

HERMOSA TOWN BOARD  
WORK SESSION  
July 29, 2025  
6:00 PM



- 1) **WORK SESSION ITEMS:**
  - A. Chapter 116: Alcoholic Beverages Ordinance
  - B. Overview of town booster pumps
  
- 2) **ITEMS FROM CONSTITUENTS:** No action can be taken by the board on any issue related without being first placed on a future agenda, to allow for proper notice.
  1. Reserved time for public comment is **15 minutes**.
  2. This is a time for citizens of the town of Hermosa or owners of property within town Limits to express concerns or discuss issues having relevance to the town.
  3. Anyone wishing to address the Town Board during this time shall be asked to stand and Identify themselves after being recognized the Board President.
  4. Each person will be allotted **3 minutes** to speak.
  5. After these time limits are reached, all further commentary shall be made only with the Chair's approval.
  
- 3) **TRUSTEE INPUT:**
  - Kramer
  - Ferguson
  - Harris
  - Koontz
  - Serviss

**OPERATING AGREEMENT FOR MUNICIPAL ON-SALE  
AND OFF-SALE LIQUOR ESTABLISHMENT**

1. **PARTIES:**

The parties to this agreement are **Pop's Grocery Shoppe** of Hermosa, S.D., hereinafter referred to as the "Operator" and the Town of Hermosa, a political subdivision of the State of South Dakota, hereinafter referred to as the "Town".

2. **PURPOSE:**

Under the provision of SDCL 35-4, the purpose of this agreement is to establish the terms and conditions of an operating agreement between the Operator and the Town as provided by SDCL 35-4.

3. **PROPERTY:**

The real property subject to the terms of this agreement is commonly known as: **Pop's Grocery Shoppe** located in the City of Hermosa, Custer County, State of South Dakota.

4. **TERMS OF THE AGREEMENT AND EFFECTIVE DATE:**

This agreement shall expire the 31st day of December 2025.

5. **RENEWAL:**

Operator agrees to give the Town ninety (90) days advance written notice of its desire to renew.

6. **OBLIGATIONS OF OPERATOR:**

- a) The Operator shall be responsible for all operating expenses including, but not limited to, utilities, purchase of all liquor, taxes, insurance and license fees, if any.
- b) Cancellation of the agreement shall be made upon ninety (90) days written notice by either party.
- c) The Operator shall furnish a suitable building situated upon the following described real property: **30 N Ferguson**, City of Hermosa, Custer County, State of South Dakota.
- d) Operator shall operate said off-sale establishment so situated and arranged and the business operated therein to be so conducted as to be in conformity with the ordinances of the Town of Hermosa and the laws of the State of South Dakota.
- e) Operator shall operate said off-sale establishment only on the days and during the hours specified by ordinance of the governing body of the Town and also in conformity with the laws of the State of South Dakota. This shall not be construed to mean, however, that there exists any restriction on the seasonal operation of the business provided all license fees hereunder are paid in a timely manner and Operator is in compliance with all laws and town ordinances. Furthermore, the

Operator shall notify local law enforcement of any change in operating hours or planned special events.

- f) Operator is to pay all sales tax and real estate property taxes when they are due and owing prior to becoming delinquent.
- g) Operator shall furnish to the Town, upon request, evidence of payment of all social Security, Withholding, Workmen's Compensation and Unemployment Insurance payments or premiums and the policies receipts therefore, along with evidence of payments of all rents, utilities and salaries on or before the 10<sup>th</sup> day of the calendar month when the same comes due.
- h) Operator agrees to furnish to the Town all records requested by the Town that are reasonably related to the issues involved in renegotiating this agreement.
- i) Operator shall maintain said premises in good repair so as to provide a safe and clean environment.
- j) Operator shall make a thorough and complete check of the age of any individual requesting to be served intoxicating liquor or other alcoholic beverages as is reasonably necessary to determine if said individual is of lawful age; and to immediately report to the proper officials for prosecution, any individual attempting to falsify his or her lawful age for the purpose of obtaining the service of alcoholic beverages or intoxicating liquor.

That Operator shall require that all its employees and/or agents shall at the expense of the Operator, as a condition of employment, complete a nationally recognized training program approved by the South Dakota State Department of Revenue that provides instruction on techniques to prevent persons under the age of twenty-one (21) from purchasing alcoholic beverages within sixty (60) days after commencement of employment, or within sixty (60) days after execution of this Agreement for existing employees.

That Operator shall implement and maintain a written age identification policy and shall require each of its employees and/or agents to sign the same, and agree to abide by said age identification policy as a condition of continuing employment and/or agency with said establishment.

- k) Operator shall at all times and in every reasonable manner cooperate with the Hermosa Town Marshal, the Custer County Sheriff's Department, and the law enforcement personnel of the State of South Dakota in allowing access to said premises, to establish the age of any individual or individuals found on said premises, and to maintain law and order of said premises.

7. **RESPONSIBILITIES OF OPERATOR REGARDING PATRONS:**

a) Any establishment duly permitted by the Town of Hermosa to sell liquor, wine or malt beverages is charged with the responsibility of maintaining a safe environment for its patrons. Any business establishment offering on-sale or off-sale liquor, wine or malt beverage within the corporate limits of Hermosa, South Dakota, shall adhere to the following requirements, procedures and protocol regarding patron activity and safety.

i.) An owner, manager or employee of an establishment is encouraged to contact the Town Marshal or County Sheriff at the first indication of a situation which appears may result in the escalation of hostility between patrons or a patron and employee. Any failure by an establishment to make such contact resulting in injury to person, damage to property or commission of a criminal act may result in civil penalty against the establishment, ranging from a letter of reprimand to license suspension or revocation.

b) The owner and manager of an offending entity will upon written demand appear before the Town Board within five (5) days of such request or at the next meeting of the Town Board of Trustees as may be directed by the Board. Any such reports, reprimands or other disciplinary action shall become a part of the licensee's permanent performance records.

8. **LIABILITY INSURANCE:**

Operator shall indemnify and hold the Town free and harmless from any and all liability, loss, damage or expense from accident or damage, either to itself or to persons or property of others, which may occur by reason of the exercise of the rights privileges herein granted, and shall, for the purpose of carrying out the provisions of the agreement, and prior to commencing operations of any kind, have in full force and effect, and file evidence thereof with the Finance Officer, a good and sufficient policy covering Five Hundred Thousand Dollars (\$500,000.00) each occurrence, One Million Dollars (\$1,000,000.00) aggregate overage with said policy to be executed by an insurance company authorized and qualified to do business in the State of South Dakota and conditioned to indemnify and save harmless the Town from and against any and all claims, actions, suits, liability, loss, cost expense or damage of any kind or description which may occur to or be suffered by the Town or by anyone by reason of the use of the real property described in Paragraph 3 herein. Proof of such insurance shall be provided by Operator and kept on file at the Town office. Operator shall also direct the insurance carrier to notify Town of cancellation or suspending policy.

9. **ASSIGNMENT:**

This agreement shall not be assigned, transferred, sold or in any manner conveyed without the express written and prior approval of the Hermosa Town Board and said approval shall not be unreasonably withheld.

10. **LICENSES/FEES:**

- a) Operator agrees to pay the sum of Four Thousand Two Hundred Dollars (\$4200.00) per year for a retail off-sale liquor license, plus 5% of liquor and beer purchases. Said sum shall be payable at the rate of **Three Hundred Fifty Dollars (\$350.00) per month, and 5% of the liquor and beer purchases by the operator for the previous month. Proof of purchases (i.e. copies of invoices from the distributor) of the same must accompany payment each month.** Purchases will be verified by the distributor at the discretion of the Finance Officer. **Payments are to be made on the first (1<sup>st</sup>) day of each month with the right of prepayment.** In the event the Operator does not pay the monthly license fee by the close of business on the fifth (5<sup>th</sup>) day of each month to the Finance Officer at the Hermosa Town Office, PO Box 298, Hermosa, SD 57744, the license may be suspended immediately and Operator shall be subject to a \$50.00 late fee, plus \$25.00 per week thereafter. To redeem the license, the Operator shall pay three (3) monthly payments in advance in addition to the late fees. In addition, any returned checks will be subject to an additional \$100.00 penalty and \$35.00 fee at the first offense. Subsequent returned checks will result in payment terms of cash or money order only. Upon receipt of a returned check the license may be revoked immediately.
- b) Operator shall purchase liquor, beer and wine directly from authorized liquor distributors in conformance with all applicable state laws.

11. **AREA OF LICENSE:**

Alcoholic beverages shall be sold only on the authorized premises authorized by the license in accordance with SDCL 35-4-75.

12. **CANCELLATION AND TERMINATION:**

Cancellation of this agreement shall be made upon ninety (90) days written notice by either party. In the event that either party to this agreement defaults in the performance of any of the terms, covenants, conditions or obligations of their agreement, assumed by that party, the parties agree that the party not in default shall have the option to cancel this agreement. Said option shall be exercisable by giving to the party in default, at their current address, by certified mail, ninety (90) days written notice of the nature of such default. In the event of the failure of the party in default to cure such default, within such ninety (90) day period, this agreement shall be deemed canceled and of no further binding effect on either of the parties to this agreement. If the Operator wishes to cancel this agreement, they may do so with ninety (90) days written notification by certified mailing to the Town.

13. **NOTICE:**

Any notice provided for herein may be given by registered or certified United States mail, postage and fees prepaid, and addressed, if to the Operator, as described in paragraph 1 herein, with the principal office located on 30 N Ferguson, Hermosa, SD, addressed to Philip Preston LLC DBA Pop's Grocery Shoppe, 30 N. Ferguson St., Hermosa, SD 57744, and if to the Town, at PO Box 298, Hermosa, South Dakota 57744. The places to which notices are to be given hereunder may be changed from time to time by either party by written notice, given to the other.

14. **COMPLIANCE WITH ALL LAWS AND CODES:**

The Operator shall observe all statutory laws of the State of South Dakota, and all ordinances of the Town. Further this Agreement is contingent upon Operator complying with the applicable provisions of the Uniform Fire Code as determined by and consistent with the recommendations of the State Fire Marshal. Failure to comply with such recommendations shall result in termination of this Agreement.

15. **MUTUAL OBLIGATIONS:**

Each of the parties shall fully comply with the provisions of SDCL 35-4, and all related State Laws and Town Ordinances.

16. **MODIFICATIONS:**

This agreement cannot be modified or changed, unless in writing, signed by the Operator and Board of Trustees of the Town.

17. **PERSONAL NATURE OF RIGHTS GRANTED:**

All rights granted hereunder are to be regarded as personal rights granted to the Operator. The release of any of the Operator signatories shall constitute termination of this agreement.

18. **INTEGRATION:**

This agreement constitutes the entire agreement between the parties and there are no agreements, oral or otherwise, other than those contained herein.

19. **RELEASE OF LIABILITY AND INDEMNIFICATION:**

Operator acknowledges that this agreement does not create a relationship of any kind between the Operator and Town other than Town authorizes Operator to possess a valid license for the sale of alcoholic beverages. Operator shall indemnify, defend and hold Town harmless from and reimburse Town with respect to, any and all losses, damages, liabilities, claims, judgments, costs and expenses (including attorney's fees and costs) of any nature whatsoever Town shall suffer as a result of Operator's breach of any representation, warranty, covenant or agreement contained herein or as a result of Operator's operation of Operator's above-listed place of business.

20. **CAPTIONS:**

The paragraph captions contained in this agreement are not intended to either broaden or limit the interpretation of this agreement.

**TOWN BOARD APPROVAL DATE:** \_\_\_\_\_

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**OPERATOR:**

By: \_\_\_\_\_  
**Philip Preston**

DATE: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

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**TOWN OF HERMOSA:**

\_\_\_\_\_  
**Kelburn Koontz**  
**Town Board President**

DATE: \_\_\_\_\_

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**ATTEST:**

\_\_\_\_\_  
**Terri Cornelison**  
**Finance Officer**

DATE: \_\_\_\_\_

## CHAPTER 116: ALCOHOLIC BEVERAGES

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### Section

- 116.01 Definitions
- 116.02 License and operating agreement required
- 116.03 License reissuance
- 116.04 Alcoholic beverages, malt beverages and wine license requirements and fees
- 116.05 Special event alcoholic beverage licenses
- 116.06 Requirements for on-sale full-service restaurant licenses
- 116.07 Hours of operation
- 116.08 Consuming, mixing or possession of alcoholic beverages in public places
- 116.09 Operating agreement requirements
  
- 116.99 Penalty

### § 116.01 DEFINITIONS.

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

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

**BAR.** Any permanently installed counter within the restaurant area, or establishment, from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages.

**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.

**FULL-SERVICE RESTAURANT.** Any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths, or the bar. Any restaurant that only serves fry orders or food and victuals such as sandwiches, hamburgers, or salads is not a full-service restaurant.

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

**NON-PROFIT ORGANIZATION.** An incorporated organization which exists for educational, religious or charitable reasons, and from which its shareholders or trustees do not benefit financially. Any money earned must be retained by the organization, and used for its own expenses, operations, and programs.



**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.

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

**OPERATING AGREEMENT.** An agreement made and entered into by the town with the owner/operator of a restaurant, bar, store, or establishment, for the purpose of allowing and regulating said business to operate with an on-sale and/or off-sale liquor or malt beverage license within the town.

**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 in or out of a public building, commonly and customarily open to or used by the general public and any street or highway.

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

**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.

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

**WINE.** Any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not more than 24% of alcohol by weight.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.02 LICENSE AND OPERATING AGREEMENT REQUIRED.**

It is a violation of this chapter to transact any business involving the sale of alcohol, wine, or malt beverages without first obtaining a license required by this chapter and SDCL Title 35, and entering into an annual operating agreement with the town. Any violation is subject to the general penalty of § 10.99.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.03 LICENSE REISSUANCE.**

Any application for the reissuance of a liquor, liquor restaurant, wine, or malt beverage license may be approved by the Hermosa Town 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 for the alcoholic beverage control law or the licenses has been suspended.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.04 ALCOHOLIC BEVERAGES, MALT BEVERAGES AND WINE LICENSE REQUIREMENTS AND FEES.**

(A) With the exception of any considerations referenced within the sections of this chapter, the following classifications and fees are established for on-sale, off-sale, on/off-sale, and/or package dealers in distilled spirits, liquors, wines, and malt beverages, as outlined below:

<i>Class of License</i>	<i>Annual Licensing Fee</i>	<i>Monthly Operating Agreement Fee</i>
<i>Class of License</i>	<i>Annual Licensing Fee</i>	<i>Monthly Operating Agreement Fee</i>
(1) On-sale dealer: Any person who sells or keeps for sale any alcoholic beverage, other than pursuant to another license under this chapter, for consumption on the premises where sold	\$0	\$350 per month + 5% of all alcoholic beverage purchases
(2) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases do not exceed over \$600	Initial one time as provided for in § 116.06(E).	\$125 per month + 5% of all alcoholic beverage purchases
(3) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases do not exceed over \$1,200	Initial one time as provided for in § 116.06(E).	\$250 per month + 5% of all alcoholic beverage purchases
(4) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases exceed over \$1,200	Initial one time as provided for in § 116.06(E).	\$350 per month + 5% of all alcoholic beverage purchases
(5) Off-sale dealer: Any person who sells or keeps for sale any alcoholic beverage for consumption off the premises where sold	\$250	\$350 per month + 5% of all alcoholic beverage purchases
(6) Special (temporary) alcoholic beverage license in conjunction with a special event within the municipality to any civic, charitable, educational, fraternal, or veterans' organization.	N/A	\$50 per day, not to exceed 15 consecutive days.
(7) Malt beverage retailer: Any person who sells or keeps for sale, other than resale, malt beverages as both package dealers and on-sale dealers (RB)	\$300	\$25 per month + 5% of all alcoholic beverage purchases
(8) Off-sale malt beverage package dealer: Any person who keeps for sale or sells malt beverages for consumption off the premises where sold (PB)	\$200	\$25 per month
(9) Off-sale malt beverage and off-sale South Dakota wine package dealer: an off- sale malt beverage package dealer who also keeps for sale or sells wines produced pursuant to SDCL Chapter 35-12 for consumption off the premises where sold (PF)	\$225	\$25 per month
(10) Wine retailers, being both package dealers and on-sale dealers	\$500	\$25 per month + 5% of all alcoholic beverage purchases
(11) Malt beverage retailer and South Dakota wine retailers: Any person who sells or keeps for sale malt beverages and wines produced pursuant to SDCL Chapter 35-12 as both package dealers and on-sale dealers (BW)	\$325	\$25 per month + 5% of all alcoholic beverage purchases



(B) The monthly operating agreement fee for a non-profit organization or association applicant, or holder, shall be reviewed and set annually by the Hermosa Town Board upon the issuance, or renewal, of any liquor, liquor restaurant, wine, malt beverage, or temporary, license, and shall not exceed the monthly amount listed for the equal classification of license listed within division (A) of this section.

(C) Non-profit organizations and associations shall be required to provide a copy of the following items; Federal EIN letter, letter of incorporation, bi-laws, tax exempt status. Additionally, an annual report, along with any changes made to addresses, directors, officers, or registered agents, shall be submitted annually to effectively maintain non-profit status with the town.

(D) In lieu of the monthly operating agreement fee, as listed within division A of this section, each licensee who currently owns an off-sale malt beverage license, with or without a South Dakota Wine license, prior to the effective date of this chapter, shall be allowed to pay a one-time, flat fee of \$150, due at the time of signing the operating agreement, for the remaining 2015-16 licensing year which shall expire at 11:59 p.m. on June 30, 2016. After this date, said licensee shall be required to follow the monthly operating agreement fee schedule, as outlined within division (A) of this section.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.05 SPECIAL EVENT ALCOHOLIC BEVERAGE LICENSES.**

(A) Special event alcoholic beverage licenses may be issued by the Town Board in conjunction with special events held within the town. Any license issued pursuant to this section may be issued for a period of time established by the Town Board, not to exceed 15 consecutive days. The license shall be issued to a person at a specific place in the same manner as licenses issued pursuant to § 116.03.

(B) The special alcoholic beverage licenses available are as follows:

(1) *Special event malt beverage retailer.* Special event malt beverage retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03

(2) *Special event on-sale wine retailer.* Special on-sale wine retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03, or to a person licensed by the Department of Revenue under SDCL Chapter 35-12.

(3) *Special event on-sale dealer.* Special on-sale dealer licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03.

(4) *Special event off-sale package wine dealer.* Special off-sale package wine dealers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03, or licensed pursuant to SDCL Chapter 35-4-2(19) or SDCL Chapter 35-12. A special off-sale package wine dealer licensee may only sell wine manufactured by a farm winery that is licensed pursuant to SDCL Chapter 35-12.

(C) Persons requesting a special event alcoholic beverage license shall make application on forms available from the Finance Office, and shall be subject to the same background check, notice and public hearing requirements as an applicant for a license under § 116.03. No public hearing is required for the issuance of a special event license pursuant to this section if the person applying for the special event license holds an eligible permanent license and the special event license is to be used on publicly-owned property.



(D) The hours of operation of each special event alcoholic beverage license shall be as set by the Town Board, but in no event shall the special event license hours exceed those for an on-sale dealer provided by § 116.07.

(E) No person may be issued more than 20 special event alcoholic beverage licenses within any calendar year. Notwithstanding the foregoing, any combination of licenses issued to the same person, at the same place, for the same time, and for the same special event, shall be counted only as one license for purposes of the 20-license limit.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.06 REQUIREMENTS FOR ON-SALE FULL-SERVICE RESTAURANT LICENSES.**

(A) An applicant for an on-sale full-service restaurant license shall provide documentation to the Finance Officer that the applicant meets all requirements of state law for an on-sale full-service restaurant license, including but not limited to: SDCL § 35-4-112. Documentation in support of initial application for full-service restaurant on-sale license. In the initial application, an applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality or county 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. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

(B) The renewal of an on-sale full-service restaurant license is conditioned upon the applicant satisfying all state requirements for renewal, including but not limited to: SDCL § 35-4-113. Renewal of full-service restaurant on-sale license--Annual report. If the municipality or county is renewing a full-service restaurant on-sale license, the municipality or county shall condition the license renewal upon receiving documentation that at least 60% of gross revenue from the preceding 12 months operation of the full-service restaurant was derived from the sale of food and nonalcoholic beverages. The full-service restaurant on-sale licensee shall submit an annual report to the municipality or county on the revenues from the full-service restaurant that 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 revenues of the licensee for the following two categories: (1) food and nonalcoholic beverage gross revenues; and (2) total gross revenues.

(C) *Certain licensees to report amount paid for other licenses; objection to report; hearing; appeal.* Any person who purchased an on-sale license issued pursuant to SDCL §§ 35-4-2(4) or 35-4-2(6) within the last five years shall report to the town the amount paid for the license. If the town requests from any other licensee the amount originally paid for any other on-sale license pursuant to SDCL § 35-4-117, the licensee shall report that amount to the town. The declared purchase price shall be made under oath and shall include the documents establishing the amount paid for the on-sale license. If the transaction included other personal property or real property, the full market value of the other property on the date of the transaction shall be deducted from the total purchase price to establish the amount paid for the license. The person who owned the license as of the date of the adoption of this section has the burden of establishing the amount paid for the license. If the amount reported is used to determine current fair market value pursuant to SDCL § 35-4-117, any licensee who contends that the amount does not accurately reflect the fair market value of the license on the date of purchase may file an objection to the report. The objection shall be filed with the town within 30 days of the date the license fee is set pursuant to SDCL § 35-4-116. If an objection is filed, the Board of Trustees for the town shall conduct a hearing to determine the fair market value of the license. The determination of the Board of Trustees for the town may be appealed to circuit court.

(D) The city will maintain a registry of each on-sale license that is being offered and will provide a copy of the registry to anyone who requests a new on-sale full-service restaurant license.

(E) All full-service restaurant licensees shall be required to pay a one-time initial licensing fee equal to the market value of the license established by the board under SDCL § 35-4-117, which will be at



least \$1 for each person residing within the municipality as measured by the last preceding decennial federal census. (Source SDCL §§ 35-4-19.1, 35-4-111, 35-4-116, and 35-4-117. Nine, Inc. v. City of Brookings, 797 N.W.2d 73 (SD 2011)).

(Ord. 4.0, passed 9-15-2015; Ord. passed 9-4-2018)

#### **§ 116.07 HOURS OF OPERATION.**

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

<i>Type of License</i>	<i>Hours</i>	<i>Days</i>	<i>Holidays</i>
<i>Type of License</i>	<i>Hours</i>	<i>Days</i>	<i>Holidays</i>
(A) On-sale dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(B) On-sale dealer (Full-service restaurant licensee)	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(C) Special (Temporary) alcoholic beverage dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(D) Off-sale dealer	7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(E) Malt beverage retailer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(F) Off-sale malt beverage package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(G) Off-sale malt beverage and off-sale South Dakota wine package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(H) Wine retailers, being both package dealers and on-sale dealers	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(I) Malt beverage retailer and South Dakota wine retailers	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.08 CONSUMING, MIXING, OR POSSESSION OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.**

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



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

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

(D) Notwithstanding divisions (A), (B), and (C), the Board of Trustees may authorize consumption of blending of alcoholic beverages in a public place, but not the sale of the same, in or upon property described by the Town Board, which property is publicly-owned, or owned by a non-profit corporation. The authorization shall not exceed 72 hours and hours of consumption shall not exceed those permitted for on-sale licensees.

(E) A licensee that is licensed to sell wine on-sale may permit a customer to carry out the unconsumed portion of a bottle of wine if the customer purchased the bottle of wine from the licensee and consumed a portion of it with a meal that was prepared and served by the licensee at a table on the licensed premises. The licensee shall securely reseal the bottle of wine with a cork or other similar cap and place the bottle in a sealed bag or other container. The licensee shall also attach a receipt for the meal and the wine to the bag or container. A bottle of wine that is recorked and sealed as provided in this division is not a violation of the provisions of division (B) if the cork and the seal have not been disturbed.

(F) A licensee that is licensed to sell wine on-sale may permit a customer to bring a sealed and unopened bottle of wine onto the licensed premises for consumption by the customer while eating a meal that was prepared by the licensee and that was served at a table on the licensed premises. The licensee may charge a corkage fee for serving wine supplied by a customer. Consumption of wine pursuant to this division is not a violation of division (A). The customer may carry out the unconsumed portion of the bottle of wine if it is securely resealed by the licensee as provided in division (E). Such resealed bottle is not a violation of division (B) if the cork and seal have not been disturbed.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.09 OPERATING AGREEMENT REQUIREMENTS.**

(A) It shall be unlawful for any establishment, bar, store, operator, manager, or person to engage in the operation, distribution, or sale of any malt beverage, alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and/or any other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, without having entered into an annual operating agreement with the town.

(B) Operating agreements shall not be assigned, transferred, sold or in any manner conveyed without the express written and prior approval of the Town Board and such approval shall not be unreasonably withheld.

(C) Licensees shall comply with all laws of the State of South Dakota, and all ordinances of the Town of Hermosa. Failure to comply may result in termination or suspension of all licenses and operating agreements.

(D) No operating agreement may be modified or changed, unless such request has been submitted in writing to the Town Board, and said request has been approved by the Board of Trustees, with all approved changes to be recorded and signed by the operator(s) and the Board of Trustees.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.99 PENALTY.**

Any person violating any portion of this chapter is subject to the general penalty as set out in § 10.99 of this Code, or by current fee schedule.

(Ord. 4.0, passed 9-15-2015)