

## 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, November 18, 2013 at the Erskine Building. Present: Mayor Mark Carstensen, Alderpersons, Jason Anderson, Mike Bachand, Branden Bestgen, David Hersrud (arrived at 6:38 pm), Marcia Johnston, Kelly Vasknetz, and Ronald Waterland. Also present City Manager Daniel Ainslie and City Attorney Greg Barnier. Absent: Tim Potts.

Mayor Mark Carstensen led everyone in the Pledge of Allegiance.

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

### Announcements:

The following contribution checks were given out: Sponsorship Fund - Sturgis Rally Charities - \$15,549.67; Mayor's Ride Fund - Sturgis Volunteer Firemen - \$11,000; Sturgis Police Reserves - \$10,000 and Deadwood VFW (Wounded Warrior Project) - \$2000.

The amount of \$9,823.00 that was collected at the Rancher's Relief Fund Soup Supper on October 22, 2013 was presented to Silvia Christen with SD Stock Growers Association.

### City Manager Ainslie reported:

- Ainslie gave a progress report on the Southern Baptist Volunteer groups which is symbolic of all the volunteer groups that have helped out during our disaster. There were 110 volunteers from this group with a cost of 1.6 million dollars with  $\frac{3}{4}$  of that cost within the City. There were 210 job sites completed in the Northern Hills with 75% in the City of Sturgis and 42 job sites left to finish. The jobs have been done for the elderly, handicapped and single parent homes.
- The 2013 budget is at 83% of the calendar year with General Fund at 77%, Liquor at 76%, Water at 111%, Wastewater at 62%, Sanitation at 68% and Ambulance at 138%.

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

1. Consider approval of the minutes from the November 4, 2013 regular council meeting.
2. Consider approval to set a public hearing on December 2, 2013 for Liquor License and Wine License renewals for 2014.
3. Consider adoption of the City of Sturgis Public Record Policy & Procedure.
4. Consider adoption of a policy regarding Budgeted Pay Increases for Part-time Employees.

Motion by Johnston, second by Waterland and carried with Carstensen, Anderson, Bachand, Bestgen, Johnston, Vasknetz and Waterland voting yes, Hersrud abstaining, to approve the following claims with the exception of: **General** - Johnston Hardware, \$315.88, supp; Jump Off Buffalo Ranch, \$6000.00, other; **Liquor** - Johnston Hardware, \$123.48, repair; **Water** - Johnston Hardware, \$41.25, supp; **Ambulance** - Johnston Hardware, \$77.10, supp.; Scott Peterson Motors, \$1345.12, repair; -

**Wages** – Ambulance \$20,520.27; Attorney \$2884.62; Auditorium \$; Buildings \$1522.92; Cemetery \$1861.08; City Manager \$4222.42; Community Center \$9239.26; Finance Office \$8947.85; Fire Department \$2671.95; Human Resource \$2171.81; Library \$8290.23; Liquor \$4263.13; Mayor and Council \$3333.27; Parks \$10,259.28; Planning & Permitting \$3747.57; Police \$34,700.69; Rally \$3271.46; Recreation \$2531.16; Sanitary Service \$11,108.97; Streets

\$9407.26; Wastewater \$6011.87; Water \$13,339.50; Federal Withholding \$15,117.98; FICA \$11,953.95.

**General** – A&B Business, \$242.51, supp; A&B Welding, \$67.20, supp; A&J Surplus, \$158.20, supp; Amcon, \$149.38, merch for resale; Animal Health International, \$8.94, prof fee; Bentz Equipment, \$107.16, repair; BH Chemical, \$569.93, supp; BH Drywall, \$1100.00, other; BH Power, \$28,312.74, util; Brosz Engineering, \$400.00, repair; Butte Electric, \$498.23, util; C&B Aviation, \$186.65, supp; Campbell Supply, \$153.27, repair; Caselle, \$527.99, prof fee; CBH Coop, \$29,850.95, supp; Central Parts Warehouse, \$6658.00, repair; Chain Saw Center, \$103.99, repair; City of Sturgis Rally Petty Cash, \$10.00, travel-rally; Coca Cola, \$666.50, merch for resale; Corbon Law Enforcement, \$328.85, supp; Dakota Backup, \$1288.94, prof fee; Dan's Dumpster Service, \$600.00, repair; Deadwood VFW, \$2000.00, other-rally; Judy Duprel, \$1000.00, grp insur; Ecolab Pest, \$285.42, repair; First Interstate Bank, \$2446.73, travel; Freeman Electric, \$660.21, repair; FSH Communications, \$60.00, util; Glover Investments, \$600.00, rental-rally; Great Western Tire, \$3024.15, repair; Grocery Mart, \$33.84, supp; Ken Grosch, \$30.00, other; Heiman Fire Equip, \$683.70, supp; Lynn's Dakotamart, \$541.22, supp; Meade Co Auditor, \$3286.16, util; Meade Co Times, \$2572.25, publ; Menards, \$41.70, supp; MDU, \$5887.81, util; Motionsoft, \$450.00, prof fee; Neve's Uniforms, \$740.96, supp; Northern Hills Vet Clinic, \$74.93, prof fee; O'Reilly Auto Parts, \$902.06, repair; Joel Ortiz, \$30.00, other; Owens Interstate Sales, \$1212.80, repair; Pete Lien & Sons, \$536.00, supp; Pitney Bowes, \$359.87, rent; Print Mark-et, \$920.67, publ; Purchase Power, \$1019.99, supp; Rapid City Journal, \$136.95, publ; Rapid Delivery, \$10.80, supp; Rasmussen Mechanical, \$5617.62, repair; Robert Sharp & Assn, \$547.40, publ-rally; Rushmore Office, \$598.00, supp; Sand Creek Printing, \$41.00, supp; SD Parks & Recreation Assn, \$250.00, travel; SD Tourism, \$575.00, travel-rally; Servall Towel, \$633.77, supp; Shopko, \$640.39, supp; Stern Oil, \$1929.38, supp; Sturgis Napa, \$1001.53, repair; Sturgis Police Reserves, \$10,000.00, other-rally; Sturgis Rally Charities, \$15,549.67, other-rally; Sturgis Volunteer Fire Dept, \$11,000.00 other-rally; Sturgis Wild West Days, \$1000.00, deposit rtn; Tom's T's, \$1303.00, supp; Town-N-Country Plumbing, \$215.85, repair; Geody Vandewater, \$25.00, grp insur; Vanway Trophy, \$20.00, supp; Weimer's Diner, \$15.60, supp; West Payment Center, \$121.18, prof fee; West River Electric, \$392.25, util; WOW! Business, \$492.68, util.

**Capital Improvement** – Fourfront Design, \$24,779.95, cap imp; Hills Materials, \$168,754.00, cap imp; Meade Co Auditor, \$10,000.00, cap imp.

**Liquor** – Arctic Glacier USA, \$177.35, merch for resale; BH Power, \$3803.80, util; Cask & Cork, \$200.00, off sale liquor; Coca Cola, \$393.10, pop for resale; Eagle Sales, \$21,698.28, off sale beer; Ecolab Pest, \$98.03, repair; Epic Outdoor Advertising, \$1025.00, pub; First Interstate Bank, \$697.09, travel; Fisher Beverage, \$12,355.32, off sale beer, Freeman Electric, \$250.00, repair; Johnson Western Wholesale, \$20,978.93, off sale liquor; Mobile Mini, \$196.57, supp; MDU, \$97.71, util; North Country Business Products, \$256.47, repair; Okoboji Wines, \$646.00, off sale liquor; Omaha Promos, \$263.68, supp; Prairie Berry, \$1635.50, off sale liquor; Print Mark-et, \$61.38, publ; Republic Beverage Co, \$37,364.78, off sale liquor; Rushmore Office, \$157.97, supp; SD Dept of Revenue, \$25.00, other; SD Public Assurance Alliance, \$62.34, unemployment; Servall, \$152.63, supp; Shopko, \$49.90, repair; The Homeslice Group, \$4886.00, publ.

**Water** – A&B Business, \$293.59, supp; American Water Works, \$105.00, travel; APWA, \$169.00, prof fee; BH Power, \$7733.53, util; Butte Electric, \$743.84, util; Campbell Supply, \$12.50, supp; Caselle, \$382.34, prof fee; CBH Coop, \$940.43, supp; Credit Collections Bureau, \$228.87, prof fee; Dakota Backup, \$175.76, prof fee; Diesel Machinery, \$650.99, prof fee; Freeman Electric, \$150.00, repair; Great Western Tire, \$228.95, repair; HD Supply Waterworks, \$288.32, supp; Hills Materials, \$2500.00, refund; Holiday Inn Express, \$249.98, travel; Iverson Construction, \$203.50, supp; Todd Jones, \$48.47, refund; Meade Co Times, \$50.25, publ; Midcontinent Testing Lab, \$308.00, prof fee; MDU, \$308.68, util; Northwest Pipe Fittings, \$90.00, supp; O'Reilly Auto Parts, \$95.41, supp; Owens Interstate, \$6.49, supp; Postmaster,

\$2000.00, supp; Print Mark-et, \$61.38, publ; Rushmore Office, \$339.71, supp; Sacrison Paving, \$606.12, supp; SD Assn of Rural Water, \$1000.00, prof fee; Servall Towel, \$11.86, supp; Shopko, \$55.06, supp; SD One Call, \$127.65, prof fee; Sturgis Napa, \$13.98, supp; TTG Enterprises, \$222.00, repair; WOW! Business, \$34.88, util.

**Wastewater** – City of Belle Fourche, \$31.86, other; Dale’s Tire, \$1269.40, supp; Energy Lab, \$235.00, prof fee; First Interstate Bank, \$205.56, supp; Flexible Pipe Tool, \$2005.50, repair; Owens Interstate, \$91.07, repair; Print Mark-et, \$61.38, publ; Rushmore Office, \$39.00, supp.

**Sanitary Service** – A&B Welding, \$171.12, repair; A&J Surplus, \$535.75, repair; BH Power, \$9.61, util; CBH Coop, \$6208.08, supp; Century Business Leasing, \$195.76, prof fee; City of Belle Fourche, \$18,921.01, other; Dakota Radiator, \$60.00, repair; Dale’s Tire, \$1225.98, supp; Great Western Tire, \$215.05, supp; Owens Interstate, \$691.20, repair; Print Mark-et, \$61.50, publ; Rapid Delivery, \$10.80, repair; River Lodge, \$278.80, travel; Rushmore Office, \$39.00, Stern Oil, \$1929.40, supp; Street Dept Petty Cash, \$48.56, travel; Sturgis Napa, \$166.39, repair.

**Ambulance** – BH Power, \$627.89, util; CBH Coop, \$2280.40, supp; Coca Cola, \$31.25, supp; Ecolab Pest, \$35.00, supp; First Interstate Bank, \$1579.99, travel; Interstate All Batteries, \$17.90, supp; Lynn’s Dakotamart, \$135.18, supp; MDU, \$119.49, util; Print Mark-et, \$61.38, publ; Rushmore Office, \$59.39, supp; Shopko, \$102.09, supp; Sturgis Napa, \$408.70, supp.

Motion by Vasknetz, second by Bestgen and carried with Anderson, Bachand, Bestgen, Hersrud, Vasknetz and Waterland present voting yes, Carstensen and Johnston abstaining, to approve the following claims: **General** - Johnston Hardware, \$315.88, supp; Jump Off Buffalo Ranch, \$6000.00, other; **Liquor** - Johnston Hardware, \$123.48, repair; **Water** - Johnston Hardware, \$41.25, supp; **Ambulance** - Johnston Hardware, \$77.10, supp.; Scott Peterson Motors, \$1345.12, repair;

Motion by Johnston, second by Waterland and carried with all members present voting yes for a Special Events License for the Loud American at the Sturgis Armory on March 8, 2014 for a wedding party.

Motion by Waterland, second by Vasknetz and carried with all members present voting yes to approve the following payroll changes: Community Center Dept – Front Desk Clerk part-time – Angelina Schlosser - \$7.25. Wastewater Dept – Wastewater Operator – Harley Jacobs - \$11.85.

Johnston introduced the following written resolution and moved its adoption:

**RESOLUTION 2013 – 67**

**RESOLUTION CONFIRMING COUNCIL AUTHORIZATION OF A POLICY & PLAN DESCRIPTION FOR CITY MATCHES TO VOLUNTARY EMPLOYEE RETIREMENT CONTRIBUTIONS INTO THE SDRS-SUPPLEMENTAL RETIREMENT PLAN**

WHEREAS, the South Dakota Retirement System offers a Supplemental Retirement Plan;

WHEREAS, the Sturgis City Council approved participation for its employees in the SDRS-Supplemental Retirement Plan on March 3, 1997;

WHEREAS in 2013, the City of Sturgis entered into a contract addendum with Operating Engineers Local Union #49 that, amongst other provisions, included a City funded match for voluntary employee contributions to the SDRS-Supplemental Retirement Plan up to \$250 per year;

WHEREAS, the Council has a long-standing past practice of extending similar, like-in-kind benefits to those employees not covered by a collective bargaining unit;

WHEREAS, the Council approved a 2014 budget that incorporated the funds for the City match for employees of the Operating Engineers collective bargaining unit as well as for non-collectively bargained employees;

WHEREAS, City staff wishes to have a formal summary plan description for all eligible employees;

WHEREAS, this summary plan description is attached;

NOW THEREFORE, the Council confirms the policy and plan description for City matches to voluntary employee retirement contributions into the SDRS-Supplemental Retirement Plan.

Dated this 18<sup>th</sup> day of November, 2013.

Published: 11-27-2013

Effective: 12-18-2013

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

Motion by Hersrud, second by Bestgen and carried with all members present voting yes to approve second reading of Ordinance 2013-22 – Title 12 – General Nuisances – Regulation of Sexually Oriented Performances & Performers. Police Chief Bush contacted all owners of this license except for one and he left phone messages for that owner.

**ORDINANCE 2013-22**  
**AN ORDINANCE AMENDING TITLE 12– GENERAL NUISANCES**

**BE IT ORDAINED** by the Common Council of the City of Sturgis, Meade County, South Dakota that Title 12–General Nuisances – Chapter 12.11 Regulation of Sexually Oriented Performances and Performers- Section 12.11.04: License Required for premises- Section 12.11.05: License Required for Sexually Oriented Performer-Section 12.11.07: Fees- Section 12.11.10: Expiration of License-Section 12.11.11: Suspension- Section 12.11.12: Revocation- Section 12.11.14: Appeal Process amended to read as follows:

**CHAPTER 12.11**  
**REGULATION OF SEXUALLY ORIENTED PERFORMANCES AND PERFORMERS**

**SECTIONS:**

- 12.11.01: Prohibited Activities on Licensed Premises
- 12.11.02: Contact between Any Performer and Patron
- 12.11.03: Performance in Posted Designated Areas Only
- 12.11.04: License Required for Premises
- 12.11.05: License Required for Sexually Oriented Performer
- 12.11.06: Basis for Denial of License
- 12.11.07: Fees
- 12.11.08: Display of License
- 12.11.09: Inspection

- 12.11.10: Expiration of License
- 12.11.11: Suspension
- 12.11.12: Revocation
- 12.11.13: Liquor or Malt Beverage License
- 12.11.14: Appeal Process
- 12.11.15: Validity in Case of Judicial Declaration

**12.11.03: PERFORMANCE IN POSTED DESIGNATED AREAS ONLY**

No performer shall perform on the premises of a business licensed under this Ordinance in any area other than that which the licensee has designated and described in licensee's current application as the Designated Sexually Oriented Entertainment Area.

Any Designated Sexually Oriented Entertainment Area shall be located inside the premises of the licensed business in an enclosed area in a manner that the licensed performance is not visible to any person located outside of the licensed premises.

**12.11.04: LICENSE REQUIRED FOR PREMISES**

No person shall begin to operate a business where there is sexually oriented performing without first obtaining a Conditional Use Permit for such business operation within the Adult Overlay District as provided for at title 18.05.13. Any business premises intending to offer sexually oriented performing shall also obtain a valid license issued by the Police Department. In addition, no person or business shall employ or allow a person to perform on the premises who is not licensed as a sexually oriented performer.

To obtain a business license authorizing sexually oriented performances, the business owner shall make application to the Police Department on a form prescribed and provided by the City. The applicant shall be qualified according to the provisions of this Chapter. The application shall be signed under oath by the applicant and notarized. The application shall include and/or be accompanied by the following information:

- A. The name, telephone number and mailing address of the owner of the business making application;
- B. The name, telephone number and address of the business in which the performing is intended;
- C. If any prior license or permit has been denied, revoked or suspended, the reasons therefore and the effective date of such revocation or suspension;
- D. The name and address of the statutory agent or other agent authorized to receive service of process on behalf of the business;
- E. The name and address of all employees of applicant whose employment duties may include providing entertainment through sexually oriented performances at applicant's premises;
- F. An acknowledgement by the applicant that all state and federal tax records required to be maintained by applicant related to the employment status of any performer licensed under this chapter and performing on premises licensed under

this chapter, shall be subject to inspection upon request of law enforcement or Department of Revenue representatives, and

- G. An acknowledgement by the applicant that any change in the information submitted with the application will be provided to the Police Department within 3 business days of the change, to be provided in the form of a Supplemental Application, and
- H. Any other information determined to be necessary and relevant to the application process by the Chief of Police.

Upon completion the application shall be submitted to the Police Department. It shall be the responsibility of the applicant to contact the Police Department to obtain an appropriate date and time to complete the application process with the Police Department. The applicant shall demonstrate in the application documents that the proposed premises are in full compliance with Chapter 18.05.13 of the Sturgis Zoning Ordinance, and that the Conditional Use Permit required for such entertainment activities by that provision has been obtained by the applicant. No premises located outside the General Industrial Zone shall be permitted to apply for such a license unless, in the year prior to submitting the application, Applicant was issued a sexually oriented performance premises license for the same premises sought to be licensed under the subsequent application. Any authority to conduct such performances without a Conditional Use Permit as a prior non-conforming use outside the General Industrial zone shall expire at the end of the calendar year in which it was issued. If said applicant meets all qualifications and complies with all requirements of this Chapter, the Police Department shall issue the license within thirty (30) days of the date of the application.

#### **12.11.05: LICENSE REQUIRED FOR SEXUALLY ORIENTED PERFORMER**

No person shall perform as a sexually oriented performer without a valid license.

To obtain a sexually oriented performer license, the applicant shall make application to the Police Department on a form prescribed and provided by the City. The applicant shall be qualified according to the provisions of this Chapter. The applicant will be signed under oath by the applicant and notarized. The application shall include and/or be accompanied by the following information:

- A. The applicant's full, legal name and any other names used in the preceding five (5) years;
- B. Current residential mailing address and telephone number;
- C. Written proof of age, in the form of a birth certificate, current driver's license with picture, or other picture identification document issued by a governmental agency;
- D. If any prior license or permit has been denied, revoked or suspended the reasons therefore, the issuing jurisdiction and the effective date of such revocation or suspension;
- E. Any criminal charges, complaints, information, or indictments in the preceding five (5) years which resulted in a conviction, a plea of guilty, or no contest for

any offense described in Chapters 22-22, 22-23, 22-24, of the South Dakota Codified Laws;

- F. Written confirmation that applicant is an employee of the business at which the applicant seeks to perform, as shown by a valid IRS documentation in the form of a current W-4 form. In the alternative, for an applicant that is not an employee at a premises licensed under this chapter, the application must show that applicant has obtained a Temporary Vendor License, and a South Dakota Sales Tax license for applicant's performance activities within the City of Sturgis, and
- G. Any other information or documentation determined to be necessary and relevant to the application process by the Chief of Police or his/her designee.

The application process shall be conducted at the Police Department. It shall be the responsibility of the applicant to contact the Police Department to obtain an appropriate date and time to complete the application process with the Police Department. If said applicant meets all qualifications and complies with all requirements of this Chapter, the Police Department may issue the license the day the application is completed and all requirements of this Chapter complied with and in no event shall the Police Department wait any longer than thirty (30) days to either issue the license or advise the applicant of the denial of said issuance.

#### **12.11.07: FEES**

The annual, non-refundable application fee for a business allowing sexually oriented performing shall be Two thousand dollars (\$2,000.00). The annual application fee for a sexually oriented performer shall be Two hundred dollars (\$200.00).

#### **12.11.10: EXPIRATION OF LICENSE**

Each sexually oriented business license and sexually oriented performer license shall expire December 31<sup>st</sup> of the year issued and may only be renewed by making application as provided in this Chapter and complying with the applicable provision of the Conditional Use Permit as set forth in Chapter 18.05.13 of Sturgis City Ordinances.

#### **12.11.11: SUSPENSION**

The Chief of Police shall suspend a business license as herein before set forth for a period not to exceed thirty (30) days if he/she determines that the licensee or an employee of the licensee has:

- A. Refused to allow an inspection of the business premises; or
- B. Has violated any other provision of this Chapter or the applicable provisions of the Conditional Use Permit as set forth in Chapter 18.05.13 of Sturgis City Ordinances.

#### **12.11.12: REVOCATION**

The Chief of Police shall revoke the license of a business allowing sexually oriented performing if a cause for suspension set forth in the previous section occurs and the license has been suspended in the previous twelve (12) months.

The Chief of Police shall revoke the license of a business allowing sexually oriented performing if it is determined that:

- A. The licensee gave false or misleading information in the application;
- B. The licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- C. The licensee or an employee has knowingly allowed prostitution on the premises;
- D. The licensee has allowed a sexually oriented performer to perform on the premises without having obtained a sexually oriented performer's license as required by this Chapter;
- E. The licensee or an employee knowingly operated the business during a period of time when the licensee's license was suspended;
- F. The licensee has been convicted of an offense set forth in SDCL 22-22, 22-34, or 22-24;
- G. The licensee or an employee has knowingly allowed any act of sexual activity to occur on the licensed premises;
- H. The licensee is delinquent in payment to the City taxes or fees related to the business or arising out of any other business activity owned or operated by the licensee and licensed by the City; or
- I. The licensee has allowed sexually oriented performing to occur on its premises in a manner that is in violation of this Chapter or the applicable provisions of the Conditional Use Permit as set forth in Chapter 18.05.13 of Sturgis City Ordinances and has failed and/or refused to immediately eliminate the violation.

#### **12.11.14: APPEAL PROCESS**

Any applicant having paid the required application fee that is aggrieved by a decision of the Chief of Police regarding their application made under this Chapter shall be entitled to have said decision reviewed by the City Manager. If after review the said person is unsatisfied, he or she may appeal the decision of the City Manager to the City Council. The process shall be as follows:

- A. An aggrieved person shall first file a written request for review with the City Manager at the City Finance Office setting forth the basis for which he or she believes the Chief of Police's decision to be in error. The writing shall also include the person's name and mailing address.
- B. Upon receipt of a written request for review, the City Manager shall review the decision of the Chief of Police and mail a written response to the aggrieved person within five (5) days.
- C. If the aggrieved person is not satisfied with the decision of the City Manager following review, he or she may file a notice of appeal with the City Finance Office within five (5) days of mailing the review decision by the City Manager.

- D. Upon receipt of a notice of appeal, the City Finance Office shall set a public hearing on the appeal at a regularly scheduled City Council meeting and the public hearing shall be held within thirty (30) days after the date said appeal was filed. The City Council shall provide notice to the person specifying the time, date, and location of the hearing.
- E. The City Council may informally notify the aggrieved person of its decision following the hearing; however, the City Council shall issue a written decision to the person within twenty (20) days of the hearing. The City Council may affirm or reverse the decision of the City Manager.

Dated this 18<sup>th</sup> day of November, 2013.

First reading: 11-04-2013  
 Second reading: 11-18-2013  
 Adopted: 11-18-2013  
 Published: 11-27-2013  
 Effective: 12-18-2013

Motion by Waterland, second by Bestgen and carried with all members present voting yes to approve second reading of Ordinance 2013-23 – Title 31 – Licensing of Temporary Businesses.

**ORDINANCE 2013-23**  
**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- 31.01.02 – Definitions; 31.01.03- Penalty; Chapters 31.02- Licensing and Regulation of Peddlers, Vendors, Solicitors, Professional People, Businesses and Trades- Section 31.02.03 - Licensing of Transient Professional People and Merchants; Section 31.02.03.01- Vendor License Required; 31.02.03.02- Application; 31.02.03.03- Fee and Duration of License; 31.02.03.5- Exemptions from the Temporary Vendor License Fee; 31.02.03.7- Required Documentation of Sales Activities** is amended to read as follows:

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

**CHAPTERS:**

- 31.01: General Provisions
- 31.02: Licensing and Regulation of Peddlers, Vendors, Solicitors, Professional People, Businesses and Trades

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

**SECTIONS:**

- 31.01.01: Scope and Purpose
- 31.01.02: Definitions
- 31.01.03: Penalty

**31.01.01: SCOPE AND PURPOSE**

The purpose of Title 31 is to regulate the licensing of people who do not have a permanent business within the City of Sturgis who wish to do business within the City of Sturgis for a temporary period of time.

**31.01.02: DEFINITIONS**

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. 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.

**31.01.03: PENALTY**

A violation of this ordinance shall be punishable by a civil penalty of 80% of the combined cost of a Temporary Vendor License and the Special Sanitation Fee, plus a separate administrative fee of \$75.00, to be paid before the Temporary Vendor License can be issued. To avoid additional civil penalty fees for each separate day of operation violation of this ordinance, the vender shall be required to obtain a valid Temporary 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 Temporary Vendor has been paid to the City and verified by the Finance Office. Any Temporary Vendor exercising the right to appeal this penalty provision may appear in person at the time of the public hearing before the Council, or may be represented by a licensed attorney. In addition to statements by the Temporary Vendor during such public hearing, the Council shall consider and determine the credibility of any written material submitted to the Council in regard to the appeal prior to the close of the public hearing.

Any temporary vendor found to be operating without a Temporary Vendor License and Special Sanitation Fee twice within a 24 month period shall be prohibited from obtaining a Temporary Vendor License in the future unless the Temporary 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 Temporary 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 Temporary 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 PEDDLERS, VENDORS, SOLICITORS,**  
**PROFESSIONAL PEOPLE, BUSINESSES AND TRADES**

**SECTIONS:**

- 31.02.01: Sales and Marketing within the Right of Way
- 31.02.02: Peddling in Parks
- 31.02.03: Licensing of Transient Professional People and Merchants
  - 31.02.03.01 Vendor License Required
  - 31.02.03.02 Application
  - 31.02.03.03 Property Vending Map
  - 31.02.03.04 Fee and Duration of License
  - 31.02.03.05 Issuance
  - 31.02.03.06 Exemptions from the Temporary 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: LICENSING OF TRANSIENT PROFESSIONAL PEOPLE AND MERCHANTS**

**31.02.03.01 Vendor License Required**

Any firm, person, or corporation which intends to operate a temporary business within the corporate limits of the City of Sturgis in conjunction with an event of more than four (4) consecutive days within any twelve (12) day time span 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, a vendor 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 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 Property Vending Map**

Starting January 1, 2014 any property owners seeking to place temporary vendors licensed under this Title on property zoned GC-1, HS-1, RV (14 day only), Public Land or Fairgrounds, shall file at the City Finance Office a 8 1/2 x 11 scale map of the potential vending area based on the parcel ID number for the subject property as established by the Meade County Equalization Office, and having attached to it a second sheet consisting of a diagram showing the dimensions of the potential vending area to be licensed.

- a) For all property owner maps filed at the City Finance Office prior to April 1 of each year, there shall be no filing fee.
- b) For all property owner maps filed at the City Finance Office between April 1 and May 31<sup>st</sup> of each year, the filing fee shall be \$250.00.
- c) For all property owner maps filed at the City Finance Office between June 1 and July 15 of each year, the filing fee shall be \$500.00.
- d) For all property owner maps filed at the City Finance Office after July 16 of each year, the filing fee shall be \$1000.00.

Each applicant for a temporary vendor license shall submit a file-stamped copy of a scale map for the property parcel upon which the applicant proposes to operate if licensed. The applicant shall include with the application material written confirmation that the property owner, a designated representative of the owner as on file with the City Finance Office, knows the applicant is seeking a temporary vendor license to operate on a parcel owned by the property owner. The file stamped map copy submitted by the applicant show the dimensions and location of the area applicant seeks to have licensed for temporary vending.

### **31.02.03.04 Fee and Duration of License**

- A) A temporary business shall pay a Temporary 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 ten (10) 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 Temporary Vendor License fee and the Special Sanitation fee, shall be as follows:
  1. Vending area of 100 square feet or less, \$560.00
  2. Vending area of 101 to 400 square feet, \$850.00
  3. Vending area of 401 to 800 square feet, \$1000.00
  4. Vending area of 801 to 1200 square feet or less, \$1200.00
  5. 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.

### **31.02.03.05 Issuance**

On filing the application and payment of the fee described in this section, the Finance Officer shall issue a license to the applicant to do business 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 Temporary Vendor License fee but are subject to the Special Sanitation fee imposed by ordinance 11.03.21.

### **31.02.03.06 Exemptions from the Temporary Vendor License Fee:**

The exemptions to the requirement to purchase a temporary business license are stated in paragraphs A through E below. Regardless of any shared resources, expenses, corporate affiliation or relationship, other cooperative business activities, or any contract or agreement between temporary businesses, each temporary business shall be required to obtain a separate temporary business 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 Temporary 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.
- 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, selling lemonade and like items and incidentals thereto from property from which 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.

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

The City of Sturgis is hereby authorized to refund up to 50% of 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 ten (10) days prior to the official start day of 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 as applied to a sales tax licensee. Evidence and documents to show proof of compliance with these requirements shall be provided by the licensee to any authorized representatives of the South Dakota Department of Revenue, or to any law enforcement officer, upon request. The records to be maintained are the following:

- a) Sales receipts 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.

Dated this 18<sup>th</sup> day of November, 2013.

First reading: 11-04-2013  
 Second reading: 11-18-2013  
 Adopted: 11-18-2013  
 Published: 11-27-2013  
 Effective: 12-18-2013

Motion by Johnston, second by Vasknetz and carried with all members present voting yes to approve second reading of Ordinance 2013-21 – Supplemental Annual Appropriations.

**ORDINANCE 2013-21**

**AN ORDINANCE AMENDING ORDINANCE NO. 2012-15  
 ANNUAL APPROPRIATIONS FOR THE YEAR 2013  
 OF THE CITY OF STURGIS, MEADE COUNTY, SOUTH DAKOTA**

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota, that ordinance 2012-15 is amended so that the following amounts are hereby appropriated to meet the obligation of the municipality for the year 2013.

General Fund 101	
4196-4370 Planning and Permitting – Capital Improvements	\$35,000
Source of Funding: Proceeds from rental of sign	

General Fund 101	
4196-4290 Planning and Permitting – Other	\$100,000
Source of Funding – Unexpended Cash balances – Storm expenses	

General Fund 101	
4199-4220 Professional Service – Brick Project	\$10,000
Source of Funding: Unexpended Cash balances	
Capital Improvements 212	
4311-4370 Capital Improvement – 7 <sup>th</sup> Street Bridge, striping and overlay projects	\$135,000
Source of Funding: Unexpended Cash balances	
4350-4370 Capital Improvements – Airport	\$3,065
Source of Funding: Unexpended Cash balances	
4511-4370 Capital Improvements- Community Center Equipment	\$125,600
Source of Funding: Unexpended Cash balances	
4520-4370 Capital Improvements-Concession at Titan Field	\$61,000
Source of Funding: Unexpended Cash balances	
4560-4370 Capital Improvements – Auditorium Floors	
Source of Funding – Unexpended Cash balances	\$3000

Adopted this 18th day of November, 2013.

First reading: 11-04-13

Second reading: 11-18-13

Adopted: 11-18-13

Published: 11-27-13

Effective: 12-18-13

Motion by Hersrud, second by Waterland and carried with all members present voting yes to approve authorizing the mayor to sign the SD DOT state financial assistance agreement for airport monies.

Motion by Johnston, second by Bestgen and carried with all members present voting yes to approve Use of City Property/Street Closure for the Chamber of Commerce for the Sturgis Parade of Lights on 12/6/13.

Motion by Hersrud, second by Anderson and carried with all members present voting yes to approve Use of City Property/Fairgrounds for the Sturgis Wild West Days/PRCA Rodeo on June 20-22, 2014 pending the City receiving a current insurance certificate.

Motion by Johnston, second by Waterland and carried with all members present voting yes to approve Use of City Property/2<sup>nd</sup> Street Plaza for the Chamber of Commerce for the Winter Frostival on December 7, 2013.

Motion by Waterland, second by Anderson and carried with all members present voting yes to approve first reading of Ordinance 2013-24 – Title 14 – Parks & Recreation.

Motion by Vasknetz, second by Johnston and carried with all members present voting yes to approve the Lagoon Lease Agreement with Henry Bruch to graze cattle.

Motion by Bachand, second by Waterland and carried with all members present voting yes authorizing City Manager Ainslie to write a letter of support to Meade County for the I-90 Tourism Signage project.

Motion by Bestgen, second by Vasknetz motion failed with Anderson, Bestgen, Vasknetz voting yes, Bachand, Johnston and Waterland voting no and Carstensen and Hersrud abstaining, to approve the purchase of two vehicles: Class BT full size Utility AWD for Police Dept (\$28,541.00) and Class CS Truck 1 ton 4x4 Crew Cab for Wastewater Department (\$30,270.00) using the State bid contract and award the bid to Scott Peterson Motors.

After discussion a motion was made by Bestgen, second by Vasknetz and carried with Anderson, Bachand, Bestgen, Hersrud, Johnston, Vasknetz and Waterland voting yes and Carstensen abstaining, to reconsider purchasing the Class BT full size Utility AWD for Police Dept (\$28,541.00) using the State bid contract and award the bid to Scott Peterson Motors.

Any other business:

Bernadette Usera stated her concerns on the City expenses that are incurred during a special event. Ms. Usera asked the Council to look at her concerns at the next Council retreat.

Motion by Waterland, second by Johnston and carried with all members present voting yes to go into executive session for personnel, contracts and legal at 8:05 pm.

Motion by Johnston, second by Hersrud and carried with all members present voting yes to return to regular session at 9:45 pm.

Motion by Waterland, seconded by Hersrud and carried with all members present voting yes to adjourn the meeting at 9:45 pm.

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

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

Published once at the total approximate cost of \$