

## RESOLUTION 2024-15

### ESTABLISHING THE REQUIREMENTS, FEES, AND REGULATIONS FOR THE ISSUANCE OF ALCOHOLIC BEVERAGE LICENSES WITHIN BUTTE COUNTY BE IT ORDAINED BY BUTTE COUNTY, SOUTH DAKOTA:

**WHEREAS**, the Butte County Board of County Commissioners believes that alcoholic beverage licenses are a privilege and not a right, and

**WHEREAS**, Butte County reserves the right to refuse approval, renewal, or transfer of any alcoholic beverage license in the event an applicant or the holder of the license refuses to comply with applicable requirements of Title 35 of the South Dakota Codified Laws (SDCL) and

**WHEREAS**, SDCL § 35-2-1.2 requires any applicant or person seeking transfer of an alcoholic beverage license to submit an application to the governing body of the County in which the applicant or transferee intends to operate; and

**WHEREAS**, SDCL § 35-4-11.1 requires the Board of County Commissioners to determine the number of alcoholic beverage licenses the County will approve and the fees to be charged; and

**NOW THEREFORE**, it is hereby resolved that:

1. The total number of available alcoholic beverage licenses in Butte County is determined by SDCL § 35-4-11.1 and is based on the population residing within Butte County, but outside the limits of any incorporated municipality or improvement districts within Butte County.
2. Butte County currently has six (6) on-sale alcoholic beverage licenses available.

#### **Application Process:**

1. If any alcoholic beverage license becomes available in Butte County, a notice will be published in the legal newspaper of the County for at least two (2) consecutive weeks, stating that the Board of County Commissioners will be accepting applications for the available license and setting a deadline for submission of applications.
2. Applicants must submit all applications for alcoholic beverage licenses, including new licenses or transfers of existing licenses, for businesses intending to operate outside the corporate limits of any municipality within Butte County, to the Board of County Commissioners for approval as required by SDCL § 25-2-1.2.
3. Any application for transfer of an alcoholic beverage license must also comply with the requirements of SDCL § 35-2-7.

4. All applications must be accompanied by an application fee.
  - a. As required by SDCL § 35-4-2(2) and (6), application fees for new alcoholic beverage licenses are ten thousand two hundred and forty three dollars (\$10,243.00).
  - b. Application fees for renewal of existing alcoholic beverage licenses are nine hundred dollars (\$900.00).
5. All applications must include proof that the premises to which the license is being issued or transferred has, or shall have within one year, a sufficient structure in which to conduct the operation of an on-sale liquor business. No alcoholic beverage license will be issued or transferred to any applicant if there is not an approved place of business for the operation of the license.
  - a. Proof may include (but is not limited to) pictures of any existing structures or plans and specifications of proposed structures, along with proof of ownership or a valid lease of the premises.
  - b. As required by SDCL § 35-2-2.1, all applications must include an agreement that the premises used for the sale of alcoholic beverages are considered public premises for the purpose of search and seizure laws and are open to inspection at all times, including all buildings, safes, cabinets, lockers, storerooms on the premises along with any records and books pertaining to the sale and ownership of alcoholic beverages.
6. The Board of County Commissioners may give conditional approval to allow for construction of an approved structure, with the alcoholic beverage license to be issued to the applicant when the structure is completed.
  - a. If the alcoholic beverage license is not issued within one year of conditional approval, the Board of County Commissioners may extend the conditional approval for up to six (6) additional months if the delay is not the fault of the applicant.
  - b. Under no circumstances will an alcoholic beverage license be held on conditional approval for more than eighteen (18) months.

#### **Approval Process**

1. As required by SDCL § 35-2-3, the Board of County Commissioners shall set the time and place for a public hearing to consider any application for alcoholic beverage licenses that come before the board.
2. As required by SDCL § 35-2-5, the Butte County Auditor shall publish a notice of the time and place where the Butte County Board of County Commissioners will

consider applications for alcoholic beverage license at least one week prior to the public hearing. The notice will also inform the public that any interested person may appear and be heard either in favor of, or objecting to, the issuance of the license.

3. The Board of County Commissioners will consider the application and any objection to the application before making a final decision to issue or not to issue available licenses.
4. Pursuant to SDCL § 35-2-1.2, the Board of County Commissioners may approve or disapprove an application for alcoholic beverage license, or the transfer of an existing license, depending on whether the Board finds the applicant is a suitable person to hold the license, whether the Board considers the proposed location suitable for sale of alcoholic beverages, and whether the application and applicant meets all other statutory requirements.
5. As required by SDCL § 25-2-6.2, all applicants must be of good moral character and may not have a felony conviction. If the applicant is a corporation, all managing officers of the corporation must be of good moral character and may not have been convicted of a felony.
6. Any application fees will not be refunded once the license is approved by the Board of County Commissioners and issued by the State.
7. As required by SDCL § 35-2-5.1, if the Board of County Commissioners does not approve an application, it shall specify the reasons for disapproval on the application and return the application and fee to the applicant. The applicant may not submit another application for an alcoholic beverage license for one (1) year from the date of the denied application. However, if the denial was based on the suitability of the location for the license, the applicant may not submit another application for three (3) months from the date of the denial as long as the renewal is based on a different location.

### **Renewal Process**

1. Applicants for renewal of existing on-sale alcoholic beverage licenses must follow the same application process set forth above.
2. Renewals of existing licenses may be approved without a public hearing before the Board of County Commissioners unless one or more of the licensee's employees has been subject to a criminal penalty for violation of the alcoholic beverage control law or the license has been suspended.
3. As required by SDCL § 32-2-5.3, the Board of County Commissioners may not reissue any alcoholic beverage license to the same licensee or the licensee's

transferee if the license has not been actively used during the two (2) years preceding the date of the current application.

- a. "Actively used," as defined in SDCL § 32-3-5.3 means that the licensed premises was open to the public during regular business hours for sale and consumption of distilled spirits for at least sixty (60) days during the two preceding years.
4. The Butte County Board of Commissioners will not reissue an alcoholic beverage license unless all taxes incurred by the licensee or his transferee because of the operation of the licensed premises are paid or are not delinquent.
5. No license will renew or reissue until all property taxes that are the liability of the licensee levied on the licensed property are paid or are not delinquent.

**Revocation or Suspension Process**

1. The Butte County Board of County Commissioners may recommend that the Secretary suspend or revoke any alcoholic beverage license issued for violation of any provision of SDCL Chapter 35.
2. As required by 35-2-11.2, the Board of County Commissioners must give notice to the licensee of proposed revocation or suspension recommendation only after a public hearing on the issue.
3. The licensee must have at least thirty (30) days' notice of the proposed recommendation and date set for a public hearing.
4. The Butte County Auditor shall publish a notice of the public hearing in the County's official newspaper at least one week before the public hearing in a form approved by the Board of County Commissioners.
5. Grounds for revocation or suspension of an alcoholic beverage license are found in SDCL § 35-2-10.

Dated this 2<sup>nd</sup> day of January 2024.

BOARD OF BUTTE COUNTY COMMISSIONERS

/s/

CHAIRPERSON

ATTEST: /s/

Annie Capp, BUTTE COUNTY AUDITOR

