

TITLE 31
LICENSING OF TEMPORARY BUSINESSES

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

CHAPTERS:

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CHAPTER 31.01
GENERAL PROVISIONS

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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.

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 SDCL 10-45-1, 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 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.

- B) VENDING AREA: This is defined as the area in which all of the related and supportive activities for the operation of a business granted a temporary business license under this Title can be found. The area shall include the area for keeping all materials, equipment, inventory, components and other items related to the temporary business if located on the same premises. This definition shall also include any area used by the business to assemble, display, market, demonstrate or provide a tryout of any of the goods or services displayed, offered for sale or otherwise made available to consumers the licensed temporary business. The definition shall also include the area for meeting with potential or actual clients, buyers, or customers, and shall also include the space needed to prepare the goods or services for transfer to the client, buyer or customer, as well as all of the area used in any manner for preparing, cooking, serving or consuming any food or other consumable product offered for sale to purchasers or given away at no charge to Rally attendees. The common area shared by written agreement between three or more food vendors for their customers to be seated at tables and eat the food products they have purchased from those vendors shall not be included as Vending Area.
- C) YEAR: A twelve (12) month period.
- D) BUSINESS: The activity of buying & selling.
- E) OPERATION: In action, functioning, conducting business as defined within SDCL 10-45-1 or acting as a retailer as defined within SDCL 10-45-1.
- F) EVENT: An organized occurrence or happening where the City provides extraordinary services, including but not limited to sanitation services, law enforcement or traffic control. Includes, but is not limited to, the annual Sturgis® Motorcycle Rally™.

31.01.03: PENALTY

A violation of this ordinance may occur daily, and shall be punishable by a civil penalty of 80% of the combined cost of a Vendor License and the Special Sanitation Fee, plus a separate administrative fee of \$75.00, to be paid before a Vendor License can be issued to the vendor in violation. To avoid additional civil penalty fees for each separate day of operation violation of this ordinance, the vendor shall be required to obtain a valid Vendors License from the City Finance Office within 12 hours of the issuance of the Citation. No right to appeal this penalty to the City Council shall exist until the

full payment of the penalty assessed against the Vendor has been paid to the City and verified by the Finance Office. Any Vendor exercising the right to appeal this penalty provision shall file its request for refund within 30 days of the issuance of the license, and the Vendor may appear in person at the time of the public hearing before the Council, or may be represented by an attorney licensed to practice in South Dakota. In addition to statements by the Vendor during such public hearing, the Council shall consider and determine the credibility of any written material in regard to the appeal submitted to the Council prior to the close of the public hearing.

The Penalty for a violation of this ordinance for an ATM as identified in Section 31.02.03.04 (B) 2 shall total \$75.00.

Any vendor found to be operating without a Vendor License and Special Sanitation Fee twice within a 24 month period shall be prohibited from obtaining a Vendor License in the future unless the Vendor License application is accompanied by combined payment of the administrative penalty and administrative fee set forth in the preceding paragraph, for each separate violation of this ordinance. Any person or entity who is required to obtain a Vendor License and Special Sanitation Fee and who knowingly allows an unlicensed vendor to conduct or engage in business on property they own or which is subject to their control shall be prohibited from obtaining a Vendor License for a period of 400 days after the date of violation.

In addition to the civil penalty and administrative fee set forth above, a violation of this Title is a Class 2 Misdemeanor, punishable by the maximum punishment set forth by the laws of the State of South Dakota pursuant to SDCL 22-6-2.

In addition, any violation of the provisions of this Title may result in the revocation and/or suspension of any license issued pursuant to any Section of this Title.

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

SECTIONS:

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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 may market (not sell) their products or services if they have a temporary vendor location or permanent business location within the City of Sturgis and have paid for an additional Special Sanitation fee as well as an additional \$100 merchandising fee. At no time shall this allow the vendor to obstruct pedestrian or vehicular traffic flow.

31.02.02: PEDDLING IN PARKS

It shall be unlawful for any peddler or other person excepting a person occupying a portion of the park under a valid concession or lease agreement to display goods or services, sell or offer to sell, to any person within any municipal park of the City, any goods, 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.

**31.02.03: LICENSING OF VENDORS, PEDDLERS, SOLICITORS, 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.

31.02.03.03 Fee and Duration of License

- A) A temporary business shall pay a Vendor License fee based on location and size of the overall vending area as set forth below together with the Special Sanitation Fee at the rate established and required by Title 11 of Sturgis City Ordinances for each twelve (12) consecutive day period, or portion thereof, in any calendar year. The combined fee shall be paid at the Finance Office at the time the application is submitted for approval. The Finance Officer shall note on the license the time period for which it is effective. A business may purchase only two (2) vendor licenses per location per twelve (12) month period.
- B) 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.

31.02.03.05 Prohibition of Sale of Glass Beverage Containers and Products

All Vendors licensed under this Title, and business as defined by SDCL45-10-1, or operating as a retailer as defined in SDCL45-10-1, shall be strictly prohibited from offering for sale or making available to the public any beverage in a glass container which would allow consumption of the beverage outside of the licensed vending area of the Vendor.

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 definitions 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 1st through July 31st 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.

31.02.03.07 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.

31.02.03.08 Required Documentation of Sales Activities

It is the responsibility of the Transient Merchant 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.

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