

ORDINANCE NO. #-10-03

AN ORDINANCE ENTITLED, Ordinance NO#10-03 “An Ordinance providing for the process and requirements of an interested party to apply and compete for a Liquor License in Clay County as defined in said Ordinance.”

Clay County, as authorized by state statute, may issue on-sale liquor licenses. As the ownership of a liquor license has evolved into a valuable commodity, the Clay County Commission has elected to institute a process whereby the taxpayers of the county shall receive the benefit of that value as a license fee. When a liquor license becomes available the Commissioners shall designate a special session whereby all interested parties will be allowed to submit a deposit and a business plan for the right to apply and bid for the license. The bids will be received in an open bid auction format conducted by the Chair of the Commission. The bid amount shall include the amount statutorily authorized as the fee amount the commission may impose. To qualify as a bidder, interested parties shall submit the following to the County Auditor:


1. Certified funds in the amount of \$5,000.00;
2. A letter of intent identifying the party bidding and an affidavit stating the owner(s) and/or management plan. The plan shall show that the applicant acknowledges and accepts the following:
 - a. An affidavit identifying the owner(s) and/or officers of a business or corporation applying for the license.
 - b. The affidavit shall list all persons having an interest in the license and must include a statement of compliance with SDCL § 35-2-6.2;
 - c. An awareness of contractual obligations set forth in SDCL 35-2-2.1.
 - d. An awareness and understanding of the obligations and risks stated by SDCL § 35-2-5.3.
 - e. An awareness and understanding that SDCL § 35-2-5.3 does not entitle the license holder to a refund of the license fee.
 - f. An awareness and understanding that an immediate and/or subsequent transfer request of a license pursuant to SDCL § 35-2-5.2, is subject to independent reviews by the Board of County Commissioners and the Secretary of Revenue, and therefore is not guaranteed.
 - g. An awareness and understanding that the owner(s) or business that receives the license shall be subject to a public hearing pursuant to SDCL § 35-2-5.
 - h. An awareness and understanding that this application process shall be complete upon a majority vote of the County Commissioners in open session following the discussion at the public hearing on this matter.
 - i. An awareness and understanding of SDCL § 35-2-5.1 will preclude a denied applicant (person's / business / corporations with interest identified in the original application) from participating for a license for one year.
 - j. An awareness and understanding of SDCL § 35-2-6.6.
 - k. A business plan listing:
 - i. Location of establishment;
 - ii. Statement of zoning compliance;
 - iii. Statement of compliance with an applicable covenant;
 - iv. Square footage / planned square footage;
 - v. Cursory or primary activities associated with planned establishment;
1. A completed Uniform Alcoholic Beverage License Application.

- m. All required elements and funds must be submitted to the County Auditor at least five (5) days prior to the date of the auction.
3. Business plans are subject to review by the commissioners and may be rejected pursuant to SDCL § 35-2-1.2.
 4. Unsuccessful bidders shall receive their deposited funds upon closing of the sale.
 5. Upon completion of the bid process, confirmation of the successful bid shall be placed on the agenda pursuant to SDCL § 35-2-4.
 6. The successful bidder shall then submit certified funds for the (license fee) purchase amount on the date of the auction to the County Auditor.
 7. In order to preserve the process, but not to exercise favoritism, the County Commission reserves the right to reject any and all bids upon finding that the bidder intends to subvert the process, and hamper the Commission's efforts to maximize the benefits to the taxpayers.
 8. The County reserves the right to rescind, amend or otherwise change this process up to and until the closing of the transaction. Such changes shall be made in open session of a County Commission meeting.
 9. Failure of the successful bidder to consummate the purchase of the license fee shall forfeit their deposit.
 10. Bids under \$25,000 shall automatically be rejected.
 11. SEVERABILITY AND SAVING CLAUSE: If any provision of this ordinance shall be held invalid, it shall not affect any other provisions of this ordinance that can be given effect without the invalid provision, and for this saving purpose the provisions of this ordinance is hereby declared to be severable.

First Reading: April 27, 2010
Second Reading: May 4, 2010
Publish: May 7, 2010
Adopted this 4th day of May, 2010.



Leo F. Powell, Chairman, Clay County
Board of Commissioners

Attest: 
Ruth A. Bremer, Clay County Auditor

