

Chapter 4

ALCOHOLIC BEVERAGES*

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ARTICLE I. IN GENERAL

Sec. 4-1. Definitions.

As used in this chapter the following terms shall mean as indicated below:

Alcoholic beverage: Any distilled spirits, wine and malt beverages.

Bulk container: Any package, or any container within which container there are one or more packages.

Dispenser: A duly licensed physician, dentist, veterinarian, osteopath, podiatrist, chiropractor, or pharmacist; or a druggist, sanitarium, hospital, clinic, educational institution, industrial company, or corporation who purchases alcohol for scientific and medicinal purposes only.

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 non-industrial use.

License: A license issued pursuant to the provisions of SDCL 1967, Tit. 35.

License Code: PB Off-Sale Malt Beverage License

RB On-Off Sale Malt Beverage License (Tavern)

PL Off-Sale Package Liquor License

RL On-Premise Retail Sale Liquor License

RW On-Premise Retail Sale Light Wine License

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.

* **Cross reference**-Public dances, 10-79 et seq.

State law reference-Alcoholic Beverages generally, SDCL 1967, Tit. 35.

Manufacturer: Any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any establishment for the brewing, production, bottling, or blending of malt beverages or wine.

Off-sale: (PL) The sale of any alcoholic beverage, for consumption off the premises where sold.

On-sale: (RL) The sale of any alcoholic beverage for consumption only upon the premises where sold.

On-off sale malt beverage: (RB) The sale of any malt beverage for consumption on the premises where sold or to carry out for consumption off the premises where sold.

On-sale dealer: Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

Off-sale malt beverage: (PB) The sale of any malt beverage for consumption off the premises where sold.

On-sale wine: (RW) The on-premises retail sale of light wine.

On-off malt beverage dealer: Any person who sells, or keeps for sale, any malt beverage for consumption on the premises where sold or to carry out for consumption off the premises where sold.

Package: The bottle or immediate container of any alcoholic beverage.

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.

Public place: Any place, whether within or without a building, commonly and customarily open to or used by the general public and any street or highway.

Religious ceremony: One that takes place in a structure identified to the public as a house of worship.

Retail license: An on-sale or off-sale license issued under the provisions of SDCL 1967, Tit. 35.

Retailer or retail dealer: Any person who sells alcoholic beverages for other than resale.

Sale: The transfer, for a consideration, of title to any alcoholic beverage.

Solicitor: Any person employed by a licensed wholesaler within this state, or by any distiller or manufacturer within or without this state, who contacts a wholesaler or retail dealer within this state for the purpose of selling, promoting, or advertising alcoholic beverages or for any other reason connected with the alcoholic beverage industry but shall not include employees of wholesale or transporter licensees who only deliver such beverages.

Wholesaler: Any person who sells alcoholic beverages to retailers for resale.

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 twenty-four (24) per cent of alcohol by weight.

(Ord. No. 1090, 7-7-89)

Sec. 4-2. Compliance.

No person shall produce, transport, store or sell any alcoholic beverage except as authorized under the provisions of their chapter and under SDCL 1967, Tit. 35.

(Ord. No. 1090, 7-7-89)

Sec. 4-3. Unlicensed business prohibited.

No person, unless he first obtains a license provided by SDCL 1967, Tit. 35, shall transact the business authorized by said title to be conducted by such licensee.

(Ord. No. 1090, 7-7-89)

Sec. 4-4. Number of licenses and fees.

(a) The number of, and fees for, retail licenses shall be established by state law and, when authorized by state law, established by resolution or Ordinance of the Board of Commissioners.

(b) In addition to the fees for alcoholic beverage licenses, a fee of fifty (50) dollars shall be imposed upon any person licensed pursuant to SDCL 35-4-2 amended and who is issued a video lottery establishment license pursuant to SDCL 42-7A-41 amended for each video lottery machine on the licensed premises. This fee shall be paid at the same time and in the same manner as the fees paid in SDCL 35-4-2.

(Ord. No. 1134, 06-01-92)

Sec. 4-5. Bottle clubs prohibited.

A bottle club, being an establishment not licensed for the sale of alcoholic beverages, which allows persons to bring their own alcoholic beverages on the premises for purposes of consumption and where the proprietor sells or provides soft drinks, mix, or ice on the premises, or charges for bringing such alcoholic beverages, soft drinks, mix or ice on the premises, is hereby prohibited.

(Ord. No. 1090, 7-7-89)

Sec. 4-6. Consuming or mixing drinks or possessing any package or receptacle containing alcoholic beverages in unlicensed public places or motor vehicles.

- (a) It shall be unlawful for any person to consume any alcoholic beverage or to mix or blend any alcoholic beverage with any other beverage, regardless of whether such beverage is an alcoholic beverage, or have a package or any receptacle containing an alcoholic beverage, unless the seal of the original package remains unbroken, in any public place or in his or her possession in a motor vehicle other than upon the premises of a licensed on-sale dealer where such an alcoholic beverage was purchased from such dealer for on-sale purposes, this subsection (a) being subject to the exceptions and provisions set forth in subsection (b) herein.
- (b) Consumption of alcoholic beverages shall be permitted in city parks, the city depot and city armory as long as such consumption occurs within the following limitations and on the following conditions:
 - 1) That application for a permit to consume alcoholic beverages be made and approved by the two assigned administrative officials; and
 - 2) That compliance with all terms, conditions, and limitations stated in the permit occur; and
 - 3) In the case of city parks, alcoholic beverage consumption shall only occur in the picnic or shelter area. In the case of the city depot or city armory, alcoholic beverage consumption shall only occur inside the facility itself. Alcohol consumption or open containers in any other area of a city park, city depot or city armory is prohibited and is a violation of Madison City Ordinance 4-6 (a); and
 - 4) That the hours of authorized consumption shall not exceed those as indicated on the permit for alcoholic beverage consumption, and if not such time limitation is indicated thereon, the hours of authorized consumption shall not exceed those permitted for on-sale licensees.
- (c) No alcohol consumption whatsoever shall be allowed or approved in Totland Park. No alcohol consumption shall be allowed or approved in Westside Park during the open season of the Madison aquatic facility.
- (d) The Public Safety Commissioner and Police Chief shall serve as the administrative officials responsible for the review, approval or denial of each permit to consume alcoholic beverages as set forth in this ordinance. In the event the Public Safety Commissioner is unavailable, any police officer authorized to serve in the capacity of the police chief may function in such capacity. The approval of both administrative officials is required for a permit to be issued.

- (e) In the event that a permit for the consumption of alcoholic beverages is denied by the assigned administrative officials, an aggrieved person may request a hearing before the governing body of the City for a hearing to appeal such denial and request that a permit to consume alcoholic beverages be issued in accordance with the subject application.
 - (f) Nothing in this ordinance authorizes any person, group or entity to engage in the sale of alcoholic beverages in any public place, including, but not limited to, city parks, the city depot, or the city armory without obtaining the required permit or license to engage in the sale of alcohol.
- (Ord. No. 1090, 7-7-89; Ord. No. 1478, 6-29-09)

Sec. 4-7. Off-sale licensee not to deliver.

No off-sale licensee shall make any delivery of alcoholic beverages outside of the structure upon the premises described in his license.
(Ord. No. 1090, 7-7-89)

Sec. 4-8. Sales outside the structure not allowed except under certain conditions.

- (a) On-sale licensees shall be allowed to serve, and allowed to be consumed, alcoholic beverages on the sidewalk subject to the public right-of-way abutting a licensed premises provided that the license holder derives more than fifty percent of its gross receipts from the sale of prepared food for consumption on the premises and subject to the following provisions.
 - (b) An on-sale licensee shall apply at the City Finance Office on the prescribed application for a permit to serve and allow consumption of alcoholic beverages on the sidewalk abutting the licensed premises. Each permit applied for under this ordinance will be considered by the City Commission and will be voted upon as to approval or denial.
 - (c) The service of alcohol by an on-sale licensee under this ordinance and corresponding permit shall be allowed to serve alcohol until no later than 9:00 p.m. and such alcohol sales and service shall only be allowed to patrons seated at tables.
 - (d) The on-sale licensee serving alcohol under this ordinance and corresponding permit must at all times leave at least six feet (6') of open and unobstructed sidewalk for pedestrian traffic.
 - (e) The City of Madison, may, in its discretion, require an applicant for an on-sale license permit under this chapter to submit such documentation, plans and drawings, among other such information, identifying a design and plan for the orderly sale and service of alcohol.
 - (f) An off-sale licensee shall be allowed to conduct an outdoor sale of off-sale malt beverage providing the product is covered and secured during the night and closed hours.
- (Ord. No. 1090, 7-7-89; Ord. No. 1432, 8-13-07; Ord. No. 1460, 6-23-08)

Sec. 4-9. Times when off-sale (PL) service prohibited.

- (a) No off-sale licensee shall sell or allow to be sold, distilled spirits or wine, between the hours of 2:00 a.m. and 7:00 a.m. or at any time on Christmas Day.
(Ord. No. 1494, 7-26-10)

(b) No off-sale licensee shall sell, or allow to be sold malt beverages between the hours of 12:00 p.m. midnight and 7:00 a.m. of the following day.

(Ord. No. 1090, 7-7-89)

(c) Off-sale licensees shall be allowed to sell alcoholic beverages on Sunday or Memorial Day.

(Ord. No. 1494, 7-26-10)

Sec. 4-10. Times when on-sale (RL) service prohibited; duty of licensee to lock doors.

(a) No on-sale licensee (RL) shall sell or allow to be consumed on the premises alcoholic beverages, between the hours of 2:00 a.m. and 7:00 a.m., Memorial Day after 2:00 a.m., or at any time on Christmas Day.

(Ord. No. 1283, 02-15-99; Ord. No. 1480, 7-27-09)

(b) On-sale licensees (RL) shall be allowed to sell or allowed to be consumed on the premises alcoholic beverages between the hours of 11:00 a.m. Sunday and 2:00 a.m. on Monday if the licensee complies with all provisions of SDCL 35-4-2.1.

(Ord. No. 1114, 12-31-90, Ord. No. 1283, 02-15-99; Ord. No. 1480, 7-27-09)

Sec. 4-11. Repealed.

(Ord. No. 1494, 7-26-10)

Sec. 4-12. Package purchases from on-sale dealer prohibited.

No person shall buy from any on-sale dealer any intoxicating liquor in a package, whether sealed or unsealed, or whether full or partially full.

(Ord. No. 1090, 7-7-89)

Sec. 4-13. Intoxicated person to be kept from premises.

It shall be unlawful for any licensee to permit any intoxicated person to enter his premises.

(Ord. No. 1090, 7-7-89)

Sec. 4-14. Persons to whom sale of beverages prohibited.

No licensee shall sell any alcoholic beverage to any person under the age of twenty-one (21) years, or to any person who is obviously intoxicated at the time.

(Ord. No. 1090, 7-7-89)

Sec. 4-15. Intoxication not to be permitted on licensed premises.

No licensee shall permit any person to become intoxicated on the premises described on the license.

(Ord. No. 1090, 7-7-89)

Sec. 4-16. Furnishing of beverage to others; minimum ages; exceptions.

It shall be unlawful to sell or give for use as a beverage any alcoholic beverage to any person under the age of twenty-one (21) years, unless it is done in the immediate presence of a parent or

guardian or spouse over twenty-one (21) years of age or by prescription or direction of a duly licensed practitioner or nurse of the healing art for medical purposes or a religious ceremony. (Ord. No. 1090, 7-7-89)

Sec. 4-17. Persons to whom malt beverage sales prohibited.

No licensee under SDCL 1967, Ch. 35-6 shall sell or give any malt beverage to any person who is less than twenty-one (21) years old or to any person to whom the sale of other alcoholic beverages is prohibited under the provisions of subdivision two (2) of SDCL 1967, 35-4-78. (Ord. No. 1090, 7-7-89)

Sec. 4-18. Purchase, possession or consumption of beverage by minor unlawful; misrepresentation of age.

It shall be unlawful for any person under the age of twenty-one (21) years to purchase, attempt to purchase or possess or consume alcoholic beverages except when consumed in a religious ceremony and given to said person by an authorized person, or to misrepresent his age with the use of any document, for the purpose of purchasing or attempting to purchase alcoholic beverages from any licensee. (Ord. No. 1090, 7-7-89)

Sec. 4-19. Persons under twenty-one (21) years barred from on-sale premises.

No on-sale licensee shall permit any person less than twenty-one (21) years old to loiter on the licensed premises or to sell, serve, dispense or consume alcoholic beverages on such premises. However, an on-sale licensee licensed may permit persons less than twenty-one (21) years old to sell or dispense malt beverages if the sales of such beverages constitute less than fifty percent of the gross business transacted by that establishment and the licensee or an employee that is at least twenty-one (21) years of age is on the premises when the malt beverage is sold or dispensed. (Ord. No. 1090, 7-7-89)

Sec. 4-20. Possession of unstamped beverages prohibited.

No person shall have in his possession any alcoholic beverage other than in a package upon which the required stamps are affixed. This Section, however, shall not apply to alcoholic beverages:

- (1) In transit to or in possession of distiller or wholesale licensees;
 - (2) In possession of a person authorized to have possession as specified in SDCL 1967, 35-4-66;
 - (3) Purchased outside the state by carrier licensees for service to patrons only;
 - (4) Seized by or in possession of any officer of this state or any political subdivision thereof pursuant to official duty;
 - (5) In transit to or stored with a bonded warehouse under the provisions of SDCL 1967, 35-4-46;
 - (6) As to which, under SDCL 1967, 35-5-6, no tax is required to be paid.
- (Ord. No. 1090, 7-7-89)

Sec. 4-21-4-23. Reserved.

Sec. 4-24. Issuance of a special malt beverage license.

The City may issue a special malt beverage retailers license to any civic, charitable, educational or fraternal organization in conjunction with a special event within the municipality provided:

- (1) The organization shall make application sufficiently in advance of the event so that it may be put on the City Commission agenda a minimum of two weeks prior to the event.
- (2) The application shall specify:
 - (a) Organization
 - (b) Date/dates and hours of event for which license is requested not to exceed fifteen (15) consecutive days
 - (c) Where the event is to be held
 - (d) Nature of event.
- (3) The hours of sale shall not exceed those permitted for on-sale licenses.
- (4) The organization receiving the licenses shall be responsible for security and safety of the participants, and/or meet all rules, regulations or laws and requirements of state and local government.
- (5) The issuance of this license is not a matter of right and is at the sole discretion of the City Commission.
(Ord. No. 1086; 4-20-89)

Sec. 4-25-4-35. Reserved.

ARTICLE II. ESTABLISHMENTS WHERE MUSIC IS PERMITTED

Sec. 4-36. Repealed.

(Code 1953, 6.03A01; Ord. No. 834, 8-15-77, Ord. No. 1376, 6-6-05)

Sec. 4-37. Repealed.

(Code 1953, 6.03A05; Ord. No. 838, 8-15-77, Ord. No. 1376, 6-6-05)

Sec. 4-38. Repealed.

(Code 1953, 6.03A02; Ord. No. 834, 8-15-77, Ord. No. 1376, 6-6-05)

Sec. 4-39. Repealed.

(Code 1953, 6.03A03; Ord. No. 834, 8-15-77, Ord. No. 1376, 6-6-05)

Sec. 4-40. Repealed.

(Code 1953, 6.03A04; Ord. No. 834, 8-15-77, Ord. No. 1376, 6-6-05)

Sec. 4-41. Repealed.

(Code 1953, 6.03A06; Ord. No. 838, 8-15-77, Ord. No. 1376, 6-6-05)

Sec. 4-42. Repealed.

(Code 1953, 6.03A07; Ord. No. 838, 8-15-77, Ord. No. 1376, 6-6-05)

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