

ORDINANCE 855

An ordinance to amend the Milbank Municipal Code regarding alcoholic beverages within the City of Milbank.

BE IT ORDAINED BY THE CITY COUNCIL of the City of Milbank, Grant County, South Dakota, that Chapter 5.02 of the Milbank Municipal Code is amended to read as follows:

CHAPTER 111  
ALCOHOLIC BEVERAGES

General Provisions

- 111.001 Definition of Terms
- 111.002 License Required
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Off-Sale Package Liquor License

- 111.100 License; Limitations
- 111.101 Package Dealers; Fees
- 111.102 Sale to Persons in Complete View
- 111.103 Hours on Christmas Day
- 111.104 Sale Hours; Off-Sale

GENERAL PROVISIONS

111.001 Definition of Terms. For The purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Alcoholic beverage,” any distilled spirits, wine, and malt beverages as defined in this chapter;

“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;

“Malt beverages,” 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, or any other similar product, 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 one-half of one percent (0.5%) by weight;

“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 where sold;

“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;

“Wine,” any beverage made from the fermentation of grapes, grape juice, other fruit bases, or honey, with or without adding alcoholic beverages; without rectification, except for the purpose of fortification; and contains not less than one-half percent (0.5%) and not more than twenty-four (24%) alcohol by volume.

111.002 License Required – No person shall sell, exchange, barter, distribute, or keep for sale any alcoholic beverages, as hereinafter defined, without first having obtained a license therefore, pursuant to the provisions of the statutes of the state.

111.003 License Fees – Any person desiring to enter into the selling of alcoholic beverages within the city shall make an application for an on-sale, off-sale, or package license under the provisions of the statutes in such case made and provided, such application shall be in the form provided by the statutes of the state and shall be, by the applicant, presented to the governing body in the city, and the applicant with the application shall present the amount required by state law.

111.004 Unsealed Container in Public - It is unlawful for any person to have an unsealed original package containing alcoholic beverages, as defined by law, in his possession in any public place within the city; provided that this section shall not apply to licensed on-sale dealers on the licensed premises; and, further, that this section shall not apply to hospitals and sanitariums; and, provided further, that this section shall not apply to the possession and consumption of malt beverages, as defined by law, in the parks designated as Pribyl Park, and Lake Farley Park, less that area designated as the public beach at Lake Farley Park.

(Summary: Open containers (malt beverage) would be allowed in Pribyl Park and Lake Farley except in the beach area.  
Would not be allowed at Flynn Park, Jack & Jill Park, dog park, Mill Park & Hurley Park. )

Do you want this open to all parks?

111.005 Glass Containers Prohibited - The possession of glass containers of alcoholic beverages is unlawful within any park of the city.

111.006 Penalty - Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99

RETAIL (On-Sale) LIQUOR LICENSE

111.020 License Fee for Video Lottery Machines - A fee in the amount of \$50.00 per video lottery machine is established for all persons licensed for the on-sale sale of alcoholic beverages and are issued a video lottery establishment license by the State of South Dakota. The fee is an annual fee to be paid at the same time and in the same manner as the fees paid for licenses to sell alcoholic beverages on-sale.

111.021 License; Limitations - No more than six establishments shall be licensed for the on-sale dispensing of alcoholic beverages, other than malt beverages, within the city limits. (Regulated by the state, based on population. Currently, the city is maxed.) (Habanero's, Lantern Inn, Johnson Auto (Legion), VFW, The Pump, Speedway)

111.022 Retail Dealers; Fees - Classifications and fees are established for retail dealers in alcoholic beverages other than malt beverages: On-sale dealer includes any person who sells, or keeps for sale, any alcoholic beverage other than malt beverages, for consumption on the premises where sold. The fee is an annual fee is \$1,200.

111.023 Sale to Person in Complete View - It is unlawful for any on-sale dealer to sell alcoholic beverages to any person who is not in complete view of every other person on the licensed premises, and also observable from any and all points thereof.

111.024 Hours on Christmas Day - No on-sale license, licensed under subdivisions SDCL 35-4-2(4), ~~(6)~~, ~~(11)~~, and ~~(13)~~, add: (12), (16) may be open to the public, may sell, serve, or allow to be consumed on the premises, alcoholic beverages after the hour of **12:00 a.m.** on Christmas Day.

111.025 Sale Hours; On-Sale - No on-sale licensee, licensed under subdivision SDCL 35-4-2(4), ~~(6)~~, ~~(11)~~, and ~~(13)~~, add: (12) (16) may be open to the public, may sell, serve or allow to be consumed on the premises alcoholic beverages between 2:00 a.m. and 7:00 a.m. Monday through Sunday.

111.026 Memorial Day, On-Sale Liquor - On-Sale licensee, licensed under subdivision SDCL 35-4-2(4),~~(6)~~, ~~(11)~~, and ~~(13)~~, add: (12) (16) may be open to the public, may sell serve or allow to be consumed on the premises alcoholic beverages between the hours of 7:00 a.m. and 2:00 a.m. on Memorial Day.

## RETAIL (On-Sale) LIQUOR - RESTAURANT

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

“Bar” means any permanently installed counter within the restaurant area from which the alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages.

“Full-Service Restaurant” means any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths, or the bar. Any restaurant that only serves fry orders or food such as sandwiches, hamburgers, or salads is not a full-service restaurant.

“Restaurant” means any area in a building maintained, advertised, and held out to the public as a place where individually priced meals are prepared and served primarily for consumption in such area and where at least 60% of the gross revenue of the restaurant is derived from the sale of food and nonalcoholic beverages. The restaurant shall have a dining room, a kitchen, and the number and kinds of employees necessary for the preparing, cooking, and serving of meals.

111.031 License Application Requirements; Documentation - An applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the city with an application form provided by the municipality to prove that the primary source of revenue from the operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages.

111.032 Advertising Restriction - A restaurant that has a full-service restaurant on-sale license may only be advertised or held out to the public as primarily a food-eating establishment.

111.033 Annual Reports – The full-service restaurant on-sale licensee shall submit an annual report and supporting documentation to the city on forms provided by the city of the annual sales of the full-service restaurant, which includes an oath verifying the validity of the information provided in the report.

The report and the supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross sales of the licensee for the following two categories:

- (1.) Food and nonalcoholic beverage sales; and
- (2.) Alcoholic beverage sales.

111.034 License Renewals - When renewing a full-service restaurant on-sale license, the city shall condition the license renewal upon receiving documentation that at least 60% of gross sales from the preceding 12 months operation of the full-service restaurant is

derived from the sale of food and nonalcoholic beverages.

111.035 Video Lottery Machines - No video lottery machines will be authorized in conjunction with this license.

111.036 License; Limitations - Licenses in this category will be unlimited based on the approval of the Milbank City Council.

111.037 Retail Dealers; Fees - Classifications and fees are established for retail dealers in alcoholic beverages other than malt beverages:

On-sale dealer-restaurant includes any person who sells, or keeps for sale, any alcoholic beverage other than malt beverages, for consumption on the premises where sold. The fee is \$1,200 annually.

111.038 Sale to Person in Complete View - It is unlawful for any on-sale dealer to sell alcoholic beverages to any person who is not in complete view of every other person on the licensed premises, and also observable from any and all points thereof.

111.039 Hours on Christmas Day - No on-sale license, licensed under subdivisions SDCL 35-4-2(4), ~~(6)~~, ~~(11)~~, and ~~(13)~~, add: (12) (16) may be open to the public, may sell, serve, or allow to be consumed on the premises, alcoholic beverages after the hour of **12:00 a.m.** on Christmas Day.

111.040 Sale Hours; On-Sale - No on-sale restaurant licensee, licensed under subdivision SDCL 35-4-2(4), ~~(6)~~, ~~(11)~~, and ~~(13)~~, (12) (16) may be open to the public, may sell, serve or allow to be consumed on the premises alcoholic beverages between 2:00 a.m. and 7:00 a.m. Monday through Sunday.

111.041 Memorial Day, On-Sale Liquor - On-Sale restaurant licensee, licensed under subdivision SDCL 35-4-2(4),~~(6)~~, ~~(11)~~, and ~~(13)~~, (12), (16) may be open to the public, may sell serve or allow to be consumed on the premises alcoholic beverages between the hours of 7:00 a.m. and 2:00 a.m. on Memorial Day.

#### ON-OFF SALE MALT BEVERAGE, ON-OFF SD FARM WINE LICENSE

111.040 License Fee for Video Lottery Machines - A fee in the amount of \$50.00 per video lottery machine is established for all persons licensed for the on-sale sale of malt beverages and are issued a video lottery establishment license by the State of South Dakota. The fee is an annual fee to be paid at the same time and in the same manner as the fees paid for licenses to sell malt beverages on-sale.

111.041 License – Limitations - No more than five establishments shall be licensed for the sale of on-sale and packaged malt beverages within the city limits. The license fees are as established by state law.

**(The Back Door, The Pump, Top Hat Lanes, Pizza Hut, Beren's Market Off-sale only)**

111.042 Sale to Persons in Complete View - It is unlawful for any on-sale dealer to sell

malt beverages to any person who is not in complete view of every other person on the licensed premises, and also observable from any and all points thereof.

111.043 Hours on Christmas Day - It is unlawful to sell malt beverages, both on and off-sale, between the hours of **6:00** p.m. on December 24<sup>th</sup> until the hour of 7:00 a.m. on December 26<sup>th</sup>.

111.044 Sale Hours – Malt Beverages. No malt beverage retailer or malt beverage package dealer, licensed under subdivisions SDCL 35-4-2 (16) and ~~(17)~~, may sell, serve or allow to be consumed on the premises any malt beverage between the hours of 2:00 a.m. and 7:00 a.m., Monday through Sunday.

111.045 Special Malt Beverage Retailer’s License - The governing body may issue a special malt beverage retailer license to any civic, charitable, educational, or fraternal organization or licensed dealer licensee licensed pursuant to 35-4-111 or subdivision 35-4-2(4), ~~(6) or (12)~~ (16) in addition to any other licenses held by the special events license applicant in conjunction with a special event within the municipality.  
(4-on-sale liquor, 6-out of municipality, 12-wine & cider, 16-malt beverage)

- A. The special malt beverage retailer’s license may be issued for a period of time not to exceed fifteen consecutive days.
- B. The written application for the special malt beverage retailer’s license shall contain the following:
  - 1. Name of organization
  - 2. Responsible parties or officers of the non-profit organization
  - 3. Description of event;
  - 4. Address and legal description of the location for license;
  - 5. Date or dates license requested;
  - 6. Fee of \$100.00 ~~per day for the dates requested~~; and,
  - 7. Declarations page of liability insurance insuring the event and name the City as an insured.

Each application shall be accompanied by the fee prior to consideration by the governing body. The fee is not refundable.

111.046 Hotel and Conference Center Malt Beverage License - The governing body may issue a Hotel (as defined by Chapter 17 of the Milbank Municipal Code) and Conference Center license to any hotel, motel, or conference center that meets the following criteria:  
**(Grand Stay Hotel)**

- A. Has available for rent at least 15 suitable lodging accommodations.
- B. Has available for rent a meeting space to accommodate at least 10 individuals.
- C. A facility holding this license shall not derive more than 10% of its revenue from the sale of malt beverages. The city has the right to request documentation to verify this at any time that it deems necessary.

D. South Dakota video lottery will not be allowed in facilities holding this license.

E. License fee will be the same as what is established by state law for other on-sale/off-sale malt beverage licenses.

#### On-Off Sale Wine License

111.060	Video Lottery Machines
111.061	License; Limitations
111.062	Sale to Persons in Complete View
111.063	Hours on Christmas Day
111.064	Sale Hours; Wine
111.065	Memorial Day; On-Sale Wine
111.066	Special Wine Retailer's License
111.067	Hotel and Conference Center Wine License

#### ON-OFF SALE WINE LICENSE

##### The Bank

111.060 License Fee for Video Lottery Machines - No Video Lottery machines will be authorized in conjunction with this license.

111.061 License – Limitations - Licenses in this category will be unlimited based on the approval of the Milbank City Council. The license fees are as established by state law.

111.062 Sale to Persons in Complete View - It is unlawful for any one-sale dealer to sell wine to any person who is not in complete view of every other person on the licensed premises, and also observable from any and all points thereof.

111.063 Sale on Christmas Day - It is unlawful to sell wine, both on and off-sale, between the hours of **6:00** p.m. on December 24<sup>th</sup> until the hour of 7:00 a.m. on December 26<sup>th</sup>.

#### 111.064 Sale Hours – Wine.

No wine retailer or wine package dealer, licensed under subdivisions SDCL 35-4-2 (16) and (17), may sell, sever, or allow to be consumed on the premises any malt beverage between the hours of 2:00 a.m. and 7:00 a.m.

111.065 Memorial Day, On-Sale Wine - On-Sale licensee, licensed under subdivision SDCL 35-4-2(4),(6), (11), and (13), add: (12) (16) may be open to the public, may sell serve or allow to be consumed on the premises alcoholic beverages between the hours of 7:00 a.m. and 2:00 a.m. on Memorial Day.

111.066 Special Wine Retailer's License – The governing body may issue a special wine retailer license to any civic, charitable, educational or fraternal organization licensee licensed pursuant to 35-4-111 or subdivision 35-4-2(4), (6) or (16) (12) in addition to any other licenses held by the special events license applicant in conjunction with a special



event within the municipality in conjunction with a special event within the municipality.

A. The special wine retailer's license may be issued for a period of time not to exceed fifteen consecutive days.

B. The written application for the special wine retailer's license shall contain the following:

1. Name of organization
2. Responsible party or officers of non-profit organization
3. Description of event;
4. Address and legal description of the location for license;
5. Date or dates license requested;
6. Fee of \$100.00 ~~per day for the dates requested~~; and,
- g Declarations page of liability insurance insuring the event and name the City as an insured.

C. Each application shall be accompanied by the fee prior to consideration by the governing body. The fee is not refundable.

111.067 Hotel and Conference Center Wine License - The governing body may issue a Hotel (as defined by Chapter 17 of the Milbank Municipal Code) and Conference Center license to any hotel, motel, or conference center that meets the following criteria:

A. Has available for rent at least 15 suitable lodging accommodations.

B. Has available for rent a meeting space to accommodate at least 10 individuals.

C. A facility holding this license shall not derive more than 10% of its revenue from the sale of wine. The city has the right to request documentation to verify this at any time that it deems necessary.

D. South Dakota video lottery will not be allowed in facilities holding this license.

E License fee will be the same as what is established by state law for other on-sale/off-sale wine licenses.

#### OFF-SALE PACKAGE LIQUOR LICENSE

- |         |                                  |
|---------|----------------------------------|
| 111.080 | License; Limitations             |
| 111.081 | Retail Dealers; Fees             |
| 111.082 | Sale to Persons in Complete View |
| 111.083 | Hours on Christmas Day           |
| 111.084 | Sale hours; off-sale             |

#### OFF-SALE PACKAGE LIQUOR LICENSE

Valley Liquor, Cocktails & Corks

111.080 License; Limitations. Only two off-sale licenses for the dispensing of alcoholic beverages, other than malt beverages, shall be allowed within the city limits.

111.081 Retail Dealers; Fees - Classifications and fees are established for retail dealers in alcoholic beverages other than malt beverages: Off-sale dealer. Any person who sells, or keeps for sale, any alcoholic beverages other than malt beverage, for consumption off the premises where sold, \$400.

111.082 Sale to Persons in Complete View - It is unlawful for any on-sale dealer to sell alcoholic beverages to any person who is not in the complete view of every other person on the licensed premises, and also observable from any and all points thereof.

111.083 Hours on Christmas Day - It is unlawful to sell alcoholic beverages or malt beverages, off-sale, between the hours of **6:00** p.m. on December 24th until the hour of 7:00 a.m. on December 26th.

111.084 Sale Hours – Off-sale - No off-sale licensee, licensed under subdivisions SDCL 35- 4-2 (3) and (5), may sell or allow to be sold alcoholic beverages between the hours of 12:00 a.m. and 7:00 a.m. or on Memorial Day, or Sunday.

Dated this day of

Aye: Nay:

Pat Raffety, Mayor

ATTEST:

Cynthia Schumacher, Finance Officer

Passed First Reading:

Passed Second Reading:

Adopted and Approved: Published:

Publish once at an approximate cost\_\_\_\_\_.