ORDINANCE ESTABLISHING THE REQUIREMENTS, FEES, AND REGULATIONS  
FOR THE ISSUANCE OF ALCOHOLIC BEVERAGE LICENSES  
WITHIN MINNEHAHA COUNTY**

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

WHEREAS, the Minnehaha County Board of County Commissioners (hereinafter “Board”) believes that alcoholic beverage licenses are a privilege and not a right, and the County reserves the right to refuse the approval, renewal, or transfer of any license in the event an applicant refuses to comply with the requirements of this Ordinance or other applicable local, state, or federal laws; and

WHEREAS, Minnehaha County issues multiple types of alcoholic beverage licenses, as those terms are defined by SDCL 35-1-1, and that it would be to the benefit of the County to specify by Ordinance the requirements, fees, and regulations for certain alcoholic beverage licenses; and

THEREFORE, BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA, that the requirements, fees, and regulations for the issuance of certain alcoholic beverage licenses within the County be adopted as follows:

**SECTION A. ON-SALE OR OFF-SALE LIQUOR LICENSE.**

**I. Availability and Notice of New License**

1. On or before the adoption of this Ordinance and by May 15<sup>th</sup> of each year thereafter, the Minnehaha County Auditor shall determine the number of on-sale and off-sale liquor licenses available for the ensuing calendar year and report the same to the Board.
2. The total number of available on-sale and off-sale liquor licenses in Minnehaha County is determined by SDCL 35-4-11.1.
3. No off-sale liquor license will be issued to any establishment located within three (3) miles of the exterior boundary of an incorporated municipality.
4. The number of on-sale and off-sale liquor licenses available shall, pursuant to SDCL 35-4-11.1, be determined by the population residing within Minnehaha County but outside the incorporated municipalities and improvement districts within the Minnehaha County.
5. If an additional on-sale or off-sale liquor license becomes available in Minnehaha County, a notice will be published in the legal newspapers of the County for at least two (2) consecutive weeks, stating that the Board will be accepting

applications for the new license, and setting a deadline for applications to be submitted.

6. After the deadline has passed, all applications submitted to the Auditor's Office shall be submitted to the Board for consideration.

## II. Application Process

1. The application for an on-sale or off-sale liquor license, or the transfer of an existing license, intending to operate outside the corporate limits of a municipality within Minnehaha County, shall be submitted to the Board for approval pursuant to SDCL 35-2-1.2.
2. The application shall be accompanied by the required fee.
3. Applicants shall provide appropriate proof, as required by the Board, that the premises to which the license is being issued or transferred has or shall have (within the time period stated below) a sufficient structure in which to conduct the operation of an on-sale or off-sale liquor business.
4. Such proof may include, but is not necessarily limited to, pictures (inside and outside) of any existing structures, and plans and specifications of proposed structures along with proof of ownership or a valid lease of the premises.
5. Under no circumstance will an alcoholic beverage license of any kind be approved 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 zoning ordinance provisions.
6. An on-sale or off-sale liquor license shall not be issued or transferred to any premises or parcel of land where there is not an approved structure located.
  - 6.1 Conditional approval may be given to an applicant and the license will be held by the County for up to one year to allow for the construction of an approved structure. The license may then be issued to the applicant upon the completion of such structure.
  - 6.2 Conditional approval may be given to an applicant and the license will be held by the County for up to four months if the applicant needs additional time to rezone the premises for compliance with county zoning requirements.
  - 6.3 If the license has not been issued within one year due to the applicant failing to comply with this Ordinance, the county may, upon request of the applicant, extend the conditional approval for up to six (6) additional months if it finds that the delay is not the fault of the applicant.
  - 6.4 Under no circumstance shall a license be held on conditional approval in excess of eighteen (18) months.
  - 6.5 All application or renewal fees paid by an applicant receiving conditional approval under §6.1 or §6.2 of this Section are nonrefundable if such

applicant subsequently fails to comply with this Ordinance as set forth in §6.3 or §6.4 of this Section.

7. An application for the transfer of an existing license to a new location or to another person shall comply with the requirements of SDCL 35-2-7.

### III. Approval Process

1. The Board shall fix the time and place for a public hearing upon all such applications that come before the Board.
2. The Auditor shall publish notice once in the legal newspapers of the County after a hearing date has been set. The notice shall be headed "Notice of Hearing Upon Applications for Sale of Alcoholic Beverages." The notice shall state the time and place when and where such applications will be considered by the Board, and shall state that any person interested in the approval or rejection of any such application may appear and be heard. The notice shall be published at least one (1) week before the hearing, pursuant to SDCL 35-2-5.
3. At the stated time and place, the Board shall consider each application and any objection to the application before making its final decision on the application.
4. The Board may approve or disapprove the application for an on-sale or off-sale license, or the transfer of an existing license, depending on whether the Board deems the applicant a suitable person to hold the license, whether the Board considers the proposed location suitable pursuant to SDCL 35-2-1.2, and whether the application meets all other statutory requirements.
5. License application fees will not be refunded once the license is approved by the Board and issued by the State.
6. If the Board does not approve an application, it shall endorse on the application the reasons for the denial and return the application and fee to the applicant. No further application may be received from the applicant until after the expiration of one (1) year from the date of a denied application. However, if the application was denied based on the suitability of the location for the license, no further application may be received from the applicant until after the expiration of three (3) months from the date of the denied application only if the application is for a different location, pursuant to SDCL 35-2-5.1.

#### IV. Renewal Process

1. Applicants for the renewal of an on-sale or off-sale liquor license shall follow the same application process as set forth above.
2. An application for the reissuance of an on-sale or off-sale liquor license may be approved by the Board without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation of the alcoholic beverage control law or the license has been suspended, pursuant to SDCL 35-2-1.2.
3. The Board may not reissue any on-sale or off-sale liquor license issued pursuant to subdivision 35-4-2(4), (6), or (13) to the same licensee or the licensee's transferee if the license has not been actively used by the applicant during the two years preceding the date of the current application, pursuant to SDCL 35-2-5.3.
4. The term, actively used, as defined in SDCL 35-2-5.3, means that the licensed premise was open to the public during regular business hours for the sale and consumption of distilled spirits for at least sixty days during the two preceding years. However, the licensed premise is only required to be open five days per year if it is open to the public during a special event that has at least twenty-five thousand visitors.
5. No license granted under this title may be reissued until all taxes incurred by the licensee as a result of the operation of the licensed premises, including applicable sales and use taxes, unemployment insurance tax, or any other state tax, are paid or are not delinquent. No license granted under this title may be reissued until all property taxes which are the liability of the licensee levied on the licensed premises are paid or are not delinquent. No license granted under this title may be reissued to an Indian tribe operating in Indian country controlled by the Indian tribe or to an enrolled tribal member operating in Indian country controlled by the enrolled tribal member's tribe until the Indian tribe or enrolled tribal member remits to the Department of Revenue all use tax incurred by nonmembers as a result of the operation of the licensed premises, and any other state tax has been remitted or is not delinquent.

#### SECTION B. OTHER ALCOHOLIC BEVERAGE LICENSES AND PERMITS.

##### I. Special Event Licenses

1. A temporary special malt beverage retailers license may be issued in conjunction with a special event within the County to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL 35-4-111 or 35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant.
2. A temporary special on-sale wine retailers license may be issued in conjunction with a special event within the County to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL 35-4-

111 or 35-4-2(4), (6), or (12) or any farm winery licensee in addition to any other licenses held by the special events license applicant.

3. A temporary special on-sale license may be issued in conjunction with a special event within the County to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL 35-4-111 or 35-4-2(4) or (6) in addition to any other licenses held by the special events license applicant.
4. A temporary special off-sale package wine dealers license may be issued in conjunction with a special event within the County to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL 35-4-2(3), (5), or (12) or any farm winery licensee in addition to any other licenses held by the special events license applicant. A special off-sale package wine dealers licensee may only sell wine manufactured by a farm winery licensee.
5. A temporary special off-sale package wine dealers license may be issued in conjunction with a special event, conducted pursuant to SDCL 35-4-124.1, within the County to any civic, charitable, educational, fraternal, or veterans organization.
6. A temporary special off-sale package malt beverage dealers license may be issued in conjunction with a special event, conducted pursuant to SDCL 35-4-124.1, within the County to any civic, charitable, educational, fraternal, or veterans organization.
7. A temporary special off-sale package dealers license may be issued in conjunction with a special event, conducted pursuant to SDCL 35-4-124. 1, within the County to any civic, charitable, educational, fraternal, or veterans organization.
8. Any license issued pursuant to this Section may be issued for no longer than fifteen (15) consecutive days.
9. The maximum number of licenses that may be issued pursuant to this Section to any person, organization, or entity within any calendar year is fifteen (15).
10. If the special event is cancelled, the issued license is void. The licensee shall provide written verification of cancellation to the County Auditor's Office, from the event host, in order to ensure the cancelled event does not count against the maximum number of licenses that may be issued within that calendar year.
11. Any license issued pursuant to this Section shall be issued only to the specific person, organization, or entity and for the specific location specified on the application.
12. Any application brought pursuant to this Section shall be accompanied by the applicable license fee and publishing fee at the time of submission to the County Auditor's Office. The fees for licenses issued pursuant to this Section shall be placed in the County's general fund.

13. Temporary licenses issued pursuant to this Section may allow the sale of alcoholic beverages on public property or property owned by a nonprofit corporation during a special event.
14. Any license issued pursuant to this Section may be rescinded by official Commission action should the licensee, or any employees or agents acting on behalf of the licensee, violate any County ordinance or State law related to the sale or furnishing of alcoholic beverages found within Title 35.

## II. Consume-Blend Permit

1. The consumption of alcoholic beverages upon property owned by Minnehaha County shall be prohibited unless authorized by this Ordinance.
2. A permit to allow the consumption, but not the sale, of any alcoholic beverages on property owned by the County or by a nonprofit corporation within the County (Consume-Blend Permit) may be issued by the Board through a majority vote at a regularly scheduled Commission Meeting;
3. Any person interested in a Consume-Blend Permit must submit an application to the Minnehaha County Auditor's Office as the facilitator of alcohol beverage licenses for the County;
4. Any license issued pursuant to this resolution shall be issued for no longer than twenty-four (24) hours. Additionally, the hours authorized for consumption may not exceed those permitted for on-sale licenses.
5. Any permit issued pursuant to this Section shall be issued only to the specific person and for the specific location contained within the application.
6. Any permit issued pursuant to this Section is limited to property owned by the public or by a nonprofit corporation.

## SECTION C. PROVISIONS PERTAINING TO ALL LICENSES.

All alcoholic beverage licenses issued by Minnehaha County shall be subject to the following provisions:

### I. Time for Selling or Serving

1. No on-sale or off-sale licensee, licensed under SDCL 35-4-2, may sell, serve or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of two a.m. and seven a.m. or at any time on Christmas Day, pursuant to SDCL 35-4-2.1, except for holders of on/off sale malt beverage licenses and on/off sale wine licenses which shall be permitted to sell, serve and allow consumption on the premises covered by the license on Christmas Day.
2. The sale, service, and consumption of alcoholic beverages shall be permitted on Sundays and Memorial Day, except between the hours of two a.m. and seven a.m., pursuant to SDCL 35-4-81.

3. A violation of this section is a Class 2 misdemeanor, punishable by up to thirty (30) days imprisonment in the county jail or a five hundred dollar (\$500.00) fine, or both.

II. Indecent Exposure or Simulation Thereof Prohibited.

1. It is unlawful for any person on a premises licensed for the sale of alcoholic beverages, while in the presence of any other person, to:
  - a. Fail to conceal, with a fully opaque covering, the sexual parts of the person's body, to include the genitals, pubic area and anus of any person, or the nipple and areola of the female breast; and
  - b. Expose any device, costume or covering which gives the appearance of, or simulates, the genitals or pubic area of the male or female body, or the nipple or areola of the breast.
2. A violation of this section is a Class 2 misdemeanor, punishable by up to thirty (30) days imprisonment in the county jail or a five hundred dollar (\$500.00) fine, or both.
3. In addition, upon proof of violation of this section, any license approved or recommended to be approved by Minnehaha County may be revoked or suspended pursuant to SDCL 35-2-10.

SECTION D. MISCELLANEOUS.

This Ordinance shall replace any and all prior ordinances or resolutions adopted by the Minnehaha County Board of County Commissioners regarding the regulations, requirements, or distribution of alcoholic beverage licenses and licensees within the County.

Any provision regarding the requirements, fees, regulation, or distribution of alcoholic beverage licenses not addressed within this Ordinance shall be set by separate Resolution or pursuant to South Dakota Codified Law.

Adopted this \_\_\_\_\_ day of August, 2021

MINNEHAHA COUNTY:

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Dean Karsky, Chair  
Minnehaha County Commission

ATTEST:

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Minnehaha County Auditor

First Reading: \_\_\_\_\_, 2021  
Second Reading: \_\_\_\_\_, 2021  
Adoption: \_\_\_\_\_, 2021  
Publication: \_\_\_\_\_, 2021  
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