

Spearfish City Council



Regular Session - Agenda

Date:
September 7, 2010

7:00 PM – City Council Chambers, 625 5th Street, Spearfish

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. CONSENT AGENDA

A. Approve Brown Bag Permit Requests (3)

Facility	Applicant	Event	Date
Center Shelter	First Interstate Bank	Co. Picnic	9/14/10
South Shelter	Kirk Kokinos	Wedding Reception	9/10/10
Center Shelter	Noel Ahl	Rehearsal Supper	9/24/10

B. Approve minutes of the Regular Session of August 16, 2010.

5. ITEMS FROM VISITORS

- A. Mayor will proclaim Constitution Week - September 17-23.
- B. Request to waive rental fee on Lookout Room at the Rec Center for Premier Bankcard Relay for Life Skate Party Fundraiser to be held October 15, 2010
- C. Mayoral Appointments to Fassbender Board

6. BIDS AND PROPOSALS

- A. Request authorization to award bid to New Rushmore Radio, Inc. for a total bid of \$400.00 for the purchase of the following radio equipment declared surplus: One (1) Antennae (obsolete), One (1) Pair of filter cavities (requires remanufacturing/retuning), One (1) Crown transmitter (requires remanufacturing/retuning), One (1) Satellite receiver (obsolete), One (1) Satellite controller (obsolete) and One (1) Length of cable (junk). Bids were opened on August 31, 2010 - one bid was received.
- B. Request authorization to accept proposal from NJS engineering for a survey to locate and mark corners of Thoen Stone Monument Lot and City owned lot containing access road.

survey to locate and mark corners of City-owned tract which contains the historic stone well house, and an exhibit for an ingress-egress easement from the 40' right-of-way to the well house property. Total amount of proposal is \$3,400.00.

- C. Request approval to accept lowest proposal of \$6,245.00 from Ainsworth Benning for the remodel of the first floor mail room as recommended during the last annual audit due to security concerns. Funded from 501 Construction Fund Balance.
- D. Request authorization to accept proposal for engineering services from HDR Engineering for 2011 Sanitary Sewer Improvements at a fee not to exceed \$49,822, funded from Sewer
- E. Request authorization to accept proposal from NJS Engineering for staking, soil density testing, and construction administration/observation for the Spearfish Industrial Park Grading Project on Lot 3, Block 1 of the Dodd's Subdivision at a total lump fee of \$5,800, funded from TIF #2.
- F. Request authorization to accept proposal for engineering services from CETEC Engineering for Water Distribution System Hydraulic Model at a fee not to exceed \$42,268, funded from Water
- G. Request to accept proposal from Black Hills Truck & Trailer Inc. to purchase a V-plow for a pickup at the Wastewater Treatment Plant at a cost of \$4,984.40, funded from WWT

7. HEARINGS

N/A

8. RESOLUTIONS AND ORDINANCES

- A. Resolution 2010-24 – A resolution to establish Fund 291 – Historical Procurement & Project Fund
- B. Resolution 2010-25 – Dedication of Tranquility Lane
- C. First Reading Ordinance 1123 – 2011 Appropriations Ordinance – on September 7, 2010
- D. First Reading Ordinance 1124 – Alcohol Revisions, September 7, 2010.

9. LEGAL, FINANCE AND PUBLIC SAFETY

- A. Police – Request authorization to accept quote from Western Communications for 2 portable radios and one mobile radio for a total of \$6,591.
- B. Police – Request authorization to purchase JOEY Transcorder CTR-752WT from Tactical Technologies Inc. at a cost of \$3,430. The JOEY will be used for undercover operations in a variety of investigations that include, but not limited to, drug investigation, sexual assaults, and burglary investigations.

- C. FYI – Parade Permit – Spearfish High School Homecoming Parade – October 1, 2010 from 1:45PM to 3:00 PM – Line up on Grant Street, parade down Main Street to SHS.

10. PUBLIC WORKS

- A. Authorization to seek proposals for design of 2011 Winterville Rec Path project.
- B. Request approval of Change Order #1, Elkhorn Ridge North Service Road Extension, increase of \$10,023.43, due to adding barrel section to manholes to bring them to the correct elevation. This Change Order also increases the date of completion an additional 30 days making the completion date October 1, 2010, due to weather. Funded by Daryll Propp.
- C. Request approval of Change Order #2, 2010 Street Improvement Project, increase of \$3,281.76, for flowable fill, pipe encasement and geo grid material
- D. Request approval of Change Order #4, 2010 Colorado Boulevard Water Main Replacement, increase of \$39,543.20, under/over quantities to final project
- E. Request authorization to pay Ward Development Group a total of \$48,072.63 for Upsizing Costs for Ward Lift Station.

11. HUMAN RESOURCES

- A. Request authorization to hire Peggy Hensley as a Facility Maintenance Tech I at the Recreation Center, Grade 9, Step 1, \$12.07 per hour, effective 9/8/2010
- B. Request authorization to move Jordan Thomas to a Fitness Instructor, Grade 6, Step 1, \$10.41 per hour, effective September 7, 2010

12. PLANNING AND ZONING

- A. Wind Energy – Additional Discussion

13. APPROVE THE BILL LIST OF SEPTEMBER 7, 2010.

14. ITEMS FROM ATTORNEY

15. ITEMS FROM MAYOR AND COUNCIL

16. REPORTS

A. Public Works Administrator

- 1) FYI – ‘Dog Days of Summer’ at Water Park – September 9, 2010 – 5:30pm to 7:30pm – Fundraiser for Western Hills Humane Society.

B. Acting Finance Officer

- 1) Update on Midco Access Channel at BHSU
- 2) FYI - Annual SDML Conference – Rapid City Ramkota Hotel and Convention Center – October 5, 6, 7 and 8. Go to www.sdmunicipalleague.org to view the preliminary agenda – please let Karla Weber know if you plan to attend any of the sessions by September 12th.

C. Planning Director

D. Police Chief

E. Fire Chief

- 1) FYI: Update on Maitland Rd. Civil Defense/Fire siren.

17. EXECUTIVE SESSION – FOR PERSONNEL MATTERS.

18. ADJOURNMENT

ADA Compliance: The City of Spearfish fully subscribes to the provisions of the Americans with Disabilities Act. If you desire to attend this public meeting and are in need of special accommodations, please notify the City Finance Office 24 hours prior to the meeting so that appropriate auxiliary aids and services are available.

**ADDITIONAL
PACKET
DOCUMENTS
FOR THIS
AGENDA
FOLLOW**

**SPEARFISH REC & AQUATICS CENTER RENTAL RATES AND POLICIES
122 RECREATION LANE, SPEARFISH, SD 57783 (PHONE: 722-1430)**

Renters of the rooms at the SRAC are separated into the following classes.

Class 1

- ◆ Non-profit groups who will not collect fees, not accept donations, and/or not charge admission

Class 2

- ◆ Private groups including commercial entities

Rental Hours Vary Depending Upon the Room:

See Rental Agreement for Specifics

Room Rental Descriptions, Classes, Deposits and Fees

Room Descriptions	Multiple Purpose One or Two 45 cap.	Multiple Purpose All 94 cap.	Gym One	Gym All 500 cap.	Party Room 38 cap.	Cardio Room 24 cap.	Lookout Room Rental 200 cap.	Batting Cage 2 cap.
Deposit	\$ 50	\$ 100	\$ 100	\$ 200	\$ 50	\$ 50	\$100	
Hourly Class 1	\$ 15	\$ 30	\$ 25	\$ 50	\$20	\$20	\$30	\$10 For up to 5 persons
Hourly Class 2	\$ 25	\$ 40	\$ 30	\$ 60	\$30	\$ 30	\$40	\$25 For 6 + persons
Half Day (4 hour) Class 1							\$200*	
Half Day (4 hour) Class 2							\$240*	
Full Day (8 hour) Class 1							\$400*	
Full Day (8 hour) Class 2							\$480*	
Serving Kitchen - Flat Fee	\$ 20	\$ 20	\$ 20	\$ 20	\$ 20	\$ 20	\$ 20	
							*200 people max. Exclusive use No passes	

Rooms and gyms include a 15 minute setup and teardown period if the room/gym is not rented for at least four hours. Deposits are required at time of signing the rental agreement.

Equipment rental is available. Renter needs to request items at least 24 hours prior to rental.

Equipment Item	Rental Fee	Notice
TV/DVD/ Portable Screen	\$ 10	24 Hour notice
Easel	\$ 0	24 Hour Notice

**SPEARFISH REC & AQUATICS CENTER PARTY RATES AND POLICIES
122 RECREATION LANE, SPEARFISH, SD 57783 (PHONE: 722-1430)**

Rates for party rentals at the SRAC are as follows:

Descriptions	Lookout Water Park Party	Lookout Indoor Rec Party	Patio or Party Room Water Park Party	Party Room Indoor Rec Party	Kidz Room Party 24 cap.
Deposit	\$ 100	\$ 100	\$100	\$50	\$50
Rate	\$ 200*	\$ 100*	\$100*	\$70*	\$70*
	*Includes 20 water park passes 4-hour max. 11:30 am-3:30pm 3:30 pm-7:30 pm	*Includes 20 rec center passes 2-hour max.	*Includes 10 water park passes 2-hour max.	*Includes 10 indoor rec passes 2-hour max.	*Includes 10 Kidz Room passes and staff assistance 2-hour max.

FACILITY AND EQUIPEMENT RENTAL POLICIES

RENTAL HOURS VARY:

Rentals are available from 30 minutes after opening time to 30 minutes prior to closing. Hours differ depending on the season and day of week.

An SRAC staff member can assist in party organization, supervision or other setup and cleanup needs if reserved in advance at a \$25 per hour fee. Please make your request during reservation signup.

The SRAC reserves the right to refuse rental if the renter cannot meet these requirements.

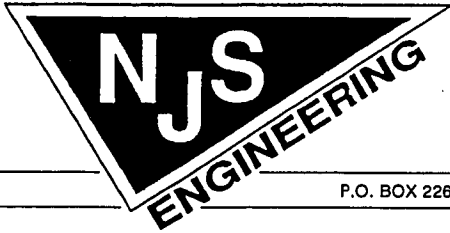
FACILITY RENTAL POLICIES:

The SRAC facilities may be rented for activities and events at the discretion of the director. A security/damage deposit and a facility usage form are required at the time of reservation. Rental payment and paperwork must be received by the appropriate City staff during regular business hours, 8 a.m. to 5 p.m. Monday through Friday. All paperwork for facility rental must be completed before the scheduled reservation.

USE POLICIES:

- a. Rental setup is the responsibility of the user/renter.
- b. The user/renter must clean areas immediately after use. See the cleanup guidelines for specific information.

6B.



Consulting Engineers
Land Surveyors

P.O. BOX 226 • 123 E. JACKSON BLVD. SUITE 1 • SPEARFISH, SOUTH DAKOTA 57783 • (605) 642-4772 • FAX (605) 642-4773

September 1, 2010

Attn: Sherry Mowell/Cheryl Johnson
City of Spearfish Public Works
625 Fifth Avenue
Spearfish, SD 57783

RE: Property Boundary surveys in the NW $\frac{1}{4}$ of Section 15, T6N, R2E

Dear Sherry & Cheryl:

In response to your request, our proposal for surveys in the above-referenced section is as follows:

Base Survey: The scope of work for the Base Survey would include a survey to locate and mark the corners of Lot 37A (Thoen Stone Monument Lot) and Lot 37C2 (City-owned lot containing road that provides access to Thoen Stone Monument road). This would include a drawing depicting the survey. The drawing would also show the location of the road and fences on Lot 37C2. This survey and drawing would be completed for a lump sum fee of \$2,200.00.

Option #1: This option would be contingent on completion of the Base Survey described above and would include a survey to locate and mark the corners of the City-owned tract described in Book 98 at page 341, which contains the historic stone well house. This option would also include a survey and preparation of an exhibit for an ingress-egress easement that would run from the existing 40' right-of-way to the well house property. This would be on a route selected by City of Spearfish personnel. This option would also be added to the Base Survey drawing. Option #1 would be completed for an additional lump sum fee of \$1,200.00, bringing the total lump sum fee to \$3,400.00.

Thank you for the opportunity to provide this quote. If you have any questions or require additional information, please contact me.

Sincerely,

A handwritten signature in black ink that reads 'James D. Walker'.

James D. Walker
NJS Engineering

ACEC

RESOLUTION 2010-24

**RESOLUTION ESTABLISHING FUND 291 –
HISTORICAL PROCUREMENT & PROJECT FUND**

WHEREAS, pursuant to Resolution 2010-24, the City of Spearfish authorized the purchase of the Fassbender Photographic Collection; and

WHEREAS, the City of Spearfish desires to establish a fund in the budget for the acquisition, preservation, maintenance, and annual administration of special, significant, unique, or historic documents, artifacts, memorabilia, materials, or treasures, including but not limited to those items of the Fassbender Photographic Collection that are being purchased by the City of Spearfish and to further accommodate and increase public accessibility to such historic items;

NOW, THEREFORE, be it resolved by the City of Spearfish that Fund 291 – Historical Procurement & Project Fund is hereby established and included in the City’s annual budget to accomplish the purposes set forth above. The City of Spearfish hereby authorizes the transfer of funds in the amount of \$25,000 from the General Fund into Fund 291 – Historical Procurement & Project Fund. Fund 291 – Historical Procurement & Project Fund shall be funded by \$25,000 of the annual revenues received from Deadwood gaming revenues as well as any revenues generated from the historical items. The City of Spearfish hereby authorizes the transfer of these annual revenues received from Deadwood gaming revenues as well as any revenues generated from the historical items to be deposited or transferred into Fund 291 – Historical Procurement & Project Fund to accomplish said purposes.

Dated this 7th day of September, 2010.

BY: _____
Jerry A. Krambeck, Mayor

ATTEST:

BY: _____
David H. Dutton, Acting Finance Officer

Adopted: September 7, 2010
Published: September 17, 2010
Effective: October 7, 2010

Prepared by:
 City of Spearfish
 625 Fifth Street
 Spearfish, SD 57783
 605-642-1333

RESOLUTION 2010-25

ACCEPTANCE OF IRREVOCABLE OFFER OF DEDICATION OF LAND AND IMPROVEMENTS

WHEREAS, M&W Enterprises has offered to dedicate in perpetuity to the City of Spearfish, South Dakota the following legally described land and/or improvements, to wit, as further depicted on Exhibit A:

Tranquility Lane and Lot C of the Sunset Oaks Subdivision to the City of Spearfish, a subdivision of a portion of Lot B, Block 16 of the Sandstone Hills Addition to the City of Spearfish, Lawrence County, South Dakota.

WHEREAS, the City has reviewed and hereby accepts the following terms of the Offer of Dedication; having a fair market value thereof:

Land:	
R.O.W. Tranquility Lane	\$ 172,000/ 2 acres
Common Open Space Lot C	\$ 83,000/ .38 acres
Water Lines:	\$ 74,194/ 1,919 Linear feet
Sanitary Sewer:	\$ 95,202 / 1,107 Linear feet
Streets:	\$ 98,321 / 1184 Tons Asphalt
Curb/Gutter:	\$ 26,477 / 2,463 Linear feet
Sidewalk:	\$ 25,592 / 7,418 Square feet
Streetlight:	\$ 9,549 / 6 lights

WHEREAS, the owner(s) has certified that the improvements offered for dedication herein have been constructed in conformance with the design plans and specifications approved by the City of Spearfish, and warrants materials and workmanship of the improvements for a period of one year from the date of acceptance by the City.

Prepared By:
City of Spearfish
625 Fifth Street
Spearfish, SD 57783
605-642-1333
Page 2 Resolution 2010-25

WHEREAS, the City has performed a visual inspection and has reviewed all required construction documentation by the Engineer of record that the improvements have been constructed in conformance with the plans and specifications approved by the City.

WHEREAS, the City of Spearfish shall own the irrigation system on Lot C and be responsible for winter shut down of it and for opening the system in the spring. The dedicator, M&W Enterprises or their designee/successor, shall be responsible for mowing. Water shall be metered, but provided at no charge.

NOW THEREFORE BE IT RESOLVED that we, the assembled members of the Common Council of the City of Spearfish do hereby accept the dedication described herein.

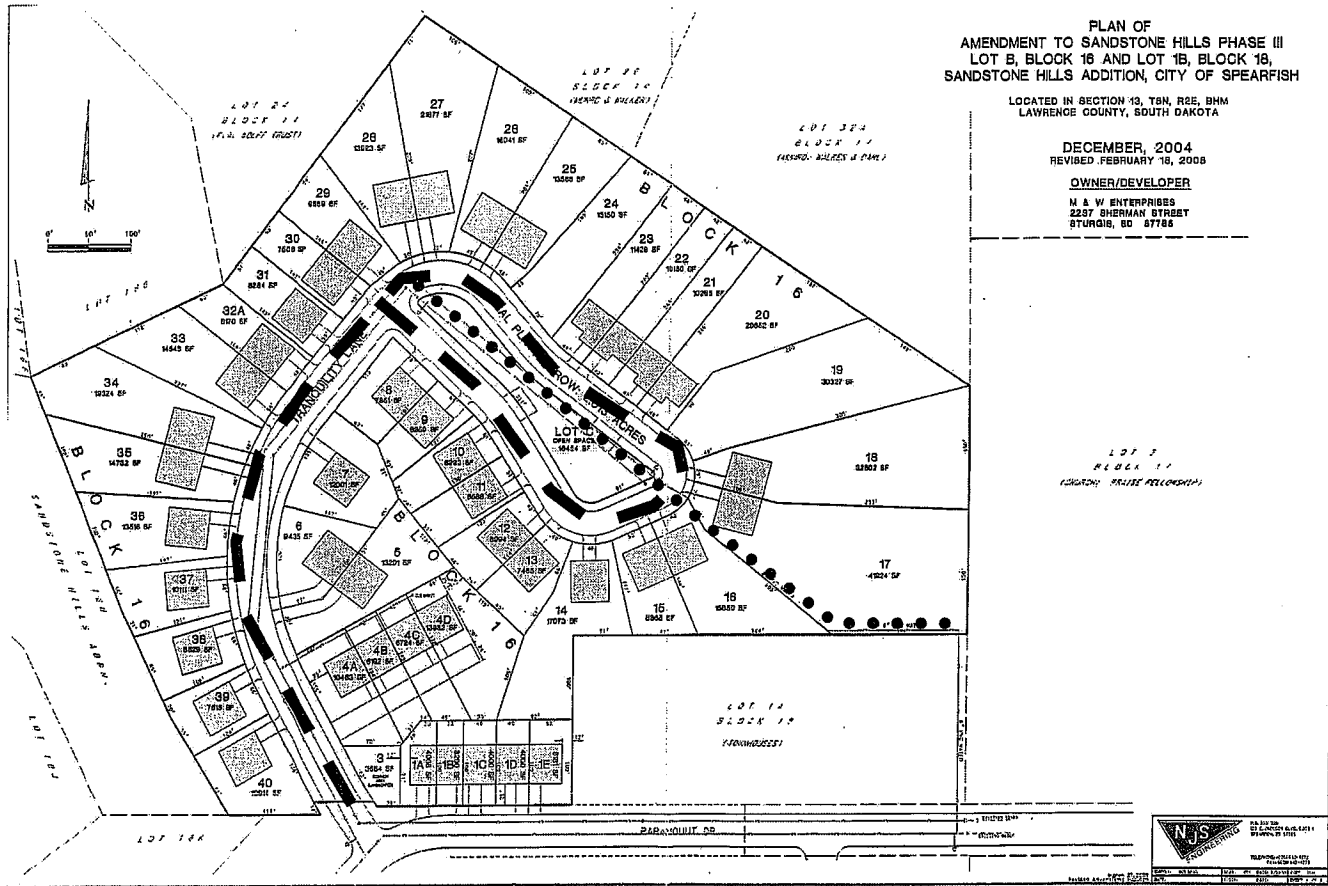
Adopted this 7th day of September, 2010.

Jerry A. Krambeck, Mayor

ATTEST: _____
David H. Dutton, Acting City Finance Officer

Adopted: September 7, 2010
Published: September 17, 2010
Effective Date: October 7, 2010

Prepared By:
City of Spearfish
625 Fifth Street
Spearfish, SD 57783
605-642-1333
Page 3 Resolution 2010-25



Tranquility Lane Street/Water/Sewer Improvements ■■■■■
Water main location in upper loop area ●●●●●
(all other locations within the street)

EXHIBIT A

8c.

ORDINANCE 1123 – 2011 APPROPRIATIONS
ORDINANCE

DUE SIZE OF DOCUMENT, IT IS NOT READABLE IN A SCANNED FORMAT

THIS DOCUMENT IS AVAILABLE TO VIEW AT THE
CITY FINANCE OFFICE – FIRST FLOOR, CITY HALL.

ORDINANCE NO. 1124AN ORDINANCE AMENDING AND REENACTING CHAPTER 4, ALCOHOLIC BEVERAGES, OF THE CODE OF ORDINANCES OF THE CITY OF SPEARFISH.

BE IT ORDAINED by the Common Council of the City of Spearfish that the following specified sections of Chapter of the Code of Ordinances of the City of Spearfish, are hereby amended and restated to read as follows:

CHAPTER 4 ALCOHOLIC BEVERAGES*

Art. I. Licenses and General Provisions, §§ 4-1—4-18

***Cross references**—Administration, Ch. 2; advertising, Ch. 3; buildings and building regulations, Ch. 6; health, sanitation and nuisances, Ch. 9; licenses, permits and business regulations, Ch. 10; streets, sidewalks and other public places, Ch. 14; taxation, Ch. 16; traffic and vehicles, Ch. 17; zoning, App. A.

State law references—Alcoholic beverages, SDCL Title 35; retailing of alcoholic beverages, SDCL § 9-29-6; power to regulate sale and use, SDCL § 9-29-7.

ARTICLE I. LICENSES AND GENERAL PROVISIONS

Sec. 4-1. Definitions.

A term that is defined in a specific section of this chapter is to be first given the meaning therein defined. If a term is not defined in a specific section the term is to be defined using the definitions below in this section. If a term is not defined in this section the term is to be given the meaning as defined in Title 35 of the South Dakota Codified Laws, SDCL. If a term is not provided for in the SDCL the term is to be given its plain and ordinary meaning.

Alcoholic beverage. Any distilled spirits, wine, and malt beverages as defined in this chapter.

Bulk container. Any package, or any container within which container are one or more packages.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, containing not less than one-half of one percent (0.5%) of alcohol by weight.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable

for human consumption containing not less than one-half of one percent (0.5%) of alcohol by weight.

Off-sale. The sale of any alcoholic beverage, for consumption off the premises where sold.

On-sale. The sale of any alcoholic beverage for consumption only upon the premises where sold.

On-sale dealer. Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

Package. The bottle or immediate container of any alcoholic beverage.

Package dealer. Any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

Public place. Any location that the local, state, or national government maintains for the use of the public, such as a highway, park, or public building.

Retail license. Any on-sale or off-sale license issued under the provisions of this chapter.

Retailer or retail dealer. Any person who sells alcoholic beverages for other than resale.

Sale. The transfer, for a consideration, of title to any alcoholic beverage.

Wine. Any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent (0.5%) of alcohol by weight but not more than twenty- four percent (24%) of alcohol by weight.

(Ord. No. 1035, 9-5-06)

Cross reference and State law reference— Definitions and rules of construction generally, § 1-2-; Classes of licenses enumerated – Fees, SDCL §35-4-2.

Sec. 4-2. Traffic in alcoholic beverages prohibited.

No person shall produce, transport, store, or sell any alcoholic beverage except as authorized under the provisions of this chapter and SDCL Title 35 of the SDCL.

(Ord. No. 1035, 9-5-06)

Sec. 4-3. Application for license to conduct business pursuant to this chapter.

Any person desiring to enter into the alcoholic beverage business in the city shall ~~make~~ submit an application for a license under the provisions of SDCL Title 35, Alcoholic Beverages, ~~the state liquor control law, SDCL Title 35,~~ to the City Finance Officer.

(Ord. No. 1035, 9-5-06)

State law reference— Applications submitted to City – Fee – Approval or disapproval, SDCL §35-2-1.2.

Sec. 4-4. Action by council.

The common council may approve or disapprove an application for a license depending on whether the council deems the applicant a suitable person to hold the license and whether the council considers the proposed location suitable. The common council may, in their discretion, require the applicant to appear personally at any meeting of the council and to answer any question which may be asked pertaining to himself the applicant or the place of business which may in any way pertain to the carrying on of the business applied for.

(Ord. No. 1035, 9-5-06)

State law reference— Applications submitted to City – Fee – Approval or disapproval, SDCL §35-2-1.2.

Sec. 4-5. Character requirements for licensees.

Any licensee under this chapter and SDCL Title 35 of the SDCL must be a person of good moral character, who has never been convicted of a felony, and, if the licensee is a corporation, the managing officers thereof must have like qualifications.

(Ord. No. 1035, 9-5-06)

State law reference— Applications submitted to City – Fee – Approval or disapproval, SDCL §35-2-1.2.

Sec. 4-6. Area limited.

The common council shall not approve any application for “on-sale” or “off-sale” license to sell any alcoholic beverages in the city at any place of business unless that place of business is located in an area described as a commercial area on the zoning use district map of the city.

(Ord. No. 1035, 9-5-06)

Cross reference— Zoning, App. A.

Sec. 4-7. Violation as ground for revocation or suspension of license – Multiple licenses.

The common council may revoke or suspend any license issued under this chapter and SDCL Title 35 upon proof of violation by the licensee, by the licensee’s agents or employees, or by the manager or contractual operators of retail establishments and their agents or employees operating under a City license, of any of the following:

- (1) Any provision of SDCL Title 35;
- (2) Any rule promulgated pursuant to SDCL Title 35; or
- (3) Any ordinance or regulation relevant to alcoholic beverage control that has been adopted by the City.

~~—(a) Any license issued pursuant to this chapter may be revoked or suspended upon proof of violation by the licensee, his agents or employees or by the manager or contractual operators of retail establishments and their agents or employees.~~

—(b) For any licensees with multiple alcoholic beverage licenses for the same premises, upon suspension or revocation of any license issued pursuant to this chapter or SDCL Title 35 of the SDCL, such licensee shall cease operation under all alcoholic beverage licenses held by such licensee for the same premises for the same period as the suspension or revocation.

(Ord. No. 1035, 9-5-06)

State law reference— Violations as grounds for revocation of suspension of license – Multiple licenses, SDCL §35-2-10.

Sec. 4-8. Issuance of on-sale malt beverage licenses restricted.

No on-sale malt beverage license may be issued to any business where gasoline, blended gasoline, or diesel fuel is pumped.

(Ord. No. 1035, 9-5-06)

Sec. 4-9. Classification, information, limitations, and cost of alcoholic beverage licenses.

No license shall be issued pursuant to this chapter except after a public hearing unless otherwise expressly stated. Classes of licenses, with the fee of each class, follow:

- (1) Off-sale liquor license.
 - a. The fee for this license is five hundred dollars (\$500.00) per year.
- (2) Off-sale malt beverage license.
 - a. The fee for this license shall be the amount set forth in SDCL Ch. 35-4.
 - b. Fifty percent (50%) of this fee is paid to the State of South Dakota, State, through the city.
- (3) On-sale and off-sale malt beverage retailers' license.
 - a. The fee for this license shall be the amount set forth in SDCL Ch. 35-4.
 - b. Fifty percent (50%) of this fee is paid to the state through the city.

(4) On-sale and off-sale wine license.

a. The fee for the license shall be the amount set forth in SDCL Ch. 35-4.

(5) On-sale liquor license.

a. The fee for the license shall be one thousand five hundred dollars (\$1,500.00) per year.

(6) The City may issue:

a. A special malt beverage retailer's license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL §35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant;

b. A special on-sale wine retailer's license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL §35-4-2(4), (6), or (12) or SDCL Ch. 35-12 in addition to any other licenses held by the special events license applicant;

c. A special on-sale license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL §35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant; or

d. A special off-sale package wine dealer's license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to SDCL §35-4-2(3), (5), (12), (17A), or (19) or SDCL Ch. 35-12 in addition to any other licenses held by the special events license applicant. A special off-sale package wine dealers licensee may only sell wine manufactured by a farm winery that is licensed pursuant to chapter 35-12.

e. The fee for each special malt beverage retailer's license, special on-sale wine retailer's license, and special off-sale package wine dealer's license will be fifty dollars (\$50.00) per day. The fee for each special on-sale liquor license shall be one hundred dollars (\$100.00) per day. The fee for each of these licenses will be twenty-five dollars (\$25.00) for the first day and ten dollars (\$10.00) for each additional day.

~~Special malt beverage retailers' license and special retail on-sale wine dealers' license.~~

~~a. The fee for this license is twenty-five dollars (\$25.00) for the first day and ten dollars (\$10.00) for each additional day.~~

~~— b. — This license may only be issued to civic, charitable, educational, or fraternal organizations in conjunction with a special event within the city.~~

~~— c. — For the purposes of this subsection educational does not include any elementary, secondary, or higher education institution in the public school system of this state.~~

~~— d. f. A public hearing is required before approval and issuance of any license under this section.~~

g. Any licenses issued pursuant to this section may be issued for a period of time established by the city council not exceeding fifteen (15) consecutive days.

h. This license may be issued pursuant to SDCL § 35-4-11-4124.

~~(7) — Temporary on-sale license for convention hall.~~

~~— a. — The fee for this license is one hundred dollars (\$100.00) per day.~~

~~— b. — City council may issue an on-sale license to be operated at a convention hall.~~

~~— c. — In order to be eligible for this license the licensee must be a holder of an annual alcoholic beverage license within the city.~~

~~— d. — Any license issued pursuant to this section shall not exceed five (5) consecutive days and the license shall expire at twelve midnight on the fifth day after issuance.~~

~~— e. — No public hearing is required for the issuance of this license provided that the applicant holds an on sale alcoholic beverage license within the city.~~

~~— f. — This license can be issued pursuant to SDCL § 35-4-14.2.~~

~~— g. — Convention hall includes, but is not limited to Hudson Street Hall, the Wilbur S. Tretheway Pavilion, and the Snapper's Club.~~

~~— (8) — Notwithstanding Subsection (a) of Section 4-11 below, the council may, in its discretion, provide in any on-sale license the right to sell, serve or allow to be consumed alcoholic beverages on Sunday except between the hours of 2:00 a.m. and 7:00 a.m.~~

~~(9)(7) — Brown bag permit.~~

a. The fee for this permit is twenty-five dollars (\$25.00) per day.

b. This permit allows the applicant to provide alcoholic beverages free of charge during the applicant's rental of the Wilbur S. Tretheway Pavilion, the Snapper's Club, Hudson Hall or a shelter in a public park.

c. The application permit must be completed and filed with the Public Works Office at least thirty (30) days prior to the first day of rental of a facility described above.

d. The applicant must be at least twenty-one (21) years of age and provide an acceptable form of identification, together with a signed Hold Harmless Agreement and the name, policy number and expiration date of applicant's homeowner's insurance or liability insurance carrier.

e. ~~A brown bag permit shall not exceed five (5) consecutive days and the permit shall expire at twelve midnight on the fifth day after issuance.~~ This permit allows, with the common council's approval, the consumption and blending of any alcoholic beverages in city parks on property owned by the public or by a nonprofit corporation within the City. The length of the brown bag permit may not exceed twenty-four (24) hours. Hours of consumption may not exceed those permitted for on-sale licensees.

(Ord. No. 1035, 9-5-06; Ord. No. 1096, 7-6-09)

State law references— Classes of licenses enumerated – Fees, SDCL §35-4-2; Local approval of Sunday sales, SDCL §35-4-2.1; City may permit consumption of alcoholic beverages on property owned by public or nonprofit corporation; SDCL §35-1-5.3; Hours of sale, SDCL §§ 35-4-81 and 35-4-81.2; ~~local approval of Sunday sales, SDCL § 35-4-2.1~~ Special alcoholic beverage licenses issued in conjunction with special events, SDCL §§35-4-124 and 35-4-125.

Sec. 4-10. Fee for alcoholic beverage licensees who have video lottery licenses.

Any person who is licensed pursuant to SDCL §35-4-2(4), (6), (11), (12), (134), or (167) ~~of SDCL § 35-4-2~~, and who is issued a video lottery establishment license pursuant to SDCL § 42-7A-41 must pay an additional annual fee for locating video lottery machines on the licensed premises. The fee is established at fifty dollars (\$50.00) for each video lottery machine and the fee shall be paid at the same time and in the same manner as the fees paid on licenses issued pursuant to SDCL § 35-4-2. All fees received under this section shall be deposited into the general fund of the city.

(Ord. No. 1035, 9-5-06)

State law reference— Annual additional license fee for video lottery machines on licensed premises, SDCL §35-4-103.

Sec. 4-11. On-sale and off-sale service restricted and consumption restricted.

(a) No on-sale or off-sale licensee, licensed under SDCL §35-4-2(3), (4), (5), (6), (9), (11), (13), or (18), may ~~serve, sell~~ sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages, between the hours of 2:00 a.m. and 7:00 a.m., ~~or on Memorial Day after 2:00 a.m.~~, or at any time on Christmas Day. Such licensees are permitted to sell, serve, or allow to be consumed alcoholic beverages on Sunday and on Memorial Day, except between the hours of 2:00 a.m. and 7:00 a.m. A violation of this section will be a Class 2 misdemeanor.

(b) No licensee licensed under subdivisions 35-4-2(12), (16), (17), (17A), and (19) may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. A violation of this section will be a Class 2 misdemeanor.

~~(b) No regular on-sale malt beverage licensee may sell or allow to be consumed any malt beverage outside the building of the licensed premises unless the licensee's business operates out of a permanent structure and the consumption of the malt beverage occurs in an outdoor designated area located on the premises of the licensee which is approved by the common council.~~

(Ord. No. 1035, 9-5-06; Ord. No. 1096, 7-6-09)

State law references— Hours of sale, SDCL §§35-4-81 and 35-4-81.2; local approval of Sunday sales under certain circumstances, SDCL § 35-4-2.1.

~~Sec. 4-12. Off sale service restricted.~~

~~—No off-sale licensee, authorized under Title 35 of the SDCL, may sell, or allow to be sold, alcoholic beverages between the hours of 12:00 midnight and 7:00 a.m. of the following day or sell or allow to be sold, distilled spirits, malt beverages or wine on Memorial Day or Christmas Day.~~

(Ord. No. 1035, 9-5-06)

~~—State law reference— Similar provisions, SDCL § 35-4-81.1.~~

Sec. 4-123. Malt beverages—Identification of containers and record-keeping requirements. Kegs of malt beverage – Retail sale – Records.

~~(a) A retail licensee selling malt beverages for off-sale consumption in a container having a liquid capacity of greater than two (2) gallons shall not sell any such container without placing a distinctive symbol, notation or mark on the container which uniquely identifies the licensee. The licensee must register his or her unique symbol, notation or mark with the Spearfish Police Department or its designee.~~

~~(b) Business records shall be kept by the licensee providing the following information: the date of the sale, and the name, address, driver's license number and social security number of the person to whom the malt beverage in the designated containers was sold. The licensee shall retain these records for six (6) months following the last sale of malt beverages in the above-designated containers, and shall provide the records upon request to any duly authorized officer or representative of any city, county or state agency responsible for enforcing this section or for enforcing SDCL pertaining to consumption of alcohol.~~

(Ord. No. 1035, 9-5-06)

No keg of malt beverage may be sold at retail in this state unless the licensee who sold the keg records the name and address of the person to whom the keg is sold and has provided for the identification of the keg. Each licensee shall maintain such sales records for one year and shall make the sales records available to any law enforcement agency upon request.

The identification provided for in this section may not be permanent or damaging to the structure of the keg. The licensee must register his or her unique symbol, notation, or mark with the Spearfish Police Department or its designee.

For the purposes of this section, the term, keg, means an eight or sixteen gallon reusable plastic or metal container.

State law reference— Kegs of malt beverage – Retail sale - Records, SDCL §35-1-12.

~~Sec. 4-14. Intoxication on premises prohibited.~~

~~— No licensee shall permit any person to become intoxicated on the premises described on the license.~~

~~(Ord. No. 1035, 9-5-06).~~

~~Sec. 4-15. Persons to whom sale of alcoholic beverages prohibited.~~

~~No licensee may sell any alcoholic beverage to any person~~

- ~~1. Under the age of twenty one (21) years; or~~
- ~~2. Who is obviously intoxicated at the time; or~~
- ~~3. Person who is known to the dealer to be a habitual drunkard.~~

~~(Ord. No. 1035, 9-5-06).~~

~~**State law reference**— Similar provisions, SDCL § 35-4-78.~~

~~Sec. 4-16. Possession by minors.~~

~~— It shall be unlawful for any person under the age of twenty one (21) years to have in his possession any alcoholic beverage.~~

~~(Ord. No. 1035, 9-5-06)~~

~~**State law reference**— Similar provisions, SDCL § 35-9-2.~~

Sec. 4-137. Consuming, blending, possessing alcoholic beverages in public places; disposal of containers containing alcoholic beverages restricted.

(a) ~~It shall be~~ is unlawful for any person to consume any alcoholic beverage upon the premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-sale dealer. ~~or to mix or blend any alcoholic beverage with any other beverage, regardless of whether such beverage is an alcoholic beverage, in any public place, other than upon the premises of a licensed on-sale dealer, where such alcoholic beverages were purchased from such dealer for on-sale purposes. Exceptions to this subsection are provided for in Section 4-18 of this chapter.~~

(b) ~~It shall be~~ is unlawful for any person to ~~possess~~ consume any distilled spirits in any public place, other than upon the premises of a licensed on-sale dealer, ~~any glass, can, bottle, or other container, containing an alcoholic beverage on which the seal has been broken.~~

~~(c) It shall be unlawful for any person to throw, cast or otherwise put in motion, any bottle, can, glass or any other container, at any person or vehicle, whether moving or parked or to dispose of or deposit any bottle, can, glass or other container upon any street, alley, highway, sidewalk, or park.~~

~~(d)(c)~~ For the purposes of this section, the term "public place" shall mean any place, whether ~~within~~ in or out of a building, commonly and customarily open to or used by the general public, and any street, highway, ~~alley, or sidewalk.~~

(d) Exceptions to this subsection are provided for in Section 4-14 of this chapter.

(e) Any person violating the provisions of this section is guilty of a Class 2 misdemeanor.

(Ord. No. 1035, 9-5-06)

Cross references— Buildings and building regulations, Ch. 6; health, sanitation and nuisances, Ch. 9; licenses, permits and business regulations, Ch. 10; mobile homes and mobile home parks, Ch. 12; streets, sidewalks and other public places, Ch. 14; streets and public rights-of-way, § 14-26 et seq.; sidewalks, § 14-76 et seq.; assemblies, parades and processions, § 14-101 et seq.; cemeteries, § 14-156 et seq.; parks and recreation areas, § 14-251 et seq.; subdivisions, Ch. 15; traffic and vehicles, Ch. 17; zoning, App. A.

State law reference— Similar provisions, SDCL § 35-1-5.3.

Sec. 4-184. Open container permitted.

Notwithstanding anything herein to the contrary:

(1) No regular on-sale malt beverage licensee may sell or allow to be consumed any malt beverage outside the building of the licensed premises unless the licensee's business operates out of a permanent structure and the consumption of the malt beverage occurs in an outdoor

designated area located on the premises of the licensee which is approved by the common council.

(1)(2) The sales and consumption of alcoholic beverages on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises, provided that the license holder derives more than fifty percent of its gross receipts from the sale of prepared food for consumption on the licensed premises. The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and abutting the licensed premises. This section does not apply to any federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid. ~~adjacent to a public right-of-way abutting a licensed premises, provided that the license holder derives more than fifty percent (50%) of its gross receipts from the sale of prepared food for consumption on the licensed premises. The sidewalk or walkway subject to the public right-of-way shall be immediately adjacent to and abutting the licensed premises.~~

~~(2) The common council may permit the consumption and blending of any alcoholic beverages in city parks on property owned by the public or by a nonprofit corporation within the City. The fee for such permit shall be twenty five dollars (\$25.00). The length of the permit shall may not exceed twenty four (24) hours. Hours of consumption shall may not exceed those permitted for on-sale licensees.~~

(3) The common council may, in its discretion, for community designated events, permit open containers in public places upon such terms and conditions the council may impose.

(Ord. No. 1035, 9-5-06; Ord. No. 1096, 7-6-09; Ord. No. 1108, 9-21-09)

State law references— City may permit consumption of alcoholic beverages on property owned by public or nonprofit corporation; SDCL §35-1-5.3; Sales or consumption of alcoholic beverages on sidewalk abutting licensed premises permitted by ordinance, SDCL § 35-4-77.1.

Remaining Provisions: All terms and provisions as set forth in Chapter 4 shall remain in full force and effect, except as specifically modified by this Ordinance.

Authorization: This ordinance is being passed pursuant to the provisions of SDCL §35-4-2.1, §35-4-11.4, §35-4-14.2, §35-4-81 and §35-4-77.1.

Severability: If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

Effective Date: This ordinance will be effective 20 days following publication, which will occur after the ordinance receives second and final reading by the City Council and is signed by the Mayor.

Jerry A. Krambeck, Mayor

ATTEST:

David H. Dutton, Acting Finance Officer

First Reading: September 7, 2010
Second Reading: September 20, 2010
Published: September 24, 2010
Effective: October 14, 2010

Published once at the approximate cost of _____.