

ORDINANCE NO. 987

AN ORDINANCE AMENDING ORDINANCE 886 ALLOWING SIDEWALK CAFES AND THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON DESIGNATED AREAS OF SIDEWALKS IN CERTAIN AREAS OF THE B-3 CENTRAL BUSINESS DISTRICT AND CREATING REGULATIONS BY WHICH THEY WILL BE PERMITTED

BE IT ORDAINED, BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF YANKTON, SOUTH DAKOTA THAT THE FOLLOWING CODES OF THE CITY ORDINANCES BE AMENDED AND RECREATED TO WIT:

CHAPTER 3

Sec. 3-15. - Sale or consumption of alcoholic beverages on public sidewalk.

The City Commission of the City of Yankton charged with the approval of alcoholic beverage license issuance may permit the sale and consumption of alcoholic beverages on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises. The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and abutting the licensed premises. This section does not apply to any federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid.

The city commission further imposes the conditions or restrictions that appear in Chapter 13, article I, section 13-2 through 13-5, Sidewalk cafes permitted in certain areas; regulations.

The sidewalk or walkway subject to a public right-of-way where the sale and consumption of alcoholic beverages is permitted does not constitute a public place as defined in SDCL 35-1-5.3, if the sidewalk or walkway subject to a public right-of-way has been properly authorized for sale and consumption of alcoholic beverages pursuant to this section. The hours of authorized sale and consumption on the sidewalk or walkway subject to a public right-of-way as provided by this section shall be consistent with the hours permitted for the on-sale license.

A violation of any provision of SDCL Title 35 by an alcoholic beverage license holder conducting business on a sidewalk or walkway subject to a public right-of-way pursuant to this section constitutes a violation of SDCL Title 35 as if the violation had occurred in or on the licensed premises.

CHAPTER 13. ARTICLE I

Section 13-2.

Outdoor Food and Beverage Service and Dining, including the consumption of alcoholic beverages, in the defined area of the B-3, Central Business District. Permits are available on an annual basis following the calendar year.

Outdoor food and beverage service and dining areas permitted along and on both sides of those portions of the identified Rights-of-Way located in the City of Yankton's B-3 Central Business District. Only those areas being both in the B-3 District and identified below are allowed to request a sidewalk café permit.

Area identified as:

1. Third Street from Broadway Avenue, east to Burleigh Street.
2. Second Street from Broadway Avenue, east to Burleigh Street.
3. Riverside Drive and Levee Street from Broadway Avenue, east to Burleigh Street.
4. Cedar Street, Walnut Street, Douglas Avenue, Capital Street, Pine Street, Mulberry Street, Pearl Street and Picotte Street from Riverside Drive / Levee Street, north to Fourth Street.

Outdoor food and beverage service and dining, including the consumption of alcoholic beverages, is permitted on sidewalks in the defined area of the Central Business District by the owner or operator whose business is adjacent to the sidewalk upon which the food and beverages are to be sold, served or consumed. Outdoor sales and service of food, beverages and outdoor dining, including the consumption of alcoholic beverages, in the Central Business District shall be subject to the regulations set forth in this ordinance.

Definitions.

The following definitions shall apply when used in this ordinance.

B – 3 Central Business District means the zoning district defined by that name in the Zoning Ordinance of the City of Yankton.

Outdoor dining area means an area on a public sidewalk in front of and adjacent to a licensed business where food or beverages are sold, served or consumed.

Sidewalk means all that area legally open to public use as a pedestrian public way between the curb line and the public right-of-way boundary along the abutting property.

Public Sidewalk Use Zones shall be defined as:

1. Curb zone: Two feet from the face of the curb toward the private property line.
2. Pedestrian zone: A five foot wide corridor on the sidewalk not including the curb zone.
3. Sidewalk Café Permit Zone: Remaining area of the public sidewalk not included in the curb zone or pedestrian zone. Sidewalk cafes may be located in this zone.

Location of the Pedestrian Zone: The applicant shall propose the location of the pedestrian zone in front of their licensed establishment at the time of application for a permit. The Applicant shall preserve a clearly identifiable and easily navigable pedestrian zone. The City Commission may adjust the location of the requested pedestrian zone as a part of their action on the application. The location of other established pedestrian zones in the area will be taken into consideration when establishing a new pedestrian zone. Once approved, the location of the pedestrian zone cannot change without City Commission action in the form of an amendment to an existing permit, or as a part of the annual renewal process.

Regulations pertaining to outdoor food and beverage service and dining areas in the central business district.

- (1) No person shall sell or serve food or beverages or permit outdoor dining on a sidewalk in the defined area unless they comply with the requirements of this ordinance.
- (2) Pursuant to South Dakota Codified Law, city licensing requirements and the provisions of this ordinance, alcoholic beverages may be sold, served or consumed on a public sidewalk.
- (3) Outdoor food or beverage sales and outdoor dining shall be located so that such service and dining does not impede, endanger or interfere with pedestrian traffic. Tables, chairs and benches shall be located so that they do not impede, endanger or interfere with pedestrian traffic, with a minimum of five feet of passage for pedestrian traffic as defined in the above described public sidewalk use zones. Sidewalk cafes shall only be allowed in the "Sidewalk Café Permit Zone" of the public sidewalk.
- (4) No fixtures or devices on which food or beverages are sold or consumed shall be attached to the sidewalk or other public area.
- (5) Outdoor food or beverage sales and outdoor dining will be permitted only on sidewalks that are adjacent to the building or structure in which the business providing the outdoor food and beverage service is located.
- (6) Tables, chairs and benches shall not block regulatory signs, crosswalks or intersections and shall be sufficiently lit during times of low light in order to provide for safe pedestrian passage alongside the outdoor dining area. All tables, chairs and benches shall not have sharp edges, protrusions, or other features which may be hazardous to the public.
- (7) All equipment used for food and beverage sales or consumption shall be moved inside the building wherein the business is located during hours the business is not in operation, unless the tables and chairs are secured to the building, or secured together in a preapproved fashion or constructed of such material and placed in a manner that they cannot inadvertently move.
- (8) All tables, chairs and benches must be managed so that they may not be dislodged during windy or stormy weather.

(9) The business owner or operator who conducts outdoor food or beverage sales and outdoor dining shall be responsible for the maintenance, upkeep and security of all tables, chairs and benches.

(10) The business owner or operator who conducts outdoor food or beverage sales and outdoor dining shall be responsible for keeping the outdoor service area clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor dining area.

(11) Signs used to advertise to the outdoor food or beverage sales and the outdoor dining area shall meet all applicable sign regulations and be secured so that they are not dislodged during windy or stormy weather.

(12) The applicant requesting the permit agrees to assume all liability associated with the sidewalk café activities and hold the City of Yankton "harmless" in matters associated with the operation of said café.

(13) The City of Yankton has established a fee for a sidewalk café permit by resolution. Said resolution may be amended as determined by the Board of City Commissioners without impacting the provisions of this ordinance.

Section 13-3. Violations / Penalty.

Any person, firm or corporation who violates any of the provisions of this ordinance or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance may have their permit revoked and is further subject to the penalties described in Section 1-8 of the Code of Ordinances for the City of Yankton, South Dakota.

Section 13-4. Saving Clause.

Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 13-5. Effective Clause.

This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

Adopted: JUNE 13, 2016
1st Reading: MAY 23, 2016
2nd Reading: JUNE 13, 2016
Publication Date: JUNE 22, 2016
Effective Date: JULY 13, 2016

Mayor



Charles Gross.

Attest:



Al Viereck, Finance Officer