



## Council Report

December 5, 2016

Daniel Ainslie, City Manager

Consideration to approve the First Reading of Title 31 Temporary Vendor Licenses

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### Background

The Rally and Events Committee has held numerous meetings with local landowners. The purpose of these meetings is ensure a growing and thriving Sturgis® Motorcycle Rally™ in 2017 and for years to come. This has taken on several facets, several of which require modifications to the City's Temporary Vendor Ordinance.

The present Ordinance was developed after the Chamber assembled a Downtown Strategy Task Force. Every individual that applied was appointed to the task force. After more than a year of studying Downtown and the Rally, the Task Force prepared a list of policy changes. One area of policy changes included revising the vendor fees so that there was a tiered structure. This allowed smaller vendors to be able to pay a reduced rate compared to larger apparel or corporate vendors. The changes presented today, seek to better refine the vendor fee system that was established. Numerous items that were brought forward by land owners, vendors and City staff were taken into consideration and many of the suggestions are included in the attached draft.

### Issue under consideration

The proposed modifications include the following policy modifications:

1. Vendor licenses would only be required if an event hosted within the City limits requires an investment to be made by the City in the amount of \$100,000 or more. Currently, this would require vendors fees for participants of the Sturgis® Motorcycle Rally™. The current ordinance requires vendor fees for any event lasting at least 4 days. This in effect would require vendor fees for both the Mustang and Camaro Rallies as well as the Sturgis® Motorcycle Rally™.
2. The Map requirement for vendors would be eliminated. While this requirement allowed for some additional information which was important for enforcement and for some public safety, it has proven to be a significant burden for vendors, landowners and Finance Office staff.
3. Further clarified that businesses could seek a reimbursement of Vendor fees paid if their municipal sales tax paid from Jan-July and September-October is equal to or greater than the Vendor License Fee and Special Sanitation fee. This will allow a larger number of vendors that are in business for longer periods of time to hopefully avoid having to pay for the license fee. It also provides an additional incentive for vendors to be open throughout the tourist season. In doing so, the additional sales tax generated will offset the revenue otherwise paid through the vendor fees which helps to pay for the services provided to the vendors by the City.
4. Provides a system to allow vendors to provide limited marketing along sidewalks. This is a growing issue that currently is entirely disallowed. By providing some allowance of this activity it provides vendors with a standard practice by which they can do the marketing activities in a less disruptive manner.

5. It alters the penalty for ATMs that are not compliant to the existing licensing system. The new penalty is more in line with the small footprint occupied by ATMs.
6. Provides some greater definition as to when storage areas are a part of the licensed area. This has been requested by vendors to ensure that storage areas not on scene are not required to be licensed.

**Budget Impact**

The proposed changes are not anticipated to greatly change the actual revenue collected by the Community. However, this is part of a significant number of alterations which are seeking to ensure that the Sturgis® Motorcycle Rally™ continues to grow and evolve and attract hundreds of thousands of attendees each year. As part of that effort, the number of attendees and vendors should continue on average to grow. As such, the total revenue generated each year by the Rally should grow.

**Recommendation**

Staff's recommends adopting the first reading of the Title 31 amendments.

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Approved:	 _____ Daniel Ainslie, City Manager
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**TITLE 31  
LICENSING OF TEMPORARY BUSINESSES**

## CHAPTERS:

31.01: General Provisions

31.02: Licensing and Regulation of Vendors, Peddlers, Solicitors, Transient Businesses, Trades and Merchants.

**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**

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 build, maintain and operate public marketplace so to provide a venue for such temporary business. In addition, the legislature allow municipalities in South Dakota~~ 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~~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™~~ ~~motoreyele rally. The it is an event that in the past decade~~ has had an annual attendance estimated to range from 250,000 persons to ~~perhaps~~ 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 epicentre~~~~considered the center~~ 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 ~~aimat~~, the City incurs costs each year of ~~well over~~ \$~~1,070,000~~. 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 ~~R~~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~~primary beneficiaries of the business and marketing that results from a stable Rally™ ~~event~~venue 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 SDCL10-45-1, and not exempt as defined in Subsection 31.02.03.07 herein, not operating throughout the year within the City and which, in conjunction with an event where the City invests more than \$100,000 in hosting the event of more than four (4) consecutive days within any twelve (12) day time span, 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 ~~who, for more than four (4) consecutive days within any twelve (12) day time span, is selling or displaying such goods, wares, merchandise or services~~, 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.

(31.01.02 A, revised by Ordinance 2015-17, effective 1/27/16)

- 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.

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- 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.

(31.01.03 revised by Ordinance 2013-23, effective 12-18-2013)

(31.01 revised by Ordinance 2015-07, effective 07-15-2015)

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

**SECTIONS:**

- 31.02.01: Sales and Marketing within the Right of Way
- 31.02.02: Peddling in Parks
- 31.02.03: Licensing of Vendors, Peddlers, Solicitors, Transient Businesses, Trades 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: Prohibition of Sale of Glass Beverage Containers and Products
  - 31.02.03.07: Exemptions from the Vendor License Fee
  - 31.02.03.08: Refund Fee for Transient Merchant License
  - 31.02.03.09: Required Documentation of Sales Activities

**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 Council from ~~entering into a lease agreement adopting a resolution~~ to allow the display or sale of ~~lottery tickets or other~~ 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. Any qualifying organization or group as defined in Title 25-02.02 must submit an application, consistent with the requirements of Title 25-02.11, to the Finance Office at least 90 days prior to the proposed starting date for such display or sale. Except as set forth in this subsection, the City Council may adopt such an authorizing resolution for a non-profit organization only for qualified display or sale activities which occur during an Event lasting more than four (4) days within a twelve (12) day time period.~~

~~For an event to be located within the Downtown Business Improvement District, the City Council may authorize such use of public Right of Way located within the Downtown Business Improvement District by a vote of the majority of the Council. For an event lasting not more than four days located outside the Downtown Business Improvement District, the City Council may authorize such use of designated public Right of Way, after notice and public hearing, by the adoption of a Resolution by a majority of the City Council approving such use.~~

**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 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.

(31.02.03.01 revised by Ordinance 2015-17, effective 1/27/16)

#### **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 Property Vending Map**

~~Starting January 1, 2014 any property owners seeking to place 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.~~
- ~~e) 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 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 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 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~~ 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~~
  - ~~2. ATM machine/equipment, area of 25 square feet or less, \$100.00~~
  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 revised by Ordinance 2015-17, effective 1/27/16)

#### 31.02.03.05 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 ~~11.03.21~~ 11.04.12.

**31.02.03.06 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.

**31.02.03.07 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 since January 1<sup>st</sup> through July 31<sup>st</sup> of the calendar year for which the Vendor permit application is submitted, and that such tax payments by applicant equal or exceed the amount of the combined Vendor license and Special Sanitation fees which applicant would otherwise be required to pay under subsection 31.02.03.04 (B) above, and
  - 3) Verification by applicant that it also operates in all other respects in compliance with all state and federal laws and local ordinances,  
Then that applicant is exempt from payment of the Vendor license and Special Sanitation fee required by Subsection 31.02.03.04.
- g) An automated teller service(s) provided by a bank or credit union, licensed by the State of South Dakota, through equipment located upon its own business premises.

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g)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 revised by Ordinance 2015-17, effective 1/27/16)

#### **31.02.03.08 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 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, ten (10) days prior to the official start day of the event.

#### **31.02.03.09 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 adopted effective Nov. 5, 2004 – Ordinance 2004-18 – Ordinance creating Title 31 – Licensing of Temporary Businesses and moving previous Chapter 3.01 – Licensing and regulation of Peddlers, vendors, solicitors, professional people, businesses and trades to Title 31, chapter 31.02)

(Title 31 replaced in entirety by Ordinance 2012-07, effective May 2, 2012)

(Title 31.01.02 (A), 31.02.03.2 and 31.02.03.3 replaced by Ordinance 2013-04, effective 3/05/2013)

(Title 31.02.03 replaced in entirety by Ordinance 2013-23, effective 12-18-2013)

(Title 31.02.03.08 replaced by Ordinance 2015-06, effective 7-8-2015)

(Title 31.02 replaced in entirety by Ordinance 2015-07, effective 7-15-2015)

## ADVERTISING AGENCY RETAINER AGREEMENT

THIS AGREEMENT made effective as of the 6<sup>th</sup> day of December, 2016 BY AND BETWEEN:

HomeSlice Media Group, LLC

with an office at 1612 Junction Avenue – Sturgis, SD 57785  
(the “Agency”)

- and -

City of Sturgis, SD

with an office at 1040 Harley-Davidson Way – Sturgis, SD 57785  
(the “Client”)

WHEREAS the Client desires to retain the Agency to provide advertising, marketing and related services, as more particularly described below (the “Services”), and the Agency desires to be so retained and to perform the Services for the Client;

NOW THEREFORE the parties agree as follows:

1. *Services.* During the term of this Agreement, the Agency shall provide products and services necessary to manage, on behalf of the Client, the digital media of the Sturgis® Motorcycle Rally™, including, but not limited to, its primary website (sturgismotorcyclerrally.com) and all corresponding social media platforms. The Agency shall also direct the placement of 100% of the Client’s digital media budget, which shall not be less than \$40,000 per annum. The Services are more extensively defined in Exhibit A, attached.
2. *Term.* This Agreement shall commence on the date first above written and shall continue until December 31, 2020, unless sooner terminated in accordance with the terms of this Agreement.
3. *Independent Contractor.* It is understood and agreed that the Agency is independent in the performance of this Agreement, that the Agency shall perform the Services in the capacity of an independent contractor. The Agency is not an employee of the Client, and has no authority whatsoever to bind the Client by contract or agreement of any kind other than as expressly provided under the terms of this Agreement. The Client shall not withhold federal or state/provincial income taxes or any other amounts from the Agency’s fees payable hereunder. The Client acknowledges and agrees that the Agency shall act on behalf of the Client but will not be liable for payment of media and purchases placed on behalf of Client but for which the Agency has not been paid by Client.
4. *Compensation.* Upon execution of this Agreement, the Client agrees to pay the Agency a retainer fee of \$3,500, for Services rendered for the first month, with a like payment due and owing each month during the term of this Agreement. The Client will be charged for additional products and/or services as ordered by the Client which are not part of the Services covered by the terms of this Agreement, at the Agency’s current hourly rate of \$85 per hour and, when applicable, the Agency’s current rates for additional products and/or services. The Client agrees to pay Agency all reasonable out-of-pocket miscellaneous expenses, pre-approved delivery charges and travel expenses when applicable.
5. *Payment.* The Agency shall invoice the Client for the contract rate at the beginning of each month during the Term for Services of that month, along with additional media, products and services, and allowable expenses incurred during the previous month. All invoices are Net 30 days.
6. *Confidentiality.* The Agency acknowledges that, in the course of providing the Services hereunder, the Agency will have access to confidential information about the Client’s business. The Agency agrees to keep all such information strictly confidential and not use it for the Agency’s own benefit nor disclose or divulge such information to any third party. The parties acknowledge that the provisions of this Section shall not apply to any information which: (a) had been rightfully in the possession of the recipient prior to its disclosure to the recipient; (b) had been in the public domain prior to its disclosure to the recipient; (c) has become part of the public domain by publication or by any other means except an unauthorized act or omission on the part of the recipient; (d) had been supplied to the recipient without restriction by a third party who is under no obligation to maintain such information in confidence; or (e) is required to be

disclosed by any federal, state/provincial or municipal law, rule or regulation or by any applicable judgment, order or decree or any court or governmental body or agency having jurisdiction in the premises. The provisions of this Section shall survive any termination or expiration of this Agreement.

7. *Ownership of Intellectual Property.* All copyrights, patents, trade secrets, or other intellectual property rights associated with any works of authorship developed or created by the Agency, on behalf of the Client, during the course of performing work for the Client or its clients (collectively, the "Work Product") shall belong exclusively to the Client and shall, to the extent possible, be considered a work made by the Agency for hire for the Client, pursuant to applicable law. The provisions of this Section shall survive any termination or expiration of this Agreement.

8. *Expanded Definition of "Client".* Solely for purposes of Sections 6 through 7 inclusive hereof, the term "Client" also shall include any existing or future agencies, departments or subsidiaries of the Client that are operating during the time periods described herein and any other entities that directly or indirectly, through one or more intermediaries, control, are controlled by or are under common control with the Client during the periods described herein. The provisions of this Section shall survive any termination or expiration of this Agreement.

9. *Indemnification.* The Client shall indemnify, defend and hold harmless the Agency, its subsidiaries, affiliates and their directors, officers, employees, agents, successors and assigns from and against any and all claims relating to this Agreement arising out of acts or omissions of the Client, including, but not limited to, any financial obligations incurred by the Agency on behalf of the Client and attorneys' fees required to defend the Agency. The Client is responsible for reviewing all creative materials and advertisements to ensure compliance with all federal, state/provincial and local laws and regulations.

10. *Termination Upon Breach.* This Agreement may only be terminated by either party by mutual agreement or material breach. If one party commits any material breach or material default in the performance of any obligation under this agreement and the breach or default continues for a period of 30 business days after the other party delivers notice by Certified Mail, signature required, detailing the breach or default, then the other party may terminate this agreement, with immediate effect, by giving notice by Certified Mail, signature required to the first party. In the event of such termination, the Client shall promptly pay all sums owed to the Agency to and including the effective date of termination, including any future non-cancelable commitments after the termination date.

11. *Representations of the Agency.* The Agency has represented and hereby represents and warrants to the Client that the Agency is not subject to any restriction or non-competition covenant in favor of any other person or entity, and that the execution of this Agreement by the Agency and engagement by the Client, the performance of duties and provision of the Services hereunder will not violate or be a breach of any agreement with a former employer or any other person or entity. Further, the Agency agrees to indemnify the Client for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Agency based upon or arising out of any restriction or non-competition agreement or invention and secrecy agreement between the Agency and such third party. The provisions of this Section shall survive any termination or expiration of this Agreement.

12. *Representations of the Client.* The undersigned signatory on behalf of Client represents and warrants that he/she has the legal authority to bind the Client with respect to the rights and obligations undertaken by Client herein, and that Client may lawfully enter into this Agreement.

13. *Attorneys' Fees.* In the event that the services of an attorney are required or legal action is taken to enforce the terms of this Agreement by either party, or to protect those rights provided by this contract or by law, the prevailing party shall be entitled to an award of actual attorney's fees, costs, and expenses reasonably expended.

14. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of South Dakota. Any legal actions, claims or demands shall be handled in a court of competent jurisdiction within Meade County or Pennington County, South Dakota.

15. *Counterpart and Scanned Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one and the same instrument. A scanned signature shall be considered the same as an original.

16. *Entire Agreement.* This Agreement and any schedules attached hereto constitute the entire agreement between the parties to this Agreement pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set forth herein. No alteration, amendment, addition or modification of or to this Agreement shall be binding unless the same is in writing executed by each of the parties.

17. *Assignability.* This Agreement is not assignable by either party without the prior written consent of the other party hereto.

18. *Binding Effect.* This Agreement shall inure to the benefit and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

HomeSlice Media Group, LLC

City of Sturgis, SD

By: \_\_\_\_\_  
Dean L. Kinney  
President/CEO

By: \_\_\_\_\_  
[name & office of signing officer]

# EXHIBIT A

## Services Generally Included in the Retainer

**Website Redesign** or reconstruct to focus on UX (user experience) specifically improving the sites ease of use on mobile devices. Forty percent of attendees use the website as their primary source of information for the Rally.

**Website Content Building and Updates:** continue SEO strategies to build and maintain optimized content for the city's Rally website.

**Site Traffic Measurement:** conduct monthly analytical measurement of website traffic utilizing leading search engine resources and provide those reports to the Rally Director.

**Programming to Optimize:** implement web programming on the city's Rally site in cohesion with optimized content.

**News Feed Management:** optimize and distribute SMR news through the appropriate channels, as well as contribute optimized news in the form of written articles.

**Graphic/Website Design:** assume responsibility for all website-related graphic design.

**Social Media:** implement strategies for all social media platforms relevant to the SMR campaign, including: Facebook, Twitter, Pinterest, Instagram, SnapChat, and Google Plus; coordinate with City to ensure newsworthy posts throughout the year and during the Sturgis® Motorcycle Rally™, including at least three (3) days each year of a substantial interactive posts.\*

**Advertisement and Website Listings Management:** manage website listings content and manage display ad campaigns in support of Sturgis® Rally website ad and listing sales.

**Internet – website hosting:** website security, updates for sponsorships.

**Campaign Activities to Increase Sturgis Superstore Sales:** use social media and internet marketing resources to boost online sales via compound campaign strategies.

**Monthly Reports:** provide a monthly report to the Rally Director's office describing contractor activities and services for the preceding month.



## Council Report

December 5<sup>th</sup>, 2016

Jerry Cole, Rally & Events Director

Request for lifting of open container law for the "77<sup>th</sup> Annual Sturgis Motorcycle Rally" Event held during Aug. 4<sup>th</sup>-13<sup>th</sup>, 2017.

We are asking consideration for approval at the Council Meeting, December 5<sup>th</sup>, 2016.

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### Background/History

This is the single largest event in the state of South Dakota. This event provides entertainment for our community and also brings participants and spectators from across the United States to our area providing a huge economic impact to benefit Sturgis. Every year the city of Sturgis and its downtown lose out on revenue due to people leaving town to go out to the campgrounds, concert venues, and other locations because a lack of entertainment downtown.

### Discussion

The request to lift the open container law has been received: **The 77<sup>th</sup> Annual Sturgis Motorcycle Rally open container will begin Friday, Aug. 4, 2017 at 10:00a.m., and conclude Aug. 13<sup>th</sup>, 2017 at midnight. The boundaries for the open container will be:**

1. on the west, by the western edge of the Right of Way of 4<sup>th</sup> Street, beginning at the intersection of 4<sup>th</sup> Street and Lazelle Street and continuing south to the intersection of 4<sup>th</sup> Street and Sherman Street, and
2. on the south, by the south edge of the Sherman Street Right of Way between 4<sup>th</sup> Street and Middle Street, and
3. on the east, by the eastern edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and continuing north to the intersection of Middle Street and Main Street then east for an extension along and including the entire Main Street ROW to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, and then North from the intersection of Middle Street and Main Street to Lazelle Street ROW, then west staying 10' feet north of the South ROW of Lazelle Street until the western edge of ROW of 4<sup>th</sup> Street intersection with Lazelle and 4<sup>th</sup> Street.
4. on the northeast side of the ROW at the intersection of Lazelle Street and Middle Street north, starting on the north side of Lazelle Street ROW to the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street west across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1<sup>st</sup> Street, and further including the area within and between the Right of Way of 1<sup>st</sup> Street and 3<sup>rd</sup> Street that lies north of Lazelle Street and south of Bear Butte Creek, then from a point at the intersection of the 3<sup>rd</sup> Street Right of Way and Bear Butte Creek, south along 3<sup>rd</sup> Street to the intersection with a line extending west from the alley Right of Way located between Lazelle Street and Dudley Street, then along that line further west across 3<sup>rd</sup> Street and across Kinship Street to the Southwest Corner of the Community Center building then north to the corner of the northwest community center building, then west 130 feet then south to the ally Right of Way located between Lazelle Street and Williams Street to the western edge of 5<sup>th</sup> Street then South to its intersection with Lazelle

Street and 5<sup>th</sup> Street then staying 10' south of the Lazelle Street north ROW then east to the point of beginning at Lazelle Street and Middle Street.

5. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction, Main Street and Middle Street, and also including the Right of Way area of Third Street, Harley Davidson Way, First Street, Main Street and Junction Avenue within these boundaries.

6. Not included in the area are the cross walks at the intersections of Junction, 1<sup>st</sup> Street, Harley Davidson Way, 3rd Street and 4<sup>th</sup> Street as they cross Lazelle Street.

**Budget Impact**

The City of Sturgis has been asked to provide the following:

Open Container Boundary signs

Sturgis 77<sup>th</sup> Rally open container cups to be used for the event

**Recommendation**

After lots of research, discussion with downtown businesses, and other test events, it is the recommendation of the City of Sturgis Rally & Events Department, city council and city manager that the open container for malt beverages and wine be lifted for the 77<sup>th</sup> Annual Sturgis Motorcycle Rally.

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Approved:	  <hr/> Daniel Ainslie, City Manager
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RESOLUTION 2016 - 67

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

WHEREAS, the Sturgis® Motorcycle Rally™ is one of the nation's largest events, drawing hundreds of thousands of visitors each year to the State of South Dakota and focusing that attention on the Black Hills, and,

WHEREAS, the STURGIS® Motorcycle Rally™ is the single largest event contributor to the State of South Dakota's General Fund and Tourist Fund as well as to numerous hotels, casinos, restaurants, gas stations and other businesses located throughout the State of South Dakota; and,

WHEREAS, the City of Sturgis is the host of the annual Sturgis® Motorcycle Rally™ and has a particular responsibility to help ensure a successful event which continues to draw hundreds of thousands of visitors to the State of South Dakota; and,

WHEREAS, numerous events and tourist destinations throughout the United States makes use of an open container area in order to allow for responsible outdoor malt beverage and wine consumption; and,

WHEREAS, one of the highest catalysts for interactions between Sturgis law enforcement and attendees is unlawful open container and the City seeks to reduce unnecessary interactions to the greatest degree possible; and,

WHEREAS, the Sturgis® Motorcycle Rally™ must continue to evolve in order to ensure that it remains a competitive and relevant destination throughout the summer period to help ensure the profitability of numerous businesses throughout the region and the State of South Dakota; and,

WHEREAS, the request from numerous landowners and business owners is permitted under the authority of state law;

IT IS HEREBY FURTHER RESOLVED as set forth herein that the City of Sturgis shall establish a **malt beverage and wine** open container area on August 4<sup>th</sup>, 2017 beginning at 10:00 am and to conclude on August 13<sup>th</sup>, 2017 at 11:59p.m., as authorized by Section 3.02.20(C) of Sturgis City Ordinance and SDCL 35-1-5.5, for those persons legally possessing an malt beverage and/or wine in the authorized non-glass container, bearing the logo of the Sturgis Motorcycle Rally, Inc. and available for purchase from designated on-sale licensees, on that public property open to the public, within area bounded as follows:

1. on the west, by the western edge of the Right of Way of 4<sup>th</sup> Street, beginning at the intersection of 4<sup>th</sup> Street and Lazelle Street and continuing south to the intersection of 4<sup>th</sup> Street and Sherman Street, and
2. on the south, by the south edge of the Sherman Street Right of Way between 4<sup>th</sup> Street and Middle Street, and
3. on the east, by the eastern edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and continuing north to the intersection of Middle Street and Main Street then east for an extension along and including the entire Main Street ROW to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, and then North from the intersection of Middle Street and Main Street to Lazelle Street ROW, then west

staying 10' feet north of the South ROW of Lazelle Street until the western edge of ROW of 4<sup>th</sup> Street intersection with Lazelle and 4<sup>th</sup> Street.

4. on the northeast side of the ROW at the intersection of Lazelle Street and Middle Street north, starting on the north side of Lazelle Street ROW to the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street west across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1<sup>st</sup> Street, and further including the area within and between the Right of Way of 1<sup>st</sup> Street and 3<sup>rd</sup> Street that lies north of Lazelle Street and south of Bear Butte Creek, then from a point at the intersection of the 3<sup>rd</sup> Street Right of Way and Bear Butte Creek, south along 3<sup>rd</sup> Street to the intersection with a line extending west from the alley Right of Way located between Lazelle Street and Dudley Street, then along that line further west across 3<sup>rd</sup> Street and across Kinship Street to the Southwest Corner of the Community Center building then north to the corner of the northwest community center building, then west 130 feet then south to the ally Right of Way located between Lazelle Street and Williams Street to the western edge of 5<sup>th</sup> Street then South to its intersection with Lazelle Street and 5<sup>th</sup> Street then staying 10' south of the Lazelle Street north ROW then east to the point of beginning at Lazelle Street and Middle Street.

5. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction, Main Street and Middle Street, and also including the Right of Way area of Third Street, Harley Davidson Way, First Street, Main Street and Junction Avenue within these boundaries.

6. Not included in the area are the cross walks at the intersections of Junction, 1<sup>st</sup> Street, Harley Davidson Way, 3<sup>rd</sup> Street and 4<sup>th</sup> Street as they cross Lazelle Street.

This area shall be marked by city barricades with clearly legible signs, provided by the City and consistent with the limitations of this Resolution, stating that the barricade marks the boundary of the open container area. The open container area does not include the City Library, any City Property not open to the public, and does not include any private property within the open container area.

Dated this 5<sup>th</sup> day of December, 2016.

CITY OF STURGIS

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Mayor Mark Carstensen

ATTEST:

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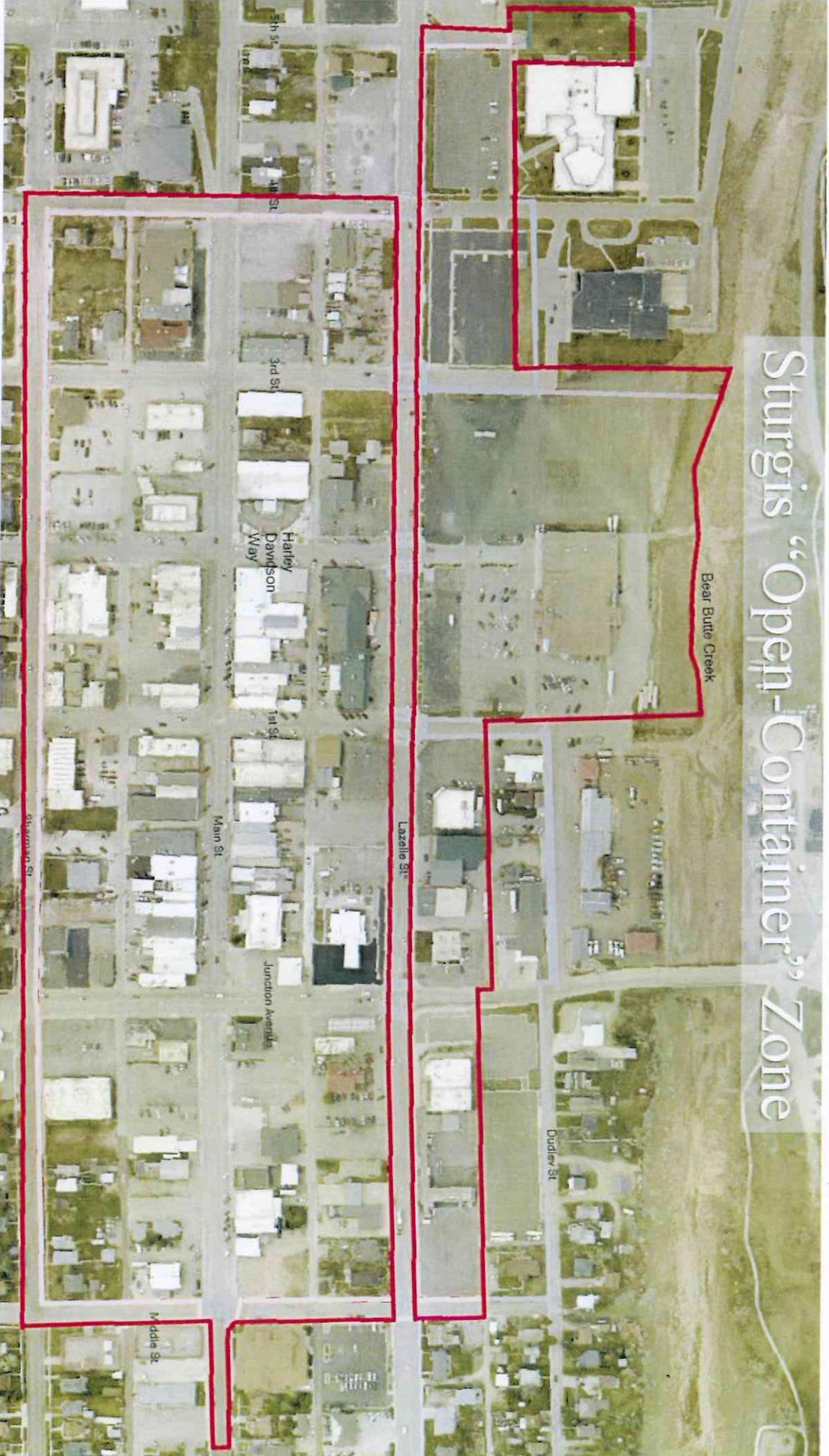
Fay Bueno, Finance Officer

Published:

Effective: Effective Immediately

# Sturgis "Open-Container" Zone

Bear Butte Creek



Dudley St

Lazelle St

Junction Avenue

Main St

1st St

Harley  
Davidson  
Way

3rd St

5th St

Middle St

Chapman St