

ORDINANCE 1462

AN ORDINANCE AMENDING CITY OF VERMILLION CODE OF ORDINANCES TITLE XI, BUSINESS REGULATIONS; CHAPTER 118, FURNITURE ZONE; SECTIONS 118.02 THROUGH 118.12 AND SECTIONS 118.14 THROUGH 118.18 ADDING AND CLARIFYING DEFINITIONS, REMOVING THE DEFINITION AND ALL REFERENCES TO A FURNITURE ZONE USE PERMIT AND FURNITURE ZONE PERMIT, MODIFYING LANGUAGE TO PROVIDE THAT THE CITY COUNCIL MAY ATTACH CONDITIONS TO LIMITED LEASES, REMOVING A REQUIREMENT FOR 50% FOOD SALES IN ORDER TO SERVE ALCOHOLIC BEVERAGE MODIFYING FOOD AND ALCOHOL SALES HOURS, AND REMOVING THE AUTHORITY FOR THE CITY MANAGER TO DENY A LIMITED LEASE.

BE IT ORDAINED, by the Governing Body of the City of Vermillion, South Dakota that the following sections of Chapter 118, Section 118.02 through 118.12 and Sections 118.14 and 118.18 be amended by adding the definition “Sidewalk Pub,” updating referenced Code in “Central Business District,” adding clarifying language to the definitions “Adjacent/Adjoining Business,” “Furniture Zone Limited Lease,” and “Sidewalk Café,” and removing the definition and all references to a “Furniture Zone Use Permit” or “Furniture Zone Permit,” modifying conditions attached to a limited lease to provide that the City Council may attach such conditions, removing the requirement that an applicant must document that at least 50% of sales are food related in order to serve alcohol in a Furniture Zone, and removing the ability of the City Manager to deny a Furniture Zone Limited Lease. All other portions of section 118.02 through 118.12, Sections 118.14 through 118.18, and Chapter 118 will remain as they are. Following are the amendments:

§118.02 DEFINITIONS.

Adjacent/Adjoining Business. The business or property immediately adjacent to a portion of the sidewalk and furniture zone. A business shall be determined to be "adjacent" to a portion of the furniture zone by extending the property lines perpendicular into the furniture zone. A business shall be determined to be “adjoining” if the corner of the business lot is no more than 50 feet from the corner of a furniture zone defined by the City.

Central Business District. Area contained within the city's Main Street Commercial Core in section 155.036 of this Code of Ordinances.

Furniture Zone Limited Lease. A partial-year limited lease granted by the city which shall convey the exclusive right to the use of a portion of the city's right-of-way to the adjacent/adjoining business only for those business purposes designated in the lease, which may include the sale and service of alcoholic beverages.

Sidewalk Café. Licensed food service establishment which is permitted to use the furniture zone adjacent/adjoining to its place of business for the purpose of serving food from its menu in an outdoor setting and/or the sale of alcoholic beverages and consumption.

Sidewalk Pub. An establishment licensed to serve alcoholic beverages for consumption on its premises which is permitted to use the furniture zone area adjacent/adjoining to its place of business for the purpose of serving alcoholic beverages in an outdoor setting.

§118.03 FURNITURE ZONE USE ALLOWED.

(A) Commercial or other nonpublic use of the furniture zone shall be allowed in the central business district only through a limited lease granted by the city. Retailing is an allowed use of this chapter for a furniture limited lease for adjacent/adjoining businesses unless a written assignment of this allowed use is provided to another. The allowed uses under the provisions of this chapter by a limited lease are retailing, sidewalk café, and sidewalk pub.

§118.04 FURNITURE ZONE LIMITED LEASE FEES.

The annual fee for a furniture zone limited lease shall be set by resolution of the governing body.

§118.05 FURNITURE ZONE LIMITED LEASES FOR ALCOHOLIC BEVERAGE SALES.

Any furniture zone limited lease granted by the City Council pursuant to this chapter shall convey to the adjacent/adjoining business the right to use a designated portion of the sidewalk or furniture zone only for those purposes set forth in the lease. The limited lease may contain such restrictions and conditions as deemed necessary by the city and may not be assigned or sublet at any time during its term. The city shall have the right to terminate the limited lease for violation of any material term or condition thereof. Required compliance with all city ordinances and state statutes regarding the sale and service of alcoholic beverages shall be deemed to be a material condition of the limited lease. Compliance with city noise ordinances shall be deemed a material condition of the limited lease. The limited lease term shall not include those dates and times specified for special events approved by the City Council which includes the area of the furniture zone limited lease at the election of the event sponsor.

§118.06 LEASE DURATION.

Leases may be granted for the period between March 10 and November 1 of the year of issuance. Leases may temporarily extend beyond this period upon approval of the City Manager.

§118.07 OBJECTS ALLOWED IN THE FURNITURE ZONE BY PERMIT.

(A) Before any items can be placed in the furniture zone, the property owner must have a current furniture zone limited lease. Notice must be provided to the city on a form furnished by the City Manager's office. The form must include a drawing of the furniture zone containing the layout of all objects to be placed in the zone. Applicant will be notified, in writing, of any objects not approved in the plan. Once the plan has been approved by the city, the applicant will be allowed to place objects in the furniture zone.

(B) Objects such as tables and chairs may be placed in the furniture zone so long as a valid furniture zone limited lease has been obtained, the items do not encroach upon the designated pedestrian walkway or another business's furniture zone limited lease area, and the items are made from commercial grade material. Other items may be placed in the furniture zone upon approval from the city. Any objects placed in the furniture zone must be removed by November 1st.

§118.08 APPLICATION FOR LIMITED LEASE.

All applicants for furniture zone limited leases shall complete an application form provided by the City Manager's Office. Any such limited lease shall be granted on forms prepared by the City Manager's office.

§118.09 REVIEW AND EVALUATION CRITERIA.

Each application for a furniture zone limited lease shall be evaluated for the following criteria prior to executing a limited lease agreement.

(A) Provisions of this chapter are adequately followed;

(B) All additional licenses or permits required by the city or state for the proposed use activity have been obtained;

(C) Placement of objects upon the furniture zone are consistent with the policies and standards developed by the city;

(D) Adequate clearances for pedestrian circulation exist within the site. This includes proper clearances from items such as light poles, trash cans, and whether proper pedestrian circulation occurs on the site; and

(E) Safety concerns related to the requested furniture zone use have been addressed.

§118.10 APPROVAL CONDITIONAL.

The City Council may attach conditions to the furniture zone limited lease to provide for the safety and welfare of the public and neighboring property interests or may deny the requested limited lease if it determines in writing that no conditions can adequately provide safety and welfare. Conditions may be added to a limited lease during its term to address bona fide concerns that may arise after the issuance of the limited lease.

§118.11 LIABILITY AND INSURANCE.

(A) Before any object placement or furniture zone limited lease is granted, the applicant shall sign a statement holding harmless the city and shall indemnify the city, its officers and employees, for any claims for damages to property or injury to persons which may occur in connection with any activity carried on pursuant to the terms of the furniture zone limited lease.

(B) All applicants for the use of the furniture zone shall furnish and maintain a policy of insurance protecting the applicant and the city from all claims for damage to property or bodily injury, including death, which may arise from operations under the furniture zone limited lease, or in connection therewith. The insurance policy shall list or endorse the city as additional insured and carry minimum liability limits of at least \$1,000,000 per occurrence. The endorsement shall provide that the policy shall not be terminated or cancelled prior to the termination of the furniture use without 30 days' written notice to the city.

§118.12 DESIGNATED PEDESTRIAN WALKWAY.

The City shall on each executed furniture zone limited lease, identify the designated pedestrian walkway. No aspect of the furniture zone lease shall be allowed to be conducted upon the designated pedestrian walkway and no equipment or fixtures shall intrude upon or extend into the designated pedestrian walkway, except to transfer items from an interior structure. The designated pedestrian walkway shall not be considered part of the furniture zone use.

§118.14 MAINTENANCE OF LIMITED LEASED AREA.

Limited lease holders shall maintain the leased area in a clean manner while in use and shall mitigate any impact activities associated with the leased use which contribute to the uncleanness of the sidewalk and surrounding area. Lease holders serving or selling food or beverage must provide a trash receptacle for patron use within the designated furniture zone while in use.

§118.15 ALCOHOL SERVICE AND CONSUMPTION IN FURNITURE ZONE.

Alcohol service and consumption in a furniture zone area is prohibited unless the adjacent/adjoining business holds a valid on-sale license issued by the state for the sale and service of alcoholic beverages for that adjacent/adjoining business. Sale and consumption of alcohol in the furniture zone is limited to the area identified in the furniture zone limited lease which shall be adjacent/adjoining to the licensed premises.

§118.16 ADDITIONAL RULES GOVERNING ALCOHOL BEVERAGES IN FURNITURE ZONE.

Any limited lease which includes the sale or consumption of alcohol shall adhere to these additional provisions which shall be deemed to be material conditions of any limited lease:

(A) Compliance with the rules, regulations, and conditions of the alcohol license.

(B) Containers for the dispensing of alcoholic beverages must be maintained inside the licensed facility and not in the furniture zone use area. No taps, kegs, cooler, or other alcoholic beverage storage devices are allowed in the furniture zone limited lease area.

(C) All alcoholic beverages served by the permitted establishment must be consumed in the furniture zone limited lease area or inside the facility and disposed of on site. Patrons and staff loitering with alcohol on the designated pedestrian pathway is a prohibited activity. Exception:

The transport of alcoholic beverages by patrons or staff directly from the indoor premises to the furniture zone use area or to the licensed facility is not prohibited.

(E) Any time more than 10 people occupy a furniture zone leased area serving alcohol, the limited lease area shall be staffed such that the furniture zone limited lease area is supervised.

(F) The hours of operation for the sale and consumption of alcoholic beverages in the furniture zone lease areas shall be on Sundays through Thursdays 7:00 a.m. to 10:00 p.m., on Fridays from 7:00 am until 1:00 am Saturday, and on Saturdays from 7:00 am until 1:00 am Sunday. The city has the right to limit use of the furniture zone area for alcoholic beverage sales and consumption on specific days.

§118.17 REVOCATION AND SUSPENSION.

The City Manager, or designee, may revoke or suspend a furniture zone limited lease upon finding that any provision herein or any condition set forth in the limited lease has been violated. Notice shall be given to the holder of the limited lease prior to revocation or suspension.

§118.18 EXEMPTION.

Property owners who wish to place flowerpots or planters upon the sidewalk may do so without obtaining a furniture zone use limited lease as long as the items are not placed in the pedestrian walkway.

Dated at Vermillion, South Dakota this 18th day of April 2022.

THE GOVERNING BODY OF THE CITY
OF VERMILLION, SOUTH DAKOTA

BY *Kelsey Collier-Wise*
Kelsey Collier-Wise, Mayor

ATTEST:

BY *Katie E. Redden*
Katie E. Redden, Finance Officer

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