

## PROCEEDINGS OF THE STURGIS CITY COUNCIL

The Common Council of the City of Sturgis met in regular session starting at 6:00 p.m. on Monday, June 4, 2018 at the Erskine Building. Present: Mayor Mark Carstensen, Alderpersons Jason Anderson (arrived at 6:25 pm), Mike Bachand, Rhea Crane, Steve Keszler, Terry Keszler, David Martinson, Ronald Waterland and Beka Zerbst. Also present: City Manager Daniel Ainslie and City Attorney Greg Barnier. Absent: None.

Motion by Crane, second by Waterland and carried with all members present unanimously voting yes to approve the agenda.

Motion by Waterland, second by Martinson and carried with all members present unanimously voting yes to go into executive session for one legal case, three contracts and one personnel at 6:01 pm.

Motion by Zerbst, second by T. Keszler to return to regular session at 6:43 pm.

Mayor Mark Carstensen led everyone in the Pledge of Allegiance.

### Informational Reports:

- MUB Board – 4/24/18 minutes

### Announcements:

- Get out and vote tomorrow.
- The Cushman Rally is going on this week.
- Music on Main starts this Wednesday.
- The High School Rodeo is this weekend.
- The Ft. Meade 140 year celebration will be held June 15<sup>th</sup> and 16<sup>th</sup>.
- The Nolan Monument dedication is Friday the 15<sup>th</sup>.
- The Ft. Meade Trail will be dedicated on June 16<sup>th</sup>.
- The Liquor Store will have a customer appreciation day with a Barbeque and beverage tasting on June 15.
- Touch the Truck will be at the Community Center on the 9<sup>th</sup> of June.
- A show and shine and swap meeting will be held at the Sturgis Motorcycle Museum on the 9<sup>th</sup> of June.

### City Manager Ainslie reported:

- Payroll Changes – within budget:
  1. Community Center Dept – Front Desk Attendant – Jamie Turnbow - \$8.85; Lifeguard – Jorge Clark, Gabe Rambow - \$9.00.
  2. Rally & Events Dept – Rally Summer Seasonal Staff – Breanna Janovy, Cynthia Scherer - \$10.00; Event Staffer – establishes pool of eligible employees - \$8.85.
  3. Police/Water/Parks Dept – Fleet Maintenance Supt – Scot Dunlavy - \$2115.39/pay period.

Motion by Waterland, second by Crane and carried with all members present unanimously voting yes to approve the following items on the consent calendar:

- a. Consideration of minutes from the May 21, 2018 regular council meeting.
- b. Consideration of setting a public hearing for June 18, 2018 for a variance to the 6' maximum height for fencing to allow 7-10' fencing at 3951 Vanocker Canyon Rd for Jackson Winery dba Belle Joli Winery.

- c. Consideration of setting a public hearing on June 18, 2018 for a variance to the 4' maximum height for fencing in a front yard to allow for a 6' fence at 1213 9<sup>th</sup> St for Toni Moore.
- d. Consideration of setting a public hearing on June 18, 2018 for a 0' setback variance to allow for a carport and a variance to the hard surfaces off-street parking requirements at 330 8<sup>th</sup> St for Nancy McPherson.
- e. Consideration of setting a public hearing on June 18, 2018 for a 15' variance to the 25' rear setback requirement and a 5' variance to the 10' side setback to allow for installation of a garage at 2125 Hill St for Larry & Tina Porterfield.
- f. Consideration of setting a public hearing on June 18, 2018 for a vacation of a portion of Arlette St adjacent to Lots 6-7 of Bk J of Glover's 2<sup>nd</sup> Add for Glover Properties LLC.
- g. Consideration of the Professional Services Agreement for Ambulance Service's Medical Director.
- h. Consideration of Resolution 2018-40 – Vacate Alley for Glover Investments LLC.

**RESOLUTION 2018-40  
RESOLUTION TO VACATE AN ALLEY**

WHEREAS, back on January 20, 2015 at the City Council meeting, Glover Investments LLC petitioned the Common Council to vacate the following alley within the following legal description:

An alley way located in Block J of Glover's 2<sup>nd</sup> Addition to the City of Sturgis, Meade County, South Dakota.

WHEREAS, at that Council meeting a motion was made by Waterland, second by Anderson to approve a vacation of the legal description described above with the condition that no building permits can be issued for lots 6 thru 9 as currently platted.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Common Council of the City of Sturgis, South Dakota in consideration of previous action made by the City Council does vacate the alley located on certain real property with the legal description as described above.

Dated this 4th day of June, 2018.

Published: 06-15-18  
Effective: 07-06-18

- i. Consideration of setting a public hearing on June 18, 2018 for a street closure of Main Street for shade structures.

Motion by Martinson, second by Crane and carried with all members present unanimously voting yes to approve the following claims:

**WAGES** – Ambulance \$23,503.02; Attorney \$3989.27; Auditorium \$191.63; Buildings \$1144.12; Cemetery \$2875.12; City Manager \$4511.54; Community Center \$11,057.64; Finance Office \$9222.81; Fire Department \$177.37; Human Resource \$7019.75; Library \$9468.40; Liquor \$5570.79; Mayor and Council \$4482.37; Parks \$11,025.45; Planning & Permitting \$8243.44; Police \$38,643.33; Rally \$7497.38; Recreation \$2564.21; Sanitary Service \$14,976.18; Special Sales Tax \$1923.08; Streets \$13,273.53; Wastewater \$8554.40; Water \$13,212.35; Federal Withholding \$15,949.81; FICA \$14,627.44.

**COMBINED CASH FUND** – Change Banks, \$150.00; Coe Meyer, \$61.39, refund.

**GENERAL** – 3E Electrical Engineering, \$175.00, rep; A&B Business, \$582.76, sup; A to Z Shredding, \$97.00, sup; APWA, \$196.00, prof fee; Elton Barden, \$200.00, prof fee; Best Buy Business, \$907.63, sup; BH Energy, \$13,902.65, util; Buckle Tree, \$826.88, sup; Roger Burnham, \$3,500.00, prof fee; Mark Carstensen, \$150.00, other; City of Sturgis Water Dept,

\$3,079.75, util; Devon Crowe, \$100.00, pro fee; Jennessa Dempsey, \$50.00, ins; Nicolis Forbes, \$60.00, other; Group II Communications, \$4,619.11, sup; Neil & Karen Hinek, \$2,000.00, travel; J&L Services, \$20.00, rep; Junction Avenue Floral & Gifts, \$50.00, other; KorManagement Services, \$1,203.33, prof fee; Marco Technologies, \$69.40, rep; MB Tree & Landscape, \$1,350.00, prof fee; Meade County Senior Citizen Center, \$4,500.00, rent; Pam Nash, \$314.84, travel; Petty Cash, \$40.00, other; Pheasantland Industries, \$22.22, sup; Powerplan, \$96.23, rep; Print Mark-et, \$1,195.31, pub; Purchase Power, \$500.00, sup; regional Health, \$36.00, prof fee; S&C Cleaners, \$3,000.00, rep; Scott Peterson Motors, \$29,243.00, equip; Specialty Installation, \$174.44, rep; Speedy Lube, \$40.49, sup; Les Starr, \$103.00, refund; Sturgis ATV, \$122.51, rep; Summit Signs & Supply, \$105.00, sup; TASC, \$1,628.22, ins; Tree Wise Men, \$1,540.00, prof fee; Twilight First Aid & Safety, \$156.66, sup; Universal Athletic, \$444.01, sup; Vanway Trophy & Award, \$277.40, other; Zach Weyer, \$100.00, prof fee; Xtreme Dakota Bicycles, \$45.50, sup.

**SPECIAL SALES TAX** – City of Sturgis Water Dept, \$29.22, util; Sturgis Area Chamber of Commerce, \$3,775.33; Sturgis Economic Development, \$8,500.00; Sturgis Motorcycle Museum, \$1,000.00, promo; Sturgis Mustang Rally, \$5,000.00, promo.

**CAPITAL IMPROVEMENT** – Albright construction, \$118,060.82; American Engineering Testing, \$2,250.00; Baseline Surveying, \$350.00; Brosz Engineering, \$11,465.00; Fence Crafters, \$2,370.00; Haggerty's Audio Visual, \$6,733.69; Knecht Home Center, \$91.45; Sacrison Paving, \$5,972.51; Universal Athletic, \$4,906.99.

**BUSINESS IMPROVEMENT DISTRICT** – Jennessa Dempsey, \$11.95, sup; Digital Throttle, \$353.50, pub; DW Management, \$1,800.00, prof fee; Brandon Jones, \$1,500.00, prof fee; Meade County Senior Citizens, \$1,000.00, sup; Perfect Wave Production, \$2,000.00, prof fee.

**HOTEL OCCUPANCY TAX DISTRICT** – Cushman, \$750.00, other; Fellowship of Motorcycle Ministries, \$500.00, other; Sturgis Area Chamber of Commerce, \$500.00, other; Tatanka, \$1,500.00, other.

**LIQUOR** – Arctic Glacier, \$271.35, resale; BH Energy, \$2,140.13, util; Cash-Wa Distributing, \$647.25, resale; Cask & Cork, \$222.00, resale; City of Sturgis Water Dept, \$295.50, util; Coca Cola, \$232.50, resale; Dakota's Best Distributing, \$150.75, resale; Fisher Beverage, \$13,176.01, resale; Johnson Western Wholesale, \$10,230.62, resale; Pepsi Cola, \$134.25, resale; Prairie Berry, \$735.00, resale; Print Mark-et, \$70.31, resale; Quality Brands, \$10,836.70, resale; Republic Beverage, \$24,417.82, resale; Southern Glazers, \$2,010.43, resale; TASC, \$88.62, ins; True Brands, \$173.04, resale.

**WATER** – BH Energy, \$750.67, util; City of Sturgis Water Dept, \$121.48, util; Credit Collections Bureau, \$23.50, prof fee; G&H Distributing, \$96.49, rep; Hawkins, \$301.50, sup; KorManagement Services, \$601.66, prof fee; Northern Hills Electric, \$137.06, rep; Petty Cash, \$5.90, sup; Print Mark-et, \$70.31, pub; Rockingtree Floral, \$45.00, sup; Sacrison Paving, \$667.86, rep; SD Assn of Rural Water, \$160.00, travel; Speedy Lube, \$65.99, rep; TASC, \$160.80, ins.

**WASTEWATER** – Advanced Engineering & Environmental, \$14,459.90, cap imp; BH Energy, \$2,863.31, utl; City of Sturgis Water Dept., \$6.26, util; Dorsey & Whitney, \$16,000.00, cap imp; KorManagement Services, \$601.66, prof fee; Print Mark-et, \$70.31, pub; TASC, \$106.92, ins.

**SANITATION** – Affordable Tire & Alignment, \$631.93, rep; BH Energy, \$247.49, util; Century Link, \$64.38, util; KorManagement Services, \$601.66, prof fee; Print Mark-et, \$70.31, pub; Rapid City Journal, \$390.22, pub; TASC, \$179.88, ins.

**AMBULANCE** – 3E Electrical Engineering, \$175.00, rep; A&B Business, \$161.74, sup; City of Sturgis Water Dept, \$85.08, util; Clubhouse Hotel & Suites, \$264.00, travel; Dakota Party, \$49.95, sup; Henry Schein, \$207.18, sup; Jones & Bartlett Learning, \$656.89, sup; Physio-control, \$471.84, sup; Print Mark-et, \$70.31, pub; Purchase Power, \$515.94, sup; Sturgis Guns & Motorcycles, \$4,600.00, fundraising; TASC, \$216.36, ins.

Motion by Crane, second by Zerbst and carried with all members present unanimously voting yes to approve Resolution 2018-38 - Street Closure and Open Container for Independence Day Celebration on July 3, 2018.

**RESOLUTION 2018-38**

**RESOLUTION TO CLOSE DESIGNATED STREETS AND PERMIT OPEN CONTAINERS ON CERTAIN PUBLIC PROPERTY AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY FOR THE STURGIS INDEPENDENCE DAY CELEBRATION**

WHEREAS, the 1<sup>st</sup> annual Independence Day Celebration will be held in the City of Sturgis, July 3rd, and

WHEREAS, the City of Sturgis Rally and Events Department will place signs and cones letting people know that there will be no parking on Harley-Davidson Way after 2:00 pm. and will be opened by 11:00 pm. and

WHEREAS, the City street shall hereby be closed to vehicular traffic and unauthorized parking between 2:00 pm. and 11:00 p.m. on July 3, 2018. The closure will be Harley-Davidson Way, from Lazelle Street south to Main Street. Leaving the alley next to the Senior Center on the northwest side of Harley-Davidson way, to turn and get out on to 3<sup>rd</sup> Street, but closed access to Harley-Davidson Way. The Police Department will be authorized to tow vehicles within the street closure area, starting July 3, 2018 after 2:00 pm.

WHEREAS, an open container area has been requested within a portion of the public property of the City of Sturgis from 5:00 pm to 10:00 pm, and as authorized by Section 3.02.20(C) of Sturgis City Ordinance and SDCL 35-1-5.5, for those persons legally possessing an alcoholic beverage in the authorized non-glass container, bearing A logo and available for purchase from designated on-sale licensees, on that public property open to the public, within area bounded as follows:

a. On the west, by the eastern edge of the Right of Way of 4th Street, beginning at the intersection of 4th Street and Lazelle Street and continuing south to the intersection of 4th Street and Sherman Street,

b. On the south, by the north edge of the Sherman Street Right of Way between 4th Street and Middle Street, and on

c. On the east, by the western edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and including the entire Main Street Right of Way to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, continuing west from Middle Street to Fourth Street on the south side of Lazelle Street.

d. On the north, continuing north to the intersection of Middle Street and the alley located between Lazelle Street and Dudley Street, and by the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1st Street and along the south edge of Lazelle from Middle Street to Fourth Street.

e. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction Avenue, Main Street and Middle Street, Lazelle Street and Junction Avenue, 1st Street, Harley Davidson Way and 3rd Street as they cross Lazelle Street, and also including the Right of Way area of Third Street, Harley Davidson Way, First Street, Main Street and Junction Avenue within these boundaries. This also includes the Harley Davidson Rally Point.

NOW THEREFORE IT IS HEREBY RESOLVED, as set forth herein that the City of Sturgis shall hereby close the City street to vehicular traffic and unauthorized parking between 2:00 pm. and 11:00 pm. on July 3, 2018, and establish an open container area on July 3, 2018 from 5:00 pm to 10:00 pm on that public property open to the public within area bounded on the West by the east edge of the Right of Way of 4<sup>th</sup> Street, bounded on the East by the west edge of the Right of Way of Junction Avenue, bounded on the South by the north edge of the Right of Way of Sherman Street, and bounded on the north by the south edge of the Right of Way of Dudley Street from Middle Street to First Street, and including within this boundary the street area of Third Street, Harley-Davidson Way, First Street and Main Street. This area shall be marked by city barricades with clearly legible signs, provided by the organizers and consistent with the limitations of this Resolution, stating that the barricade marks the boundary of the open container area. The open container area does not include the City Library, nor any City Property not open to the public, and does not include any private property within the open container area.

Dated this 4th of June, 2018.

Published: 06-15-2018  
Effective: Immediately

Motion by Waterland, second by S. Keszler and carried with all members present unanimously voting yes to approve Resolution 2018-39 - Parade and Street Closure for 140<sup>th</sup> Sturgis/Ft Meade Anniversary Celebration on June 15-16, 2018.

**RESOLUTION 2018 -39**  
**RESOLUTION TO AUTHORIZE STREET CLOSURE**  
**FOR THE 140<sup>TH</sup> STURGIS/FT. MEADE ANNIVERSARY CELEBRATION**

WHEREAS, the 140<sup>th</sup> Sturgis/Ft. Meade Anniversary Celebration will be held in the City of Sturgis, June 15 and 16, 2018; and

WHEREAS, beginning on Friday, June 15<sup>th</sup> at 2:00 pm. to 4:00 pm, Harmon Street from Junction to South Davenport Street will be closed for the rededication of the Nolan Monument; and

WHEREAS, a parade will be held on Saturday, June 16<sup>th</sup> from 10:00 am to 11:00 am with the route line up at the Vet's Club and travels west on Main Street to 3<sup>rd</sup> Street, then south on Sherman Street and east on Sherman Street where it will end at the Vet's Club; and

WHEREAS, it is in the public interest to provide a safe venue for this special event.

NOW, THEREFORE, BE IT RESOLVED that to accommodate the safe presentation of providing this special event, beginning on Friday, June 15<sup>th</sup> from 2:00 pm to 4:00 pm, Harmon Street from Junction to South Davenport Street will be closed and on June 16<sup>th</sup> from 10:00 am to 11:00 am for a parade to be held on Main Street to 3<sup>rd</sup> Street, then south on Sherman Street and east on Sherman Street.

Dated this 4<sup>th</sup> day of June, 2018.

Published: 06-15-2018  
Effective: Immediately

Motion by Anderson, second by Martinson and carried with Carstensen, Anderson, Crane, S. Keszler, T. Keszler, Martinson, Waterland and Zerbst voting yes, Bachand voting no, to approve a special events license for The Knuckle Saloon at 1201 Lazelle on August 3-11, 2018.

Motion by Martinson, second by Crane and carried with Carstensen, Anderson, Crane, S. Keszler, T. Keszler, Martinson, Waterland and Zerbst voting yes, Bachand voting no, to approve a special events license for The Knuckle Saloon at 1401 Lazelle on August 3-11, 2018.

Motion by S. Keszler, second by Anderson and carried with Carstensen, Anderson, Crane, S. Keszler, T. Keszler, Martinson, Waterland and Zerbst voting yes, Bachand voting no, to approve a special events license for The Oasis Bar/Fireside Lounge at 985 Harley-Davidson Way for August 3-11, 2018.

Motion by Waterland, second by Martinson and carried with all members present unanimously voting yes to approve a special events license for The Knuckle Saloon at 985 Harley-Davidson Way for the Tatanka Festival on July 7, 2018.

Motion by Waterland, second by Zerbst and carried with all members present unanimously voting yes to approve second reading of Ordinance 2018-06 – Title 31 – Licensing of Temporary Businesses.

**ORDINANCE 2018-06**  
**AN ORDINANCE AMENDING TITLE 31 – LICENSING OF TEMPORARY**  
**BUSINESSES**

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota that Title 31 - Licensing of Temporary Businesses – Chapter 31.01 – General Provisions – Sections 31.01.01 & 31.01.03 – Chapter 31.02 – Licensing and Regulation of Vendors, Transient Businesses, Trades and Merchants – Chapter 31.03 – Licensing of Peddlers and Solicitors – Sections 31.03.01 & 31.03.03, to be amended to read as follows:

**TITLE 31**  
**LICENSING OF TEMPORARY BUSINESSES**

(Title 31 revised in entirety by Ordinance 2016-14, effective 01/25/2017)

**CHAPTERS:**

31.01: General Provisions

31.02: Licensing and Regulations of Vendors, Transient Businesses, Trades and Merchants

31.03: Licensing of Peddlers and Solicitors

**CHAPTER 31.01**  
**GENERAL PROVISIONS**

**SECTIONS:**

31.01.01: Scope and Purpose

31.01.02: Definitions

31.01.03: Severability

31.01.04: Penalty

**31.01.01: SCOPE AND PURPOSE**

SDCL 9-34 provides the authority for municipal licensing of many non-traditional businesses which can have a negative impact the health and public safety of residents of a municipality. That legislation specifically allows municipalities to license and regulate activities such as exhibitions, second hand stores, tattoo services, piercing services, fortune tellers and mind readers, auctioneers, transient merchants, peddlers, solicitors, pawnbrokers, ticket scalpers and food preparation and sales. The City of Sturgis, population of about 6,700, is home to one of the largest tourist events in the U.S., the annual Sturgis® Motorcycle Rally™. The event has had an annual attendance estimated to range from 250,000 persons to over 500,000 persons participating. Tourists travel from across the United States and from other parts of the world to be in the Sturgis community area each year for it. They come to participate in the buying and selling of many and varied items, to attend concert activities, to camp and to travel throughout western South Dakota, and to meet others from around the world and socialize in a unique tourist environment.

The City of Sturgis is the epicenter of the Rally and faces significant responsibilities in hosting this large event every year. The primary focus of the municipal activities is to provide a safe, healthy and friendly atmosphere that will allow the Rally™ to flourish and grow. To accomplish this aim, the City incurs costs each year of well over \$1,000,000. Those costs are incurred to provide needed trash collection, recycling, water service, sewer service, adequate police and public safety staff, necessary ambulances service and similar needed services. To offset those very substantial costs and avoid an unfair burden on property tax payers in the community, the City has adopted and subsequently revised this ordinance to follow that statutory authority to license and assess fees to those who vend, sell, display and market during the annual Rally™. It is the intent of the Council, in following that statutory authority, that those who operate temporary businesses and who are the primary beneficiaries of the business and marketing that results from a stable Rally™ event will bear the majority of the costs associated with providing and maintaining that safe venue each and every year.

Recording and production policy: It is the policy of the City to ensure that filming, recording and related activities do not unreasonably interfere with public health, safety or welfare, or endanger any property. It is intended that this chapter be construed as consistent with the evolving technology of motion picture and television filming and production. It is the policy of the city to encourage professional motion picture, television production industry and digital recording entities to use City locations and backdrops, services and crew members to support the economic development goals of the City.

### **31.01.02: DEFINITIONS**

A) VENDOR: For the purpose of this Section, a vendor is any person, firm, corporation, partnership association, business, service provider or retailer as defined by SDCL10-45-1, or operating as a retailer as defined in SDCL10-45-1, and not exempt as defined in Subsection 31.02.03.07 herein, not operating throughout the year within the City and which, in conjunction with an event where the City invests more than \$100,000 in hosting the event engages in temporary or transient business in the City selling, marketing or displaying goods, wares, merchandise or services, including automated teller services, or a permanent business person, firm or corporation which is located within the City limits away from its or its usual operating place of business and who, for the purpose of carrying on such business, hires, leases, or occupies any room, building, structure, or space for the exhibition or sale of such goods, wares, merchandise, or services during any days of the event. The person, firm or corporation so engaged in business as defined by SDCL 45-10-1, or operating as a retailer as defined in SDCL 45-10-1, unless exempt as defined in Subsection 31.02.03.07 herein, shall not be relieved from the provisions of this Section by reason of association with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer. This definition shall include any

person planning to film or record in public areas within the City. The person shall file an application with the City as set forth in this Title. For all filming or recording activities not exempt as listed in #31.02.03.06, the application shall be accompanied with the required Vendor License fee established in subsection 31.02.03.02 and Special Sanitation Fee and, if applicable, the Mobile Merchandising Fee and when necessary with a property use or Recording Agreement prepared by the City of Sturgis.

For the protection of the public health, safety and property of residents and visitors, the City shall include in any such Recording Agreement all of the terms and condition intended to protect the public interest and the City's separate interest, as they may exist. The charges and fees to be included in each such Agreement are intended to provide reasonable revenue to the City the use, maintenance, and upkeep of all public City resources provided to the Vendor (Film) licensee as part of said Recording Agreement.

### **31.01.03: SEVERABILITY**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof so long as the original intent of the parties for the permit can still be accomplished.

## **CHAPTER 31.02 LICENSING AND REGULATION OF VENDORS, TRANSIENT BUSINESSES, TRADES AND MERCHANTS**

### **SECTIONS:**

31.02.01: Sales and Marketing within the Right of Way

31.02.02: Peddling in Parks

31.02.03: Licensing of Vendors, Transient Businesses, Trades and Merchants

31.02.03.01: Vendor License Required

31.02.03.02: Application

31.02.03.03: Fee and Duration of License

31.02.03.04: Issuance

31.02.03.05: Prohibition of Sale of Glass Beverage Containers and Products

31.02.03.06: Exemptions from the Vendor License Fee

31.02.03.07: Refund Fee for Transient Merchant License

31.02.03.08: Required Documentation of Sales Activities

31.02.03.09: Refund Fee for Transient Merchant License

31.02.03.10: Required Documentation of Sales Activities

31.02.03.11: Appeal

### **31.02.01: SALES AND MARKETING WITHIN THE RIGHT OF WAY**

No person may display, market, offer in exchange for donation or sale, or sell any goods, services or merchandise in person or from a cart, wagon, automobile, truck or other vehicle in the streets, thoroughfares, or while within any other public Right of Way, of the City. This Section does not apply to the delivery of farm or garden products, where the order for same was placed in advance, nor does it apply to drayage or the delivery of goods sold in the regular course of an established business. Nothing in this paragraph shall prohibit the City from entering into a contract for the sale of ice cream and sundries for immediate sale on conditions agreed to by the Common



Council, or prohibit the City from entering into a lease agreement to allow the display or sale of goods or services in the Public Right of Way. A person within the definition of Vendor in subsection 31.01.02 of this Title, may market or display (not sell) their products or services on property open to the public and zoned for such marketing if they have obtained a Temporary Vendor license and have paid the additional Special Sanitation fee and also paid the additional \$100 public area merchandising fee. At no time is a licensed Vendor permitted to interfere with pedestrian or vehicular traffic flow.

### **31.02.02: PEDDLING IN PARKS**

It shall be unlawful for any person to display, market, sell or offer to sell to any person within any municipal park of the City, any goods, services, wares, merchandise, books, pictures, novelties, souvenirs or trinkets or any other article of commerce and trade, including goods of his own production or manufacture. This provision shall not include sales by the City or any organization having an approved lease agreement with the City nor shall it prohibit such activities by a person occupying a portion of the park under a valid concession or lease agreement with the City.

(31.02.03 Title change with Ordinance 2017-05, effective 5/31/2017)

### **31.02.03: LICENSING OF VENDORS, TRANSIENT BUSINESSES, TRADES AND MERCHANTS**

#### **31.02.03.01 Vendor License Required**

Any firm, person, or corporation which intends to operate a temporary business as set forth in the definition of Vendor in this Title within the corporate limits of the City of Sturgis in conjunction with an event where the City invests more than \$100,000 in hosting the event shall be required to purchase a vendor license for each structure, stand, tent, vehicle, booth, location or place which is used by such merchant for the sale or distribution of goods. The person so engaged shall not be relieved from the provisions of this Section by reason of association with any local operating business, dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business. The vendor license must be posted in each individual vendor location during operation.

#### **31.02.03.02 Application**

To obtain a license, an applicant shall file, in the office of the City Finance Officer, a verified application stating his or her name, and residence, description and identification of the place in which he or she proposes to do business, dates of operation, name, address, phone number and e-mail address of property owner where business will take place and, the description of the goods he or she intends to handle. Applicant's valid South Dakota State sales tax number shall be included as part of the application, and any application submitted without a valid Sales Tax license number will not be processed for issuance of a temporary vendor license. A South Dakota State Department of Health license, when required for applicant's business, shall also be presented at the time of application.

A) The license fee for each vending area, for payment of both the Vendor License fee and the Special Sanitation fee, shall be as follows:

1. ATM machine/equipment, area of 25 square feet or less, \$100.00
2. Vending area of 100 square feet or less, \$560.00
3. Vending area of 101 to 400 square feet, \$850.00
4. Vending area of 401 to 800 square feet, \$1000.00
5. Vending area of 801 to 1200 square feet or less, \$1200.00

6. Vending area of more than 1200 square feet, \$1500.00

Each vending area separated by a distance of three (3) feet or more from another vending area shall be subject to a separate license fee. Regardless of any shared resources, expenses or any corporate affiliation or other cooperative business activities, each temporary business shall be required to obtain a separate temporary business license.

**31.02.03.04 Issuance**

Upon receipt of the application and payment of the fee described in this section and final approval, the Finance Officer shall issue a license to the applicant to operate as a vendor at a place described in the application and for the time for which the license fee has been paid in advance. Any applicant that has had their license issued who subsequently changes location and submits an amended application to show that change shall be charged a supplemental administrative fee of \$100.00 to obtain an amended license. Any vendor that changes location without obtaining an amended license as provided herein shall be subject to the penalty provisions set forth at section 31.01.03 of this Ordinance. This supplemental administrative fee shall also apply to organizations which are exempt from the Vendor License fee but are subject to the Special Sanitation fee imposed by ordinance 11.04.12. Upon receipt of completed application, the City may deny issuance of a Vendor license if:

- a. the applicant fails to meet any condition imposed pursuant to the provisions of this Title or this chapter, or
- b. if the proposed Vendor activities are described in a manner that indicates they will be conducted in a manner or location not meeting the health, zoning, fire or building and safety standards established by the ordinances of the City, or otherwise be conducted in apparent violation of any state or federal laws or regulations.
- c. the application submitted appears to contain false, misleading or fraudulent statement of fact in the application other documents submitted as part of the application process.

**31.02.03.06 Exemptions from the Vendor License Fee**

The exemptions to the requirement to purchase a vendor license are stated in paragraphs A through G below. Regardless of any shared resources, expenses, corporate affiliation or relationship, other cooperative business activities, or any contract or agreement between businesses, each temporary business shall be required to obtain a separate business vendor license. Each vending area separated by a distance of three (3) feet or more from another vending area shall be required to obtain a separate license fee. All Sale, display, marketing or similar activities that are not specifically described within the following exemptions shall not qualify for an exemption from the Vendor License fee.

- a) Sales where the applicant has demonstrated by verifiable documentation that the proceeds are to be used exclusively for religious, charitable or benevolent purposes. Written proof of such religious, charitable, or benevolent non-profit status as declared by the IRS (i.e. 501(c)(3) documentation) and compliance with the notice provisions of SDCL 22-25-25(6) when required, must be presented when the application is submitted. These exclusions still must comply with the Special Sanitation fee outlined in Title 11.
- b) Sales to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufacturers.
- c) The sales of fruits, vegetables or farm or garden products in their natural state.
- d) Sales by youth age 15 years and under of lemonade and like items and incidentals occurring at and within the boundaries of property at they reside, shall be exempt from the Temporary Vendor License and Special Sanitation fees.
- e) Parking lots on private property, when Vendor License application states that parking of vehicles is the only sales or marketing activity to be conducted on the premises identified in

the Vendor application, shall be exempt from the Temporary Vendor License and Special Sanitation fees.

- f) A business which has submitted a complete application as required by subsection 31.02.03.02 of this Title which shall include:
  - 1) Copies of applicant's South Dakota sales tax returns for the location within the City at which the Vendor seeks exemption, and
  - 2) Proof documenting that applicant has paid aggregate municipal sales tax from January 1<sup>st</sup> through July 31<sup>st</sup> of the calendar year for which the Vendor permit application is submitted, and that such tax payments by applicant equal or exceed the amount of the combined Vendor license and Special Sanitation fees which applicant would otherwise be required to pay under subsection 31.02.03.04 (B) above, and
  - 3) Verification by applicant that it also operates in all other respects in compliance with all state and federal laws and local ordinances,  
Then that applicant is exempt from payment of the Vendor license and Special Sanitation fee required by Subsection 31.02.03.04.
- g) An automated teller service(s) provided by a bank or credit union, licensed by the State of South Dakota, through equipment located upon its own business premises.
- h) Retailers that are selling or displaying merchandise on the same parcel as a permanently established retailer within the City limits that sells the same products within its establishment on a year-round basis.
- i) The following activities are exempt from the Vendor License (film and recording) requirement:
  - 1) The filming, videotaping or digital recording of images within the City solely for personal use of the recorder, to be done without interference with any other use of public Rights of Way or public property within the City, or
  - 2) The filming, videotaping or digital recording of images within the City for intended use in a criminal investigation proceeding, or
  - 3) filming, videotaping or digital recording of images within the City for public news broadcast or distribution.

Although not required to obtain a film permit, any person engaged in any activity listed above is required to comply with general regulations governing public safety and health.

### **31.02.03.07 No Transfer of Vendor Permit or Recording Agreement**

A permit issued to any person pursuant to the provisions of this chapter shall not be transferred to any other person nor apply to any other location(s) than that specified in the permit application without the written consent of the City Manager or as allowed by this Title. Failure to comply with this section shall constitute good cause to revoke or suspend the permit.

### **31.02.03.08 Suspension or Revocation of a Vendor License**

Any Vendor license issued pursuant to this chapter is may be suspended or revoked if the City Manager or designee determines:

- 1. That the Vendor license activities are being or will be conducted in violation of any condition required for issuance of the Vendor License, or
- 2. That the Vendor license activities are being or will be conducted in violation of any provision of this Title, or in apparent violation of state or federal laws or regulations, or
- 3. That the Vendor license activities are being or will be conducted in a manner which poses a threat to public health, safety, welfare or property; or
- 4. The Vendor license was issued in error or contrary to law.

Except for situations of emergency, notices of suspension or revocation shall be in writing and shall specifically set forth the reasons for the revocation. In an emergency requiring immediate suspension or revocation, the City Manager or designee may notify the Vendor license holder verbally of the suspension or revocation. A suspension or revocation may be appealed as provided herein.

#### **31.02.03.09 Refund Fee for Transient Merchant License**

The City of Sturgis is hereby authorized to refund a Temporary Vendor License fee, provided that written notice from the applicant requesting that the license be cancelled is received at the City Finance Office within 30 days of the conclusion of the event. The City Manager will decide on each individual request. Should a request be denied, the applicant may appeal the denial to the City Council. In addition, a Vendor may request a refund of the Vendor fee by Nov. 15 of each year of the event if the municipal sales tax paid as described in 31.02.03.07 (f) 2 from January 1 through July 31 and September 1 through Oct. 31 is equal to or greater than the Vendor fee that was paid for the event.

#### **31.02.03.10 Required Documentation of Sales Activities**

It is the responsibility of every Vendor License holder to maintain the necessary records to comply with the minimum state requirements of sales tax reporting and municipal ordinances as applied to a business operator or retailer as defined in South Dakota Codified Law 10-15-1, as well as a sales tax licensee. Evidence and documents to show proof of compliance with these requirements shall be provided by the retailer, business operator or licensee immediately upon the request of any authorized representative of the South Dakota Department of Revenue, any law enforcement officer or any municipal official appointed by the City Manager to enforce this title. The records to be maintained are the following:

- a) Sales receipts that are sequentially numbered with duplicate copies recorded during or immediately upon completion of each transaction, in the form of cash register tape, written or printed credit card receipts, or hand written sales receipts that identify the item sold, the sale price, the tax charged and the time and date of the transaction.
- b) Inventory records, including a statement of beginning inventory of merchandise, for a minimum of three years preceding the date of inspection of the transaction record, consistent with the requirements of SDCL 10-45-85.
- c) A written list of suppliers, including names, addresses and phone numbers of the supplier, for all suppliers used by the licensee for the three years preceding the date of inspection of the supplier list, consistent with the requirements of SDCL 10-45-87.

A violation of this provision shall follow the penalties described in Section 31.01.03.

#### **31.02.03.11 Appeal.**

Upon the denial, suspension or revocation of a permit under this chapter, the applicant is prohibited from conducting filming, videotaping or producing motion pictures within the city until such time as an appeal has been heard and the denial has been reversed as provided herein. Any person aggrieved by the action of the City in the denial of a license application shall have the right of appeal. Such appeal shall be taken as provided for by Title 36 of the City Ordinances.

## **CHAPTER 31.03 LICENSING OF PEDDLERS AND SOLICITORS**

### **SECTIONS**

31.03.01: Peddler License Required

31.03.02: Fee

31.03.03: Application for Peddler License

- 31.03.04: Issuance
- 31.03.05: Prohibited Conduct
- 31.03.06: Suspension of Peddler License
- 31.03.07: Penalty for Violation

### **31.03.01 PEDDLER LICENSE REQUIRE**

It is unlawful for any person, under the authority of SDCL Chapter 9-34, to engage in Peddler (door to door) sales within the City for the period between January 1 and July 31, and August 20 and through December 31 of each year without first obtaining a Peddler License from the Department of Planning & Permitting.

- a. The duration of a Peddler License shall be twelve (12) consecutive days, and upon approval a qualified applicant may apply for and purchase additional licenses.
- b. Each natural person engaging in Peddler sales within the City shall be required to have a separate Peddler License, whether acting for himself or herself or as an agent or representative of another.

### **31.03.03 APPLICATION FOR PEDDLER LICENSE**

An applicant for a Peddler Licenses shall complete an application containing all required information as provided under this Chapter. Failure to provide any of the required information or providing false or misleading material information in connection with the application for a Peddler License is a violation of this Chapter and may result in denial of the application, forfeiture of the application fee in addition to other penalties for a violation of this Title. The information to be provided shall include the following:

Adopted this 4th day of June, 2018.

First reading: 05-21-2018  
Second reading: 06-04-2018  
Adopted: 06-04-2018  
Published: 06-15-2018  
Effective: 07-06-2018

Motion by Bachand, second by Martinson and carried with all members present unanimously voting yes to approve first reading of Ordinance 2018-07 – Title 11 – Health and Sanitation.

Motion by Waterland, second by Anderson and carried with all members present unanimously voting yes to approve tabling Ordinance 2018-08 – Title 6 – Cemetery.

Motion by Martinson, second by Crane and carried with all members present unanimously voting yes to approve first reading of Ordinance 2018-09 – Title 37 – City Transit.

The City Manager reviewed the financing options for the new Public Works Campus including the need to invest city funds above and beyond the Rural Development loan. A motion to approve purchase of an existing building for the new public works campus failed for lack of a motion.

The following bids were received on May 10, 2018 for the Public Works Campus: Ainsworth-Benning Construction-\$4,453,000; MAC Construction-\$5,128,000; Scull Construction-\$4,657,000.

Motion by Martinson, second by Waterland and carried with all members present unanimously voting yes to accept the low bid from Ainsworth-Benning Construction of \$4,453,000 with the City Manager signing all documents for this project.

Any other business:  
None

Motion by Crane, second by Zerbst and carried with all members present unanimously voting yes to go into executive session for personnel and contracts at 8:17 pm.

Motion by Anderson, second by Waterland to return to regular session at 8:53 pm.

Motion by T. Keszler, seconded by Crane and carried with all members present unanimously voting yes to adjourn the meeting at 8:54 pm.

ATTEST: \_\_\_\_\_  
Fay Bueno, Finance Officer

APPROVED \_\_\_\_\_  
Mark Carstensen, Mayor

Published once at the total approximate cost of \$