

PROCEEDINGS OF THE STURGIS CITY COUNCIL

The Common Council of the City of Sturgis met in regular session starting at 6:30 p.m. on Monday, August 1, 2011 at the Erskine Building. Present: Mayor Mark Carstensen, Alderpersons, Clint Brengle, Joe DesJarlais, David Hersrud, Marcia Johnston, Jamie McVay, Tim Potts, and Kelly Vasknetz. Also present City Attorney Greg Barnier. Absent: Dane Sundstrom

Mayor Mark Carstensen led everyone in the Pledge of Allegiance.

Announcements:

Motion by Hersrud, second by Potts and carried with all members voting yes to approve the agenda as written.

Motion by DesJarlais, second by Johnston and carried with all members voting yes to approve the minutes from the regular council meeting on July 18, 2011.

Motion by Brengle, second by Johnston and carried with all members voting yes to approve the following claims with the exception of The Homeslice Group, \$4750.00, publ.

**Wages** – Ambulance \$11,084.26; Attorney \$2,741.19; Auditorium \$179.25; Buildings \$1,519.49; Cemetery \$4,571.79; City Manager \$1,633.36; Community Center \$15,807.90; Community Development \$3,543.90; Finance Office \$8,833.37; Fire Department \$2,071.90; Human Resource \$2,406.15; Library \$8,481.81; Liquor \$4,458.72; Mayor and Council \$3,333.27; Parks \$16,773.21; Police \$32,323.72; Rally \$4,572.31; Sanitary Service \$9,456.30; Streets \$8,282.23; Wastewater \$8,820.31; Water \$12,778.54; Federal Withholding \$15,219.15; FICA \$12,023.72.

**Transfers Out** – General Fund \$1,000; UDAG \$22,748.50; Liquor \$15,900.83; Wastewater \$20,891.42; Sanitation \$13,778.50; Special Sanitation \$4,858.42.

**Transfers In** – General Fund \$55,429.17; Revolving Loan Fund \$22,748.50; Sanitation - \$1000.00.

**General** – A&B Business, \$242.27, repair; Laurie Adkins, \$390.00, cc prog exp; Affinity Media, Powersports, \$2030.00, publ-rally; Alliance Packaging Group, \$778.67, city promo-rally; Amazon, \$326.80, supp; Amcon Dist. \$800.05, merch for resale; Janis Anderson, \$35.00, refund; Associated Supply Co, \$353.50, supp; Baker & Taylor, \$425.25, supp; Baseline Surveying, \$460.00, maint; BH Power, \$2526.89, util; BH Rally & Gold, \$3890.38, city promo-rally; BND Builders, \$204.00, supp; Brodart, \$33.06, supp; Jerry Burnham, \$2418.36, prof fee; Campbell Supply, \$893.98, supp; CBH Cooperative, \$202.75, supp; Chamber of Commerce, \$416.67, other; Comfort Inn, \$558.00, travel; Community Center Petty Cash, \$96.22, cc prog exp; Curt Corey, \$565.50, cc prog exp; Dakota Party, \$55.64, supp; Dakotaland Auto Glass, \$165.00, repair; Dan Davidson, \$169.31, supp; Demco, \$238.61, supp; Dish Network, \$79.95, util; EKE Inc, \$66.50, supp; Energy Lab, \$74.20, repair; Fedex, \$325.45, supp; Finance Office Petty Cash, \$136.96, travel; Flexible Benefits Dept, \$72.62, other; FSH Communications, \$120.00, util; G&G Enterprises, \$352.00, merch for resale; Gale Group, \$71.24, supp; Gene Goff, \$30.00, other; Grocery Mart, \$29.98, supp; Hills Materials, \$10,988.43, supp; Integrity Sheet Metal, \$674.83, repair; Interstate All Batteries, \$74.85, supp; J&L Services, \$750.00, maint; Dennis Johnson, \$156.00, cc prog exp; Ashley Kemp, \$30.00, refund; Knology, \$1784.03, util; Lonilers Ent, \$25.00, rally rentals; LPN Holdings, \$4993.31, supp; Maverick Publishing, \$1000.00, publ-rally; Meade Co Auditor, \$5075.37, other; Midamerica Books, \$263.23, supp; Candy Morrell, \$3311.09, maint; Motoring USA, \$11,780.00, prof fee; Neve's Uniforms, \$1217.69, supp; Northern Hills Vet Clinic, \$130.00, prof fee; Owens Interstate, \$124.57, repair; Pamida, \$220.09, supp; Park Avenue Car Wash, \$300.00, supp; Pennington Co Sheriff, \$300.00, prof fee; Pete Lien & Sons, \$1585.00, supp; Pictometry, \$2165.00, travel; Pitney Bowes, \$583.50, rental; Poly John Enter., \$241.47, supp; Powerplus Electric, \$464.98, repair; Print Mark-et, \$797.99, publ; Purchase Power, \$2427.74, supp; Qwest Comm; \$53.17,

util; Jim Rayzor, \$136.50, cc prog exp; Kim Roberts, \$45.00, refund; Rushmore Office, \$1247.04, supp; Sage Publications, \$285.94, supp; Tim Slama, \$78.00, cc prog exp; Star Boyz Productions, \$3500.00, rally; Sturgis Harley-Davidson, \$13.99, supp; Sturgis Yamaha-BMW, \$425.00, transient vendor; Summit Signs, \$850.00, supp; The Real Estate Center, \$4000.00, supp; Tom's T's, \$255.35, cc prog exp; Turbiville Industrial Electric, 138.49, repair; Twilight First Aid, \$154.40, supp; Vanway Trophy, \$252.00, cc prog exp; Matt Veal, \$30.00, other; Verizon, \$2065.50, util; West Payment Center, \$380.00, supp; Donald Whitehead, \$30.00, other; James Williams, \$234.00, cc prog exp; Zep Manufacturing, \$255.89, supp.

**Brick Project** – Fedex, \$50.48, supp; Sam Erion Construction, \$6470.88, prof fee.

**Ambulance Service** – Admiral Life Insurance, \$11.05, amb chrg; American Family Health, \$11.05, amb chrg; Bankers Life, \$11.05, amb chrg; BH Power, \$541.54, util; Century Business Products, \$44.42, supp; DB Billing, \$1327.66, prof fee; First Administrators, \$11.05, amb chrg; Flexible Benefits Dept, \$7.70, other; Gerber Life Insurance, \$11.05, amb chrg; Knology, \$84.23, util; Owens Interstate, \$5.70, supp; Print Mark-et, \$57.00, publ; Rushmore Office, \$109.93, supp; United Commercial Travel, \$11.05, amb chrg; Verizon, \$68.32, util.

**Mayor's Ride** – BH Rally & Gold, \$905.00, supp.

**Special Sales Tax** – Chamber of Commerce, \$10,416.67, chamber; SEDC, \$10,416.67, ind dev.

**Capital Improvement** – Brosz Engineering, \$1482.59, cap imp; Stanley Johnsen Concrete, \$230,590.05, cap imp.

**Special Sanitation** – Low & Mean LLC, \$175.00, spec san; Sturgis Yamaha, \$175.00, spec san.

**Liquor** – Ace Steel & Recycling, \$463.60, repair; Amcon, \$18,115.15, cig for resale; Campbell Supply, \$76.41, repair; Cask & Cork, \$117.00, off sale liquor; Jim Dandy Snack Food, \$150.00, snack for resale; Knology, \$163.82, util; Lynchburg Hardware, \$1380.60, merch for resale; Mobile Mini, \$817.00, supp; One Way Service Pros, \$651.03, supp; Print Mark-et, \$57.00, publ; Rushmore Office, \$467.59, supp; Sand Creek Printing, \$564.81, supp; Tatiana's Import Beverage, \$59.20, off sale beer;; Valiant Vineyard, \$1320.00, off sale liquor; Verizon, \$53.64, util.

**Water** – BH Power, \$7601.04, util; Flexible Benefits Dept, \$6.88, other; Knology, \$119.48, util; Candy Morrell, \$362.55, maint; Print Mark-et, \$57.00, publ; Verizon, \$373.75, util.

**Wastewater** – AT&T Mobility, \$165.84, util; Campbell Supply, \$269.12, Repair; Century Business Products, \$32.26, repair; Energy Lab, \$431.00, prof fee; Foothills Seed, \$634.00, repair; Candy Morrell, \$238.18, maint; Owens Interstate, \$399.01, repair; Print Mark-et, \$57.00, publ; Rapid Diesel Service, \$834.74, repair; Verizon, \$417.90, supp,util.

**Sanitary Service** – Butler Machinery, \$60.76, repair; Campbell Supply, \$103.35, repair; CBH Cooperative, \$47.99, supp; Century Business Products, \$195.76, prof fee; Fastenal Company, \$52.52, pro fee; Candy Morrell, \$238.18, maint; Northwest Peterbilt, \$69.52, repair; Owens Interstate, \$479.94, repair; Print Mark-et, \$57.00, publ; Rotonics Manufacturing, \$382.06, supp; Sanitation Products, \$521.22, repair; Street Dept Petty Cash, \$8.60, repair; Robert Telkamp, \$35.00, repair; Verizon, \$44.58, util.

**Community Center Children's Fund** – Sturgis Community Center, \$60.00, Motion by Potts, second by DesJarlais and carried with Carstensen, DesJarlais, Hersrud, Johnston, McVay, Potts and Vasknetz voting yes and Brengle abstaining to approve the following claim: The Homeslice Group, \$4750.00, publ.

#### Committee Report:

Councilor Johnston reported that the Library summer programs are done. The Library Board met last Wednesday and reviewed the changes to the 2012 budget request and also discussed the plans for redoing the courtyard fountain later this month.

Councilor Johnston reported that the Sturgis Motorcycle Museum Roger Scheiman 2010 inductee will shave his head for the Save or Shave event being put on by Kids & Chrome to raise money. The event will take place on Sunday, August 7 at the Buffalo Chip Campground.

Mayor Carstensen reported that there were 50 applications received for the City Manager position and that the recruitment team has narrowed that down to 4 applicants that will visit Sturgis in the near future. Plans are to have a City Manager on board within 30 to 60 days.

Management Team Report:

Motion by McVay, second by Brengle and carried with Brengle, Carstensen, DesJarlais, Hersrud, McVay, Potts and Vasknetz voting yes and Johnston abstaining to approve the following new hires: **Rally:** Daily Parking-Brie Groves-\$8.00. **Community Center Rally help:** Custodial-Zac Lasnetske, Vanessa Lester and -\$8.50; Custodial-Auditorium- Bettina Seidel- \$8.50; Towel Attendant-Lauren Fowler-\$8.50; Rally Concessions-Daniele Johnston and Errin Short-\$8.50.

Finance Officer Bueno reported that the overall sales tax is running even with last year.

Motion by McVay, second by DesJarlais and carried with all members voting yes to confirm the recommendation from Planning and Zoning that the 80' flag pole is within the exceptions in our ordinance. This request is for the 80' flag pole that is located at the Sturgis RV Park, formerly Mt. Rodney RV Park.

McVay introduced the following written resolution and moved its adoption:

**RESOLUTION 2011- 25**

**A RESOLUTION TO PERMIT OPEN CONTAINERS ON CERTAIN PUBLIC PROPERTY AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY**

WHEREAS the Sturgis Mustang Rally is an event that brings many tourists to the City of Sturgis and the surrounding area, and

WHEREAS the City of Sturgis has supported the Sturgis Mustang Rally event in past years, and

WHEREAS the Sturgis Mustang Rally organizers have requested a designation of an open container area within a portion of the public property of the City of Sturgis, and

WHEREAS the request from the Sturgis Mustang Rally is permitted under the authority of state law;

NOW THEREFORE IT IS HEREBY RESOLVED as set forth herein that the City of Sturgis shall hereby establish an open container area on September 3, 2011 from 10:00 am to 7:00 pm on the public property open to the public in area West to East beginning on the West from Fourth Street and bounded on the East by Middle Street, and made up of the public Right of Way of Fourth Street, Third Street, Second Street, First Street and Middle Street, and from North to South bounded by an area of public property open to the public including the Right of way of Dudley Street and Main Street, as well as the public alley both to the North and to the South of Main Street, and also including the City-owned open space lying North of Lazelle Street and South of the Creek bed, but not including other City Property not open to the public, and not including any private property within this area.

Published: 08-10-2011

Effective: 08-31-2011

Hersrud seconded the motion for the adoption of the foregoing resolution.

Roger Scheiman, Steve Anders and Pastor Dan Ziebarth stated that they were opposed to lifting the open container ordinance for the Mustang Rally.

Motion by McVay, second by Johnston and carried with Carstensen, Johnston, McVay and Potts voting yes, DesJarlais, Hersrud and Vasknetz voting nay and Brengle abstaining to amend the preceding resolution to change the description of the open container area to have the boundary be from Sherman Street to the creek and Middle Street to 4<sup>th</sup> Street and that the description be contingent on whether the Department of Transportation will allow the open container on Lazelle Street. The Council then considered the initial motion and the foregoing resolution with Carstensen, Johnston, McVay and Potts voting yes, DesJarlais, Hersrud and Vasknetz voting nay and Brengle abstaining and the resolution was declared passed and adopted.

Motion by Brengle, second by McVay and carried with all members voting yes to approve the transfer of an airport hanger lease from Mark Blum to Mick Quaal.

Motion by DesJarlais, second by Vasknetz and carried with all members voting yes to authorize the Mayor to sign the agreements for the use of the Sturgis Fairgrounds with the Jackpine Gypsies and the Hell Fighters Christian Ministries for 2011.

DesJarlais introduced the following written resolution and moved its adoption:

**RESOLUTION NO. 2011-24**

**RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.**

**WHEREAS**, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system of waterworks for the purpose of providing water and water supply for domestic, municipal, together with extensions, additions, and necessary appurtenances; and,

**WHEREAS**, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the improvements in accordance with Section 15 of the Act; and,

**WHEREAS**, the City of Sturgis (the "City") currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

**WHEREAS**, the City has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the "System") and has applied to the South Dakota Conservancy District (the "District") for a Drinking Water State Revolving Fund Loan to finance the improvements; and

**WHEREAS**, the City through its Utility Board shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds; and

**WHEREAS**, the City deems it necessary to provide for interim financing for a United States of America Rural Development Loan.

**NOW THEREFORE BE IT RESOLVED** by the City as follows:

**Definitions.** The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

**“Act”** means South Dakota Codified Laws Chapter 9-40.

**“Loan”** means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

**“Project”** means Sturgis Water System Improvement Project.

**“Revenue Bond”** means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

**“System”** means the City’s system of waterworks used for the purpose of providing water and water supply for domestic, municipal, and industrial purposes.

**“Utility Board”** means the City’s Utility Board created under SDCL Chapter 9-39 under which the control and management of the System has been placed.

**Declaration of Necessity and Findings.**

**Declaration of Necessity.** The City hereby declares and determines it is necessary to construct and finance improvements to its drinking water facilities within its System described as the Project.

**Findings.** The City does hereby find as follows:

The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law.

Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, that only the net income from the Project financed by the Revenue Bond be pledged for its payment.

**Authorization of Loan, Pledge of Revenue and Security.**

**Authorization of Loan.** The City hereby determines and declares it necessary to finance up to \$3,615,000 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

**Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the “Loan Agreement”), the form of which is on file with the City Finance Officer (the “Finance Officer”) and open to public inspection, between the City as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

**Approval of Revenue Bond.** The issuance of a revenue bond in a principal amount not to exceed \$3,615,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the “Revenue Bond”) shall be and the same is, in all respects,

hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

**Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of and interest on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

**Special Charge or Surcharge for Revenue Bond.** The City does hereby and shall through the Utility Board create the Revenue Bond Special-Surcharge District (the "District") which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

**Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

**Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of and interest and Administrative Surcharge on the Revenue Bond when due.

**Segregation.** The Finance Officer shall setup bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue and surcharge.

**Periodic review.** The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

**Additional Bonds.** As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no

provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

**Project Fund Accounts.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

**Project Revenue Account.** There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the Resolutions and resolutions of the City of Sturgis, South Dakota (collectively the "Rate Resolution"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

**Project Debt Service Account.** Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following January 15, April 15, July 15, or October 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

**Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;

To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:

To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or

To be used for any other authorized municipal purpose designated by the Common Council.

No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of The First National Bank in Sioux Falls, Sioux Falls, South Dakota, hereby designated as paying agent and registrar.

**Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

**Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).

**Covenants.** The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

The City agrees and covenants that it will promptly construct the improvements included in the Project.

The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal and interest on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

**Depositories.** The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City’s governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

**Severability.** If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section,

paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

**Repeal of Resolution.** At such time as the Revenue Bond are defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the City.

**Authorization of City Officials.** The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

**Effective Date.** This Resolution shall take effect on the 20<sup>th</sup> day following its publication, unless suspended by a referendum.

Adopted at City of Sturgis, South Dakota, this 1st day of August 2011.

Adopted: 08-01-11

Published: 08-10-11

Effective: 08-31-11

Johnston seconded the motion for the adoption of the foregoing resolution with all members voting yes and the resolution was declared passed and adopted.

Motion by DesJarlais, second by Hersrud and carried with all members voting yes to authorize the Mayor to sign the contract for a generator for the Water Department.

Motion by Vasknetz, second by Johnston and carried with Carstensen, DesJarlais, Hersrud, Johnston, McVay, Potts and Vasknetz voting yes and Brengle abstaining to set a public hearing date of September 6, 2011 for a request for a Special Events license for Loud American Roadhouse at the Auditorium on September 10, 2011.

Hersrud introduced the following written resolution and moved its adoption:

**RESOLUTION 2011-26  
RESOLUTION TO DISPROVE OR OBJECT TO PUBLIC RAFFLE**

**WHEREAS**, the City of Sturgis has by Ordinances enacted by the City Council limited the use of public raffles within the city to public purposes intended to provide for the benefit and safety of the members of the community, balanced with the purpose to encourage commerce and the development of a healthy and robust business and community atmosphere, and

**WHEREAS**, the Cruise for a Cause has submitted a application to conduct a public raffle within the City of Sturgis beginning on September 2, 2011 and continuing until September 5, 2011, at which time they would award the raffle prize in a drawing to be held on October 8, 2011 at Chula Vista Resort, Wisconsin Dells, WI.

**WHEREAS**, Cruise for a Cause presented its application to conduct this raffle to the City Finance Office on July 25, 2011 and proposed to begin to sell such raffle tickets on September 2, 2011, and

**WHEREAS**, the request of Cruise for a Cause to conduct this public raffle has met all the requirements of City Ordinance, and has met all the requirements of state law as well as the administrative requirements of the City Finance Office in submitting its application,

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the Sturgis City Council that the application Cruise for a Cause to conduct a public raffle in the City of Sturgis fails to Disproved and Objected to, as provided for in SDCL 22-25-25(6) for the reason that the .

RESOLVED, this 1st of August, 2011.

Published: 08-10-11

Effective-08-31-11

McVay seconded the motion for the adoption of the foregoing resolution with DesJarlais, Johnston, Hersrud and McVay voting yes and Brengle, Carstensen, Potts and Vasknetz voting nay the resolution failed.

Any Other Business:

Jack Hoel made a formal request to the Mayor and City Attorney for copies of public documents pertaining to the Trademarks.

Billy Fields, owner of Roscoz' Steakhouse, came before the Council to comment about the barricades and cones that were put up on Lazelle Street. This denies access to his business and has financially hurt his business and he feels it will hurt the City of Sturgis.

Motion by DesJarlais, second by Potts and carried with all members voting yes to go into executive session at 7:30 p.m. for contracts.

Motion by McVay, second by Brengle and carried with all members voting yes to come out of executive session at 8:06 p.m.

Mayor Carstensen adjourned the meeting at 8:06 p.m.

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

APPROVED: \_\_\_\_\_  
Mark Carstensen-Mayor

Publish once at the total approximate cost

