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Attorney General

May 24, 2024

MAY 28 2024

Tammy Bohn
CO: Kellen Willert
Bennett, Main, Gubbrud and Willert
618 State St.
Belle Fourche, SD 57717

RE: Open Meetings Complaints

Ms. Bohn:

You presented this office two Affidavits alleging violations of the Open Meetings laws of the State of South Dakota. Upon review, we are allowed to proceed in one of three ways. One, prosecute as a misdemeanor. Two, determine there is no merit to prosecuting the case and thereafter provide the complaint to the attorney general's office. Three, send the complaint to the Open Meetings Commission for further action. By this letter, I will address the complaints made and our determination as to each.

The first affidavit alleges violation against the Sturgis City Council by appointment of the mayor and president and vice-president of the council using secret ballot. The supporting documents clearly establish that these appointments were made by secret ballot, and no report or recording of each person's vote was made. We find, however, that there is no merit to prosecuting the case. SDCL 1-25-3 states: "The minutes required in this section shall report how each individual member voted on any motion on which a roll call vote is taken." Roll call votes are required in certain circumstances, SDCL 9-8-10, none of which apply. There was no obligation for a roll call vote, none was held and thus no violation of the open meetings laws.

The second affidavit alleges various violations of executive sessions. I will address each in turn.

First, alleged violation at May 6, 2024, when the Sturgis City Council went into executive session without stating the purpose of the session. A review of the video confirms this fact. We find there is prosecutorial merit to this allegation and are forwarding the same to the South Dakota Open Meetings Commission.

Second, alleged violation of executive session for personnel issues at January 16, 2024 Sturgis City Council meeting. The supporting documents indicate a question was raised by Council member Kevin Forrester as to how the council intended to proceed on questions he had raised previously. The questions are included in your attachment. The mayor, or whoever was chairing the meeting, indicated that would be discussed in executive session. The council later went into executive session, including for personnel. Assuming the “Forrester Questions” were addressed in that executive session, a fact which is not established, a review of the “Forrester Questions” supports an executive session. A fair reading of the Questions implicates the activities of three employees (or two plus the mayor) in association with the disposition of surplus property. By suggesting the “Questions” could only be addressed by a third-party legal review, it is implied the city attorney may have acted improperly. Discussing the “qualifications, competence, performance, character or fitness” of a public employee is proper reason for an executive session. SDCL 1-25-2(1). There is no merit to prosecuting this claim.

Third, alleged violation of open meetings by limiting public comment to three minutes per person, and ending a persons comments before that time expired. A period for public comment is required at city council meeting. The period for public comment may be “limited at the public body’s discretion, but not so limited as to provide for no public comment. SDCL 1-25-1. There are no requirements or guidance as to how to conduct the public comment portion of the agenda. Case law supports government may place reasonable time, place and manner restrictions on speech. Such restrictions must serve a significant governmental interest and be content neutral. The chair of a meeting presides over the meeting and can set restrictions such as in place here. There is no merit to prosecuting this claim.

Four, alleged violating of executive session at February 16, 2023 special meeting. This special meeting was announced for “personnel” but also stated “it will be important to consider the question of hiring either a city manager or a city administrator.” Exhibit 11. A review of the video of the opening of that meeting finds the Mayor stating: “I think it is fair to say that, you know, there is action coming down on Tuesday, I imagine, *but we will see what develops here tonight and see which direction the council decides to go.*” After the executive session, the meeting was adjourned without any comment on the executive sessions. Typically one cannot ascertain what was discussed in executive session to determine the propriety of session. However, in this case I believe a reasonable person would draw the conclusion that discussion in executive session on February 16, 2023, was on whether the council thought a city manager or city administrator was better for the community. There is no appearance of a

discussion of the “qualifications, competence, performance, character or fitness” of a public employee is proper reason for an executive session. SDCL 1-25-2(1). The discussion was of the position, not a person. This complaint will be sent to the South Dakote Open Meetings Commission.

Thank you for your submissions. By copy of this letter I am providing the information to the Attorney General, for those claims determined to have no merit to prosecute, and the Open Meetings Commission for the balance.

Sincerely,

A handwritten signature in black ink that reads "Michele Bordewyk". The signature is written in a cursive, flowing style.

Michele Bordewyk

CC: South Dakota Attorney General
South Dakota Open Meetings Commission

PREPARED BY:

Bennett Main Gubbrud & Willert, P.C.
618 State Street
Belle Fourche, SD 57717
605.892.2011

STATE OF SOUTH DAKOTA)
County of Meade) **SS. AFFIDAVIT OF TAMMY BOHN #1**

I, **TAMMY BOHN**, being duly sworn upon my oath, according to law, deposes and says:

1. I am a resident of Sturgis, South Dakota.
2. I make this Affidavit based on my personal knowledge and having viewed the various meetings discussed herein; to the best of my belief, everything contained in this document is true and correct.
3. I Tammy, Bohn, am a resident of Sturgis, South Dakota.
4. I believe that the City of Sturgis ("City") violated South Dakota's Open Meetings Laws (SDCL ch. 1-25) in the several different ways, including: 1) Appointment of the Mayor Using a Secret Ballot, and 2) Appointment of the Sturgis City Council President and Vice President Using a Secret Ballot.

Appointment of the Mayor Using a Secret Ballot

5. On or about February 15, 2024, then Sturgis Mayor Mark Carstensen announced his immediate resignation. Because Sturgis does not have an ordinance allowing for a special election to fill the Mayoral vacancy, Sturgis proceeded to appoint a new Mayor pursuant to SDCL § 9-8-2 by having the Sturgis City Council take action to appoint a Mayor.
6. The following events transpired at the March 4, 2024 Sturgis City Council meeting (as reflected in the meeting minutes):

City Attorney Mark Marshall outlined the voting process, by which Councilmembers present in person will vote by paper ballot and Councilmembers present by phone will send their votes by text message to Finance Director Adam Hosch. After the voting process was completed, Adam Hosch announced the final tabulation: 2 votes for Rodney Bradley, 1 vote for Jim Thompson, and 5 votes for Angela Wilkerson. Council President Zerbst announced that Angela Wilkerson has been appointed to fill the vacancy as Mayor until the end of the term in 2025.

7. Attached hereto as “Exhibit 1” is a copy of the March 4, 2024 Sturgis City Council Minutes. *See* pp. 2-3.¹
8. I ask that the Open Meetings Commission reprimand the Sturgis City Council and direct that it use the correct procedures to correctly appoint a Mayor.

Appointment of the Sturgis City Council President and Vice President Using a Secret Ballot

9. A copy of the video of the Sturgis City Council meeting on May 6, 2024 is attached hereto as “Exhibit 3” (the minutes had not yet been released as of the writing of this Complaint). During that meeting, the Sturgis City Council appointed the Sturgis City Council President and Vice-President using a secret ballot. *See* Exhibit 3, Video time-hack at approximately 2:45:00 through 2:51:30.
10. Similar to the Sturgis City Council’s violations of the Open Meetings Laws in appointing the Mayor by secret ballot, the Sturgis City Council likewise violated the Open Meetings Laws by appointing the Sturgis City Council President and Vice-President using a secret ballot.² Therefore, the Sturgis City Council violated the Open Meetings Laws when it appointed the Sturgis City Council President and Vice-President using secret ballots on March 4, 2024.

¹ All Minutes and Agendas were retrieved from the City website.

² Although Sturgis Ordinance 7.03.04 seems to require a “private ballot” if there is more than one nomination, that procedure violates the Open Meeting laws.

AFFIDAVIT OF TAMMY BOHN #1

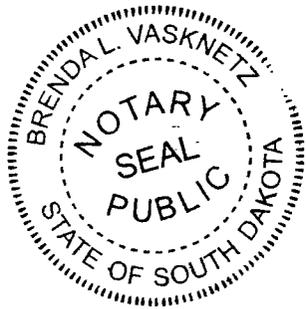
11. I ask that the Open Meetings Commission reprimand the Sturgis City Council and direct that it use the correct procedures to correctly appoint a President and Vice-President.

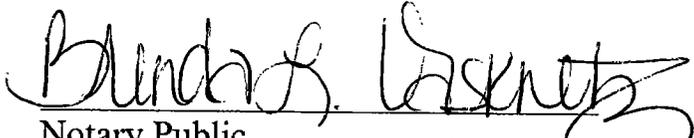
Dated this 13 day of May, 2024.



TAMMY BOHN

Subscribed and sworn to before me this 13th day of May, 2024.





Notary Public
My Commission Expires: 9-3-2026

**LAW OFFICES OF
BENNETT MAIN GUBBRUD & WILLERT**
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DWIGHT A. GUBBRUD*
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Est. 1908

KELLEN B. WILLERT**
**LICENSED in SOUTH DAKOTA, WYOMING and COLORADO

May 13, 2024

VIA Email and Hand-delivery

Michele Bordewyk
Meade County State's Attorney
1425 Sherman St.
Sturgis, SD 57785
mbordewyk@meadecounty.com

**RE: Tammy Bohn Open Meetings Complaint against the Sturgis City
Council – #1- Secret Ballot Issues; Our File No. 6591.010022.**

Dear Ms. Bordewyk:

Our office represents Tammy Bohn ("Client"). Accompanying this letter is a sworn affidavit signed by my Client with exhibits - please consider those documents her formal open meetings complaint to formerly request that you begin an open meetings violation complaint inquiry against the City of Sturgis ("City"), pursuant to SDCL § 1-25-6 and other applicable law. I further request that you forward this complaint to the Open Meetings Commission for their consideration and adjudication.

While my Client's affidavit establishes the essential facts for her complaint, this letter is intended to give your office some additional legal analysis regarding the alleged violations.

My Client believes that the City violated South Dakota's Open Meetings Laws (SDCL ch. 1-25) in the several different ways, including: 1) Appointment of the Mayor Using a Secret Ballot, and 2) Appointment of the Sturgis City Council President and Vice President Using a Secret Ballot.

1. Appointment of the Mayor Using a Secret Ballot

On or about February 15, 2024, then Sturgis Mayor Mark Carstensen announced his immediate resignation. Because Sturgis does not have an ordinance allowing for a special election to fill the Mayoral vacancy, Sturgis proceeded to appoint a new Mayor pursuant to SDCL § 9-8-2 by having the Sturgis City Council take action to appoint a Mayor.

The following events transpired at the March 4, 2024 Sturgis City Council meeting (as reflected in the meeting minutes):

City Attorney Mark Marshall outlined the voting process, by which Councilmembers present in person will vote by paper ballot and Councilmembers present by phone will send their votes by text message to Finance Director Adam Hosch. After the voting process was completed, Adam Hosch announced the final tabulation: 2 votes for Rodney Bradley, 1 vote for Jim Thompson, and 5 votes for Angela Wilkerson. Council President Zerbst announced that Angela Wilkerson has been appointed to fill the vacancy as Mayor until the end of the term in 2025.

See Exhibit 1, pp. 2-3. The ballots were cast in secret, and the votes of each of the individual Alderman were not made public.

This secret ballot process is a violation of South Dakota's Open Meeting Laws. While Sturgis City Council may have believed it could use the secret ballot process pursuant to Robert's Rules of Order, Robert's Rules of Order does not and cannot override state law.

The Ohio Supreme Court had an opportunity to address a similar situation in 2019. Ohio's Open Meetings Act commands that "All meetings of any public body are declared to be public meetings open to the public at all times." *State ex rel. More Bratenahl v. Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233 (citing R.C. 121.22(C)). See Exhibit 2, a copy of which is attached.

South Dakota law has a similar requirement as Ohio: "[t]he official meetings of the state and its political subdivisions are open to the public unless a specific law is cited by the state or the political subdivision to close the official meeting to the public." SDCL § 1-25-1.

The Ohio Supreme Court in *Bratenahl* also analyzed how the use of a secret ballot violates the provision of Ohio law that required “[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.” *Bratenahl*, at ¶14 (citing R.C. 121.22(H)).

South Dakota law is similar to Ohio in this regard as well: “...any official action concerning the matters pursuant to this section shall be made at an open official meeting.” SDCL § 1-25-2.

The Ohio Supreme Court found that the Bratenahl Village Council violated the open meetings act “when it elected its president pro tempore by secret ballot”. Similarly, the Sturgis City Council violated SDCL §§ 1-25-1 and -2 when it appointed a Mayor using a secret ballot. Because the Open Meetings Laws were violated, the appointment of the Mayor was an illegal vote, has no effect, and Sturgis must take steps to appoint a Mayor using the correct procedures.

My Client asks that the Open Meetings Commission reprimand the Sturgis City Council and direct that it use the correct procedures to correctly appoint a Mayor.

2. Appointment of the Sturgis City Council President and Vice President Using a Secret Ballot

During the May 6, 2024 meeting, the Sturgis City Council appointed the Sturgis City Council President and Vice-President using a secret ballot. *See* Exhibit 3, Video time-hack at approximately 2:45:00 through 2:51:30.

Similar to the Sturgis City Council’s violations of the Open Meetings Laws in appointing the Mayor by secret ballot, the Sturgis City Council likewise violated the Open Meetings Laws by appointing the Sturgis City Council President and Vice-President using a secret ballot.¹ Therefore, the Sturgis City Council violated the Open Meetings Laws when it appointed the Sturgis City Council President and Vice-President using secret ballots on March 4, 2024.

Because the Open Meetings Laws were violated, the appointment of the President and Vice-President were illegal votes without validity, and Sturgis must take steps to appoint a President and Vice-President using the correct procedures.

¹ Although Sturgis Ordinance 7.03.04 seems to require a “private ballot” if there is more than one nomination, that procedure violates the Open Meeting laws.

My Client asks that the Open Meetings Commission reprimand the Sturgis City Council and direct that it use the correct procedures to correctly appoint a President and Vice-President.

CONCLUSION

Because a properly appointed Mayor is necessary for the functioning of the Sturgis city government, I kindly ask that you expedite resolution on the issues raised herein.

Sincerely,

BENNETT MAIN GUBBRUD & WILLERT, P.C.



Kellen B. Willert

KBW/jn

Enclosures (2)

cc: Clients – *email only*

Deputy State's Attorney – *email only*

MINUTES
City Council Meeting
City of Sturgis, South Dakota

Monday, March 4, 2024	6:30 PM	Council Chambers
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PRESENT: Mike Bachand, Kevin Forrester, Aaron Jordan, Dean Sigman, Angela Wilkerson, Beka Zerbst, Tony Dargatz, and Preston Williams, City Attorney, Mark Marshall and Finance Officer, Adam Hosch

ABSENT: None

Call to Order Regular Meeting of the City Council

Approval of the Agenda

Moved by Forrester, seconded by Dargatz, to approve the agenda and move agenda items 12.8 & 12.9 to immediately after Item 6.

Members present carried unanimously.

Pledge of Allegiance

Other matters that may come before the Council

To address the City Council, please stand behind the front table and state your name clearly into the microphone for the public record. Please keep your comments respectful and complete your comments in three minutes or less. If you are unable to approach the podium due to a physical limitation, a portable microphone will be provided.

Non-agenda matters that may come before the Council

- Eric Davis requested that a special meeting be set to approve an ordinance to allow the City to fill future vacancies through an election. He then asked that if this ordinance were to be adopted, that the person appointed as Mayor resign to allow for an election to be held for Mayor.
- David Hersrud asked if public comment would be allowed during the interviews for Mayor appointment. Council President Zerbst stated that public comment would not be allowed during these interviews because according to state statute and City ordinance, this will be a Council appointment.
- Francine Reubel Alberts asked that the mayor appointment process be explained. Council President Zerbst stated that this will be explained during that agenda item 12.8.

EXHIBIT 1

- Bonnie Alberts stated that there is no wording in agenda item 4 that states limits the content or time limits of comments and she feels there has been a resistance to input from the community.

Old Business

(Item tabled from the February 20, 2024 meeting)

Ratification of the Appointment of Committee members for the Sturgis Industrial Expansion Revolving Fund Committee per Title 24

Moved by Bachand, seconded by Wilkerson, to ratify the appointment of the following members to the SIERF Committee: Council President Beka Zerbst, Councilor Angela Wilkerson, SEDC Executive Director Amanda Anglin, SEDC Board Chair Paul Bisson, Brice Rock (financial institution representative), Floyd Rummel III (financial institution representative), and Rick Bush (City PWD Director).

Members present carried unanimously.

Announcements and Praise

- Council President Zerbst announced that there will be a leprechaun hunt March 14th-17th put on by the Sturgis Rally & Events Dept. All interested persons can pick up their passports at the Sturgis Library and they will be asked to return these passports to the Sturgis liquor store.
- The candidates for the upcoming municipal election on April 9th will be:
 - Ward 1: Jamie Helms, Nick Jones, Angela Wilkerson (incumbent)
 - Ward 2: Ruth Kopp, Richard Zerbst
 - Ward 3: Richelle Bruch, Jim Thompson
 - Ward 4: Jesse Blakeman (unopposed)

The municipal election will also include the referred ballot question concerning the City Manager.

Presentation of Mayoral candidates:

Rodney Bradley, Tony Dargatz, Jesse Hauk, Aaron Jordan, Steve Shuck, Jim Thompson, Angela Wilkerson

- Candidates' statement
- Follow-up questions from Council members

Tony Dargatz, Aaron Jordan, and Steve Schuck stated that they would like to remove themselves from consideration as mayoral candidates. Council President Zerbst explained the process in which a mayoral candidate will be appointed. City Attorney Mark Marshall explained processes outlined in Robert's Rules of Order designed to fill the gaps in the City's election process. He stated that the meeting procedure was gathered by past practice of the Council. Interviews were conducted with candidates Rod Bradley, Jesse Hauk, Jim Thompson, and Angela Wilkerson.

Voting for a candidate to be appointed to fill the vacancy in the office of the Mayor

City Attorney Mark Marshall outlined the voting process, by which Councilmembers present in person will vote by paper ballot and Councilmembers present by phone will send their votes by text message

to Finance Director Adam Hosch. After the voting process was completed, Adam Hosch announced the final tabulation: 2 votes for Rodney Bradley, 1 vote for Jim Thompson, and 5 votes for Angela Wilkerson. Council President Zerbst announced that Angela Wilkerson has been appointed to fill the vacancy as Mayor until the end of the term in 2025.

City Manager's Report by Transition Team

Payroll - Marissa Rathert (EMT-Basic) (Full-time) (Ambulance Fund) - \$21.00

Payroll Report - Fay Bueno - Assistance with completing the 2023 Audit & 2023 Annual Report (non-exempt) - \$30.00 per hour

Consider Consent Agenda

Consider and approve Consent Agenda.

Moved by Sigman, seconded by Wilkerson, to approve the consent agenda.
Members present carried unanimously.

Consideration to approve the minutes from February 20, 2024.

Finance Director Adam Hosch presented documentation regarding corrections made to the minutes under "Public Hearings" from the February 20, 2024 meeting, as follows:

Moved by Sigman, seconded by Wilkerson, Motion to approve Resolution 2024-17 for Road Closures and Road Restrictions during the 2024 Sturgis Motorcycle Rally.

Carried by the following votes:

Ayes: Bachand, Jordan, Sigman, Wilkerson, Zerbst, Dargatz, and Williams

Nays: Forrester

Moved by Sigman, seconded by Dargatz, Motion to approve Resolution 2024-18 for the Street Closure and Lifting of Open Container Ban during the 2024 Fall Festival on September 21, 2024.

Members present carried unanimously.

Consider Final plat application for 2214 Junction Avenue.

**RESOLUTION 2024-24
RESOLUTION APPROVING PLAT**

WHEREAS the statutes of the State of South Dakota require that plats of property within the jurisdiction of the City of Sturgis be submitted to the governing body for approval before the same are recorded in the Office of the Register of Deeds; and

WHEREAS, the City of Sturgis Planning and Zoning have presented to the Common Council of the City of Sturgis a plat of the following described real property for DPLP Enterprises, LLC.

PLAT OF

Lot 1 of N.H.E.C. Addition and Public Right-of-Way Dedication of Harmon Street.
Formerly Lot F of Lot 4 and the South 81 feet of Lot F of Lot 4.
All located in NW1/4 NW1/4 of Section 15, Township 5 North, Range 5 East of the Black Hills Meridian, City of Sturgis, Meade County, South Dakota.

WHEREAS, said plat meets the requirements of the statutes.

WHEREAS, that the municipality approves the plat, and that the written certification of the City's approval will be affixed to the plat, by the Mayor.

BE IT RESOLVED by the Common Council of the City of Sturgis, South Dakota, that the within and foregoing plat is hereby approved as provided herein.

Dated this 4th day of March, 2024.

Published: 03-13-2024

Effective: 04-03-2024

Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on July 10th, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on June 19th, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on May 29th, 2024

Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Annual Tree Lighting Ceremony on December 5th, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for Loud American Roadhouse for Music on Main on June 12, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for Loud American Roadhouse for Music on Main on July 3, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Agriculture Appreciation Banquet on October 10th, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Community Appreciation Picnic on August 21, 2024.

Approval of the claims

Wages – Ambulance \$43107.06; Attorney \$7538.90; Auditorium \$; Cemetery \$403.56; City Manager \$6860.71; Community Center \$12408.81; Custodial \$5069.47; Downtown BID \$778.79; Engineering \$2789.93; Finance Office \$7880.95; Fire Department \$; Fleet \$7757.43; Human Resource \$3560.96; Library \$10765.39; Liquor \$7980.98; Mayor and Council \$9326.39; Parks \$12194.67; Planning & Permitting \$7420.72; Police \$55476.12; Rally \$6504.93; Recreation \$4100.16; Sanitary Service \$19272.10; Special Sales Tax \$; Sponsorship \$3024.19; Streets \$15171.04; Wastewater \$15707.75; Water \$21933.65; Federal Withholding \$23654.11; FICA \$20699.76.

Vendor Name	Description	Net Invoice Amount
A & B BUSINESS	sup/mat	683.84
A & J SCREENING	resale	725
A & J SURPLUS	sup/mat	85.78
ADVANCED ENG	cap imp	18,450.00
ALSCO, INC	sup/mat	282.72
AMERICINN LODGE & SUITES	travel	303.98
AMICK SOUND, INC.	rep/main	34.24
APWA	prof fees	238
AT&T MOBILITY	utilities	1817.6
AXON ENTERPRISES, INC.	prof fees	8,016.00
BAKER & TAYLOR	sup/mat	223.14
BARNEY'S SIGNS	prof fees	326.5
BASELINE SURVEYING, INC.	prof fees	5,600.00
BEANE, CHRISTINEA	market	200

BLACK HILLS CHEMICAL	sup/mat	2564.61
BLACK HILLS SECURITY & SYSTEMS,	rep/maint	144.85
BLACK HILLS SNACKS	liquor	262.55
BLACK HILLS WINDOW CLEANING,	prof fees	143
BLACKHILLS.COM	prof fees	476
BORDER STATES ELECTRIC	rep/maint	1,406.64
BURNHAM, ROGER	contract	4,706.67
BYARS, ROSE	market	39
CASK & CORK	liquor	991.65
CBH COOPERATIVE #112407	fuel	9836.22
CBH COOPERATIVE - #865928	fuel	780.24
CBH COOPERATIVE #920771	fuel	1295.85
CENTURY BUSINESS PRODUCTS	sup/mat	715.82
CHRISTIANS, AMBER	market	12
CLAUSEN, LAURA	market	34
COCA COLA BOTTLING CO	liquor/sup	458.5
COX, KYLE	market	73
CRANE, MICHELLE	market	200
CREED, DOREEN	market	200
DAIGLE, MICHELLE	market	15
DAKOTA'S BEST	liquor	516.65
DES JARLAIS, TAMI K	market	50
DOUBLE STAR COMPUTING	prof fees	964.95
ECOLAB PEST ELIMINATOR DIV	prof fees	292.76
FISHER BEVERAGE	liquor	6,548.15
GLOBAL DISTRIBUTING INC.	liquor	120
GOTTLOB, AMANDA	market	200
GREAT WESTERN TIRE COMPANY	sup/maint	3781.68
GRIMM'S PUMP & IND	rep/maint	1,248.49
GROCERY MART	sup/mat	38.18
HALE, KAYLA	market	10
HAWKINS, INC.	sup/mat	1,240.27
HUSTON-ENGLE, MARILYN	market	245
JOHNSON WESTERN WHOLESALE	liquor	21456.61
JOHNSON, ANGELA	market	120
KNIGHT SECURITY, INC.	rep/maint	720
KOESSL, KAYLA	market	5
KONE INC	rep/maint	184.56
KOSTERS, BECKY	market	205
LACAL EQUIPMENT, INC.	rep/maint	7,449.44
LEWIS, DR. SARAH	contract	500
LIBERTY CHEVROLET	rep/maint	304.4
LYNN'S DAKOTAMART-STURGIS	sup/mat	52.42

MARCO TECHNOLOGIES	rep/maint	156.95
MAXWELL, TERRY	market/sup	158
MCLEOD'S PRINTING & OFFICE	election sup	244.08
MEADE COUNTY TREASURER	sup	600
MEINERS, ASHLEY	market	6
MENARD'S	sup/mat	14.99
MERWIN, MEGAN	market	26
MOTOROLA SOLUTIONS, INC.	mach/equip	31,880.60
NEWMAN TRAFFIC SIGNS	sup/mat	852.43
NORTHERN HILLS VET CLINIC	prof fees	821.93
OFFICE OF FIRE MARSHALL-BOILER	prof fees	80
OKOBOJI WINES	liquor	299
OLSON, GINGER	market	8
OREILLY AUTO PARTS	sup/mat/rep/mat	116.46
OWENS INTERSTATE SALES INC.	sup/mat/rep/mat	94.98
PALISADES GROUP LLC	other	6,055.00
PEPSI COLA BOTTLING	liquor	361.45
PETERSEN, KIMBERLY	market	8
PHASE 3	sup/mat	236
PKG CONTRACTING, INC.	cap imp	50,000.00
POMP'S TIRE	rep/maint	756.88
QUALITY BRANDS	liquor	9750.3
RASMUSSEN MECHANICAL	sup/mat	4,417.87
RATHS, VASYLYNA	market	238
RED OWL, AMY	market	32
REPUBLIC BEVERAGE COMPANY	liquor	8800.61
RICHTER'S TIRE & EXHAUST, LLC	rep/maint	232.59
RIVERFRONT BROADCASTING, LLC	pub	514.08
RUNNINGS SUPPLY INC	sup/mat/rep/mat	86.52
RUSHMORE OFFICE SUPPLY	sup/mat	947.99
SD DEPT OF TRANSPORTATION	cap imp	3,386.77
SERVALL TOWEL & LINEN	sup/mat	413.56
SOUTHERN GLAZER'S OF SD	liquor	7583.22
SPEEDY LUBE INC.	rep/maint	82.97
STURGIS ACE HARDWARE #1	sup/mat/rep/mat	82.86
STURGIS ACE HARDWARE #3	sup/mat/rep/mat	216.24
STURGIS AREA CHAMBER OF COMM	contract	9,583.33
STURGIS ECONOMIC DEV CORP.	contract	7,916.67
STURGIS NAPA	sup/mat/rep/mat	1458.42
STURGIS RESPONDER SUPPLY, LLC	sup/mat	99.95
TAMMY BOHN AND JUSTIN BOHN	legal fees	330
THE GLASS SHOP	rep/maint	609.59

THE KETTLE CORN MAN	market	52
THORNTON, JANELLE	market	68
TRANSOURCE TRUCK & EQUIPMENT	rep/maint	268
TRAVIS, BRYAN	market	5
VERIZON WIRELESS	utilites	1611.53
VODICKA, ELIZABETH	market	15
VOSS DISTRIBUTING	liquor	373.35
WILSON, MIKAYLA	market	37

Moved by Dargatz, seconded by Bachand, to approve the claims.
Members present carried unanimously.

Board of Adjustment for Variance, Use on Review or other Administrative Appeals
Pursuant to SDCL 11-4-17, 11-4-23, and 11-4-24

The Council President declared the Council sitting as the Board of Adjustment to review the following agenda items.

No conflicts of interest were disclosed. Additionally, no ex parte communications were received by members of the Council.

Moved by Forrester, seconded by Dargatz, to approve a front and rear setback variance to build a garage 2.5' from the rear and 5' from the front property lines with the agreement of a deed restriction attached to the house for the future sale of the property.
Members present carried unanimously.

Moved by Wilkerson, seconded by Bachand, to approve a variance to allow the replacement of an existing mobile home on a non-conforming lot in Highway Service and variances to the side and front property setbacks.
Members present carried unanimously.

Council President declared the Board of Adjustment adjourned and resumed the reconvened the regular meeting of the City Council.

Public Hearings

RESOLUTION 2024-21
**RESOLUTION TO CLOSE DESIGNATED STREETS AND PERMIT OPEN CONTAINERS ON
 CERTAIN PUBLIC PROPERTY AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY FOR THE
 COMMUNITY AFTER RALLY PICNIC**

WHEREAS, the annual Community After Rally Picnic will be held in the City of Sturgis, August 21, 2024, and

WHEREAS, the City of Sturgis Rally and Events Department will close of Harley Davidson Way from Main Street to Lazelle Street and Main Street to the east of the First Interstate drive up lane from 12:00 pm until 8:00 pm; and

WHEREAS, the Police Department will be authorized to tow vehicles within the street closure area, starting August 21, 2024 after 11:00 pm.

WHEREAS, an open container area has been requested within a portion of the public property of the City of Sturgis from 5:00 pm to 8:00 pm on August 21, 2024, and as authorized by Section 3.02.20(C) of Sturgis City Ordinance and SDCL 35-1-5.5, for those persons legally possessing an alcoholic beverage in the authorized non-glass container, bearing A logo and available for purchase from designated on-sale licensees, on that public property open to the public, within area bounded as follows:

- a. On the west, by the eastern edge of the Right of Way of 4th Street, beginning at the intersection of 4th Street and Lazelle Street and continuing south to the intersection of 4th Street and Sherman Street,
- b. On the south, by the north edge of the Sherman Street Right of Way between 4th Street and Middle Street, and on
- c. On the east, by the western edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and including the entire Main Street Right of Way to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, continuing west from Middle Street to Fourth Street on the south side of Lazelle Street.
- d. On the north, continuing north to the intersection of Middle Street and the alley located between Lazelle Street and Dudley Street, and by the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1st Street and along the south edge of Lazelle from Middle Street to Fourth Street.
- e. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction Avenue, Main Street and Middle Street, Lazelle Street and Junction Avenue, 1st Street, Harley Davidson Way and 3rd Street as they cross Lazelle 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. This also includes the Harley Davidson Rally Point.

03/4/24

NOW THEREFORE IT IS HEREBY RESOLVED, as set forth herein that the City of Sturgis shall hereby close the City street to vehicular traffic and unauthorized parking between 12:00 pm until 8:00 pm August 21, 2024, and establish an open container area on August 21, 2024, from 5:00 pm to 8:00 pm on that public property open to the public within area stated above. The open container area does not include the City Library, nor any City Property not open to the public, and does not include any private property within the open container area.

Dated this 28th of February 2024.

Published: 03-01-2024

Effective: 03-21-2024

Moved by Wilkerson, seconded by Bachand, Motion to approve Resolution 2024-21 for the street closure and lifting of the Open Container Ordinance for the Community Appreciation Picnic on Wednesday, August 21, 2024.

Members present carried unanimously.

RESOLUTION 2024-22

RESOLUTION TO CLOSE DESIGNATED STREETS ON CERTAIN PUBLIC PROPERTY AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY FOR THE KOOL DEADWOOD NIGHTS PICNIC

WHEREAS, the Kool Deadwood Nights Picnic will be held in the City of Sturgis, August 21, 2024, and

WHEREAS, the City of Sturgis will close Harley Davidson Way from Third Street to First Street on Main and Harley-Davidson Way from Lazelle Street South to the alley behind First Interstate Bank; and

WHEREAS, the Police Department will be authorized to tow vehicles within the street closure area, starting August 21, 2024 after 5:00 am.

WHEREAS, as soon as the event is concluded the City streets from Third Street to First Street on Main will open.

NOW THEREFORE IT IS HEREBY RESOLVED, as set forth herein that the City of Sturgis shall hereby close the City street to vehicular traffic and unauthorized parking between 5:00 am until conclusion of event on August 21, 2024,

Dated this 28th of February 2024.

Published: 03-02-2024

Effective: 03-22-2024

Moved by Forrester, seconded by Dargatz, to approve Resolution 2024-22 for a street closure for the Kool Deadwood Nights Picnic.

Members present carried unanimously.

Moved by Forrester, seconded by Sigman, to approve setting a public hearing of March 18, 2024 for an SEL to serve for a fundraiser at the Sturgis Auditorium for the Knuckle Saloon for Ducks Unlimited. Members present carried unanimously.

Reports

Moved by Forrester, seconded by Wilkerson, to approve the Joint Powers Agreement between the City of Sturgis and the South Dakota Game, Fish and Parks to dredge the Lions Club Pond. Members present carried unanimously.

Moved by Dargatz, seconded by Bachand, to approve the Recommendation from the Parks Board to approve the Sturgis Trail System Addendum #1 between the City of Sturgis and Black Hills Trails. Members present carried unanimously.

Moved by Sigman, seconded by Wilkerson, to approve the Motorcycle Museum agreement to develop the Rally magazine. Members present carried unanimously.

**RESOLUTION 2024-23
A RESOLUTION DECLARING PROPERTY SURPLUS
AND AUTHORIZING THE SALE OF SUCH PROPERTY**

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF STURGIS that Resolution 2023-55 is hereby rescinded.

BE IT FURTHER RESOLVED BY THE COMMON COUNCIL OF THE CITY OF STURGIS that any sealed bid received by the finance office for surplus silver coins be returned by City staff to the bidder.

BE IT FURTHER RESOLVED BY THE COMMON COUNCIL OF THE CITY OF STURGIS that the personal property described below is hereby declared surplus and to be disposed of as described by SDCL § 6-13-1. It is advisable and in the best interest of the City of Sturgis to sell/trade/dispose/demolish the following property.

SPONSORSHIP

One hundred forty-three 2022 (82nd) Limited Edition Silver Coins

Seventy 2023 (83rd) Limited Edition Silver Coins

This property must be sold promptly either by

XXX Sealed Bid.

_____ Public Auction.

_____ Through a broker at spot value.

Dated this 4th day of March, 2024.

Published: 03-13-2024

Effective: 04-03-2024

Moved by Forrester, seconded by Dargatz, Motion to rescind Resolution 2023-55 and approve Resolution 2024-23 with the mean(s) of sale City staff can use to be sealed bid. Members present carried unanimously.

Moved by Sigman, seconded by Wilkerson, Motion to approve the BMI and and ASCAP Licensing Agreements and authorize the City Attorney to sign the Agreements. Members present carried unanimously.

ORDINANCE 2024-02

AN ORDINANCE ADOPTING CHAPTER 37.04 – PEDICABS AND AMENDING SECTION 37.01.02

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota that Chapter 37.04: Pedicabs be adopted to read as follows, and that Section 37.01.02 be amended to read as follows:

**TITLE 37
CITY TRANSIT**

CHAPTERS:

- 37.01 General Provisions
- 37.02 License
- 37.03 Transportation Network Company Driver Registration & Regulation
- 37.04 Pedicabs

37.01.02 DEFINITIONS

For the purpose of this title, the following definitions shall apply unless a subsection specifically states otherwise or the context clearly indicates or requires a different meaning:

AIR TRANSPORT SERVICE: An air transport service is any transit service providing observation, sightseeing or passenger transportation or delivery services originating or terminating with the city limits of and within the immediate airspace over the City of Sturgis, in a manner not specifically authorized or approved by the Federal Aviation Administration.

DIGITAL NETWORK: any online-enabled application, software, website, or system offered or utilized by a transportation network company that enables a prearranged ride with a transportation network company driver.

DRIVER: One who actually engages in the driving of a vehicle for hire.

ENGAGING IN BUSINESS: Any person shall be deemed to have engaged in the business of operating a vehicle for hire under Chapter 37.02 herein if he keeps or maintains any such vehicle for the purpose of engaging in a vehicle for hire business or if he accepts or permits any employee to accept any money or other thing of value from any such passenger for transportation in such vehicle. Accepting such a passenger under the guise that such transportation is purely gratuitous, and that no payment of compensation or consideration is required shall not be deemed to remove such transaction from the effect of this article. In any case where the driver or any person in charge of any such vehicle does in fact accept any money or other thing of value, even though the money or thing of value is accepted or purported to be accepted as a gift or present or purported gift or present, such gift or present, or such purported gift or present, shall constitute prima facie evidence of an intent to accept compensation or hire for such transportation.

OPERATING: A person is operating a transit business within the meaning of Chapters 37.01 and 37.02 herein if any fare or transportation service, whether on a public right of way or in airspace over the City, of any kind or nature which originates within the City of Sturgis.

OPERATOR: A person engaged in operating a taxicab or transit business.

PEDICAB: A nonmotorized three-wheel bicycle used to carry passengers for hire or similar vehicle with an electric motor that meets the requirements or characteristics of an electric-assisted bicycle. If this vehicle is powered completely or in part by the physical effort of the driver, it shall also be required to meet the slow-moving vehicle equipment requirements set forth at Chapter 34-15 of the South Dakota Code.

PEDICAB BUSINESS: The business of operating a pedicab for hire for the recreation or physical transportation of the general public.

PEDICAB DRIVER: Any person who operates, drives, or propels a pedicab.

PEDICAB DRIVER LICENSE: A license granted to operate a pedicab within the boundaries of the City of Sturgis.

PERSONAL VEHICLE: a vehicle that is used by a transportation network company driver to provide a prearranged ride and is owned, leased, or otherwise authorized for use by the transportation network company driver. The term does not include any taxicab, limousine, or for-hire vehicle.

PRE-ARRANGED RIDE: the provision of transportation by a driver to a rider, beginning when a driver accepts a rider's request for a ride through a digital network controlled by a transportation network company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. The term does not include transportation provided through a shared expense carpool or vanpool arrangement or by using a taxicab, limousine, or other for-hire vehicle.

SEATING CAPACITY: The number of persons, not including the driver, who can be conveniently seated in a taxicab without crowding.

TAXICAB: A motor vehicle for carrying passengers, with a seating capacity for 7 persons or less, not including the driver, not traveling any definite or prescribed route, operated by a driver, and carrying or accepting passengers for hire. The term taxicab shall not include funeral cars or ambulances.

TRANSIT BUSINESS LICENSE: The license under Chapter 37.02 herein shall be issued to an applicant when the application which they have submitted is approved as provided for in this ordinance.

TRANSPORTATION NETWORK COMPANY DRIVER: a person who receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the transportation network company and who uses a personal vehicle to provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

TRANSPORTATION NETWORK COMPANY RIDER: a person who uses a transportation network company's digital network to connect with a transportation network driver who provides a prearranged ride to the person in the driver's personal vehicle between points chosen by the person.

TRANSPORTATION NETWORK COMPANY (abbreviated hereafter as "TNC"): a corporation, partnership, sole proprietorship, or other entity that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides and that does not control, direct, or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.

VEHICLE FOR HIRE: means any vehicle licensed or registered under this title, including, but not limited to, bus or motorbus, pedicab, taxicab, limousine or Transportation Network Company drivers.

CHAPTER 37.04 PEDICABS

SECTIONS:

- 37.03.01: Definitions
- 37.03.02: License Required
- 37.03.03: License Fee
- 37.03.04: License Term
- 37.03.05: Number of Licenses
- 37.03.06: License Lottery
- 37.03.07: Conditional Temporary Licenses
- 37.03.08: License Application
- 37.03.09: Insurance Required
- 37.03.10: Pedicab Inspections
- 37.03.11: Pedicab Vehicle Operation
- 37.03.12: Operating Restrictions and Conditions
- 37.03.13: Revocation or Suspension

37.03.14: Additional Penalty and Enforcement

37.03.01 DEFINITIONS

As used in this chapter, the following terms mean:

- (a) Pedicab: A nonmotorized three-wheel bicycle used to carry passengers for hire or similar vehicle with an electric motor that meets the requirements or characteristics of an electric-assisted bicycle.
- (b) Pedicab Business: The business of operating a pedicab for hire for the recreational or physical transportation of the general public.
- (c) Pedicab Driver: Any person who operates, drives, or propels a pedicab.
- (d) Pedicab Driver License: A license granted to operated a pedicab in the City of Sturgis.

37.03.02 LICENSE REQUIRED

No person may operate a pedicab or engage in any pedicab business without obtaining a pedicab driver license.

37.03.03 LICENSE FEE

The annual licensing fee is \$200.00 per pedicab.

37.03.04 LICENSE TERM

Any Pedicab License issued under this chapter becomes effective on February 1st, or on the date the license granted, and expires on January 31st of the following year unless sooner revoked, canceled, or otherwise terminated.

37.03.05 NUMBER OF LICENSES

The annual number of pedicab licenses is limited to ten (10). In the event the numerical cap is lowered to an amount less than the number of existing licenses, no existing license will be prevented from continuing operation during the license term. This exception does not prevent a license from being suspended or revoked for cause.

37.03.06 LICENSE LOTTERY

Pedicab License Applications will be accepted according to the following special procedures. These procedures will apply whenever a pedicab license becomes available.

1. When a pedicab license becomes available, whether because of the end of the licensing term, or because of revocation, the City will publish an invitation for applications on the City's website stating the deadline to apply, and the location applications may be submitted. No application will be accepted prior to the publication of the invitation, or after the deadline established in the invitation.
2. Applications submitted to an invitation must be submitted in writing and sealed. An applicant may not supplement their application after the deadline has passed.
3. Only one (1) application is allowable per pedicab. If more than one (1) application is submitted for a pedicab, then this submittal will be deemed a fraudulent application and removed from the lottery. In addition, all other applications from the violating pedicab business or individual will be deemed invalid and removed from the lottery regardless whether they are valid or not. Serial Numbers/Vehicle

Identification Numbers (VINs) provided in the applications will be reviewed from all submitted applications following the lottery, and if any other application shares the same serial number/VIN, then any license awarded will be forfeited.

4. Once the application deadline has passed, the finance officer, or designee, will randomly give each sealed application a number. The finance officer, or designee will enter these numbers into a random number generator, such as www.random.org, to randomly draw the numbers. The finance officer, or designee, will randomly draw ten (10) numbers from the pool of sealed applications using the random number generator. The finance officer will open the applications in the order drawn, and review each application for completeness. Complete applications drawn will be granted a license. If an application is incomplete or invalid, this application will be removed from competition and a new application will be selected from the remaining undrawn applications.

37.03.07 CONDITIONAL TEMPORARY LICENSES

The City may issue additional conditional temporary pedicab licenses beyond the ten (10) yearly licenses provided in § 37.03.05. No conditional temporary pedicab license may be issued to operate between July 15 and August 15. Any pedicab applying for a conditional temporary license must submit an application as provided under § 37.03.06. Additionally, any pedicab must abide by all regulations, including but not limited to insurance, inspection, and other requirements as provided in this chapter unless expressly provided. Conditional temporary licenses are only valid for five (5) days. A pedicab may receive multiple conditional temporary licenses in a year. The fee for a conditional pedicab license is \$25.00 per license.

37.03.08 LICENSE APPLICATION

Application for a pedicab license under this chapter will be made on forms provided by the finance officer and will contain such information as deemed necessary. The finance officer may require applications be submitted through Citizenserve. The application may require the following information:

- A. Business Name, Applicant's Name, Phone number, Street address and Mailing address, email address; and
- B. Previous experience in the business, if the applicant has not been licensed before; and
- C. A list of all driver's names which may operate the licensed pedicab, and copies of all driver's licenses.
- D. The Application must contain a photo of the pedicab and a photo of the serial number/VIN located on the pedicab.

The pedicab owner/operator will also sign an affidavit which shall include the following information:

- A. That applicant, operators, and drivers are all licensed drivers, and are in good standing with the law.
- B. That applicant has not submitted more than one (1) pedicab license application for the pedicab associated with this application.
- C. That applicant, operators, and drivers will abide by all State and City laws governing the use of pedicabs, taxis, and bicycles on the public streets.
- D. That applicant, operators, and drivers are all over eighteen (18) years old.

- E. That applicant, operators, and drivers have not been convicted of a felony within the past five (5) years.
- F. That the applicant, operators, and drivers each have no more than three (3) moving violations within the past three (3) years.
- G. That the applicant, operators, and drivers each have not been convicted of careless driving, reckless driving, or driving under the influence within the past three (3) years.
- H. That each pedicab sought to be licensed is covered by liability insurance with a minimum of one million-dollar limit of liability and fifty thousand dollars medical cost coverage.
- I. Each pedicab proposed to be licensed has been inspected and that on the date of application that vehicle meets all applicable laws of the state concerning equipment, lights, tires and all other safety-related equipment.

A supplement affidavit attesting to the above requirements must be submitted if any additional drivers not identified in the application are allowed to operate the pedicab. The failure to supplement the affidavit may result in immediate revocation or suspension of the pedicab license.

37.03.09 INSURANCE REQUIRED

Each pedicab sought to be licensed must be covered by liability insurance with a minimum of one million dollar (\$1,000,000) limit of liability and fifty thousand dollars (\$50,000) medical cost coverage. Proof of insurance coverage must be provided to City before operating.

37.03.10 PEDICAB INSPECTIONS

- (a) (a) Annual Inspections: Any pedicab operating in the City must be inspected annually by the Sturgis Police Department. The Sturgis Police Department may designate minimum safety standards for equipment and defects. Any pedicab inspected which does not meet the minimum safety standards as determined by the Sturgis Police Department will be classified as "out of service," and may not operate until such defects are cured.
- (b) (b) Periodic Inspections: The Sturgis Police Department, or inspection designee, reserves the right to examine and inspect each and every licensed pedicab, including driver credentials, at any reasonable time. The intent of such inspection is to ensure compliance with the rules established in this chapter.
- (c) (c) Seizure of License: Failure to submit a pedicab to an annual or periodic inspection, or classification of a pedicab as "out of service," may result in the seizure of a pedicab license by the City. The City may hold a seized license until the pedicab is inspected and found to be in a safe condition. In the event of such a seizure, the inspector will immediately notify the licensee in writing, specifying in detail the cause for seizure and stating that the licensee has a right to a City Manager review of the seizure. If the City Manager affirms the seizure, the aggrieved party may utilize the appeal process as provided in SMC Chapter 36.04.

37.03.11 PEDICAB VEHICLE OPERATION

Every pedicab must be operated in compliance with all applicable federal, state, and local traffic laws, and in a manner so as to assure the safety of person and property. The pedicabs applicant, operators, and drivers are solely responsible for being aware of and obeying all laws, ordinances, and regulations.

37.03.12 OPERATING RESTRICTIONS AND CONDITIONS

All pedicabs must abide by the following operating restrictions and conditions. The failure to strictly follow these restrictions and conditions may result in the immediate revocation or suspension of the pedicab license.

- (a) No pedicab will be operated upon a public sidewalk.
- (b) No pedicab will use any public street or other public property as a waiting area unless such are is a legal motor vehicle parking area, or is a designated pedicab waiting area. No pedicab may wait in a designated taxi or rideshare drop-off or pickup location.
- (c) All pedicabs, when operating between dusk and dawn, must make use of working battery powered lights. Each pedicab must be equipped with at least one (1) headlight capable of projecting a beam of white light for a distance of three hundred (300) feet, and two (2) red taillights mounted on the right and left, respectively, on the rear exterior of the vehicle. Taillights must be plainly visible from all distances within five hundred (500) feet to the rear of the pedicab.
- (d) All pedicabs must be equipped with a front and rear braking system which is operated by the pedicab driver from their normal position of operation while driving the pedicab, and be capable of causing a fully loaded passenger compartment to come to a complete stop.
- (e) All pedicabs must be, at all reasonable times, subject to inspection by the Sturgis Police Department. All pedicabs must pass inspection before operation.
- (f) All pedicabs must display a valid license issued by the City on the Pedicab.
- (g) Pedicab drivers must have in their possession both a valid driver's license and proof of insurance while in control of any pedicab, and must make these documents available to law enforcement or a City inspector.
- (h) All pedicab drivers must obey and comply with any lawful order or discretion of any law enforcement officer, traffic control agent, or City inspector, and must refrain from the use of any profane language or from interference with such officials while in the performance of their duties.
- (i) No pedicab driver may consume alcoholic beverages, or any other mind-altering substance while on duty or allow any occupant of the pedicab to drink alcoholic beverages or possess an open container of alcoholic beverages.
- (j) No pedicab driver may allow a passenger to stand up while the pedicab is in motion.
- (k) No pedicab driver may permit more passengers to be carried in a pedicab than the pedicab is designed to accommodate, with the exception that children under forty (40) pounds may be seated upon the lap of another passenger.
- (l) No pedicab driver may allow a passenger or other individual to drive their pedicab unless that individual is identified in the application as an authorized driver.
- (m) Pedicabs may operated on city parks and recreation property only with prior written approval from the Public Works Director.
- (n) Pedicabs are prohibited from blocking traffic, waiting for passengers, or picking up/dropping off passengers on Main Street.

37.03.13 REVOCATION OR SUSPENSION

Any violation of any federal or state law, or ordinance, may result in the revocation or suspension of any pedicab license. Additionally, if the applicant holds more than one (1) license, the City may revoke or suspend all licenses held by the applicant. Additionally, any applicant who has their license revoked or suspended may be denied future licenses. The license holder has no property rights or entitlement in a pedicab license.

37.03.14 ADDITIONAL PENALTY AND ENFORCEMENT

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In addition to any penalty provided under federal law, state law, or ordinance, any pedicab applicant, operator, or driver who violates any traffic law, city ordinance, inspection requirement, or operation condition while operating a pedicab may result in the seizure of the pedicab license. Additionally, any pedicab driver operating a pedicab without a license may be subject to arrest, and the pedicab towed or seized. All laws, ordinances and regulations may be enforced by any law enforcement officer, designated inspector, and the City Code Enforcement Officers.

Adopted this 4th day of March, 2024.

First Reading: 02/20/2024

Second Reading: 03/04/2024

Adopted: 03/04/2024

Published: 03/13/2024

Effective: 4/03/2024

Moved by Wilkerson, seconded by Bachand, to approve the second reading of Ordinance 2024-02 adopting SMC Chapter 37.04 and amending Section 37.01.02.

Members present carried unanimously.

ORDINANCE 2024-01

AN ORDINANCE TO REPEAL STURGIS MUNICIPAL CODE (SMC) CHAPTER 37.03 – TRANSPORTATION NETWORK COMPANY DRIVER REGISTRATION & REGULATON

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota that Chapter 37.03: Transportation Network Company Driver Registration & Regulation be repealed.

WHEREAS the City of Sturgis has the power to enact and repeal ordinances and exercise jurisdiction over all territory within its corporate limits for the purpose of promoting the health, safety, morals, and general welfare of the community pursuant to state statute, including but not limited to SDCL §§ 9-19-3, 9-29-1, and SDCL Title 9 Generally; and

WHEREAS the City additionally has statutory authority under SDCL § 32-40-23 to regulate Transportation Network Companies (TNCs) within the City; and

WHEREAS the City of Sturgis adopted provisions regulating TNCs operating within the City; and

WHEREAS as a result of the TNC provisions, the TNCs have blocked the City of Sturgis from their respective apps; and

WHEREAS the Sturgis Common Council finds the state statutory regulations under SDCL Chapter 32-40 sufficiently regulates TNCs operations, and sufficiently protects the health, safety, morals, and general welfare of the community; and

WHEREAS the Sturgis Common Council desires to open TNC operations within the City; and

WHEREAS the Sturgis Common Council deems it to be in the City's best interests to repeal Chapter 37.03 of the Sturgis Municipal Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF STURGIS that Chapter 37.03 of the Sturgis Municipal Code is hereby repealed in its entirety.

Dated this 4th day of March, 2024.

First Reading: 02/20/2024
Second Reading: 03/04/2024
Adopted: 03/04/2024
Published: 03/13/2024
Effective: 04/03/2024

Moved by Dargatz, seconded by Wilkerson, to approve the Second Reading of Ordinance 2024-01 - Repealing SMC Chapter 37.03.
Members present carried unanimously.

Executive Session

Moved by Zerbst, seconded by Dargatz, to enter Executive Session for 0 personnel, 2 legal, 4 contracts, 0 marketing, and 0 security issues at 8:54 pm.
Members present carried unanimously.

Resume Open Meeting

Moved by Forrester, seconded by Dargatz, the Council adjourned their Executive Session at 9:50 pm.
Members present carried unanimously.

Adjourn

Moved by Zerbst, seconded by Forrester, to adjourn Council meeting at 9:50 pm.
Members present carried unanimously.

ADA ACCOMMODATION

If you desire to attend this public meeting and are in need of special accommodations (including participation by telephone), please notify the Finance Office by 10am on the day of the meeting so

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that appropriate auxiliary aids and services may be coordinated. The Finance Office can be reached at (605) 347-4422, option 1.

ATTEST: _____
Adam Hosch, Finance Officer

APPROVED: _____
Angela Wilkerson, Mayor

Published once at the total approximate cost of \$ _____

[Cite as *State ex rel. More Bratenahl v. Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233.]

**THE STATE EX REL. MORE BRATENAHL; MEADE, APPELLANT, v. THE VILLAGE
OF BRATENAHL ET AL., APPELLEES.**

[Cite as *State ex rel. More Bratenahl v. Bratenahl*, 157 Ohio St.3d 309,
2019-Ohio-3233.]

*Civil law—Application of R.C. 121.22, Ohio’s Open Meetings Act—The Open
Meetings Act does not permit a governmental body to take official action by
secret ballot—Maintaining secret-ballot slips as public records does not
cure an R.C. 121.22 violation—Court of appeals’ judgment reversed and
cause remanded.*

(No. 2018-0440—Submitted March 26, 2019—Decided August 14, 2019.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 105281,
2018-Ohio-497.

DEWINE, J.

{¶ 1} Ohio’s Open Meetings Act commands, “All meetings of any public body are declared to be public meetings open to the public at all times,” R.C. 121.22(C). The question before us is whether a village council complies with this directive when it elects a council officer by way of a secret ballot. We say no.

I. A secret ballot to elect a president pro tempore of council

{¶ 2} In January 2015, the Bratenahl Village Council gathered for its first meeting of the year. Among the council’s business that day was the election of a president pro tempore—someone to serve as the acting mayor when the mayor is absent or unable to perform his or her duties. *See* R.C. 731.10. After two members were nominated for the position, the following exchange was had:

EXHIBIT 2

SUPREME COURT OF OHIO

MAYOR LICASTRO: Do you want to do a show of hands? Do you want to do a secret ballot?

COUNCILMEMBER BECKENBACH: Let's do secret ballot. We've always done that.

MAYOR LICASTRO: Secret Ballot. Mr. Matty?

COUNCILMEMBER BACCI: Is that legal?

SOLICITOR MATTY: Yes, it is legal.

* * *

COUNCILMEMBER BACCI: I thought I saw something in the Sunshine Law of the [Ohio Revised Code] that you can't have a secret ballot.

{¶ 3} No one replied to Councilmember Bacci's comment, and the council proceeded to vote by secret ballot. The village solicitor privately tallied the votes. Without revealing the results, he announced that the council would have to vote again because someone had voted for a person who had not been nominated. The second vote was a tie, so the council voted by secret ballot a third time. Again, the village solicitor counted the votes and, without announcing the votes, declared Councilmember Jim Puffenberger the new president pro tempore.

{¶ 4} A year later, the community-news publication MORE Bratenahl and Patricia Meade, the operator of MORE Bratenahl, filed suit against the village of Bratenahl, five of the village's councilmembers, and its mayor (collectively, "Bratenahl"). MORE Bratenahl and Meade sought a declaratory judgment that Bratenahl had violated Ohio's Open Meetings Act, R.C. 121.22, by conducting public business by secret ballot, an injunction to prohibit future secret-ballot voting, reasonable attorney fees, and a civil forfeiture of \$500.

{¶ 5} During discovery, Meade sought copies of the ballots. Bratenahl produced the ballot slips with sticky notes attached to them, purporting to identify

the councilmember who cast each vote. Both sides filed motions for summary judgment. The trial court denied Meade's motion for summary judgment and awarded summary judgment to Bratenahl.

{¶ 6} On appeal, the Eighth District found that Meade was unable to establish that Bratenahl had violated the Open Meetings Act. It noted that because the votes were cast in open session and were maintained as a public record, the votes were not "secret." 2018-Ohio-497, ¶ 20. Thus, there was "no evidence that Bratenahl attempted to conceal information from the public." *Id.*

{¶ 7} We accepted Meade's appeal on the question whether members of a public body violate the Open Meetings Act when they vote on matters of public business through the use of secret ballots. *See* 152 Ohio St.3d 1489, 2018-Ohio-2155, 99 N.E.3d 426.

II. The Open Meetings Act does not permit a governmental body to take official action by secret ballot

{¶ 8} The Open Meetings Act begins with a pronouncement: "This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." R.C. 121.22(A). It directs that "[a]ll meetings of any public body are declared to be public meetings open to the public at all times." R.C. 121.22(C). And it further provides, "A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body." R.C. 121.22(H). (The act includes several exceptions to its requirements, none of which are applicable here.)

{¶ 9} Bratenahl does not dispute that its council is a public body, that the election of a president pro tempore was an "official action" on "public business," or that the council's January gathering was a meeting. (A meeting is defined as "any prearranged discussion of the public business of the public body by a majority of its members." R.C. 121.22(B)(2).) The only question is whether the council

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acted in a meeting that was “open to the public” when it selected its president pro tempore by secret ballot.

{¶ 10} Taking a point from the introductory language of the act, Meade says that we must construe the act in favor of openness. To allow a secret ballot, she says, is inconsistent with the act’s legislative purpose of allowing the public to ascertain the workings of their government.

{¶ 11} Bratenahl pushes back on such a reading. It says that the act does not prescribe a voting procedure, pointing to a municipal corporation’s statutory authority “to determine its own rules,” R.C. 731.45. In essence, Bratenahl contends that the act is satisfied as long as the doors to the meeting space are unlocked and the public is permitted to sit in the same room as the council.

{¶ 12} We begin our analysis with the text of the act, focusing on the ordinary meaning of its terms and its structure. Because the act does not define “open” or “open meeting,” we afford the terms their plain, everyday meanings, looking to how such words are ordinarily used. *Great Lakes Bar Control, Inc. v. Testa*, 156 Ohio St.3d 199, 2018-Ohio-5207, 124 N.E.3d 803, ¶ 8-10. This work includes reading words in their context and construing them “according to the rules of grammar and common usage.” R.C. 1.42; *see also Great Lakes* at ¶ 9.

{¶ 13} “Open” is a word with a variety of usages. It is defined as “completely free from concealment : exposed to general or particular perception or knowledge,” *Webster’s Third New International Dictionary* 1579 (1966)—a definition that supports Meade’s interpretation. But it can also mean more narrowly “free to be entered, visited, or used,” *Webster’s New International Dictionary* 1705 (1953), and “in a state which permits access, entrance, or exit,” *Webster’s New World Dictionary* 948 (3d College Ed.1988)—definitions more in line with Bratenahl’s reading of the act.

{¶ 14} When we consider the full text of the act, its structure, and the legislative purpose as derived from the text of the act, we think it clear that the

broader reading must carry the day. Significantly, the act does not just say that all meetings shall be open to the public. It also provides that “[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.” R.C. 121.22(H). Thus, the act ties the openness requirement to official action taken at the meeting. Not only must the meeting be open, but any official action (for example, the election of a president pro tempore) must take place in an open meeting. We read this to mean that that portion of the meeting in which the formal action is taken—here, the vote—must be open.

{¶ 15} Further, when the text of a statute makes its purpose clear, and we must choose between two permissible readings of the statutory text, an interpretation that advances the purpose of the statute is to be preferred over one that would thwart that purpose. *See Griffin v. Oceanic Contrs., Inc.*, 458 U.S. 564, 571, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982); *see also* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 56-57 (2012). The text of the act makes clear its purpose: to require that public business be conducted in a manner that is accessible to the public. Meade’s reading advances that purpose; Bratenahl’s reading does not.

{¶ 16} Bratenahl’s reliance on the fact that the Open Meetings Act does not prescribe particular voting procedures does little to advance its cause. Just as the act does not prescribe a particular voting procedure, it does not prescribe how members are to communicate in such a meeting. But certainly, a meeting is not open if the members communicate in whispers, concealing their deliberations from the public. *See Manogg v. Stickle*, 5th Dist. Licking No. 97 CA 104, 1998 Ohio App. LEXIS 1961, *2, 4 (Apr. 8, 1998). Nor do we think it would be open if the members spoke only in Latin, or placed a screen between themselves and the audience, or took any of numerous other actions that would limit the public’s ability to access their deliberations. The act may not prescribe any particular voting procedure—and a council may adopt its own rules—but none of this alters the

fundamental requirement that the public have meaningful access to what takes place at the meeting.

{¶ 17} The reading that Bratenahl proposes—that a meeting is open as long as the doors of the meeting room are open to the public—is inconsistent with our precedent. In *State ex rel. Cincinnati Post v. Cincinnati*, we held that the act was violated when the city manager set up a series of back-to-back meetings (each attended by three of the city’s councilmembers) to discuss public business prior to the regular session of the nine-member council. 76 Ohio St.3d 540, 542-543, 668 N.E.2d 903 (1996). In doing so, we looked to the legislative dictate that the statute be liberally construed and concluded that “Cincinnati’s game of legislative musical chairs,” *id.* at 544, was inconsistent with the statutory requirement that governmental bodies “conduct all deliberations upon official business only in open meetings,” R.C. 121.22(A).

{¶ 18} Similarly, we have held that the act prohibited a majority of a school board from engaging in a private, prearranged discussion of public business by e-mail that was later ratified by the board at a public meeting. *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, 60 N.E.3d 1234, ¶ 15, 24-25.

{¶ 19} Implicit in the *Cincinnati Post* and *White* decisions is a rejection of the view that Bratenahl advances. The act is not satisfied simply because the doors of a council meeting are open to the public. Rather, an open meeting requires that the public have meaningful access to the deliberations that take place among members of the public body, and that includes being able to determine how participants vote.

{¶ 20} Thus, we hold that the Open Meetings Act precludes a public body from taking official action by way of a secret ballot. Bratenahl violated the act when it elected its president pro tempore by secret ballot.

III. Maintaining secret-ballot slips as public records does not cure a R.C. 121.22 violation

{¶ 21} Bratenahl also argues that since the secret-ballot slips were maintained as public records, they were not actually secret. The court of appeals reached this same conclusion, finding that since the votes were cast in open session and later made public record, they were not “secret.” 2018-Ohio-497, at ¶ 20. But the availability of concealed information through a public-records request does not retroactively make a meeting with secret votes “open to the public.” Besides the practical problems attending Bratenahl’s position—illustrated by the sticky notes haphazardly appended to the ballot slips, supposedly identifying the voters more than a year after they had cast their votes—it lacks any support in the text of R.C. 121.22. The statute’s plain language requires that public meetings remain open throughout the proceedings themselves—the prospect of future access does not make a meeting “open to the public at *all* times.” (Emphasis added.) R.C. 121.22(C). The statutory burden to maintain a meeting’s openness is on the public officials, not the public. R.C. 121.22(A) and (C). Likewise, the consequence for failing to adopt a formal action in an open meeting—invalidation of that action—falls on the public body. R.C. 121.22(H). Thus, the availability of secret-ballot slips as a public record does not retroactively make a meeting compliant with the act.

IV. The matter is not moot

{¶ 22} Bratenahl argues that since the president pro tempore’s term has expired, the issue is moot. But again, the statute’s plain terms refute this argument. R.C. 121.22(I)(1) provides:

Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened

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violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

{¶ 23} Thus, the act specifically allows a party to bring an action within two years of a violation—as Meade did. And when a violation or threatened violation is proven, it mandates the issuance of an injunction. Because the act, by its terms, anticipates exactly the type of action Meade pursued, we have little difficulty concluding that the matter is not moot.

V. Conclusion

{¶ 24} We hold that the use of secret ballots in a public meeting violates the Open Meetings Act. Accordingly, we remand this matter to the court of common pleas to issue an injunction under R.C. 121.22(I)(1), order the village council to pay a civil forfeiture under R.C. 121.22(I)(2)(a), and award any other relief consistent with R.C. 121.22.

Judgment reversed
and cause remanded.

O’CONNOR, C.J., and KENNEDY, FRENCH, FISCHER, DONNELLY, and STEWART, JJ., concur.

Finney Law Firm, L.L.C., Brian C. Shrive, Christopher P. Finney, and Justin C. Walker; and the Law Firm of Curt C. Hartman and Curt C. Hartman, for appellant.

Matty, Henrikson & Greve, L.L.C., David J. Matty, Shana A. Samson, and Mark B. Marong, for appellees.

January Term, 2019

Frost Brown Todd, L.L.C., Ryan W. Goellner, and Monica L. Dias, urging reversal for amici curiae, Ohio Coalition for Open Government, Reporters Committee for Freedom of the Press, and Ohio Association of Broadcasters.

PREPARED BY:

Bennett Main Gubbrud & Willert, P.C.

618 State Street

Belle Fourche, SD 57717

605.892.2011

STATE OF SOUTH DAKOTA)

) SS. AFFIDAVIT OF TAMMY BOHN #2

County of Meade)

I, **TAMMY BOHN**, being duly sworn upon my oath, according to law, deposes and says:

1. I am a resident of Sturgis, South Dakota.
2. I make this Affidavit based on my personal knowledge and having viewed the various meetings discussed herein; to the best of my belief, everything contained in this document is true and correct.
3. I believe that the City of Sturgis (“City”) violated South Dakota’s Open Meetings Laws (SDCL ch. 1-25) in the several different ways, including: 1) Violations of the Executive Session Laws on May 6, 2024, 2) Violations of the Executive Session Laws on September 19, 2022, 3) Violation of the Law Requiring Allowance of Public Comments on March 4, 2024, and 4) Violations of the Executive Session Laws on February 16, 2023.

Violations of the Executive Session Laws on May 6, 2024

4. During the Sturgis City Council Meeting on May 6, 2024, the Sturgis City Council began discussion about moving into executive session at approximate video time-hack 4:33:10. *See Exhibit 3*¹.

¹ The first Exhibit referenced in this complaint is Exhibit 3 because prior Exhibits were already used in the first complaint. All meetings and agendas were retrieved from the City website.

5. A copy of the Agenda for the May 6, 2024 meeting is attached hereto as "Exhibit 4".
6. The motion to enter executive session was simply enter into executive session.
7. The purpose for entering into executive session was not specified in the closure motion.
8. The Sturgis City Council finally returned to open session approximately 1.5 hours after entering executive session. *See* approximate video time-hack 6:01:15. The public has no way to determine how much time was spent on each of the various executive session issues.
9. I ask that the Open Meetings Commission reprimand the Sturgis City Council and direct that it properly enter into executive sessions.

Violations of the Executive Session Laws on September 19, 2022

10. At its September 19, 2022 meeting, the Sturgis City Council declared a Harley Davidson FLTRX, VIN# 1HD1KHC14NB647481 ("Harley") as surplus property. A copy of the Staff Report and Resolution 2022-51 are attached hereto as "Exhibit 5".
11. The Harley was later sold at the renowned Mecum auction in August 2023.
12. At some point after the sale, Alderman Kevin Forrester presented City staff and his fellow Sturgis City Council Alderman with questions relating to the Harley and its sale ("Forrester Questions"). A copy of what is believed to be the Forrester Questions, dated January 2, 2024, is attached hereto as "Exhibit 6".
13. A copy of the Sturgis City Council Meeting Minutes for January 16, 2024 is attached hereto as "Exhibit 7". As reflected in the Minutes on page 2, Alderman Kevin Forrester asked if there were any answers to the Forrester Questions. Then Mayor, Mayor Carstensen, indicated that much of the answers to the Forrester Questions were personnel issues for executive session. One can only presume the matters were then later discussed in executive session.²

² This discussion can be seen at approximate time-hack 1:10:20 on the meeting video. This

14. A copy of the February 5, 2024 Meeting Minutes is attached hereto as "Exhibit 8". The Minutes reflect that the Forrester Questions "...will be answered in executive session as this is a personnel issue." See Exhibit 8, p. 2 (under "Non-agenda matters...").
15. At 10:19 p.m. on February 5, 2024, the Sturgis City Council entered into executive session for, among other things, personnel issues. See Exhibit 8, p. 21. The Sturgis City Council did not come out of executive session for approximately 1.5 hours. *Id.*
16. I believe entering executive session to discuss the Forrester Questions was not a proper reason to have executive session.
17. I ask that the Open Meetings Commission reprimand the Sturgis City Council and direct that it properly enter into of executive sessions.

Violation of the Law Requiring Allowance of Public Comment on March 4, 2024

18. A copy of the Agenda for the March 4, 2024 Sturgis City Council Meeting is attached hereto as "Exhibit 9". The only limitation the Sturgis City Council had on public comment at this meeting was "...to complete your comments in three minutes or less." See Exhibit 9, item #4.
19. A copy of the Meeting Minutes for the March 4, 2024 Sturgis City Council Meeting is attached hereto as "Exhibit 9.1". During the public input portion of the meeting, "Bonnie Alberts asked why the Council voting for Mayor and Council Vice-President was done by secret ballot." See Exhibit 9.1, first complete bullet paragraph, p. 2. Obviously, this subject matter was not restricted by the Sturgis City Council when it adopted the agenda for the April 15, 2024 Sturgis City Council Meeting, but only a three minute limitation.
20. A copy of the video of the March 4, 2024 Sturgis City Council Meeting is attached hereto as "Exhibit 10". Becca Zerbst, chaired the meeting as Sturgis City Council President (due to the former Mayor's abrupt resignation). Bonnie Alberts delivered her comments during the public input portion of the March 4, 2024 Sturgis City Council Meeting from video time-hack 9:24 through

video is not attached hereto due to the accuracy of the Minutes. The video can be provided if necessary or it is available on the City's website.

11:45. At approximate video time-hack 11:45, President Zerbst told Bonnie Alberts that she was at her three minutes and essentially shut down Bonnie Alberts' comments. Somewhat ironically, Bonnie Alberts was trying to make comments about the City's resistance to public input when President Zerbst told Bonnie Alberts that her three minutes were up (even though she still had approximate 40 seconds left). President Zerbst limited Bonnie Alberts' rights to comment for up to three minutes in violation of the Open Meetings Laws.

21. I ask that the Open Meetings Commission reprimand Becca Zerbst for infringing on Bonnie Alberts' right to comment at the meeting and direct that the Sturgis City Council follow the proper procedures (including the Sturgis City Council's own rules as set by their own agenda) for public input during meetings.

Violations of the Executive Session Laws on February 16, 2023

22. A copy of a press release from the City of Sturgis that was obtained from its website at <https://www.sturgis-sd.gov/news/post/16654/> ("Press Release") is attached hereto as "Exhibit 11". The Press Release announces the Sturgis City Council's plan to have a special meeting on February 16, 2023 with one agenda item: "an executive session focused on personnel matters." The issue clearly set for executive session, as indicated from the Press Release, is "the question of hiring either a city manager or a city administrator." Exhibit 11.
23. A copy of the special meeting Agenda for the February 16, 2023 Meeting is attached hereto as "Exhibit 12" ("Special Agenda"), which lists the executive session as being held "Pursuant to SDCL 1-25-2(1), Personnel: 1". See Exhibit 12, item 5.1.a.
24. A copy of the video from the February 16, 2023 Special Meeting is attached hereto as "Exhibit 13". Immediately before entering executive session, the Mayor unequivocally stated:

"As shown in the Agenda no anticipated action, um, I think it is fair to say that you know, there is action coming down on Tuesday I imagine, um, but we will see what develops here tonight and see which direction the council desires to go."

See Exhibit 13, at approximate video at time-hack 1:40. The Sturgis City Council entered into executive session at video time-hack 2:13. The Sturgis

AFFIDAVIT OF TAMMY BOHN #2

City Council did not come out of executive session until approximately 2 hours and 42 minutes later, at video time-hack 2:44:45. Rather than discuss a particular employee's qualifications, competence, performance, or character or fitness (*see* SDCL §1-25-2(1)), it is clear that the Sturgis City Council was discussing the structure of leadership positions within the city – a discussion that should have been held in public.

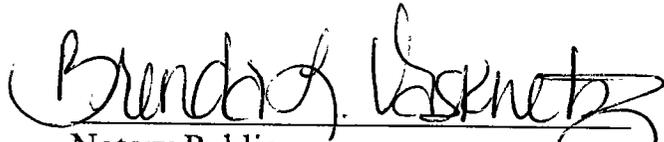
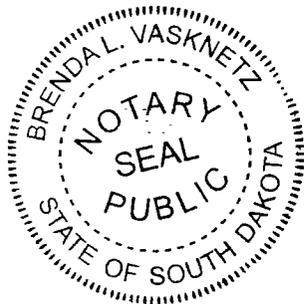
25. I ask that the Open Meetings Commission reprimand the Sturgis City Council and direct that it properly enter into and exit out of executive sessions.

Dated this 13 day of May, 2024.



TAMMY BOHN

Subscribed and sworn to before me this 13th day of May, 2024.



Notary Public

My Commission Expires: 9-3-2024

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May 13, 2024

VIA Email and Hand-delivery

Michele Bordewyk
Meade County State's Attorney
1425 Sherman St.
Sturgis, SD 57785.
mbordewyk@meadecounty.com

RE: Tammy Bohn Open Meetings Complaint against the Sturgis City Council – #2-Violations of Executive Session Laws and Allowance of Public Comments; Our File No. 6591.010022.

Dear Ms. Bordewyk:

Our office represents Tammy Bohn ("Client"). Accompanying this letter is a sworn affidavit signed by my Client with exhibits - please consider those documents her formal open meetings complaint to formerly request that you begin an open meetings violation complaint inquiry against the City of Sturgis ("City"), pursuant to SDCL § 1-25-6 and other applicable law. I further request that you forward this complaint to the Open Meetings Commission for their consideration and adjudication.

While my Client's affidavit establishes the essential facts for her complaint, this letter is intended to give your office some additional legal analysis regarding the alleged violations.

My Client believes that the City violated South Dakota's Open Meetings Laws (SDCL ch. 1-25) in the several different ways, including: 1) Violations of the Executive Session Laws on May 6, 2024, 2) Violations of the Executive Session Laws on September 19, 2022, 3) Violation of the Law Requiring Allowance of Public Comments on March 4, 2024, and 4) Violations of the Executive Session Laws on February 16, 2023.

1. Violations of the Executive Session Laws on May 6, 2024

During the Sturgis City Council Meeting on May 6, 2024, the Sturgis City Council began discussion about moving into executive session at approximate video time-hack 4:33:10. See Exhibit 3. The motion to enter executive session was simply to enter into executive session without referencing any specific purpose.

The law requires that "An executive or closed meeting must be held only upon a majority vote of the members of the public body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion." SDCL § 1-25-2 (in relevant part). The Sturgis City Council violated the Open Meetings Laws because no purpose was stated in the closure motion to enter into executive session (with no specified purpose).

It is anticipated that Sturgis will assert that it entered into executive session for the purposes stated on the Agenda, which was:

20. EXECUTIVE SESSION

- 20.1. a. Pursuant to SDCL 1-25-2 (1), Personnel: 3
- b. Pursuant to SDCL 1-25-2 (3), Legal: 4
- c. Pursuant to SDCL 1-25-2 (4), Contracts: 2
- d. Pursuant to SDCL 1-25-2 (5), Marketing: 0
- e. Pursuant to SDCL 1-25-2 (6), Security: 0

See Exhibit 4.¹

At best, the Sturgis City Council entered into executive session for what appears to be 3 personnel issues, 4 legal issues, and 2 contractual issues (9 total separate issues). Executive sessions are "... restricted to the purpose specified in the closure motion." SDCL § 1-25-2 (in relevant part). The statute does not allow for a Council to enter executive session for more than one "purpose", otherwise it would have used the word "purposes".

The Sturgis City Council should enter and exit separate executive sessions for each purpose and individual session. Therefore, the Sturgis City Council should have entered and exited nine separate executive sessions for the agenda items contained in item 20.1; this did not happen.

¹ It appears that the Sturgis City Council usually lumps all of their executive sessions into one – basically every single meeting.

The Sturgis City Council finally returned to open session approximately 1.5 hours after entering executive session. *See* approximate video time-hack 6:01:15. The public has no way to determine how much time was spent on each of the various executive session issues.

My Client asks that the Open Meetings Commission reprimand the Sturgis City Council and direct that it properly enter into executive sessions.

2. Violations of the Executive Session Laws on September 19, 2022

At its September 19, 2022 meeting, the Sturgis City Council declared a Harley Davidson FLTRX, VIN# 1HD1KHC14NB647481 ("Harley") as surplus property. *See* Exhibit 5.

The Harley was later sold at the renowned Mecum auction in August 2023.

At some point after the sale, Alderman Kevin Forrester presented City staff and his fellow Sturgis City Council Alderman with questions relating to the Harley and its sale ("Forrester Questions"). *See* Exhibit 6.

The Forrester Questions are made up of 17 paragraphs, broken down as follows:

- A) Paragraphs 1, 6, 7, 8, 9, 10, 11, 13, 14, and 17 relate to surplus and sale of City property.
- B) Paragraphs 2, 3, 4, 5, 12, and 16 relate to claims (bills and reimbursements the city owes).
- C) Paragraph 15 related to a public records request.

As reflected in the January 16, 2024 Minutes on page 2, Alderman Kevin Forrester asked if there were any answers to the Forrester Questions. *See* Exhibit 7. Then Mayor, Mayor Carstensen, indicated that much of the answers to the Forrester Questions were personnel issues for executive session. One can only presume the matters were then later discussed in executive session.²

²This discussion can be seen at approximate time-hack 1:10:20 on the meeting video. This video is not attached hereto due to the accuracy of the Minutes. The video can be provided if necessary or it is available on the City's website.

The February 5, 2024 Meeting Minutes state the Forrester Questions "...will be answered in executive session as this is a personnel issue." See Exhibit 8, p. 2 (under "Non-agenda matters...").

At 10:19 p.m. on February 5, 2024, the Sturgis City Council entered into executive session for, among other things, personnel issues. See Exhibit 8, p. 21. The Sturgis City Council did not come out of executive session for approximately 1.5 hours. *Id.*

The Forrester Questions were factual questions relating to, among other things, the surplus, sale, potential bid-law violations, and arms-length negotiation for the sale of surplus property without Sturgis City Council approval or action, and monetary claims against the City (bills and reimbursements). The Forrester Questions did not have anything to do with personnel issues that would justify or enable discussion in a secret executive session, and the Sturgis City Council's executive session(s) on the Forrester Questions were therefore a violation of the Open Meetings Laws.

My Client asks that the Open Meetings Commission reprimand the Sturgis City Council and direct that it properly enter into of executive sessions.

**3. Violation of the Law Requiring Allowance of Public Comment on
March 4, 2024**

"The public body shall reserve at every official meeting a period for public comment, limited at the public body's discretion as to the time allowed for each topic and the total time allowed for public comment, but not so limited as to provide for no public comment." SDCL § 1-25-1.

The only limitation the Sturgis City Council had on public comment at the March 4, 2024 Sturgis City Council Meeting was "...to complete your comments in three minutes or less." See Exhibit 9, item #4.

A copy of the Meeting Minutes for the March 4, 2024 Sturgis City Council Meeting is attached hereto as "Exhibit 9.1". During the public input portion of the meeting, "Bonnie Alberts asked why the Council voting for Mayor and Council Vice-President was done by secret ballot." See Exhibit 9.1, first complete bullet paragraph, p. 2. Obviously, this subject matter was not restricted by the Sturgis City Council when it adopted the agenda for the April 15, 2024 Sturgis City Council Meeting, but only a three minute limitation.

Becca Zerbst, chaired the March 4, 2024 Sturgis City Council Meeting as Sturgis City Council President (due to the former Mayor's abrupt resignation). Bonnie Alberts delivered her comments during the public input portion of the March 4, 2024 Sturgis City Council Meeting from video time-hack 9:24 through 11:45. At approximate video time-hack 11:45, President Zerbst told Bonnie Alberts that she was at her three minutes and essentially shut down Bonnie Alberts' comments. Somewhat ironically, Bonnie Alberts was trying to make comments about the City's resistance to public input when President Zerbst told Bonnie Alberts that her three minutes were up (even though she still had approximate 40 seconds left). President Zerbst limited Bonnie Alberts' rights to comment for up to three minutes in violation of the Open Meetings Laws.³

My Client asks that the Open Meetings Commission reprimand Becca Zerbst for infringing on Bonnie Alberts' right to comment at the meeting and direct that the Sturgis City Council follow the proper procedures (including the Sturgis City Council's own rules as set by their own agenda) for public input during meetings.

4. Violations of the Executive Session Laws on February 16, 2023

The City of Sturgis announced by Press Release that the Sturgis City Council's plan to have a special meeting on February 16, 2023 with one agenda item: "an executive session focused on personnel matters." See Exhibit 11. The issue clearly set for executive session, as indicated from the Press Release, is "the question of hiring either a city manager or a city administrator." Exhibit 11.

The special meeting Agenda for the February 16, 2023 Meeting lists the executive session as being held "Pursuant to SDCL 1-25-2(1), Personnel: 1". See Exhibit 12, item 5.1.a.

SDCL § 1-25-2(1) only authorizes a government body to enter executive session for the limited purposes of:

Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor;

SDCL § 1-25-2(1).

³ President Zerbst's actions may have been warranted had Bonnie Alberts been disruptive or unruly, but that was not the case here.

Immediately before entering executive session during the February 16, 2023 Special Meeting, the Mayor unequivocally stated:

“As shown in the Agenda no anticipated action, um, I think it is fair to say that you know, there is action coming down on Tuesday I imagine, um, but we will see what develops here tonight and see which direction the council desires to go.”

See Exhibit 13, at approximate video at time-hack 1:40. The Sturgis City Council entered into executive session at video time-hack 2:13. The Sturgis City Council did not come out of executive session until approximately 2 hours and 42 minutes later, at video time-hack 2:44:45. Rather than discuss a particular employee's qualifications, competence, performance, or character or fitness (*see* SDCL §1-25-2(1)), it is clear that the Sturgis City Council was discussing the structure of leadership positions within the city – a discussion that should have been held in public.

My Client asks that the Open Meetings Commission reprimand the Sturgis City Council and direct that it properly enter into and exit out of executive sessions.

Sincerely,

BENNETT MAIN GUBBRUD & WILLERT, P.C.



Kellen B. Willert

KBW/jn

Enclosures (1)

cc: Clients – *email only*

Deputy State's Attorney – *email only*



City Council Meeting
AGENDA

DATE: Monday, May 6, 2024
TIME: Regular Meeting - 6:30 PM
PLACE: Council Chambers - City Hall, 1040 Harley-Davidson Way, Sturgis SD

Page

1. CALL TO ORDER REGULAR MEETING OF THE CITY COUNCIL

2. APPROVAL OF THE AGENDA

3. PLEDGE OF ALLEGIANCE

4. ANNOUNCEMENTS AND PRAISE

4.1. City-wide clean-up week is happening now, through May 10th. Thank you, Public Works, for all you efforts this week!

4.2. Condolences to the family of Jim Blakeman, former Council member (2000 - 2002).

7 - 9

4.3. Mayor's Proclamation to declare the week of May 15th as "Law Enforcement Torch Run for Special Olympics Week"
[Agenda Item Report - Pdf](#)

10 - 12

4.4. Mayor's Proclamation to designate the Week of May 19 - 25, 2024, as Emergency Medical Services Week - Honoring Our Past. Forging Our Future.
[Agenda Item Report - Pdf](#)

5. NON-AGENDA MATTERS THAT MAY COME BEFORE THE COUNCIL

To address the City Council, please stand behind the front table and state your name clearly into the microphone for the public record. Please keep your comments respectful and complete your comments in three minutes or less. If you are unable to approach the podium due to a

EXHIBIT 4

physical limitation, a portable microphone will be provided.

6. OLD BUSINESS

13 - 15 6.1. Reconsideration of Resolution 2024-32 "A Temporary Resolution Addressing the Transition from a City Government with a City Manager to a City Government without a City Manager but employing a City Administrator"
Agenda Item Report - Pdf

16 - 17 6.2. Confirmation of continuation of the Transition Team Stipend until September 3, 2024
Payroll Change Form - Pdf

7. REPORT BY TRANSITION TEAM

18 7.1. Payroll - Andrew Kimbell (Patrol Officer Class A) (Full-time) - \$28.49
Payroll Report - Pdf

19 7.2. Payroll - Eli Bueno (Custodian) (Full-time, non-exempt, eligible for benefits) - \$17.34
Payroll Item - Pdf

20 7.3. Payroll - Seth Goodro (Paramedic) (Part-time / PRN) (Ambulance) - \$27.27 (status change from full-time to part-time/PRN)
Payroll Report - Pdf

21 7.4. Payroll - Dave Cummings (EMT-Basic) (Part-time / PRN) (Ambulance Fund) - \$21.00
Payroll Report - Pdf

22 7.5. Payroll - Damien Wilt - Front Desk Attendant (Community Center) (Part-time) - \$12.50 (non-exempt)
Payroll Report - Pdf

8. CONSIDER CONSENT AGENDA

23 - 36 8.1. Consideration to approve the minutes from April 15, 2024.
Agenda Item Report - Pdf

37 - 42 8.2. Consideration to approve Resolution 2024-36 approving the final plat for Moose Drive, WBI.
Agenda Item Report - Pdf

9. APPROVAL OF THE CLAIMS

43 - 57 9.1. Claims for 05-06-24

10. BOARD OF ADJUSTMENT FOR VARIANCE, USE ON REVIEW OR OTHER ADMINISTRATIVE APPEALS

Pursuant to SDCL 11-4-17, 11-4-23, and 11-4-24

10.1. Adjourn Council meeting to meet as a Board of Adjustment for the following agenda items:

10.2. Declaration of conflicts of interest and/or ex parte communications by members of the Board

58 - 65 10.3. Consideration for side yard setback variances for 1040 8th Street.
Agenda Item Report - Pdf

66 - 72 10.4. Consideration for side yard setback variances for 1901 Heather Court.
Agenda Item Report - Pdf

73 - 77 10.5. Consideration for Use on Review to allow in-home dog grooming business at 633 Weber Drive.
Agenda Item Report - Pdf

78 - 84 10.6. Consideration for variances for gravel surfacing at 1311 Industry Road.
Agenda Item Report - Pdf

85 - 92 10.7. Consideration for variances to lot width at 3601 Hansen Avenue.
Agenda Item Report - Pdf

10.8. Adjourn Board of Adjustment and reconvene Council Meeting

11. PUBLIC HEARINGS

93 - 97 11.1. Consideration to approve a SEL for the Loud American Roadhouse for the Sturgis Mustang Rally on 8/28/24, 8/29/24, 8/30/24, & 9/01/24.
Agenda Item Report - Pdf

98 - 101 11.2. Consideration to approve a SEL for the Oasis Bar and Fireside Lounge for Music on Main on 6/05/24, 6/26/24, and 7/17/24.
Agenda Item Report - Pdf

102 - 105 11.3. Consideration to approve a Retail (on/off sale) Malt Beverage & SD Farm Wine License for T-Bob Investment Holdings, LLC.
Agenda Item Report - Pdf

106 - 108 11.4. Consideration to approve a Retail (on/off sale) Wine & Cider License for T-Bob Investment Holdings, LLC.

Agenda Item Report - Pdf

12. REPORTS

- 109 - 111 12.1. Consideration of the SEDRF Application from All Fab & Weld (Tim Edson)
Agenda Item Report - Pdf

13. ADJOURN SINE DIE

Final Adjournment of the 2023-2024 Council Session

14. BRIEF RECESS

15. CALL TO ORDER THE 2024-2025 COUNCIL SESSION

16. OATH OF OFFICE

- 16.1. Oath of Office for
- Nick Jones (Ward 1)
 - Ruth Kopp (Ward 2)
 - Jim Thompson (Ward 3)
 - Jesse Blakeman (Ward 4)

17. ELECTION OF COUNCIL LEADERSHIP

- 17.1. Election of Council President
17.2. Election of Council Vice President

18. CONSIDER CONSENT AGENDA

- 18.1. Authorize Bank Depositories - First Interstate Bank, Wells Fargo Bank, First National Bank, Pioneer Bank and SD Public Fund Investment Trust (FIT).
18.2. Designate Legal Newspaper as Black Hills Pioneer.
18.3. Authorize Signatories on Bank Accounts - Mayor, Council President, Finance Officer, Senior Accountant and City Attorney.

- 112 - 119 18.4. Consideration to approve Resolution 2024-37 approving the final plat application for 3601 Hansen Avenue
[Agenda Item Report - Pdf](#)
- 120 - 121 18.5. Consideration to approve Resolution 2024-35 "A Resolution Declaring City Property Surplus"
[Agenda Item Report - Pdf](#)
- 122 - 126 18.6. Consideration to set a public hearing on May 20th for a transfer of a Retail (On/Off Sale) Malt Beverage & SD Farm Wine License from Oyster Bay/Door 4 to GM B Services, LLC - 1025 Junction Ave.
[Agenda Item Report - Pdf](#)
- 127 - 131 18.7. Consideration to set a public hearing on May 20th for a transfer of a Retail (On/Off Sale) Wine & Cider License from Oyster Bay/Door 4 to GM B Services, LLC - 1025 Junction Ave.
[Agenda Item Report - Pdf](#)
- 132 - 135 18.8. Consideration to set a public hearing on May 20, 2024 for a Retail (on/off sale) Malt Beverage & SD Farm Wine License for Dixon Supply LLC - Dixon Flannel Co.
[Agenda Item Report - Pdf](#)
- 136 - 139 18.9. Consideration to set a public hearing on May 20, 2024 for a Retail (on/off sale) Wine & Cider License for Dixon Supply LLC - Dixon Flannel Co.
[Agenda Item Report - Pdf](#)
- 140 - 144 18.10. Consideration to set a public hearing on May 20, 2024 for a Retail (on/off sale) Malt Beverage & SD Farm Wine License for Hanson Investments LLC - Total Eclips Salon
[Agenda Item Report - Pdf](#)
- 145 - 149 18.11. Consideration to set a public hearing on May 20, 2024 for a Retail (on/off sale) Malt Beverage & SD Farm Wine License for Swizzle Beverage Company LLC - The Wet Spot
[Agenda Item Report - Pdf](#)
- 150 - 152 18.12. Consideration to set a public hearing for May 20th for approval of the renewals of the Retail (on/off sale) Malt Beverage and SD Wine licenses for 2024-2025
[Agenda Item Report - Pdf](#)
- 153 - 157 18.13. Consideration to set a public hearing on May 20, 2024 for a SEL for the Iron Horse Saloon for the Steel Pony Campground from 8/02/24 - 8/10/24.
[Agenda Item Report - Pdf](#)

19. NEW BUSINESS

- 158 - 161 19.1. Consideration of fee request waiver for use of Rally Point (Meade 46-1 School District - Hillary Hill)
Agenda Item Report - Pdf
- 162 - 164 19.2. Request for Consumption Permits for Monday, August 5th for the 2024 Rally Sponsorship VIP Social and Thursday, August 8th for the 2024 Rally Vendor Social
Agenda Item Report - Pdf
- 165 - 168 19.3. Discussion - Ordinance 2024-03: An Ordinance Adopting 7.03.13 - Election to Fill Council or Mayoral Vacancy.
Agenda Item Report - Pdf
- 169 - 174 19.4. Discussion - Ordinance 2024-04: An ordinance revising Malt Beverage licensing under Title 3.
Agenda Item Report - Pdf

20. EXECUTIVE SESSION

- 20.1. a. Pursuant to SDCL 1-25-2 (1), Personnel: 3
b. Pursuant to SDCL 1-25-2 (3), Legal: 4
c. Pursuant to SDCL 1-25-2 (4), Contracts: 2
d. Pursuant to SDCL 1-25-2 (5), Marketing: 0
e. Pursuant to SDCL 1-25-2 (6), Security: 0

21. RESUME OPEN MEETING

- 21.1. Return to Open Session

22. ADJOURN

23. ADA ACCOMMODATION

If you desire to attend this public meeting and are in need of special accommodations (including participation by telephone), please notify the Finance Office by 10am on the day of the meeting so that appropriate auxiliary aids and services may be coordinated. The Finance Office can be reached at (605) 347-4422, option 1.

City Council
STAFF REPORT



Meeting Date: City Council - Sep 19 2022

Agenda Item: Surplus City property for sale/trade/disposal/demolish.

Prepared By: Fay Bueno, Finance Officer

BACKGROUND INFORMATION:

The governing board may sell, trade, destroy or otherwise dispose of any land, structures, equipment or other property which such governing board has, by appropriate motion, determined to be no longer necessary, useful or suitable for the purpose for which it was acquired. (SDCL 6-13-1) Any surplus property appraised at \$500.00 or less may be sold by the governing board at a private or public sale without notice.

Auction - In lieu of sealed bids the governing board may sell surplus property at auction. Such governing board shall advertise such auction by publication in the official newspaper for at least once each week for two consecutive weeks with the first publication no less than 10 days prior to the sale. The first publication has to be in the entity's official newspaper; however, the second publication can be in any other newspaper in the state. (SDCL 6-13-6, 6-13-4)

DISCUSSION:

We have been selling surplus items on a online auction services

BUDGET IMPACT:

There will be some revenue generated from the auctioned items

RECOMMENDATION:

Motion to approve Resolution 2021-51 - a resolution declaring property surplus

ATTACHMENTS:

Resolution 2022-51- Surplus property several depts

Approved By:

Fay Bueno, Finance Officer

Status:

Approved - Sep 13 2022

EXHIBIT 5

RESOLUTION 2022-51
A RESOLUTION DECLARING PROPERTY SURPLUS

BE IT FURTHER RESOLVED BY THE COMMON COUNCIL OF THE CITY OF STURGIS that the personal property described below is hereby declared surplus and to be disposed of as described by SDCL 6-13-1. It is being advisable and in the best interest of the City to sell/trade/discard/demolish of such personal property.

AMBULANCE

2003 Ford MedTec Van – 1FDSS34F73HB05848

AIRPORT

4 Taxi way edge lights

SPONSORSHIP

2022 Harley-Davidson FLTRX Dom

VIN 1HD1KHC14NB647481

2022 Harley-Davidson RA1250s Dom

VIN 1HD1ZES12NB320959

POLICE

2006 Dodge Caravan – 1D4GP21E16B671872

2010 Chevrolet Tahoe – 1GNUKAE04AR205058

2 Iwatsu phones

3 monitors

8 keyboards

1 HP desktop printer

Multiple mice

1 locking cash can

1 locking cash drawer

1 telephone headset

1 army blanket

1 blue blanket

Non-functioning card ID printer with cards, ribbons, and cleaner

HP colored printer cartridges

PUBLIC WORKS

6th Street Shop building to be demolished.

98 Mack COE e7 engine vin# 1m2k195c4rm004273

14' Hiway sander body model #e3020-14

LIBRARY

Computer HP Compaq Elite 8300 Ultra-Slim Desktop MXL3232J2G

Computer HP Compaq Elite 8300 Ultra-Slim Desktop MXL3341S4L

Computer HP Compaq Elite 8300 Ultra-Slim Desktop MXL30713ZR

Computer HP Compaq Elite 8300 Ultra-Slim Desktop MXL1520DFC

Computer HP Compaq 2UA61806L

Computer HP Compaq DC7700 USH74500EY

Computer HP Compaq Pro 6305 MT Desktop MXL3232J23

Computer Lenovo ThinkCentre M710e MJ0B36AC

Computer	HP Compaq dc7900	2UA9180M12
Computer	HP Compaq 8200 Elite	MXL1330JP9
Computer	HP	RF68MW8Z401E
Computer	HP	USH620005W
Computer	HP Compaq 6305	MXL3232J1Z
Computer	HP	USH74500F5
Computer	Lenovo IdeaCentre Q700	JS10003317
Computer	Lenovo IdeaCentre Q701	JS10003688
Computer	Lenovo IdeaCentre Q702	JS10003718
Computer	Lenovo IdeaCentre Q703	JS10003722
Computer	Acer Aspire T	54801013130
Computer	Acer Aspire T	80601629330
Computer	HPCompaq Pro 6305 MT Desktop	MXL3232J23
Computer	Lenovo ThinkCentre M710e	MJ09Z911
Laptop	Dell Laptop Latitude E3440	
Monitor	HANNS-G HL161Abb Monitor	3048A1WY01679
Monitor	ACER V193 monitor	ETLDQ0C1991357DD4C8016
Monitor	HP PE1229 monitor	CNCHM0K350
Monitor	HP SH249 monitor	CND73740JL
Monitor	HP SH249 monitor	CND73740HH
Monitor	ACER V196L monitor	MMLYQAA003412173078510
Monitor	ACER V193 monitor	MMLS2AA0023121454A4213
Monitor	HP L1706 monitor	CND6260367
Monitor	HP L1706 monitor	CND62601YL
Monitor	HP L1706 monitor	CND62601TW
Monitor	HP P9621D monitor	CNN4420T5F
Monitor	HP L1706 monitor	CND62602ZF
Monitor	HP L1706 monitor	CND62601V8
Monitor	HP L1706 monitor	CND62602ZC
Monitor	Acer V193 monitor	ETLHWOD17021013AC88523
Monitor	Acer V193 monitor	ETLBZO81692190A86E
Monitor	HANNS-G HL161ABB monitor	1538A1WY02334
Monitor	HP L1706 monitor	CND62601TZ
Monitor	HP L1706 monitor	CND62602ZL
Monitor	HP L1706 monitor	CND6240NJH
Monitor	HP V193 monitor	3CQ4463NR6
Monitor	HP V193 monitor	3CQ4463NRK
Monitor	Acer V246HQL monitor	92316273542
Monitor	HP L1706 monitor	CND6240NBN
Monitor	Acer V193 monitor	ETHLWOD17021013HC48523
Monitor	HP L1906 monitor	CND73740KB
Monitor	HP L1706 monitor	CND62602JM
Monitor	HP L1906 monitor	CND73740JC
Monitor	HP L1706 monitor	CND62602JM
Monitor	LGW1943TB-PF	912UXBP3Z029
Printer	HP DeskJet C69000 inkjet printer	CB055A
Printer	Canon MX922 inkjet printer	ADJV19980

Printer	Epson XP-410 inkjet printer	S52P062359
Printer	HP Desk Jet 2050 printer	CN23A3P1FO
Printer	Lexmark E120 Laser	994FV34
Keyboard	USB Keyboards (31)	
Keyboard	Serial Keyboards (10)	
Mouse	USB Mice (25)	
Mouse	Serial Mice (6)	

MISCELLANEOUS DEPARTMENTS

Metal Filing cabinet (2 drawers)
Ithaca 150 printer

Dated this 19th day of September 2022.

CITY OF STURGIS

Mark Carstensen, Mayor

ATTEST:

Fay Bueno, Finance Officer

Published:
Effective:

Mecum Auction Surplus Property Disposal and Associated Items Questions

Submitted to Sturgis City Council by Kevin Forrester Sturgis City Councilor Ward 4

January 2, 2024

The surplus and sale of 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 has been discussed on several occasions in public meeting for the Sturgis City Council including multiple reports being provided by City of Sturgis Staff Attorney Mark Marshall. Despite the discussion and multiple reports on the topic there are still unanswered questions as applies to South Dakota Codified Law Section 6-13 DISPOSAL OF SURPLUS GOVERNMENT PROPERTY, City of Sturgis Policies and actions of the Sturgis City Council. The City Council discussion has resulted in the statement that we will do better next time and bring the questions forward in writing. I continue to raise this issue as most of us operate within the business world in one capacity or another. Place this current situation in your business; would you ignore it, save it for a future recurring incident or deal with it to avoid future problems?

The constricted information provided has had an effect in generating additional questions on items related to the surplus disposal. These are not just my questions; they are also the questions of the City of Sturgis Constituents. As the situation relates in part to the City of Sturgis Legal Department these questions will only be able to be completely answered by a third-party legal review.

Surplus Property Disposal and related item questions:

- 1) The 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 was surplused in September 2022. The Sturgis City Council, by appropriate motion, determined the motorcycle to be no longer necessary, useful or suitable for the purpose for which it was acquired, yet months later in 2023 before the surplus item was sold, many aftermarket parts were installed. How is it that an item that had been surplused by Sturgis City Council action had additional investment made without the approval of the Sturgis City Council?

- 2) The 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 was transported to California to be sold at the Monterey Mecum Auction using a personal vehicle resulting in mileage payments when city vehicles were available. This same situation occurred in January, 2023 when another motorcycle was surplused for sale. It resulted in personal trip mileage payment for travel to Mitchell SD and Las Vegas NV. Why does the city pay for the use of an employee's personal vehicle when city owned transportation is available and fits within current city policies? Were non-city owned motorcycles also transported at the same time? Several city employees went to these sales. Why was the council not asked to approve these employee travels and their expenses prior to these events?

EXHIBIT 6

- 3) Claims associated with the Monterey Mecum Auction lodging are more than \$6,900 for a duration of 5 days. The Monterey Mecum Auction was a three-day event. How do additional lodging days fit within current city policies?

- 4) The 5-bedroom property rented for lodging three city staff members was 20 miles away from the auction location in another community and situated adjacent to a state beach. Pictures of the property show it could be described more as a Villa than a single-family home. How does renting this property fit within city policies?

- 5) From the discussion and reports provided on the Monterey Mecum Auction there were guest(s) in addition to city staff that lodged at this costly \$6,900 rented property. Part 1: Who stayed at the property rented by the City of Sturgis? Part 2: Was compensation for the lodging made to the City of Sturgis by everyone who lodged at the rented property? Part 3: If compensation was provided to the city, how was it invoiced/receipted in the city's accounting system?

- 6) South Dakota State Law specifies where and when surplus property destined to be sold at public auction is to be advertised. Where and when were the required publications completed?

- 7) South Dakota State Law specifies that city officials can only purchase surplus property at public auction. It has been indicated through discussion and documentation that the 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 did not sell at Public Auction and was instead sold through private negotiations conducted after item was declared a no sale at public auction. The Mecum web site states "The Auction is over, but the sales don't stop. The Mecum Bid Goes On team keeps the auction energy flowing and the deals working with bidders after a vehicle leaves the auction block." These after auction negotiations are not publicly displayed or publicly disclosed. City of Sturgis Attorney Mark Marshall purchased the motorcycle through the Bid Goes On process. How does the Bid Goes On negotiation meet the South Dakota State Law on public officials purchasing surplus property?

- 8) The 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 declared a no sale at public auction by City of Sturgis Staff Attorney Mark Marshall and/or Sturgis Mayor Mark Carstensen. In the Deal Goes On Process, the same two people approved the sale amount. South Dakota State Law DICTATES THIS IS A COUNCIL DECISION, not city staff or the Mayor, decision. How does the decision to

sell the 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 to city employee, Mark Marshall, who also made the decision on approving the sale amount, fit within South Dakota State Law?

9) It costs \$100 to register to bid at Mecum Auctions. Does a Mecum Auction FIT THE DEFINITION OF a public auction since they require a membership fee be purchased?

10) City of Sturgis Attorney Mark Marshall indicated he purchased the 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 for Indian Motorcycle Sturgis. Why did Indian Motorcycle Sturgis not purchase the motorcycle themselves at the auction?

11) City Attorney Mark Marshall has provided a receipt from the Monterey Mecum Auction where he purchased the 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481. Did the title to the 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 transfer from the City of Sturgis to Mark Marshall?

12) City Attorney Mark Marshall presented a claim for the buyer's fee associated with his purchase of the 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481. Mr Marshall shared that the city was responsible because of a matching donation to the Sturgis Rally Charities Agency Endowment. The Sturgis City Council approved this claim BY A SPLIT VOTE. How is it that the City of Sturgis is responsible for a buyer's fee for an item purchased by a private individual? How would this financial transaction be viewed by the State Auditor General's Office? Why are the city's rally and sponsorship financial records excluded from auditing by the State Auditor General's Office?

13) Discussion and documentation on the Monterey Mecum Auction revealed that the Sturgis Rally Endowment matching funding donation was a deferred donation payable upon death of the donor(s) and could be revoked at any time. Does this contract adhere to federal/state laws? How would financial responsibility need to be documented over the extended timeline of the contract? What is the result if a donor revokes their deferred donation? Has the City of Sturgis misled its citizens when it has issued official press releases indicating matching endowment fund deposits when in fact it is not known if any donor money has been actually been deposited into the endowment fund? Does the city provide any annual tax deduction documents to the donor?

14) It has been presented through discussion and documentation that building the Sturgis Rally Charities Agency Endowment was the goal and reasoning for following the decision that resulted in the

2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 being purchased by a senior city employee. The Sturgis Rally Charities Agency Endowment authorization documentation has neither been presented to, nor approved, by the Sturgis City Council. At no point has the Sturgis City Council ratified the rally endowment as one of their priority goals. Is the formation of this fund legal in federal and state law? What are the financial tracking, reporting, and auditing processes for something that could reach far beyond the current city staff and councils involvement?

15) Publicly, one local media source indicated that a request for information as it pertained to the Mecum Auction was never responded to. What city policy allows for not responding to requests for records of public information?

16) There has been no detailed public accounting of the revenue and expenses incurred in the sale of Sturgis motorcycles. In reviewing past claims, it appears the motorcycle sold Jan. 28, 2023 in Las Vegas incurred expenses over a three-month period. It is difficult to determine if revenue exceeds expenses particularly when expenses have been taken from more than the sponsorship account. This co-mingling of financial accounts clouds the true cost of city functions. What is the total cost of selling the 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481?

17) The surplus process of 2022 Harley-Davidson FLTRX Dom VIN 1HD1KHC14NB647481 appears to have conflicts within the City of Sturgis Legal Department. Legal Department conflict manifested the need for third party legal services earlier in 2023 on another matter resulting in the hiring of private legal counsel. How can the City Legal Department have additional City of Sturgis duties and responsibilities beyond reviewing and advising the Sturgis City Council on legal matters without risking continued conflicts, need for third-party legal representation, and additional expense? EG: Signing authority of contracts, supervision of unrelated city departments: Rally & Events, Sponsorship, Planning & Permitting

MINUTES
City Council Meeting
City of Sturgis, South Dakota

Tuesday, January 16, 2024

5:30 PM

Council Chambers

PRESENT: Mark Carstensen, Mike Bachand, Kevin Forrester, Aaron Jordan, Angela Wilkerson, Tony Dargatz, and Preston Williams, City Attorney, Mark Marshall and Finance Officer, Fay Bueno

ABSENT: Dean Sigman and Beka Zerbst

Council Work Session

Councilor Zerbst is ill, Councilor Sigman is at a meeting in Sioux Falls and Councilor Williams is on the phone.

Discussion on Title 37, City Transit

Pedi cabs during the Rally have significantly increased over the years. The Pedi cab ordinance will be separate from the Taxi Ordinance and would regulate them so they are operated safely within the City. Right now the Pedi cabs are regulated under the Taxi Ordinance. This ordinance would limit the number of licenses to ten pedicabs within the City during the Rally. This would be done by through a lottery system, similar to how the Medical Marijuana licenses were given out. There would be a inspection done on each Pedi cab to make sure they are safe. Open container would not apply to Pedi cabs.

Uber or Lyft Ride Share was discussed and how we can get them to come to Sturgis. The proposal would be to lower the current fee to \$25 per individual. Uber and Lyft is extensively regulated through the statute and through their companies. The suggestion would be to repeal the City ordinance Transportation Network Company (TNC) 37.03 underneath the City's code.

Call to Order Regular Meeting of the City Council

Approval of the Agenda

Moved by Wilkerson, seconded by Forrester, to approve the agenda as posted. Members present carried unanimously.

Pledge of Allegiance

EXHIBIT 7

Non-agenda matters that may come before the Council

- Councilor Forrester asked where the Council is at on the questions that he had submitted to them at the last Council meeting. What is the next step in this process. Mayor Carstensen said that staff is working on the questions and Council leadership feels that this falls under personnel in executive session. Once the questions are answered the Council will plan on making that next step and staff will get them completed as soon as possible. There will be more information brought to the public in the future.
- Mayor Carstensen asked where we are in the process of selling the coins. A public notice was sent to the newspaper with a bid opening date of January 29th. There were questions about who opens the bids. We will get some clarity on this.

Announcements and Praise

- **Congratulations to John Rasch (Cemetery Sexton at Bear Butte Cemetery) upon his retirement from the City after 34 years of dedicated service.**
- **The drop-off for Christmas Trees will be closed at the end of January.**

City Manager's Report by Transition Team

- **November 2023 Sales Tax Report - The sales tax update for General Sales Tax and Capital Improvement Tax for October collected in November was up 1.04% year over year and month over month was up 1.873%. The Gross Receipts Tax (triple B) was down 16.42% year over year and month over month was up 12.10%.**
- **Correction to Resolution 2024-1: Lifeguard Edwin Walkenhauer - \$14.25. City Attorney Mark Marshall - \$4,471.35. Staff Attorney Eric Miller - \$2,975.62**

Consider Consent Agenda

Moved by Jordan, seconded by Forrester, to approve the consent agenda except for 8.3 - Final Plat for 3196 Vanocker Canyon Road; 8.9 - Resolution 2024-09 - amend the Sanitation Rates- Residential for one tote; 8.12 - Financial assistance agreement for FAA Weather Camera System; 8.14 - Lease with Meade 46-1 School District for Joint Use and Cost Sharing for Woodle Field.

Members present carried unanimously.

- **Consideration to approve the minutes from January 2, 2024.**
- **Approval of final plat for 3196 Vanocker Canyon Road.**

Moved by Jordan, seconded by Dargatz, to approve 20214-13 - Plat of Southside Addition - City of Sturgis.

Members present carried unanimously.

RESOLUTION 2024-13 RESOLUTION APPROVING PLAT

01/13/24

WHEREAS the statutes of the State of South Dakota require that plats of property within the jurisdiction of the City of Sturgis be submitted to the governing body for approval before the same are recorded in the Office of the Register of Deeds; and

WHEREAS, the City of Sturgis Planning and Zoning have presented to the Common Council of the City of Sturgis a plat of the following described real property for the Sturgis City Council.

PLAT OF

Lot 1 and Lot 2 of Southside Addition.

All Located in the SE1/4SW1/4, and Government Lot 4, South of the Railroad Right-of-Way, Section 15, T.5N., R.5E., B.H.M., City of Sturgis, Meade County, South Dakota.

WHEREAS, said plat meets the requirements of the statutes.

WHEREAS, that the municipality approves the plat, and that the written certification of the City's approval will be affixed to the plat, by the Mayor.

BE IT RESOLVED by the Common Council of the City of Sturgis, South Dakota, that the within and foregoing plat is hereby approved as provided herein.

Dated this 16th day of January, 2024.

Published: 01-24-2024

Effective: 02-14-2024

- **Request for a Consumption Permit for the Sturgis Public Library's upcoming adult program, "A Bad Vintage" on February 24, 2024 from 6pm to 8pm**
- **Request for Lifting of Open Container Ban for activities during the 2024 Off Road Rally**
- **Request for lifting of the Open Container Ban for the 2024 Sturgis MusicFest on September 20 and 21.**
- **Consideration to set a Public Hearing for February 5, 2024 for the Street Closure, Lifting of Open Container Ban and Police Escort request for Parade during the 2024 Sturgis Mustang Rally**
- **Consideration to set a Public Hearing on February 5 for the 2024 Music on Main - Street Closure and Lifting of Open Container Ban.**
- **Consideration to Approve Resolution 2024-09, A Resolution to amend the Sanitation Rates-Residential for 1 tote.**

Moved by Forrester, seconded by Jordan, to approve Resolution 2024-09 - a resolution to amend 2023-45 Sanitation Rates Resolution-Residential for one tote.

Members present carried unanimously.

RESOLUTION 2024-09
RESOLUTION TO AMEND THE SANITATION RATES-RESIDENTIAL FOR 1 TOTE

FOR THE CITY OF STURGIS

WHEREAS, the City of Sturgis has adopted through Ordinance 11.04.04 and 11.05.31, which authorizes the City of Sturgis to annually review the municipal garbage, sewer and water utility rates; and

WHEREAS, on November 6, 2023, the City Council Adopted Resolution 2023-45 establishing the Municipal Utility Rates for 2024; and

WHEREAS, the Finance Office found that the Residential Sanitation Rates for 1 Tote was incorrect; and

WHEREAS, the following chart will show the correct fees for 1 Tote. All other columns were correct.

SANITATION RATES - RESIDENTIAL		Budget Year:	2024					
Rate Increase	5%							
	1 Tote							
Times/Week	1x 90 Gal							
1	18.05							
2	36.10							
3	54.15							
4	72.20							
5	90.25							
6	108.30							
7	126.35							
Per unit fee, Multifamily 25+ Units	14.40							

Adopted this 16th day of January 2024.

STURGIS COMMON COUNCIL

Published: 01-24-2024

Effective: 02-14-2024

- Consideration to approve setting a public hearing for February 5, 2024 for an SEL to serve for a fundraiser at the Sturgis Auditorium for the Loud American Roadhouse.

- **Consideration to approve setting a public hearing for February 5, 2024 for an SEL to serve for a the Annual Challenge for Charities Gala at the Sturgis Auditorium for the Loud American Roadhouse.**
- **Consideration to approve state financial assistance agreement for FAA Weather Camera System at the airport and have the Mayor sign the agreement.**

Moved by Bachand, seconded by Dargatz, to approve State financial assistance agreement for FAA Weather Camera System at the airport and have the Mayor sign the agreement.
Members present carried unanimously.

- **Set Public Hearing for February 5, 2024 for the Street Closure, Lifting of Open Container Ban, and Police Escorts for activities during the 2024 Sturgis Camaro Rally**
- **Consideration to approve lease with Meade 46-1 School District for Joint Use and Cost Sharing for Woodle Field**

Moved by Jordan, seconded by Dargatz, Motion to approve lease with Meade 46-1 School District for Joint Use and Cost Sharing for Woodle Field
Members present carried unanimously.

Approval of the claims

Moved by Dargatz, seconded by Bachand, to approve the claims with the additional claims for a total of \$802,469.99.
Members present carried unanimously.

Wages – Ambulance \$51234.76; Attorney \$7432.17; Auditorium \$; Cemetery \$2902.54; City Manager \$6860.88; Community Center \$12264.55; Custodial \$5132.46; Downtown BID \$151.55; Engineering \$2789.93; Finance Office \$8064.29; Fire Department \$530.00; Fleet \$8022.96; Human Resource \$3560.96; Library \$10519.50; Liquor \$8750.01; Mayor and Council \$9326.39; Parks \$13230.99; Planning & Permitting \$7413.52; Police \$60471.82; Rally \$6446.09; Recreation \$3107.87; Sanitary Service \$19327.93; Special Sales Tax \$; Sponsorship \$3024.19; Streets \$17012.18; Wastewater \$15956.09; Water \$18578.49; Federal Withholding \$26620.57; FICA \$21596.86.

Vendor Name	Description	Net Invoice Amount
A&B BUSINESS	SUP	\$188.22
A&B WELDING	SUP/MAT	\$1,305.68
A&J SURPLUS	SUP/MAT	\$999.92
ALSCO	MAINT	\$467.17
AXON	SUP/MAT	\$8,640.00
BAILEY, GLENN	LEASE	\$750.00

BAKER & TAYLOR	SUP/MAT	\$28.34
BEAR BUTTE WATER	UTIL	\$144.90
BEDFORD, TUCKER	REIM	\$125.19
BIRK, LYNN	MARKET	\$225.00
BIZMATICS	SUP/MAT	\$187.95
BH CHEMICAL	SUP/MAT	\$173.78
BH PIONEER	PUB	\$1,073.55
BLUE PEAK	UTIL	\$4,426.19
BRICKSRUS	SUP/MAT	\$1,973.80
BROZ ENG	CAP IMP	\$6,140.00
BURNHAM, ROGER	REIMB	\$134.60
BUTTE ELECTRIC	UTIL	\$1,129.22
BYARS, ROSE	MARKET	\$6.00
CASELLE	PROF FEES	\$1,887.00
CASH-WA	LIQUOR	\$1,632.91
CASK & CORK	LIQUOR	\$1,716.91
CBH	FUEL	\$11,828.11
CENGAGE	SUP/MAT	\$134.19
CENTURY BUSINESS	SUP/MAT	\$546.14
CENTURY LINK	UTILITIES	\$345.46
CITY OF BELLE FOURCHE	OTHER	\$22,299.78
CITY OF STURGIS - WATER	UTIL	\$4,719.88
CLAUSEN, LAURA	MARKET	\$12.00
COCA COLA	SUP/MAT/LIQUOR	\$249.00
CORE&MAIN	SUP/MAT	\$514.08
CREED, DOREEN	MARKET	\$3.00
CUMMINS, INC	MAINT/REP	\$1,132.66
DAIGLE, MICHELLE	MARKET	\$2.00
DAKOTA'S BEST	LIQUOR	\$1,034.90
DANA SAFETY SUPPLY	MACH/EQUIP	\$11,626.45
DERBY, GERALD&MARY ANN	REIMB	\$145.00
DEJARLAIS, TAMI	MARKET	\$18.00
DOUBLE STAR COMPUTING	PROF FEES	\$1,832.60
ECOMITIZE	PROF FEES	\$350.00
EPIC OUTDOOR ADVERT	RENT	\$1,400.00
FARRELL, KIM	MARKET	\$5.00
FISHER BEVERAGE	LIQUOR	\$10,498.60

GOETSCH, DYLAN	REIM	\$260.73
HALE, KAYLA	MARKET	\$10.00
SCHEIN, HENRY	SUP/MAT	\$132.83
HERC-U-LIFT	EQUIP	\$4,925.00
J&M DISPLAYS	CITY PROMO	\$15,000.00
JACOBS, MATTHEW	REIM	\$201.77
JOHNSON WESTERN	LIQUOR	\$21,423.88
KAVIA, DINESH	FAÇADE	\$25,000.00
KIEFFER SANITATION	OTHER	\$504.09
KOSTERS, BECKY	MARKET	\$5.00
LA RISA	PROF FEES	\$100.00
LALICKER	HOLD	\$20.00
LEAVITT HEARTLAND INS	INSURANCE	\$22,264.00
LEGENDARY ELECTRIC	SUP	\$1,040.09
LIBERTY CHEVROLET	REP/MAINT	\$96.67
LIBERTY CHRYSLER	REP/MAINT	\$200.83
LPA	PROF FEES	\$1,470.00
LYNN'S DAKOTAMART	SUP/MAT	\$343.67
MARCO TECH	SUP/MAT	\$145.73
MASTERCARD	SUP/MAT/TRAVEL/OTHER	\$13,185.59
MAXWELL, TERRY	MARKET	\$19.00
MCGAS	SUP/MAT	\$7.97
MCLEOD'S	SUP/MAT	\$354.36
MEADE CO REGISTER DEEDS	PROF FEES	\$90.00
MEINERS, ASHLEY	MARKET	\$15.00
MERWIN, MEGAN	MARKET	\$108.00
MIDCONTINENT TESTING	PROF FEES	\$233.50
MIRACLE RECREATION EQUIP	SUP/MAT	\$1,451.30
MIRANDA, MIKKO	MARKET	\$74.00
MOUNTAIN AIR INS	INSURANCE	\$3,499.00
MR TIRE	REP/MAINT	\$25.00
NORTHERN HILLS VET	PROF FEES	\$42.00
NORTHWEST PIPE	SUP/MAT	\$1,427.71
OWENS INTERSTATE	SUP/MAT	\$60.53
PARKER, TRAVIS	HOLD	\$140.00
PEPSI	LIQUOR	\$636.35
PETERSON, KIM	MARKET	\$10.00

POWERPLAN	SUP/MAT	\$68.68
PRAIRIE BERRY	LIQUOR	\$777.00
PRICE, KENNY	LEASE	\$180,000.00
PRINT MARKET	PUB	\$4,759.48
QUALITY BRANDS	LIQUOR	\$11,466.47
RACE WHEELS	PROF FEES	\$150.00
RATHS, VASYLYNA	MARKET	\$25.00
RED OWL, AMY	MARKET	\$49.00
REPUBLIC BEVERAGE	MARKET	\$12,182.78
RICHTERS TIRE	REP/MAINT	\$284.32
RIVERFRONT		
BROADCASTING	PROF FEES	\$2,527.56
RUNNINGS	SUP/MAT	\$125.78
RUSHMORE OFFICE	SUP/MAT	\$244.49
SANFORD HEALTH	PROF FEES	\$35.00
SCOOPER		
BASKETBALL	CITY PROMO	\$10,000.00
SD AMBULANCE		
ASSOC	TRAVEL	\$975.00
SD DEPT OF TRANS	CAP IMP	\$31,702.95
SDML WORK COMP	INSURANCE	\$183,925.00
SERVALL	MAINT	\$199.61
SD 811	PROF FEES	\$60.48
SOUTHERN GLAZERS	LIQUOR	\$10,328.16
STURGIS ACE	SUP/MAINT	\$354.72
STURGIS NAPA	SUP/MAT	\$719.87
STURGIS		
RESPONDER SUP	SUP/MAT	\$300.00
STURGIS RIFLEMAN	OTHER	\$26,202.00
STURGIS SOCCER		
ASSOC	BID GRANT	\$10,000.00
STURGIS		
VOLUNTEER FIRE	SUP/TRAVEL	\$2,440.17
TBOB INVEST	RENT	\$1,000.00
THE KETTLECORN		
MAN	MARKET	\$19.00
THOMSON REUTERS	PROF FEES	\$369.97
THORNTON JANELLE	MARKET	\$10.00
U DRIVE TECH	PROF FEES	\$337.26
ROY ULRICH	HOLD	\$60.00
USDA FOREST		
SERVICE	PERMIT	\$175.18
VERIZON WIRELESS	UTILITIES	\$3,658.32

VODICKA, ELIZABETH	MARKET	\$34.00
VOSS DISTRIB	LIQUOR	\$187.10
WEST RIVER		
ELECTRIC	UTILITIES	\$709.95
WHITFORD, JOSH	REIMB	\$66.59
WILSON		
CONTRACTING	PROF FEES	\$70,815.76

Reports

Moved by Jordan, seconded by Forrester, to approve Resolution 2024-14 - Approving the TIF #24 amended Project Plan and Development Agreement
Members present carried unanimously.

RESOLUTION 2024-14 RESOLUTION AMENDING PROJECT PLAN FOR TAX INCREMENTAL DISTRICT NUMBER TWENTY-FOUR

BE IT RESOLVED by the Common Council of the City of Sturgis, as follows:

WHEREAS, the Common Council has established Sturgis Tax Incremental District Number Twenty-four by Resolution 2022-61 on November 21, 2022; and

WHEREAS the Common Council deems it in the best interests of the City to promote the creation of housing developments within the City; and

WHEREAS this Amendment #1 to the Project Plan will replace the Project Plan approved by the City Council on November 21, 2022; and

WHEREAS the Project Plan approval helps make such housing development feasible by assisting with various public works improvements including streets, bicycle path, utility connections and earthwork within the tax increment district; and

WHEREAS the use of tax increment financing to promote this development is authorized by the statutes of the State of South Dakota; and

WHEREAS the lack of available housing hinders workforce development within the community and the growth in customer base which in turn hampers economic growth and sales tax revenue growth within the community; and

WHEREAS a significant increase in external financing interest rates have caused a significant increase in project costs for the Developer; and

WHEREAS Amendment #1 removes the City's obligation to provide internal financing and allocates these costs to additional financing costs caused by the significant increase in interest rates; and

WHEREAS Amendment #1 increases project costs to add additional financing costs; and

WHEREAS the Council has considered Amendment #1 to the Project Plan submitted by the Planning Commission and determined that Amendment #1 to the Project Plan for the Garden Grove Tax Increment District Number Twenty-Four is economically feasible; and

WHEREAS the Council further determined that Amendment #1 to the Project Plan is in conformity with the adopted Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF STURGIS that the Amended Project Plan for Tax Incremental District Number Twenty-four be, and is hereby, approved as presented by the Sturgis Planning Commission.

Published: 01-24-2024

Effective: 02-14-2024

Moved by Bachand, seconded by Wilkerson, to approve Armory Lease with BikerNettie for vending space during the 2024 Sturgis Motorcycle Rally.
Members present carried unanimously.

Executive Session

Moved by Dargatz, seconded by Bachand, to enter Executive session at 7:34 pm for Personnel, Legal, Contracts, Marketing, and Security.
Members present carried unanimously.

Resume Open Meeting

Moved by Forrester, seconded by Dargatz, to adjourn Executive Session at pm 10:16 pm.

Adjourn

Moved by Jordan, seconded by Dargatz, to adjourn Council meeting at 10:17 pm.
Members present carried unanimously.

ATTEST: _____
Fay Bueno, Finance Officer

APPROVED: _____
Mark Carstensen, Mayor

Published once at the total approximate cost of \$ _____

MINUTES
City Council Meeting
City of Sturgis, South Dakota

Monday, February 5, 2024	6:00 PM	Council Chambers
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PRESENT: Mark Carstensen, Mike Bachand, Kevin Forrester, Aaron Jordan, Dean Sigman, Angela Wilkerson, Beka Zerbst, Tony Dargatz, and Preston Williams, City Attorney, Mark Marshall and Finance Officer, Fay Bueno

ABSENT: None

Call to Order Regular Meeting of the City Council

Approval of the Agenda

Moved by Zerbst, seconded by Williams, to approve the amended agenda.
Carried by the following votes:

Ayes: Carstensen, Bachand, Forrester, Jordan, Zerbst, Dargatz, and Williams
Nays: Wilkerson

Moved by Forrester, seconded by Jordan, to approve amending the agenda to be discussion of the two ordinances on Lyft/Uber and Pedicabs and not do first reading .
Carried by the following votes:

Ayes: Carstensen, Bachand, Forrester, Jordan, Zerbst, Dargatz, and Williams
Nays: Wilkerson

Pledge of Allegiance

Executive Session

- a. Pursuant to SDCL 1-25-2 (1), Personnel: 0
- b. Pursuant to SDCL 1-25-2 (3), Legal: 0
- c. Pursuant to SDCL 1-25-2 (4), Contracts: 1
- d. Pursuant to SDCL 1-25-2 (5), Marketing: 0
- e. Pursuant to SDCL 1-25-2 (6), Security: 0

EXHIBIT 8

Moved by Zerbst, seconded by Wilkerson, to go into executive session at 6:05 pm. Members present carried unanimously.

Moved by Williams, seconded by Dargatz, to return to regular session at 6:51 pm.

Informational Reports

Presentation with Q&A by Chris Huber, CEO, of the Black Hills Area Community Foundation in order to provide Council with information about its Rally Agency Endowment Fund held by the BHACF. Discussion was also had on the Adventure Park Fund that is held by BH Area Community Foundation.

Non-agenda matters that may come before the Council

- Mayor Carstensen announced that there will be a new resolution with options to surplus the silver rally coins at the next Council meeting.
- Bernie Usera asked about the questions on Mecum auction that Councilor Forrester had presented to the Council. The questions will be answered in executive session as this is a personnel issue. Some information can be brought to the public.
- Richelle Bruch, representing the Soccer Association, spoke to the Council about setting up a Sports Commission and asked for a representative from the City Council to sit on this Commission. Councilor Jordan would like to engage with the public in 2024 and form committees with different organizations to prepare for the Comprehensive Plan that will be done in 2025. The City is looking at doing Community calendar.
- Bonnie Alberts questioned the agenda. She wondered who puts the items on the agenda. The transition team puts it together, provides it to Legal and Finance and the Mayor approves.

Announcements and Praise

- **The second Council meeting in February will be held Tuesday, February 20th due to the Presidents' Day holiday on February 19th.**
- **The garbage pick-up due to the Presidents Day holiday on Monday, February 19th will be on Tuesday.**

Department Update: Planning & Permitting

Dave Smith introduced his staff. Discussed the stats for 2023 compared to 2022 on permits and licensing. The number of Code Enforcement violations, the Planning Division and their accomplishments including a staff member becoming a certified MS4 Compliance Officer. His department generated enough revenue to cover the expenses for 2023. Smith reported on the Sturgis Municipal Airport which included Based Aircraft, hangar leases, fuel sales, property taxes, hay lease, car rental income. There was a net of \$26,761 to the City. The projects were the AWOS 3P and a

weather camera system. There are 5 businesses operating at the airport. There is public outreach done throughout the year.

City Manager's Report by Transition Team

- **Completed Capital Improvement & Infrastructure Projects 2023**

Public Works Director gave a update on the Capital Improvement projects for 2023. Items discussed: end-of-life infrastructure projects, planned development projects, quality of life improvements, preventative maintenance projects, condition-based development and compliance projects. There was approximately 35 to 40 projects did in 2023. Some of these projects are done in one year, but some span several years to be completed.

- **Payroll - Corey Julson (Custodian) (Full-time) - \$17.34**
- **Payroll - Laura Abernathy (GIS Specialist) (Part-time) (Planning & Permitting) - \$25.47 per hour (non-exempt)**
- **List volunteer for the Rally & Events Department in the Council minutes for workers' compensation and liability coverages in 2024 - Toni Moore (No compensation)**
- **Listing a volunteer for the Sturgis Police Department Reserves in the Council minutes for workers' compensation and liability coverages in 2024: John Marshal**

Consider the Consent Agenda.

Moved by Jordan, seconded by Zerbst, to approve the consent agenda with the removal of 11.3 - Lease BH Rally & Gold; 11.4 - Lease for Uniquely Crafts.

Members present carried unanimously.

- **Consideration of the Minutes from January 16, 2024.**
- **Consideration to approve and authorize City Attorney to sign an Armory Lease with Black Hills Rally & Gold for vending space during the 2024 Sturgis Motorcycle Rally**

Moved by Sigman, seconded by Williams, to approve and authorize City Attorney to sign an Armory Lease with Black Hills Rally & Gold for vending space during the 2024 Sturgis Motorcycle Rally.

Members present carried unanimously.

- **Consideration to approve and authorize City Attorney to sign an Armory Lease with Uniquely Crafts for vending space during the 2024 Sturgis Motorcycle Rally**

Moved by Zerbst, seconded by Sigman, to approve and authorize City Attorney to sign an Armory Lease with Uniquely Crafts for vending space during the 2024 Sturgis Motorcycle Rally

Members present carried unanimously.

- Consideration setting a public hearing for February 20, 2024 to approve a SEL for Sturgis Brewing Company for the SEDC Annual Meeting on March 26, 2024.
- Request for Lifting of Open Container Ban for activities during the 2024 Off Road Rally
- Request for lifting of the Open Container Ban for the 2024 Sturgis MusicFest on September 20 and 21.
- Consideration to set a public hearing on February 20th for a Street Closure and Lifting Open Container during the 2024 Fall Festival on September 21st, 2024.
- Consideration to approve setting a public hearing on February 20 for Street Closure and Lifting of Open Container Ban for the 2024 Sturgis Art Festival/Battle of the Bands on June 1.
- Consideration to approve lifting of the Open Container Ban for the for the 2024 Annual Tree Lighting Ceremony.
- Consideration to set a Public Hearing on February 20, 2024 to consider Road Closures and Road Restrictions and open container during the 2024 Sturgis Motorcycle Rally.

Approval of the claims

Moved by Dargatz, seconded by Jordan, to approve the claims
 Members present carried unanimously.

Wages – Ambulance \$59699.19; Attorney \$7645.57; Auditorium \$; Cemetery \$2764.71; City Manager \$6950.96; Community Center \$12594.39; Custodial \$6062.60; Downtown BID \$246.80; Engineering \$2789.93; Finance Office \$8189.03; Fire Department \$; Fleet \$8054.80; Human Resource \$3560.96; Library \$10535.06; Liquor \$8758.97; Mayor and Council \$9326.39; Parks \$14125.94; Planning & Permitting \$7423.47; Police \$58501.89; Rally \$6504.82; Recreation \$3047.88; Sanitary Service \$20296.66; Special Sales Tax \$; Sponsorship \$3024.19; Streets \$15947.41; Wastewater \$15692.75; Water \$19231.48; Federal Withholding \$27029.00; FICA \$22350.40.

Vendor Name	Description	Net Invoice Amount
A & B BUSINESS	sup	899.15
A & B WELDING CO, INC.	sup	175.24
A & J SURPLUS	sup	119.13
ADVANCED ENGINEERING & ENVIRONMENTAL	cap imp	84,033.75
AIRPORT WEATHER CAMERA SYSTEMS	cap imp	9,170.19
ALSCO, INC	sup	397.09
AMERICAN ACADEMY OF APPELLATE LAWYERS	dues	545
AMERICAN SOLUTIONS FOR BUSINES	sup	1,595.45
AMERICINN LODGE & SUITES	travel	175.91
AMICK SOUND, INC.	sup/mat	34.24

APPLICANT PRO	prof fees	3,186.00
ARGUS LEADER	sup/mat	753.75
AT&T MOBILITY	utilites	2217.95
AYRES Associates Inc	cap imp	6,091.10
BAILEY, GLENN G	rent	750
BAKER & TAYLOR	sup/mat	1399.48
BEANE, CHRISTINEA	market	6
BEDFORD, TUCKER	reimb	129.34
BIRK, LYNN	market	7
BLACK HILLS CHEMICAL	sup/mat	4340.51
BLACK HILLS FAMILY PRACTICE INC.	prof fees	30
BLACK HILLS SNACKS	liquor	770.15
BLACK HILLS WINDOW CLEANING, INC	prof fees	70
BLACKHILLS.COM	rep/maint	476
BOMGAARS	sup/mat	312.63
BUREAU OF LAND MANAGEMENT	prof fees	3,816.60
BURNHAM, ROGER	contract	4,706.67
BUTLER MACHINERY COMPANY	sup/mat	1,590.00
BYARS, ROSE	market	37
CASH-WA DISTRIBUTING, INC.	liquor	1710.54
CASK & CORK	liquor	824.74
CBH COOPERATIVE #112407	fuel	8489.46
CBH COOPERATIVE - #865928	fuel	517.15
CBH COOPERATIVE #912448	fuel	1339.47
CBH COOPERATIVE #920771	fuel	1,074.10
CENGAGE LEARNING, INC / GALE	sup/mat	201.86
CENTRAL STATES SANITATION	prof fees	940.43
CENTURY BUSINESS PRODUCTS, INC	sup	2875.23
CENTURY LINK	utilites	347.57
CHAPLIN, MARK	market	50
CHILDREN'S HOME SOCIETY	prof fees	300
CITY OF STURGIS	market	174
CLAUSEN, LAURA	market	67
COCA COLA BOTTLING COMPANY HIGH COUNTRY	liquor	968
COMFORT INN & SUITES	travel	570
CULLIGAN OF THE NORTHERN HILLS	sup	12
CUMMINS, INC	rep/maint	597.39
DAIGLE, MICHELLE	market	28
DAKOTA EXTINGUISHER & SAFETY, LLC	prof fees	98
DAKOTA'S BEST	liquor	657.15
DES JARLAIS, TAMI K	market	117

DISPLAY SALES	sup/mat	10,684.00
DOUBLE STAR COMPUTING	prof fees	2271.98
ECOLAB PEST ELIMINATOR DIV	prof fees	638.6
FARRELL, KIM	market	18
FISHER BEVERAGE	liquor	16,980.00
FOTH INFRASTRUCTURE & ENVIRONMENT, LLC	cap imp	29,807.40
FRONTIER PRECISION, INC.	prof fees	50
GLOBAL DISTRIBUTING INC.	liquor	149
GOTTLOB, AMANDA	market	62
GRAFIX SHOPPE	sup/mat	336.46
GREAT WESTERN TIRE COMPANY	rep/maint	1309.72
GROSSENBURG IMPLEMENT, INC.	sup/mat	1,304.77
HALE, KAYLA	market	10
HAWKINS, INC.	sup/mat	110
HELMS & ASSOCIATES	cap imp	6138.74
HENRY SCHEIN	sup	466.77
IMAGE TREND INC.	prof fees	1380
Inducer	rep/maint	1,574.37
INOVALON PROVIDER, INC.	prof fees	472.78
INTERSTATE ENGINEERING, INC.	prof fees	53,092.50
JACOBS, MATTHEW	reimb	300.75
JENNER EQUIPMENT CO	rep/maint	467.12
JOHNSON FITNESS & WELLNESS	rep/maint	857.15
JOHNSON WESTERN WHOLESALE	liquor	38049.6
JOHNSON, ANGELA	market	60
JV BAILEY CO, INC.	refund	85,102.74
K T CONNECTIONS, INC.	rep/maint	230
KNECHT HOME CENTER	sup/mat	299.43
KNIGHT SECURITY, INC.	prof fees	1,560.00
KOESSL, KAYLA	market	95
KOSTERS, BECKY	market	25
LAWSON PRODUCTS, INC.	sup/mat	493.95
LEGENDARY ELECTRIC, LLC	sup/mat	3,517.08
LEWIS, DR. SARAH	prof fees	500
LIBERTY CHEVROLET	rep/maint	673.45
LYNN'S DAKOTAMART-STURGIS	sup/mat	1492.36
MARCO TECHNOLOGIES LLC. NW 7128	sup/mat	133.82
MARTIN, GWEN	market	7
MAXWELL, TERRY	market	78
MCGAS PROPANE, LLC	sup	104.08
MEADE COUNTY AUDITOR	Utilities	9,136.39

MEINERS, ASHLEY	market	49
MENARD'S	sup/rep/maint	300.95
MERWIN, MEGAN	market	150
MID-AMERICAN RESEARCH CHEMICAL	sup	411.77
MIDCO BUSINESS	Utilities	196.78
MIRANDA, MIKKO	market	99
MOSER, LAURA	market	3
NORTHERN HILLS VET CLINIC	prof fees	3397.45
NORTHERN TRUCK EQUIPMENT	sup/mat	6277.87
NORTHWEST PIPE FITTINGS	sup/mat	450
ON SITE EXCAVATING	rental	6,125.00
OREILLY AUTO PARTS	sup/mat	209.61
OWENS INTERSTATE SALES INC.	sup/mat	1510.55
PARADISE, TANYA	market	26
PEPSI COLA BOTTLING	liquor	379.1
PETERSEN, KIMBERLY	market	40
PETTY CASH	petty cash	46.76
POINTCLICKCARE TECHNOLOGIES, INC.	prof fees	540
PURCHASE POWER	sup	1,673.57
QUALITY BRANDS OF THE BLACK HILLS	liquor	22708.06
RASMUSSEN MECHANICAL SERVICES INC.	sup/mat/rep/maint	3,949.32
RATHS, VASYLYNA	market	38
RED OWL, AMY	market	88
REPUBLIC BEVERAGE COMPANY	liquor	14825.32
RICHTER'S TIRE & EXHAUST, LLC	rep/maint	90.68
ROBERDEAU, TRENT	market	50
RUNNINGS SUPPLY INC	sup/mat	352.45
RUSHMORE OFFICE SUPPLY	sup	1731.12
SAWYER BREWING CO	liquor	354
SCOTT PETERSON MOTORS	rep/maint	294
SD AIRPORT CONFERENCE	registration	300
SD DEPT OF TRANSPORTATION	cap imp	137,121.76
SD PUBLIC ASSURANCE ALLIANCE	insurance	386,086.49
SD RETAILERS ASSOCIATION	dues	525
SERVALL TOWEL & LINEN	sup/mat	407.26
SHOCKEY, SARITA	market	2
SMITH, JOANN	market	20
SOUTHERN GLAZER'S OF SD	liquor	5752.48
SPEEDY LUBE INC.	rep/maint	72.98
STURGIS ACE HARDWARE #1	sup/mat	595.2
STURGIS AREA CHAMBER OF COMMERCE	contract	9,583.33
STURGIS ECONOMIC DEVELOPMENT CORP.	CONTRACT	7,916.67

STURGIS NAPA	sup/mat	1671.99
STURGIS RESPONDER SUPPLY, LLC	sup/mat	581.8
STURGIS VETERINARY HOSPITAL	prof fees	610.64
SYNTECH	rep/maint	550
TAMARACK, INC	Liquor	593.25
THE KETTLE CORN MAN	market	35
THORNTON, JANELLE	market	5
TRAVIS, BRYAN	market	19
VERIZON WIRELESS	utilites	1718.12
VODICKA, ELIZABETH	market	163
VOSS DISTRIBUTING	liquor	149
WHISLER BEARING	sup/mat	21.77
WHITFORD, JOSH	reimb	156.86
WILD WEST CONTRACTING, LLC	rep/maint	293.55
WILSON, MIKAYLA	market	35
ZIMMERMAN, DEB	market	25

Public Hearings

Moved by Forrester, seconded by Jordan, to approve the Loud American Roadhouse SEL to serve for a fundraiser at the Sturgis Auditorium.
Members present carried unanimously.

Moved by Sigman, seconded by Wilkerson, to approve the Loud American Roadhouse SEL to serve at the Annual Challenge for Charities Gala at the Sturgis Auditorium.
Members present carried unanimously.

Moved by Forrester, seconded by Sigman, to approve Resolution 2024-10 for the Street Closure, Lifting of Open Container Ban and Police Escort request for Parade during the 2024 Sturgis Mustang Rally.
Members present carried unanimously.

RESOLUTION 2024-10
A RESOLUTION TO CLOSE STREETS TO CREATE AN SHOW AND SHINE AREA,
AND TO PERMIT OPEN CONTAINERS ON CERTAIN PUBLIC PROPERTY
AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY. POLICE ESCORT FOR PARADE.

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

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

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

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

IT IS HEREBY FURTHER RESOLVED as set forth herein that the City of Sturgis shall close certain streets to the public for a limited period of time to establish a Show and Shine event area on August 31, 2024, from 5:00 am until 6:00 pm, on the public streets as follows:

- a. On Main Street, beginning at the east edge of the Right of Way of 4th Street, and continuing east to intersection of Main Street and Junction Avenue, and resuming on the East side of Junction Avenue and continuing to the intersection of Main street and Middle street, and
- b. On First Street, between its intersection with Lazelle Street and south to its intersection with Sherman Street, and
- c. On Harley-Davidson Way, between its intersection with Lazelle Street and south to its intersection with Sherman Street, and
- d. On Third Street, between its intersection with the alley south of Lazelle Street and then south to its intersection with Sherman Street, and

IT IS HEREBY FURTHER RESOLVED that the Sturgis Police Department will be authorized to ticket and tow illegally parked vehicles within that street closure area starting August 31st , at 2:00 a.m. through 8:00 p.m. and

IT IS HEREBY FURTHER RESOLVED as set forth herein that the City of Sturgis shall establish an alcoholic beverage open container area on August 31, 2024, from 10:00 am to 10:00 pm, as authorized by Section 3.02.20(C) of Sturgis City Ordinance and SDCL 35-1-5.5, for those persons legally possessing an alcoholic beverage in the designated cup that is available for purchase from any on-sale licensees, on that public property open to the public, within area bounded as follows:

- a. On the west, by the eastern edge of the Right of Way of 4th Street, beginning at the intersection of 4th Street and Lazelle Street and continuing south to the intersection of 4th Street and Sherman Street,
- b. On the south, by the north edge of the Sherman Street Right of Way between 4th Street and Middle Street, and on
- c. On the east, by the western edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and including the entire Main Street Right of Way to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, continuing west from Middle Street to Fourth Street on the south side of Lazelle Street.

d. On the north, continuing north to the intersection of Middle Street and the alley located between Lazelle Street and Dudley Street, and by the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1st Street and along the south edge of Lazelle from Middle Street to Fourth Street.

e. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction Avenue, Main Street and Middle Street, Lazelle Street and Junction Avenue, 1st Street, Harley Davidson Way and 3rd Street as they cross Lazelle 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. This also includes the Harley Davidson Rally Point.

This area shall be marked by city barricades with clearly legible signs, provided by the organizers 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 16th day of August 2024.

Published: 02-15-2024

Effective: 03-07-2024

Moved by Jordan, seconded by Dargatz, to approve Resolution 2024-11 for the 2024 Music on Main - Street Closure and Lifting of Open Container Ban.

Members present carried unanimously.

**RESOLUTION 2024-11
RESOLUTION TO AUTHORIZE STREET CLOSURE
OF HARLEY DAVIDSON WAY AND OPEN CONTAINER BOUNDARY
FOR MUSIC ON MAIN EVENT**

WHEREAS, Music on Main will be held in the City of Sturgis, May 29, June 5, 12, 19, 26, and July 3, 10, 17, and

WHEREAS, This Street Closure requests that the City of Sturgis will close Harley-Davidson Way to the public for a limited period of time to establish an area for Music on Main activities and family entertainment on the public street each week on the dates listed above. The request asks for the closure of Harley Davidson Way from Main Street to Lazelle Street, and Main Street from the east side of the First Interstate drive-thru to Harley-Davidson Way from 2:00 PM until 10:00 PM. Additionally, the request asks to close Main Street from Harley-Davidson Way to 3rd Street from 5:00

PM until 10:00 PM. The intersection of Main and Harley-Davidson Way will remain open for regular vehicle travel during the events. A street closure map is attached.

WHEREAS, an open container request for malt beverages and wine within the Official Event up within the street closure area listed above has also been requested for each date previously listed, from 5:00 p.m. to 10:00 p.m., and

- a. On the west, by the eastern edge of the Right of Way of 4th Street, beginning at the intersection of 4th Street and Lazelle Street and continuing south to the intersection of 4th Street and Sherman Street,
- b. On the south, by the north edge of the Sherman Street Right of Way between 4th Street and Middle Street, and on
- c. On the east, by the western edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and including the entire Main Street Right of Way to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, continuing west from Middle Street to Fourth Street on the south side of Lazelle Street.
- d. On the north, continuing north to the intersection of Middle Street and the alley located between Lazelle Street and Dudley Street, and by the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1st Street and along the south edge of Lazelle from Middle Street to Fourth Street.
- e. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction Avenue, Main Street and Middle Street, Lazelle Street and Junction Avenue, 1st Street, Harley Davidson Way and 3rd Street as they cross Lazelle 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. This includes Harley Davidson Rally Point.

WHEREAS, The Police Department will be authorized to tow vehicles within the street closure area, starting at 3:00 pm on each Music on Main event date.

NOW, THEREFORE, BE IT RESOLVED that to accommodate the safe presentation of providing this special event, all streets closed would open by 10:00 p.m. each Wednesday evening and open container would go back into effect by 10:00 p.m.

Dated this 16th day of February 2022.

Published: 02-15-2024

Effective: 03-06-2024

Moved by Williams, seconded by Zerbst, to approve Resolution 2024-12 for the Street Closure, Lifting of Open Container Ban, and Police Escorts for activities during the 2024 Sturgis Camaro Rally
Members present carried unanimously.

**RESOLUTION 2024-12
RESOLUTION TO CLOSE DESIGNATED STREETS AND PERMIT OPEN CONTAINERS ON
CERTAIN PUBLIC PROPERTY AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY FOR THE
STURGIS CAMARO RALLY**

WHEREAS the Sturgis Camaro Rally is an event that brings many people from all over the North America to the Sturgis area for the Sturgis Camaro Rally to join their fellow Camaro enthusiasts for four days of racing, car shows, touring the Black Hills, and other events, bringing in much needed revenue to our hotels, restaurants, grocery, and retail stores, and

WHEREAS a request has been made for street closure to vehicular traffic and unauthorized parking between 2:00 am to 3:00 pm on June 22, 2024, for Main Street from Fourth Street to First Street and Third Street from Main Street north to Lazelle, Harley Davidson Way from Sherman north to Lazelle Street and First Street from Sherman north to Lazelle Street for the Camaro Rally Show and Shine Show. This area shall be marked by city barricades with clearly legible signs. The Police Department will be authorized to tow vehicles within the street closure area, starting June 24th at the necessary times to ensure no unauthorized parking, and

WHEREAS a request was made for a police escort for the following days: Parade - Thursday, June 20th starting at 9:00 AM vehicles will depart from the Thunderdome parking lot, turning right on Hwy 34 Comanche Road into Fort Meade. The cars will exit at the same point going back to the Thunderdome. Officers do not need to enter the Fort Meade area. Fort Meade Police Department will be in that area. Parade - Saturday, June 22nd starting at 2:00 PM from the front Community Center parking lot, vehicles will turn onto Lazelle St, they will then travel to the Whitewood Service Rd, and will continue to the City Limits. If the Whitewood Service Road bridge is still under construction, then the alternate route will be turning Interstate 90 at exit 30 and existing at Whitewood. Parade - Saturday, June 22nd starting at 4:00 PM from the Thunderdome parking lot, turning right on Hwy 34, then left on Nellie, right on Main, right on 4th and ending at Lazelle. and

WHEREAS a request was made to lift the Open Container Ban for the downtown area are as follows: June 22nd from 10:00 AM until 12:00 AM for the Camaro Rally Show and Shine, and

WHEREAS the following description of the downtown open container area is permitted under the authority of state law:

- a. On the west, by the eastern edge of the Right of Way of 4th Street, beginning at the intersection of 4th Street and Lazelle Street and continuing south to the intersection of 4th Street and Sherman Street,
- b. On the south, by the north edge of the Sherman Street Right of Way between 4th Street and Middle Street, and on

c. On the east, by the western edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and including the entire Main Street Right of Way to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, continuing west from Middle Street to Fourth Street on the south side of Lazelle Street.

d. On the north, continuing north to the intersection of Middle Street and the alley located between Lazelle Street and Dudley Street, and by the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1st Street and along the south edge of Lazelle from Middle Street to Fourth Street.

e. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction Avenue, Main Street and Middle Street, Lazelle Street and Junction Avenue, 1st Street, Harley Davidson Way, and 3rd Street as they cross Lazelle 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. This also includes the Harley Davidson Rally Point.

NOW THEREFORE IT IS HEREBY RESOLVED, as set forth herein that the City of Sturgis shall hereby close the City streets to vehicular traffic and unauthorized parking described above. The areas described previously will have the Open Container Ban lifted. Persons legally possessing malt beverage and/or wine must have the beverage in the authorized non-glass container. The areas shall be marked by city barricades with clearly legible signs. The Police Department will be authorized to tow vehicles within the street closure area.

Dated this 5th of February 2024.

Published: 02-15-2024

Effective: 03-06-2024

Reports

Moved by Jordan, seconded by Wilkerson, to table any action on the the Host Services agreement with AFT-E for the Spirit of Sturgis TT event.

Members present carried unanimously.

Moved by Zerbst, seconded by Williams, to adopt the municipal goals and objectives for 2024.

Carried by the following votes:

Ayes: Carstensen, Forrester, Jordan, Sigman, Wilkerson, Zerbst, Dargatz, and Williams

Abstained: Bachand

Moved by Jordan, seconded by Sigman, to adopt the municipal goals and objectives for 2025.

Members present carried unanimously.

Discussion was held on Ordinance 2024-01 - Repealing SMC Chapter 37.03. First reading will be at the next meeting.

Discussion was held on Ordinance 2024-02 adopting SMC Chapter 37.04 and amending Section 37.01.02. First reading will be at the next Council meeting.

Moved by Jordan, seconded by Bachand, to approve Resolution 2024-15 authorizing and directing the issuance and sale of revenue bond for the State SRF loan for the wastewater projects. Members present carried unanimously.

RESOLUTION NO. 2024-15

RESOLUTION RELATING TO APPROVAL OF WASTEWATER SYSTEM IMPROVEMENTS; CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF THE MONEYS DERIVED THEREFROM; AUTHORIZING AND DIRECTING THE ISSUANCE AND SALE OF A REVENUE BOND TO PAY THE COST OF SAID IMPROVEMENTS; DEFINING THE TERMS AND MANNER OF PAYMENT OF THE BOND AND THE SECURITY THEREOF AND APPROVING THE FORM OF LOAN AGREEMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STURGIS, SOUTH DAKOTA, AS FOLLOWS:

SECTION 1. AUTHORIZATION AND FINDINGS.

1.01. The City of Sturgis, South Dakota (the "Issuer") currently operates a wastewater system (the "System"), for municipal, industrial and domestic purposes.

1.02. The Issuer is authorized to borrow money and issue its revenue bonds under South Dakota Codified Laws, Chapters 9-40 (the "Act") and 6-8B, in order to finance a portion of the cost of improvements to the System, including construction of a new 15-inch PVC sewer trunk line beginning along Avalanche Road near Bear Butte Creek, following Bear Butte Creek East to Blanche Street and construction of a new 10-inch PVC main to replace the existing sewer main along Williams, Dudley and Miller Streets (together, the "Improvements"). The Issuer is authorized to issue its obligations in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the holders of the obligations, including, without limitation, those covenants set forth in SDCL, Sections 9-40-16 and 9-40-17. The obligations are payable from the Net Revenues of the Improvements, as defined in Section 2.04 hereof.

1.03. The City has, by resolution, covenanted and agreed to adopt and maintain special rates or surcharges for the Improvements, in order to produce revenues to be pledged, segregated and used for the operation and maintenance of the Improvements and payment of the revenue bonds.

1.04. The execution and delivery of the Revenue Obligation Loan Agreement between South Dakota Conservancy District (the District) and the Issuer (the Loan Agreement), the form of which has been submitted to this Council, and the pledging of the loan payments thereunder for the security of the State Revolving Fund revenue bond of the Issuer and the interest thereon shall be, and they are, in all respects, hereby authorized, approved and confirmed, and the Mayor and Finance Officer are

hereby authorized and directed to execute and deliver the Loan Agreement in the form and content submitted to this Council, with such changes that are not substantive as the Attorney for the Issuer deems appropriate and approves, for and on behalf of the Issuer. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the Issuer as set forth in or required by the Loan Agreement.

1.05. The issuance of a revenue bond of the Issuer, of not more than \$10,339,000 principal amount in the form and content set forth in Appendix B to the Loan Agreement (the Bond) is hereby authorized, approved and confirmed, and the Mayor, Finance Officer and other appropriate officials of the Issuer shall be authorized to execute and deliver the Bond to the District, for and on behalf of the Issuer, upon receipt of the purchase price and to deposit the proceeds thereof in the manner provided for in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Bond, and their execution and delivery of the Bond shall evidence such approval. The terms of the Bond, as so executed and delivered, shall be deemed to be incorporated herein by reference.

1.06. The Issuer hereby determines that because the Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to SDCL 9-40-15, no election is required to issue the Bond.

SECTION 2. FUNDS AND ACCOUNTS. For the purpose of application and proper allocation of the income of the Improvements and to secure the payment of principal of and interest on the Bond, the following funds and accounts shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Bond:

2.01. Pledge of Revenues of the Improvements. The Net Revenues of the Improvements shall be pledged and appropriated to the payment of the Bond as set forth in the resolution adopted by the City.

2.02. Wastewater System Fund; Bond Proceeds and Revenues Pledged and Appropriated. A fund designated as the Sewer Extension Project Account (the "Fund") within the Wastewater Fund has been established and shall be maintained as a separate and special bookkeeping account on the official books of the Issuer until the Bond and any additional bonds (together referred to as the Bonds) payable from the Net Revenues of the Improvements, as provided in Sections 3.02 through 3.04 hereof and interest, Administrative Expense Surcharge and redemption premiums due thereon have been fully paid, or the Issuer's obligation with reference to the Bond has been discharged as provided in this resolution. All proceeds of the Bond and all other funds hereafter received or appropriated for purposes of the Improvements are appropriated to the Fund. All gross revenues derived from the operation of the Improvements are irrevocably pledged and appropriated and shall be credited to the Fund as received. As described in Section 3.04 hereof, the Issuer shall impose a separate surcharge for the availability, benefit and use of the Improvements as part of the System and shall aggregate the gross revenues derived from such surcharge and the Improvements, together with the expenses of operation and maintenance of the Improvements and the Issuer shall account for them as provided in this Resolution; except as expressly stated in this Resolution, the pledges, appropriations, covenants and agreements of the Issuer and the Accounts established within the Fund by the Resolution apply only to the Improvements, its operations, revenues and expenses. The Issuer finds that acquisition and construction of the Improvements will benefit all present and future users of the System, therefore the surcharge described in Section 3.04 shall be imposed on all current and future users of the System. Such gross revenues shall include all gross income and receipts from rates and charges imposed for the availability, benefit and use of the Improvements as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the Improvements and all income received from the investment of such gross revenues; but not any taxes levied or amounts borrowed or received as

grants for construction of any part of the Improvements. The Fund shall be subdivided into separate accounts as designated and described in Sections 2.04 to 2.07, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund shall be apportioned monthly or as soon as possible after the first day of each month, commencing the first calendar month following the delivery of the Bond, which apportionment is hereinafter referred to as the "monthly apportionment."

2.03. Construction Account. The Construction Account shall be used only to pay as incurred and allowed costs which under financial and reporting standards as promulgated by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or an Other Comprehensive Basis of Accounting, as applicable (referred to herein as Financial and Reporting Standards), are capital costs of the Improvements, and of such future reconstructions, improvements, betterments or extensions of the Improvements as may be authorized in accordance with law; including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accruing on the Bond during the first year following the date of its delivery, if and to the extent that the Revenue Bond Account is not sufficient for payment of such interest, reimbursement of any advances made from other Issuer funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Account shall be credited as received all proceeds of the Bond, except amounts appropriated to the Revenue Bond Account under Section 2.05, all other funds appropriated by the Issuer for the Improvements, and all income received from the investment of the Construction Account.

2.04. Operating Account. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the Operating Account to pay the reasonable and necessary operating expenses of the Improvements which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the Improvements, calculated in accordance with Financial and Reporting Standards, and shall include, without limitation, administrative expenses of the Issuer relating solely to the Improvements, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with Financial and Reporting Standards. Such operating expenses shall not include any allowance for depreciation or renewals or replacements of capital assets of the Improvements and shall not include any portion of the salaries or wages paid to any officer or employee of the Issuer, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the Improvements, nor any amount properly payable from any other account of the Fund. The Net Revenues of the Improvements, as referred to in this resolution, are hereby defined to include the entire amount of such gross revenues remaining after each such monthly apportionment, after crediting to the Operating Account the amount required hereby, including sums required to maintain an operating reserve equal to one month's estimated operating expenses.

2.05. Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account, out of the Net Revenues of the Improvements, an amount equal to one sixth of the total sum of the principal and interest to become due on the Bond on the next succeeding Loan Payment Date (as defined in the Bond). Moneys from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal and interest on the Bond as such payments become due; provided, that on any date when the outstanding Bond is due or prepayable by its terms, if the amount then on hand in the Revenue Bond Account is sufficient,

with other moneys available for the purpose, to pay the Bond and the interest accrued thereon in full, it may be used for that purpose. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient, such payment shall be advanced out of any Net Revenues theretofore segregated and then on hand in the Replacement and Depreciation Account or the Surplus Account. In the event that sufficient moneys are not available from the aforementioned sources the Issuer, to the extent it may, at the time legally do so, may, but shall not be required to, temporarily advance moneys to the Revenue Bond Account from other revenues of the Improvements or from other funds of the Issuer on hand and legally available for the purpose, but any such advance shall be repaid from Net Revenues of the Improvements within 24 months.

2.06. Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account such portion of the Net Revenues, in excess of the current requirements of the Revenue Bond Account (which portion of the Net Revenues is referred to herein as Surplus Net Revenues), as the City Council shall determine to be required for the accumulation of a reasonable reserve for renewal of worn out, obsolete or damaged properties and equipment of the Improvements. Moneys in this account shall be used only for the purposes above stated or, if so directed by the City Council, to redeem Bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in Section 2.05 hereof, or to pay the cost of improvements to the Improvements; provided, that in the event that the Issuer shall hereafter issue bonds for the purpose of financing the construction and installation of additional improvements or additions to the Improvements, but which additional bonds cannot, upon the terms and conditions provided in Section 3, be made payable from the Revenue Bond Account, Surplus Net Revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the payment of such bonds and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

2.07. Surplus Account. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account, and the moneys from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in Section 2.05 hereof, may be used for any of the following purposes and not otherwise:

- (a) to redeem and prepay principal of the Bond when and as such principal becomes prepayable according to its terms;
- (b) if the balances in the Revenue Bond Account and the Replacement and Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the current fiscal year, then;
 - (i) to pay for repairs or for the construction and installation of improvements or additions to the Improvements;
 - (ii) to be held as a reserve for redemption and prepayment of principal of the Bond which is not then but will later be prepayable according to its terms; and
 - (iii) with the written consent of the District, transferred to one or more specified funds of the Issuer.

No moneys shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the Issuer, nor shall such moneys at any time be invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in this section.

2.08. Deposit and Investment of Funds. The Finance Officer shall cause all moneys pertaining to the Fund to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of Chapter 4-6A, South Dakota Codified Laws, in a deposit account or accounts, which shall be maintained so long as any of the Bonds and the interest thereon shall remain unpaid.

The deposit and investment of all moneys pertaining to the Fund must, on the books and records of the Issuer, be maintained separate and apart from all other funds of the Issuer. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No moneys shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as authorized in this resolution; except that moneys from time to time on hand in the Fund may at any time, in the discretion of the City Council, be invested in securities permitted by the provisions of South Dakota Codified Laws, Section 4-5-6; provided, that the Replacement and Depreciation Account may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account. The investment of the moneys on deposit in the Revenue Bond Account is further restricted by the provisions of Section 6.01 hereof. Deposits and securities described in this section shall constitute "Qualified Investments."

2.09. Additional Revenues or Collateral. The Issuer reserves the right at any time to pledge additional moneys, revenues or collateral as security for the Bond and any additional bonds. Such pledge shall not be effective unless and until the Issuer receives, and provides to the bond registrar an opinion of, nationally recognized bond counsel stating that such pledge will not adversely affect the validity or tax exemption of the Bond and any additional bonds then outstanding.

2.10. Appropriation of Other Moneys. The Issuer reserves the right in any year while the Bond is outstanding to appropriate from moneys on hand and legally available for such purpose in its cash reserve accounts such amounts as this Council may specify and direct that such amounts be used to pay principal and interest on the Bond. Any such appropriation shall reduce the obligation of the Issuer to impose rates and charges under Section 3.04 hereof.

2.11. Statutory Mortgage. The Issuer covenants and agrees that pursuant to SDCL 9-40-28 and SDCL 9-40-29, the lawful holders of the Bond shall have a statutory mortgage lien upon the Improvements and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest, and Administrative Expense Surcharge on the Bond, and the Issuer agrees not sell or otherwise dispose of the Improvements, the Improvements, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other Improvements supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the collection and treatment of wastewater for municipal, industrial, and domestic purposes within the Issuer.

SECTION 3. PRIORITIES, ADDITIONAL BONDS AND RATES AND CHARGES.

3.01. Priority of Bond Payments. If at any time the Net Revenues of the Improvements are insufficient to pay principal and interest then due on the Bond, any and all moneys then on hand shall be first used to pay the interest accrued on the Bond, and the balance shall be applied toward payment of the maturing principal of the Bond in order of their maturities, the earliest maturing principal to be paid first, and pro rata in payment of principal maturing on the same date.

3.02. Additional Bonds. The Issuer reserves the right to issue additional bonds, payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Bond in the manner and upon satisfaction of the conditions and subject to the limitations set forth in the Loan Agreement.

3.03. Compliance with Loan Agreement. The Issuer will comply, so long as the Bond is outstanding, and unpaid, with all of the provisions of the Loan Agreement, to the same extent as though such provisions were set forth in this resolution.

3.04. Rates and Charges. The Issuer will maintain, revise, charge and collect rates and other charges for all service furnished and made available by the Improvements, according to schedules

such that the gross revenues derived therefrom will be sufficient, when combined with other available funds, to pay when due all expenses of the operation and maintenance of the Improvements, and all principal of and interest on the Bond, to provide for the establishment and maintenance of adequate reserves, to provide an allowance adequate for recurring renewals and replacements of the Improvements, to satisfy the rate covenant provided in Section 6.4 of the Loan Agreement and to fulfill the terms of all other agreements with holders of the Issuer's bonds. The rates and charges with respect to the Improvements shall be in the form of a separately stated surcharge on the municipal utilities rate schedule; in calculating the surcharge the City shall allocate to the Improvements its share of the expenses of operation and maintenance and allowances for renewal and replacement as well as the requirements to pay principal of and interest on the Bond and to repay the System or any other funds of the Issuer for moneys advanced in accordance with Section 2.05 hereof.

SECTION 4. AMENDMENTS.

4.01. Amendments Without Bondholder Consent. The Issuer reserves the right to amend this resolution from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as this City Council may deem necessary or desirable and not inconsistent with this resolution, and which shall not adversely affect the interest of the holder of the Bond, or for the purpose of adding to the covenants and agreements herein contained, or to the gross revenues herein pledged, other covenants and agreements thereafter to be observed and additional gross revenues thereafter appropriated to the Fund, for the purpose of surrendering any right or power herein reserved to or conferred upon the Issuer, or for the purpose of authorizing the issuance of additional bonds in the manner and subject to the terms and conditions prescribed in Section 3. Any such amendment may be adopted by resolution, without the consent of the holder of the Bond.

4.02. Amendments With Bondholder Consent. With the consent of the holder of the Bond as provided in Section 4.03, the Issuer may from time to time and at any time amend this resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof, or of any amending resolution, except that no amendment shall be adopted at any time without the consent of the holder of the Bond which are then outstanding, if it would extend the maturities of any Bond, would reduce the rate or extend the time of payment of interest thereon, would reduce the amount or extend the time of payment of the principal or redemption premium thereof, would give to any Bond any privileges over any other Bond, would reduce the sources of gross revenues appropriated to the Fund, would authorize the creation of a pledge of gross revenues prior to or on a parity with the Bond (except as is authorized by Section 3), or would reduce the percentage in principal amount of Bonds required to authorize or consent to any such amendment.

4.03. Notice and Consent. Any amendment adopted pursuant to Section 4.02 shall be made by resolution, mailed to each holder of a Bond affected thereby, and shall become effective only upon the filing of written consents with the Finance Officer, signed by the holders of not less than two-thirds in principal amount of the Bonds which are then outstanding or, in the case of an amendment not equally affecting all outstanding Bonds, by the holders of not less than two-thirds in principal amount of the Bond adversely affected by such amendment. Any written consent to an amendment may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by bondholders in person or by agent duly appointed in writing, and shall become effective when delivered to the Finance Officer. Any consent by the holder of any Bond shall bind the holder and every future holder of the same Bond with respect to any amendment adopted by the Issuer pursuant to such consent, provided that any bondholder may revoke his consent with reference to any Bond by written notice received by the Finance Officer before the amendment has become effective. In the event that unrevoked consents of the holders of the required amount of

Bonds have not been received by the Finance Officer within one year after the mailing of any amendment, the amendment and all consents theretofore received shall be of no further force and effect.

4.04. Proof. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any person of a Bond, shall be sufficient for any purpose of this resolution and shall be conclusive in favor of the Issuer if made in the manner provided in this section. The fact and date of the execution by any person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgements that the person signing such writing acknowledged to him the execution thereof. The amount of Bonds held by any person by or for whom a consent is given, and the distinguishing numbers of such Bond, and the date of holding the same, shall be proved by the bond register. The fact and date of execution of any such consent may also be proved in any other manner which this Council may deem sufficient; but this City Council may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable.

SECTION 5. PAYMENT OF BOND.

5.01. General. When the liability of the Issuer on the Bond has been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution to the holder of the Bond shall cease.

5.02. Payment. The Issuer may discharge its liability with reference to any Bond which is due on any date by depositing with the holder or holders thereof, or the paying agent or agents, if any, for such Bond on or before that date a sum sufficient for the payment thereof in full; or if any Bond shall not be paid when due, the Issuer may nevertheless discharge its liability with reference thereto by depositing with the holder or holders thereof, or the paying agent or agents, if any, a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

5.03. Prepayable Bond. The Issuer may also discharge its liability with reference to any prepayable Bond which is called for redemption on any date in accordance with its terms, by depositing with the holder or holders thereof, or the paying agent or agents, if any, on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due thereon, provided that notice of such redemption has been duly given as provided in the resolution authorizing the Bond.

SECTION 6. TAX MATTERS AND EFFECTIVE DATE.

6.01. Tax Matters.

(a) Covenant. The Issuer covenants and agrees with the holders from time to time of the Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bond to become subject to taxation under the Internal Revenue Code of 1986, as amended (the Code), and applicable Treasury Regulations (the Regulations).

(b) Use of Improvements. The Issuer covenants and agrees that it will not, nor will it permit any of its officers, employees or agents, to enter into any lease, use or other agreement with any person other than a state or political subdivision or agency or instrumentality of a state, relating to the use of the Improvements or the security for the Bond which might cause the Bond to be considered a "private activity bond" within the meaning of Section 141 of the Code.

(c) Investment of Moneys on Deposit in Revenue Bond Account. The Finance Officer shall ascertain monthly the amount on deposit in the Revenue Bond Account. If the amount on deposit therein ever exceeds by more than \$100,000 the aggregate amount of principal and interest due and payable from the Revenue Bond Account within 13 months thereafter, such excess shall either (1) not be invested except at a yield equal to or less than the yield borne by the Bond, or (2) be used to prepay and redeem principal installments of the Bond.

(d) Certification. The Mayor and Finance Officer, being the officers of the Issuer charged with the responsibility for issuing the obligations pursuant to this resolution, are authorized and directed to execute and deliver to the purchaser a certification in order to satisfy the provisions of Section 1.148-2(b) of the Regulations. Such certification shall state that on the basis of the facts, estimates and circumstances in existence on the date of issue and delivery of the Bond as therein set forth, it is not expected that the proceeds of the Bond will be used in such a manner that would cause the Bond to be an arbitrage bond, and the certification shall further state that to the best of the knowledge and belief of the officers there are no other facts, estimates or circumstances that would materially change such expectation.

6.02. Not Qualified Tax-Exempt Obligations. The Bond is not a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

6.03. Tax-Exempt Status of the Bond and Rebate. The Issuer shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Bond, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the Bond, and (3) the rebate of excess investment earnings to the United States.

6.04. Repeal. All provisions of all other ordinances, resolutions and other actions and proceedings of the Issuer and of this City Council which are in any way inconsistent with the terms and provisions of this resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this resolution.

Adopted: 02-05-2024

Published: 02-15-2024

Effective: 03-06-2024

4871-5081-2220\2

Moved by Jordan, seconded by Forrester, to table Resolution 2024-16 Establishing a Wastewater Surcharge for the City of Sturgis for sewer line construction to the next meeting.

Members present carried unanimously.

Executive Session

Moved by Wilkerson, seconded by Zerbst, to enter Executive session at 10:19 pm for Personnel, Legal, Contracts, Marketing, and Security.

Members present carried unanimously.

Resume Open Meeting

Moved by Dargatz, seconded by Sigman, adjourned Executive Session at pm11:54 pm.

Carried

Adjourn

Moved by Dargatz, seconded by Jordan, to adjourn Council meeting at 11:55 pm.
Carried

ATTEST: _____
Fay Bueno, Finance Officer

APPROVED: _____
Mark Carstensen, Mayor

Published once at the total approximate cost of \$ _____



City Council Meeting
AGENDA

DATE: Monday, March 4, 2024
TIME: Regular Meeting - 6:30 PM
PLACE: Council Chambers - City Hall, 1040 Harley-Davidson Way, Sturgis SD
Page

1. CALL TO ORDER REGULAR MEETING OF THE CITY COUNCIL

2. APPROVAL OF THE AGENDA

3. PLEDGE OF ALLEGIANCE

4. OTHER MATTERS THAT MAY COME BEFORE THE COUNCIL

To address the City Council, please stand behind the front table and state your name clearly into the microphone for the public record. Please keep your comments respectful and complete your comments in three minutes or less. If you are unable to approach the podium due to a physical limitation, a portable microphone will be provided.

5. OLD BUSINESS

(Item tabled from the February 20, 2024 meeting)

6 - 14

5.1. Ratification of the Appointment of Committee members for the Sturgis Industrial Expansion Revolving Fund Committee per Title 24

Motion to ratify the appointment of the following members to the SIERF Committee: Council President Beka Zerbst, Councilor Angela Wilkerson, SEDC Executive Director Amanda Anglin, SEDC Board Chair Paul Bisson, Brice Rock (financial institution representative), Floyd Rummel III (financial institution representative), and Rick Bush (City PWD Director).

[Agenda Item Report - Pdf](#)

6. ANNOUNCEMENTS AND PRAISE

EXHIBIT 9

- 6.1. The candidates for the upcoming municipal election on April 9th will be
Ward 1: Jamie Helms, Nick Jones, Angela Wilkerson (incumbent)
Ward 2: Ruth Kopp, Richard Zerbst
Ward 3: Richelle Bruch, Jim Thompson
Ward 4: Jesse Blakeman (unopposed)
The municipal election will also include the referred ballot question concerning the City Manager.

7. CITY MANAGER'S REPORT BY TRANSITION TEAM

- 15 7.1. Payroll Report - Fay Bueno - Assistance with completing the 2023 Audit & 2023 Annual Report (non-exempt) - \$30.00 per hour
Agenda Item Report - Pdf
- 16 7.2. Payroll - Marissa Rathert (EMT-Basic) (Full-time) (Ambulance Fund) - \$21.00
Payroll Report - Pdf

8. CONSIDER CONSENT AGENDA

- 8.1. Consider and approve Consent Agenda.
- 17 - 27 8.2. Consideration to approve the minutes from February 20, 2024.
City Council - Feb 20 2024 - Minutes (3)
- 28 - 36 8.3. Consider Final plat application for 2214 Junction Avenue.
Agenda Item Report - Pdf
Resolution 2024-24- Plat of N.H.E.C. Addition - DPLP Enterprises, LLC
- 37 - 40 8.4. Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on July 10th, 2024.
Agenda Item Report - Pdf
- 41 - 47 8.5. Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on June 19th, 2024.
Agenda Item Report - Pdf
- 48 - 51 8.6. Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on May 29th, 2024
Agenda Item Report - Pdf
- 52 - 56 8.7. Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Annual Tree Lighting Ceremony on December 5th, 2024.
Agenda Item Report - Pdf

- 57 - 62 8.8. Consideration to set a public hearing on March 18, 2024 for a SEL for Loud American Roadhouse for Music on Main on June 12, 2024.
Agenda Item Report - Pdf
- 63 - 68 8.9. Consideration to set a public hearing on March 18, 2024 for a SEL for Loud American Roadhouse for Music on Main on July 3, 2024.
Agenda Item Report - Pdf
- 69 - 73 8.10. Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Agriculture Appreciation Banquet on October 10th, 2024.
Agenda Item Report - Pdf
- 74 - 78 8.11. Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Community Appreciation Picnic on August 21, 2024.
Agenda Item Report - Pdf

9. APPROVAL OF THE CLAIMS

- 79 - 91 9.1. 3-4-2024

10. BOARD OF ADJUSTMENT FOR VARIANCE, USE ON REVIEW OR OTHER ADMINISTRATIVE APPEALS

Pursuant to SDCL 11-4-17, 11-4-23, and 11-4-24

- 10.1. Adjourn Council meeting to meet as a Board of Adjustment for the following agenda items:
- 10.2. Declaration of conflicts of interest and/or ex parte communications by members of the Board
- 92 - 100 10.3. Consideration for variances to front and rear setbacks at 1823 Spruce Street.
Agenda Item Report - Pdf
- 101 - 108 10.4. Consideration for variances to setbacks on non-conforming lot at 1919 Sherman Street
Agenda Item Report - Pdf
- 10.5. Adjourn Board of Adjustment and reconvene Council Meeting

11. PUBLIC HEARINGS

- 109 - 116 11.1. Consideration to approve Resolution 2024-21 for the street closure and lifting of the Open Container Ordinance for the Community Appreciation

Picnic on Wednesday, August 21, 2024.

[Agenda Item Report - Pdf](#)

[Resolution 2024-21 - for street closure-Community Appreciation Picnic-open container](#)

- 117 - 124 11.2. Consideration to approve Resolution 2024-22 for a Street Closure for the Kool Deadwood Nights Picnic
[Agenda Item Report - Pdf](#)
[Resolution 2024-22 - for street closure-Kool Deadwood Nights Picnic](#)

- 125 - 130 11.3. Consideration to approve setting a public hearing for March 4, 2024 for an SEL to serve for a fundraiser at the Sturgis Auditorium for Ducks Unlimited.
[Agenda Item Report - Pdf](#)
[doc18055620240228120249](#)

12. REPORTS

- 131 - 138 12.1. Consideration to approve Joint Powers Agreement between the City of Sturgis and the South Dakota Game, Fish and Parks to dredge Lions Club Pond.
[Agenda Item Report - Pdf](#)

- 139 - 145 12.2. Consideration to approve Recommendation from the Parks Board to approve Sturgis Trail System Addendum #1 between the City of Sturgis and Black Hills Trails.
[Agenda Item Report - Pdf](#)

- 146 12.3. Consideration to approve Motorcycle Museum agreement to develop the Rally magazine.
[Informational Report - SMM \(CC 03-04-2024\)](#)

- 147 - 150 12.4. Reconsideration of Resolution 2023-55 "A Resolution Declaring Property Surplus"

Consideration of Resolution 2024-23 "A Resolution Declaring Property Surplus and Authorizing the Sale of Such Property"
[Agenda Item Report - Pdf](#)

- 151 - 180 12.5. Consideration to approve the Broadcast Music Inc. (BMI) and American Society of Composers, Authors, and Publishers music copyright licenses, and authorize the City Attorney to sign the agreements.
[Agenda Item Report - Pdf](#)

- 181 - 199 12.6. Second Reading of Ordinance 2024-02: An Ordinance Adopting Chapter 37.04 - Pedicabs and Amending Section 37.01.02.
[Agenda Item Report - Pdf](#)

- 200 - 203 12.7. Second Reading of Ordinance 2024-01 - An Ordinance to Repeal Sturgis Municipal Code (SMC) Chapter 37.03 - Transportation Network Company Driver Registration and Regulation
Agenda Item Report - Pdf
- 204 - 223 12.8. Presentation of Mayoral candidates:
Rodney Bradley, Tony Dargatz, Jesse Hauk, Aaron Jordan, Steve Shuck, Jim Thompson, Angela Wilkerson
- Candidates' statement
 - Follow-up questions from Council members
- Mayoral Appointment Candidates 20241
- 224 - 228 12.9. Voting for a candidate to be appointed to fill the vacancy in the office of the Mayor
Transition Team Report about Mayoral Selection Process V2
- 12.10. Oath of Office of the Mayoral appointee

13. EXECUTIVE SESSION

- 13.1. a. Pursuant to SDCL 1-25-2 (1), Personnel: 0
b. Pursuant to SDCL 1-25-2 (3), Legal: 2
c. Pursuant to SDCL 1-25-2 (4), Contracts: 4
d. Pursuant to SDCL 1-25-2 (5), Marketing: 0
e. Pursuant to SDCL 1-25-2 (6), Security: 0

14. RESUME OPEN MEETING

- 14.1. Return to Open Session

15. ADJOURN

16. ADA ACCOMMODATION

If you desire to attend this public meeting and are in need of special accommodations (including participation by telephone), please notify the Finance Office by 10am on the day of the meeting so that appropriate auxiliary aids and services may be coordinated. The Finance Office can be reached at (605) 347-4422, option 1.

MINUTES
City Council Meeting
City of Sturgis, South Dakota

Monday, March 4, 2024	6:30 PM	Council Chambers
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PRESENT: Mike Bachand, Kevin Forrester, Aaron Jordan, Dean Sigman, Angela Wilkerson, Beka Zerbst, Tony Dargatz, and Preston Williams, City Attorney, Mark Marshall and Finance Officer, Adam Hosch

ABSENT: None

Call to Order Regular Meeting of the City Council

Approval of the Agenda

Moved by Forrester, seconded by Dargatz, to approve the agenda and move agenda items 12.8 & 12.9 to immediately after Item 6.

Members present carried unanimously.

Pledge of Allegiance

Other matters that may come before the Council

To address the City Council, please stand behind the front table and state your name clearly into the microphone for the public record. Please keep your comments respectful and complete your comments in three minutes or less. If you are unable to approach the podium due to a physical limitation, a portable microphone will be provided.

Non-agenda matters that may come before the Council

- Eric Davis requested that a special meeting be set to approve an ordinance to allow the City to fill future vacancies through an election. He then asked that if this ordinance were to be adopted, that the person appointed as Mayor resign to allow for an election to be held for Mayor.
- David Hersrud asked if public comment would be allowed during the interviews for Mayor appointment. Council President Zerbst stated that public comment would not be allowed during these interviews because according to state statute and City ordinance, this will be a Council appointment.
- Francine Reubel Alberts asked that the mayor appointment process be explained. Council President Zerbst stated that this will be explained during that agenda item 12.8.

EXHIBIT 9.1

- 03/02/24
- Bonnie Alberts stated that there is no wording in agenda item 4 that states limits the content or time limits of comments and she feels there has been a resistance to input from the community.

Old Business

(Item tabled from the February 20, 2024 meeting)

Ratification of the Appointment of Committee members for the Sturgis Industrial Expansion Revolving Fund Committee per Title 24

Moved by Bachand, seconded by Wilkerson, to ratify the appointment of the following members to the SIERF Committee: Council President Beka Zerbst, Councilor Angela Wilkerson, SEDC Executive Director Amanda Anglin, SEDC Board Chair Paul Bisson, Brice Rock (financial institution representative), Floyd Rummel III (financial institution representative), and Rick Bush (City PWD Director).

Members present carried unanimously.

Announcements and Praise

- **Council President Zerbst announced that there will be a leprechaun hunt March 14th-17th put on by the Sturgis Rally & Events Dept. All interested persons can pick up their passports at the Sturgis Library and they will be asked to return these passports to the Sturgis liquor store.**
- **The candidates for the upcoming municipal election on April 9th will be:**
 - Ward 1: Jamie Helms, Nick Jones, Angela Wilkerson (incumbent)**
 - Ward 2: Ruth Kopp, Richard Zerbst**
 - Ward 3: Richelle Bruch, Jim Thompson**
 - Ward 4: Jesse Blakeman (unopposed)**

The municipal election will also include the referred ballot question concerning the City Manager.

Presentation of Mayoral candidates:

Rodney Bradley, Tony Dargatz, Jesse Hauk, Aaron Jordan, Steve Shuck, Jim Thompson, Angela Wilkerson

- **Candidates' statement**
- **Follow-up questions from Council members**

Tony Dargatz, Aaron Jordan, and Steve Schuck stated that they would like to remove themselves from consideration as mayoral candidates. Council President Zerbst explained the process in which a mayoral candidate will be appointed. City Attorney Mark Marshall explained processes outlined in Robert's Rules of Order designed to fill the gaps in the City's election process. He stated that the meeting procedure was gathered by past practice of the Council. Interviews were conducted with candidates Rod Bradley, Jesse Hauk, Jim Thompson, and Angela Wilkerson.

Voting for a candidate to be appointed to fill the vacancy in the office of the Mayor

City Attorney Mark Marshall outlined the voting process, by which Councilmembers present in person will vote by paper ballot and Councilmembers present by phone will send their votes by text message

to Finance Director Adam Hosch. After the voting process was completed, Adam Hosch announced the final tabulation: 2 votes for Rodney Bradley, 1 vote for Jim Thompson, and 5 votes for Angela Wilkerson. Council President Zerbst announced that Angela Wilkerson has been appointed to fill the vacancy as Mayor until the end of the term in 2025.

City Manager's Report by Transition Team

Payroll - Marissa Rathert (EMT-Basic) (Full-time) (Ambulance Fund) - \$21.00

Payroll Report - Fay Bueno - Assistance with completing the 2023 Audit & 2023 Annual Report (non-exempt) - \$30.00 per hour

Consider Consent Agenda

Consider and approve Consent Agenda.

Moved by Sigman, seconded by Wilkerson, to approve the consent agenda.
Members present carried unanimously.

Consideration to approve the minutes from February 20, 2024.

Finance Director Adam Hosch presented documentation regarding corrections made to the minutes under "Public Hearings" from the February 20, 2024 meeting, as follows:

Moved by Sigman, seconded by Wilkerson, Motion to approve Resolution 2024-17 for Road Closures and Road Restrictions during the 2024 Sturgis Motorcycle Rally.

Carried by the following votes:

Ayes: Bachand, Jordan, Sigman, Wilkerson, Zerbst, Dargatz, and Williams

Nays: Forrester

Moved by Sigman, seconded by Dargatz, Motion to approve Resolution 2024-18 for the Street Closure and Lifting of Open Container Ban during the 2024 Fall Festival on September 21, 2024.

Members present carried unanimously.

Consider Final plat application for 2214 Junction Avenue.

**RESOLUTION 2024-24
RESOLUTION APPROVING PLAT**

WHEREAS the statutes of the State of South Dakota require that plats of property within the jurisdiction of the City of Sturgis be submitted to the governing body for approval before the same are recorded in the Office of the Register of Deeds; and

WHEREAS, the City of Sturgis Planning and Zoning have presented to the Common Council of the City of Sturgis a plat of the following described real property for DPLP Enterprises, LLC.

PLAT OF

Lot 1 of N.H.E.C. Addition and Public Right-of-Way Dedication of Harmon Street.

Formerly Lot F of Lot 4 and the South 81 feet of Lot F of Lot 4.

All located in NW1/4 NW1/4 of Section 15, Township 5 North, Range 5 East of the Black Hills Meridian, City of Sturgis, Meade County, South Dakota.

WHEREAS, said plat meets the requirements of the statutes.

WHEREAS, that the municipality approves the plat, and that the written certification of the City's approval will be affixed to the plat, by the Mayor.

BE IT RESOLVED by the Common Council of the City of Sturgis, South Dakota, that the within and foregoing plat is hereby approved as provided herein.

Dated this 4th day of March, 2024.

Published: 03-13-2024

Effective: 04-03-2024

Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on July 10th, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on June 19th, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for Knuckle Saloon for Music on Main on May 29th, 2024

Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Annual Tree Lighting Ceremony on December 5th, 2024.

04/22
Consideration to set a public hearing on March 18, 2024 for a SEL for Loud American Roadhouse for Music on Main on June 12, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for Loud American Roadhouse for Music on Main on July 3, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Agriculture Appreciation Banquet on October 10th, 2024.

Consideration to set a public hearing on March 18, 2024 for a SEL for the Loud American Roadhouse for the Community Appreciation Picnic on August 21, 2024.

Approval of the claims

Wages – Ambulance \$43107.06; Attorney \$7538.90; Auditorium \$; Cemetery \$403.56; City Manager \$6860.71; Community Center \$12408.81; Custodial \$5069.47; Downtown BID \$778.79; Engineering \$2789.93; Finance Office \$7880.95; Fire Department \$; Fleet \$7757.43; Human Resource \$3560.96; Library \$10765.39; Liquor \$7980.98; Mayor and Council \$9326.39; Parks \$12194.67; Planning & Permitting \$7420.72; Police \$55476.12; Rally \$6504.93; Recreation \$4100.16; Sanitary Service \$19272.10; Special Sales Tax \$; Sponsorship \$3024.19; Streets \$15171.04; Wastewater \$15707.75; Water \$21933.65; Federal Withholding \$23654.11; FICA \$20699.76.

Vendor Name	Description	Net Invoice Amount
A & B BUSINESS	sup/mat	683.84
A & J SCREENING	resale	725
A & J SURPLUS	sup/mat	85.78
ADVANCED ENG	cap imp	18,450.00
ALSCO, INC	sup/mat	282.72
AMERICINN LODGE & SUITES	travel	303.98
AMICK SOUND, INC.	rep/main	34.24
APWA	prof fees	238
AT&T MOBILITY	utilities	1817.6
AXON ENTERPRISES, INC.	prof fees	8,016.00
BAKER & TAYLOR	sup/mat	223.14
BARNEY'S SIGNS	prof fees	326.5
BASELINE SURVEYING, INC.	prof fees	5,600.00
BEANE, CHRISTINEA	market	200

BLACK HILLS CHEMICAL	sup/mat	2564.61
BLACK HILLS SECURITY & SYSTEMS,	rep/maint	144.85
BLACK HILLS SNACKS	liquor	262.55
BLACK HILLS WINDOW CLEANING,	prof fees	143
BLACKHILLS.COM	prof fees	476
BORDER STATES ELECTRIC	rep/maint	1,406.64
BURNHAM, ROGER	contract	4,706.67
BYARS, ROSE	market	39
CASK & CORK	liquor	991.65
CBH COOPERATIVE #112407	fuel	9836.22
CBH COOPERATIVE - #865928	fuel	780.24
CBH COOPERATIVE #920771	fuel	1295.85
CENTURY BUSINESS PRODUCTS	sup/mat	715.82
CHRISTIANS, AMBER	market	12
CLAUSEN, LAURA	market	34
COCA COLA BOTTLING CO	liquor/sup	458.5
COX, KYLE	market	73
CRANE, MICHELLE	market	200
CREED, DOREEN	market	200
DAIGLE, MICHELLE	market	15
DAKOTA'S BEST	liquor	516.65
DES JARLAIS, TAMI K	market	50
DOUBLE STAR COMPUTING	prof fees	964.95
ECOLAB PEST ELIMINATOR DIV	prof fees	292.76
FISHER BEVERAGE	liquor	6,548.15
GLOBAL DISTRIBUTING INC.	liquor	120
GOTTLLOB, AMANDA	market	200
GREAT WESTERN TIRE COMPANY	sup/maint	3781.68
GRIMM'S PUMP & IND	rep/maint	1,248.49
GROCERY MART	sup/mat	38.18
HALE, KAYLA	market	10
HAWKINS, INC.	sup/mat	1,240.27
HUSTON-ENGLE, MARILYN	market	245
JOHNSON WESTERN WHOLESALE	liquor	21456.61
JOHNSON, ANGELA	market	120
KNIGHT SECURITY, INC.	rep/maint	720
KOESSL, KAYLA	market	5
KONE INC	rep/maint	184.56
KOSTERS, BECKY	market	205
LACAL EQUIPMENT, INC.	rep/maint	7,449.44
LEWIS, DR. SARAH	contract	500
LIBERTY CHEVROLET	rep/maint	304.4
LYNN'S DAKOTAMART-STURGIS	sup/mat	52.42

MARCO TECHNOLOGIES	rep/maint	156.95
MAXWELL, TERRY	market/sup	158
MCLEOD'S PRINTING & OFFICE	election sup	244.08
MEADE COUNTY TREASURER	sup	600
MEINERS, ASHLEY	market	6
MENARD'S	sup/mat	14.99
MERWIN, MEGAN	market	26
MOTOROLA SOLUTIONS, INC.	mach/equip	31,880.60
NEWMAN TRAFFIC SIGNS	sup/mat	852.43
NORTHERN HILLS VET CLINIC	prof fees	821.93
OFFICE OF FIRE MARSHALL-BOILER	prof fees	80
OKOBOJI WINES	liquor	299
OLSON, GINGER	market	8
OREILLY AUTO PARTS	sup/mat/rep/mat	116.46
OWENS INTERSTATE SALES INC.	sup/mat/rep/mat	94.98
PALISADES GROUP LLC	other	6,055.00
PEPSI COLA BOTTLING	liquor	361.45
PETERSEN, KIMBERLY	market	8
PHASE 3	sup/mat	236
PKG CONTRACTING, INC.	cap imp	50,000.00
POMP'S TIRE	rep/maint	756.88
QUALITY BRANDS	liquor	9750.3
RASMUSSEN MECHANICAL	sup/mat	4,417.87
RATHS, VASYLYNA	market	238
RED OWL, AMY	market	32
REPUBLIC BEVERAGE COMPANY	liquor	8800.61
RICHTER'S TIRE & EXHAUST, LLC	rep/maint	232.59
RIVERFRONT BROADCASTING, LLC	pub	514.08
RUNNINGS SUPPLY INC	sup/mat/rep/mat	86.52
RUSHMORE OFFICE SUPPLY	sup/mat	947.99
SD DEPT OF TRANSPORTATION	cap imp	3,386.77
SERVALL TOWEL & LINEN	sup/mat	413.56
SOUTHERN GLAZER'S OF SD	liquor	7583.22
SPEEDY LUBE INC.	rep/maint	82.97
STURGIS ACE HARDWARE #1	sup/mat/rep/mat	82.86
STURGIS ACE HARDWARE #3	sup/mat/rep/mat	216.24
STURGIS AREA CHAMBER OF COMM	contract	9,583.33
STURGIS ECONOMIC DEV CORP.	contract	7,916.67
STURGIS NAPA	sup/mat/rep/mat	1458.42
STURGIS RESPONDER SUPPLY, LLC	sup/mat	99.95
TAMMY BOHN AND JUSTIN BOHN	legal fees	330
THE GLASS SHOP	rep/maint	609.59

THE KETTLE CORN MAN	market	52
THORNTON, JANELLE	market	68
TRANSOURCE TRUCK & EQUIPMENT	rep/maint	268
TRAVIS, BRYAN	market	5
VERIZON WIRELESS	utilites	1611.53
VODICKA, ELIZABETH	market	15
VOSS DISTRIBUTING	liquor	373.35
WILSON, MIKAYLA	market	37

Moved by Dargatz, seconded by Bachand, to approve the claims.
Members present carried unanimously.

Board of Adjustment for Variance, Use on Review or other Administrative Appeals
Pursuant to SDCL 11-4-17, 11-4-23, and 11-4-24

The Council President declared the Council sitting as the Board of Adjustment to review the following agenda items.

No conflicts of interest were disclosed. Additionally, no ex parte communications were received by members of the Council.

Moved by Forrester, seconded by Dargatz, to approve a front and rear setback variance to build a garage 2.5' from the rear and 5' from the front property lines with the agreement of a deed restriction attached to the house for the future sale of the property.
Members present carried unanimously.

Moved by Wilkerson, seconded by Bachand, to approve a variance to allow the replacement of an existing mobile home on a non-conforming lot in Highway Service and variances to the side and front property setbacks.
Members present carried unanimously.

Council President declared the Board of Adjustment adjourned and resumed the reconvened the regular meeting of the City Council.

Public Hearings**RESOLUTION 2024-21
RESOLUTION TO CLOSE DESIGNATED STREETS AND PERMIT OPEN CONTAINERS ON
CERTAIN PUBLIC PROPERTY AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY FOR THE
COMMUNITY AFTER RALLY PICNIC**

WHEREAS, the annual Community After Rally Picnic will be held in the City of Sturgis, August 21, 2024, and

WHEREAS, the City of Sturgis Rally and Events Department will close of Harley Davidson Way from Main Street to Lazelle Street and Main Street to the east of the First Interstate drive up lane from 12:00 pm until 8:00 pm; and

WHEREAS, the Police Department will be authorized to tow vehicles within the street closure area, starting August 21, 2024 after 11:00 pm.

WHEREAS, an open container area has been requested within a portion of the public property of the City of Sturgis from 5:00 pm to 8:00 pm on August 21, 2024, and as authorized by Section 3.02.20(C) of Sturgis City Ordinance and SDCL 35-1-5.5, for those persons legally possessing an alcoholic beverage in the authorized non-glass container, bearing A logo and available for purchase from designated on-sale licensees, on that public property open to the public, within area bounded as follows:

- a. On the west, by the eastern edge of the Right of Way of 4th Street, beginning at the intersection of 4th Street and Lazelle Street and continuing south to the intersection of 4th Street and Sherman Street,
- b. On the south, by the north edge of the Sherman Street Right of Way between 4th Street and Middle Street, and on
- c. On the east, by the western edge of the Middle Street Right of Way beginning at the intersection of Sherman Street and Middle Street and including the entire Main Street Right of Way to a point two hundred eighty (280) feet East of the intersection of Main Street and Middle Street, continuing west from Middle Street to Fourth Street on the south side of Lazelle Street.
- d. On the north, continuing north to the intersection of Middle Street and the alley located between Lazelle Street and Dudley Street, and by the alley Right of Way located between Lazelle Street and Dudley Street and extending from the intersection of that alley and Middle Street across Junction Avenue and continuing to the intersection of that alley and the Right of Way for 1st Street and along the south edge of Lazelle from Middle Street to Fourth Street.
- e. Included in this Open Container area are the designated cross walks at the intersections of Main Street and Junction Avenue, Main Street and Middle Street, Lazelle Street and Junction Avenue, 1st Street, Harley Davidson Way and 3rd Street as they cross Lazelle 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. This also includes the Harley Davidson Rally Point.

NOW THEREFORE IT IS HEREBY RESOLVED, as set forth herein that the City of Sturgis shall hereby close the City street to vehicular traffic and unauthorized parking between 12:00 pm until 8:00 pm August 21, 2024, and establish an open container area on August 21, 2024, from 5:00 pm to 8:00 pm on that public property open to the public within area stated above. The open container area does not include the City Library, nor any City Property not open to the public, and does not include any private property within the open container area.

Dated this 28th of February 2024.
Published: 03-01-2024
Effective: 03-21-2024

Moved by Wilkerson, seconded by Bachand, Motion to approve Resolution 2024-21 for the street closure and lifting of the Open Container Ordinance for the Community Appreciation Picnic on Wednesday, August 21, 2024.
Members present carried unanimously.

RESOLUTION 2024-22
RESOLUTION TO CLOSE DESIGNATED STREETS ON CERTAIN PUBLIC PROPERTY AND WITHIN CERTAIN PUBLIC RIGHTS OF WAY FOR THE KOOL DEADWOOD NIGHTS PICNIC

WHEREAS, the Kool Deadwood Nights Picnic will be held in the City of Sturgis, August 21, 2024, and

WHEREAS, the City of Sturgis will close Harley Davidson Way from Third Street to First Street on Main and Harley-Davidson Way from Lazelle Street South to the alley behind First Interstate Bank; and

WHEREAS, the Police Department will be authorized to tow vehicles within the street closure area, starting August 21, 2024 after 5:00 am.

WHEREAS, as soon as the event is concluded the City streets from Third Street to First Street on Main will open.

NOW THEREFORE IT IS HEREBY RESOLVED, as set forth herein that the City of Sturgis shall hereby close the City street to vehicular traffic and unauthorized parking between 5:00 am until conclusion of event on August 21, 2024,

Dated this 28th of February 2024.
Published: 03-02-2024
Effective: 03-22-2024

Moved by Forrester, seconded by Dargatz, to approve Resolution 2024-22 for a street closure for the Kool Deadwood Nights Picnic.

Members present carried unanimously.

Moved by Forrester, seconded by Sigman, to approve setting a public hearing of March 18, 2024 for an SEL to serve for a fundraiser at the Sturgis Auditorium for the Knuckle Saloon for Ducks Unlimited. Members present carried unanimously.

Reports

Moved by Forrester, seconded by Wilkerson, to approve the Joint Powers Agreement between the City of Sturgis and the South Dakota Game, Fish and Parks to dredge the Lions Club Pond. Members present carried unanimously.

Moved by Dargatz, seconded by Bachand, to approve the Recommendation from the Parks Board to approve the Sturgis Trail System Addendum #1 between the City of Sturgis and Black Hills Trails. Members present carried unanimously.

Moved by Sigman, seconded by Wilkerson, to approve the Motorcycle Museum agreement to develop the Rally magazine. Members present carried unanimously.

**RESOLUTION 2024-23
A RESOLUTION DECLARING PROPERTY SURPLUS
AND AUTHORIZING THE SALE OF SUCH PROPERTY**

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF STURGIS that Resolution 2023-55 is hereby rescinded.

BE IT FURTHER RESOLVED BY THE COMMON COUNCIL OF THE CITY OF STURGIS that any sealed bid received by the finance office for surplus silver coins be returned by City staff to the bidder.

BE IT FURTHER RESOLVED BY THE COMMON COUNCIL OF THE CITY OF STURGIS that the personal property described below is hereby declared surplus and to be disposed of as described by SDCL § 6-13-1. It is advisable and in the best interest of the City of Sturgis to sell/trade/dispose/demolish the following property.

SPONSORSHIP

One hundred forty-three 2022 (82nd) Limited Edition Silver Coins

Seventy 2023 (83rd) Limited Edition Silver Coins

This property must be sold promptly either by

XXX Sealed Bid.

_____ Public Auction.

_____ Through a broker at spot value.

Dated this 4th day of March, 2024.

Published: 03-13-2024

Effective: 04-03-2024

Moved by Forrester, seconded by Dargatz, Motion to rescind Resolution 2023-55 and approve Resolution 2024-23 with the mean(s) of sale City staff can use to be sealed bid. Members present carried unanimously.

Moved by Sigman, seconded by Wilkerson, Motion to approve the BMI and and ASCAP Licensing Agreements and authorize the City Attorney to sign the Agreements. Members present carried unanimously.

ORDINANCE 2024-02

AN ORDINANCE ADOPTING CHAPTER 37.04 – PEDICABS AND AMENDING SECTION 37.01.02

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota that Chapter 37.04: Pedicabs be adopted to read as follows, and that Section 37.01.02 be amended to read as follows:

**TITLE 37
CITY TRANSIT**

CHAPTERS:

37.01 General Provisions

37.02 License

37.03 Transportation Network Company Driver Registration & Regulation

37.04 Pedicabs

37.01.02 DEFINITIONS

For the purpose of this title, the following definitions shall apply unless a subsection specifically states otherwise or the context clearly indicates or requires a different meaning:

AIR TRANSPORT SERVICE: An air transport service is any transit service providing observation, sightseeing or passenger transportation or delivery services originating or terminating with the city limits of and within the immediate airspace over the City of Sturgis, in a manner not specifically authorized or approved by the Federal Aviation Administration.

DIGITAL NETWORK: any online-enabled application, software, website, or system offered or utilized by a transportation network company that enables a prearranged ride with a transportation network company driver.

DRIVER: One who actually engages in the driving of a vehicle for hire.

ENGAGING IN BUSINESS: Any person shall be deemed to have engaged in the business of operating a vehicle for hire under Chapter 37.02 herein if he keeps or maintains any such vehicle for the purpose of engaging in a vehicle for hire business or if he accepts or permits any employee to accept any money or other thing of value from any such passenger for transportation in such vehicle. Accepting such a passenger under the guise that such transportation is purely gratuitous, and that no payment of compensation or consideration is required shall not be deemed to remove such transaction from the effect of this article. In any case where the driver or any person in charge of any such vehicle does in fact accept any money or other thing of value, even though the money or thing of value is accepted or purported to be accepted as a gift or present or purported gift or present, such gift or present, or such purported gift or present, shall constitute prima facie evidence of an intent to accept compensation or hire for such transportation.

OPERATING: A person is operating a transit business within the meaning of Chapters 37.01 and 37.02 herein if any fare or transportation service, whether on a public right of way or in airspace over the City, of any kind or nature which originates within the City of Sturgis.

OPERATOR: A person engaged in operating a taxicab or transit business.

PEDICAB: A nonmotorized three-wheel bicycle used to carry passengers for hire or similar vehicle with an electric motor that meets the requirements or characteristics of an electric-assisted bicycle. If this vehicle is powered completely or in part by the physical effort of the driver, it shall also be required to meet the slow-moving vehicle equipment requirements set forth at Chapter 34-15 of the South Dakota Code.

PEDICAB BUSINESS: The business of operating a pedicab for hire for the recreation or physical transportation of the general public.

PEDICAB DRIVER: Any person who operates, drives, or propels a pedicab.

PEDICAB DRIVER LICENSE: A license granted to operate a pedicab within the boundaries of the City of Sturgis.

PERSONAL VEHICLE: a vehicle that is used by a transportation network company driver to provide a prearranged ride and is owned, leased, or otherwise authorized for use by the transportation network company driver. The term does not include any taxicab, limousine, or for-hire vehicle.

PRE-ARRANGED RIDE: the provision of transportation by a driver to a rider, beginning when a driver accepts a rider's request for a ride through a digital network controlled by a transportation network company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. The term does not include transportation provided through a shared expense carpool or vanpool arrangement or by using a taxicab, limousine, or other for-hire vehicle.

SEATING CAPACITY: The number of persons, not including the driver, who can be conveniently seated in a taxicab without crowding.

TAXICAB: A motor vehicle for carrying passengers, with a seating capacity for 7 persons or less, not including the driver, not traveling any definite or prescribed route, operated by a driver, and carrying or accepting passengers for hire. The term taxicab shall not include funeral cars or ambulances.

TRANSIT BUSINESS LICENSE: The license under Chapter 37.02 herein shall be issued to an applicant when the application which they have submitted is approved as provided for in this ordinance.

TRANSPORTATION NETWORK COMPANY DRIVER: a person who receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the transportation network company and who uses a personal vehicle to provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

TRANSPORTATION NETWORK COMPANY RIDER: a person who uses a transportation network company's digital network to connect with a transportation network driver who provides a prearranged ride to the person in the driver's personal vehicle between points chosen by the person.

TRANSPORTATION NETWORK COMPANY (abbreviated hereafter as "TNC"): a corporation, partnership, sole proprietorship, or other entity that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides and that does not control, direct, or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.

VEHICLE FOR HIRE: means any vehicle licensed or registered under this title, including, but not limited to, bus or motorbus, pedicab, taxicab, limousine or Transportation Network Company drivers.

CHAPTER 37.04 PEDICABS

SECTIONS:

- 37.03.01: Definitions
- 37.03.02: License Required
- 37.03.03: License Fee
- 37.03.04: License Term
- 37.03.05: Number of Licenses
- 37.03.06: License Lottery
- 37.03.07: Conditional Temporary Licenses
- 37.03.08: License Application
- 37.03.09: Insurance Required
- 37.03.10: Pedicab Inspections
- 37.03.11: Pedicab Vehicle Operation
- 37.03.12: Operating Restrictions and Conditions
- 37.03.13: Revocation or Suspension

37.03.14: Additional Penalty and Enforcement

37.03.01 DEFINITIONS

As used in this chapter, the following terms mean:

- (a) Pedicab: A nonmotorized three-wheel bicycle used to carry passengers for hire or similar vehicle with an electric motor that meets the requirements or characteristics of an electric-assisted bicycle.
- (b) Pedicab Business: The business of operating a pedicab for hire for the recreational or physical transportation of the general public.
- (c) Pedicab Driver: Any person who operates, drives, or propels a pedicab.
- (d) Pedicab Driver License: A license granted to operated a pedicab in the City of Sturgis.

37.03.02 LICENSE REQUIRED

No person may operate a pedicab or engage in any pedicab business without obtaining a pedicab driver license.

37.03.03 LICENSE FEE

The annual licensing fee is \$200.00 per pedicab.

37.03.04 LICENSE TERM

Any Pedicab License issued under this chapter becomes effective on February 1st, or on the date the license granted, and expires on January 31st of the following year unless sooner revoked, canceled, or otherwise terminated.

37.03.05 NUMBER OF LICENSES

The annual number of pedicab licenses is limited to ten (10). In the event the numerical cap is lowered to an amount less than the number of existing licenses, no existing license will be prevented from continuing operation during the license term. This exception does not prevent a license from being suspended or revoked for cause.

37.03.06 LICENSE LOTTERY

Pedicab License Applications will be accepted according to the following special procedures. These procedures will apply whenever a pedicab license becomes available.

1. When a pedicab license becomes available, whether because of the end of the licensing term, or because of revocation, the City will publish an invitation for applications on the City's website stating the deadline to apply, and the location applications may be submitted. No application will be accepted prior to the publication of the invitation, or after the deadline established in the invitation.
2. Applications submitted to an invitation must be submitted in writing and sealed. An applicant may not supplement their application after the deadline has passed.
3. Only one (1) application is allowable per pedicab. If more than one (1) application is submitted for a pedicab, then this submittal will be deemed a fraudulent application and removed from the lottery. In addition, all other applications from the violating pedicab business or individual will be deemed invalid and removed from the lottery regardless whether they are valid or not. Serial Numbers/Vehicle

Identification Numbers (VINS) provided in the applications will be reviewed from all submitted applications following the lottery, and if any other application shares the same serial number/VIN, then any license awarded will be forfeited.

4. Once the application deadline has passed, the finance officer, or designee, will randomly give each sealed application a number. The finance officer, or designee will enter these numbers into a random number generator, such as www.random.org, to randomly draw the numbers. The finance officer, or designee, will randomly draw ten (10) numbers from the pool of sealed applications using the random number generator. The finance officer will open the applications in the order drawn, and review each application for completeness. Complete applications drawn will be granted a license. If an application is incomplete or invalid, this application will be removed from competition and a new application will be selected from the remaining undrawn applications.

37.03.07 CONDITIONAL TEMPORARY LICENSES

The City may issue additional conditional temporary pedicab licenses beyond the ten (10) yearly licenses provided in § 37.03.05. No conditional temporary pedicab license may be issued to operate between July 15 and August 15. Any pedicab applying for a conditional temporary license must submit an application as provided under § 37.03.06. Additionally, any pedicab must abide by all regulations, including but not limited to insurance, inspection, and other requirements as provided in this chapter unless expressly provided. Conditional temporary licenses are only valid for five (5) days. A pedicab may receive multiple conditional temporary licenses in a year. The fee for a conditional pedicab license is \$25.00 per license.

37.03.08 LICENSE APPLICATION

Application for a pedicab license under this chapter will be made on forms provided by the finance officer and will contain such information as deemed necessary. The finance officer may require applications be submitted through Citizenserve. The application may require the following information:

- A. Business Name, Applicant's Name, Phone number, Street address and Mailing address, email address; and
- B. Previous experience in the business, if the applicant has not been licensed before; and
- C. A list of all driver's names which may operate the licensed pedicab, and copies of all driver's licenses.
- D. The Application must contain a photo of the pedicab and a photo of the serial number/VIN located on the pedicab.

The pedicab owner/operator will also sign an affidavit which shall include the following information:

- A. That applicant, operators, and drivers are all licensed drivers, and are in good standing with the law.
- B. That applicant has not submitted more than one (1) pedicab license application for the pedicab associated with this application.
- C. That applicant, operators, and drivers will abide by all State and City laws governing the use of pedicabs, taxis, and bicycles on the public streets.
- D. That applicant, operators, and drivers are all over eighteen (18) years old.

- E. That applicant, operators, and drivers have not been convicted of a felony within the past five (5) years.
- F. That the applicant, operators, and drivers each have no more than three (3) moving violations within the past three (3) years.
- G. That the applicant, operators, and drivers each have not been convicted of careless driving, reckless driving, or driving under the influence within the past three (3) years.
- H. That each pedicab sought to be licensed is covered by liability insurance with a minimum of one million-dollar limit of liability and fifty thousand dollars medical cost coverage.
- I. Each pedicab proposed to be licensed has been inspected and that on the date of application that vehicle meets all applicable laws of the state concerning equipment, lights, tires and all other safety-related equipment.

A supplement affidavit attesting to the above requirements must be submitted if any additional drivers not identified in the application are allowed to operate the pedicab. The failure to supplement the affidavit may result in immediate revocation or suspension of the pedicab license.

37.03.09 INSURANCE REQUIRED

Each pedicab sought to be licensed must be covered by liability insurance with a minimum of one million dollar (\$1,000,000) limit of liability and fifty thousand dollars (\$50,000) medical cost coverage. Proof of insurance coverage must be provided to City before operating.

37.03.10 PEDICAB INSPECTIONS

- (a) (a) Annual Inspections: Any pedicab operating in the City must be inspected annually by the Sturgis Police Department. The Sturgis Police Department may designate minimum safety standards for equipment and defects. Any pedicab inspected which does not meet the minimum safety standards as determined by the Sturgis Police Department will be classified as "out of service," and may not operate until such defects are cured.
- (b) (b) Periodic Inspections: The Sturgis Police Department, or inspection designee, reserves the right to examine and inspect each and every licensed pedicab, including driver credentials, at any reasonable time. The intent of such inspection is to ensure compliance with the rules established in this chapter.
- (c) (c) Seizure of License: Failure to submit a pedicab to an annual or periodic inspection, or classification of a pedicab as "out of service," may result in the seizure of a pedicab license by the City. The City may hold a seized license until the pedicab is inspected and found to be in a safe condition. In the event of such a seizure, the inspector will immediately notify the licensee in writing, specifying in detail the cause for seizure and stating that the licensee has a right to a City Manager review of the seizure. If the City Manager affirms the seizure, the aggrieved party may utilize the appeal process as provided in SMC Chapter 36.04.

37.03.11 PEDICAB VEHICLE OPERATION

Every pedicab must be operated in compliance with all applicable federal, state, and local traffic laws, and in a manner so as to assure the safety of person and property. The pedicabs applicant, operators, and drivers are solely responsible for being aware of and obeying all laws, ordinances, and regulations.

37.03.12 OPERATING RESTRICTIONS AND CONDITIONS

All pedicabs must abide by the following operating restrictions and conditions. The failure to strictly follow these restrictions and conditions may result in the immediate revocation or suspension of the pedicab license.

- (a) No pedicab will be operated upon a public sidewalk.
- (b) No pedicab will use any public street or other public property as a waiting area unless such area is a legal motor vehicle parking area, or is a designated pedicab waiting area. No pedicab may wait in a designated taxi or rideshare drop-off or pickup location.
- (c) All pedicabs, when operating between dusk and dawn, must make use of working battery powered lights. Each pedicab must be equipped with at least one (1) headlight capable of projecting a beam of white light for a distance of three hundred (300) feet, and two (2) red taillights mounted on the right and left, respectively, on the rear exterior of the vehicle. Taillights must be plainly visible from all distances within five hundred (500) feet to the rear of the pedicab.
- (d) All pedicabs must be equipped with a front and rear braking system which is operated by the pedicab driver from their normal position of operation while driving the pedicab, and be capable of causing a fully loaded passenger compartment to come to a complete stop.
- (e) All pedicabs must be, at all reasonable times, subject to inspection by the Sturgis Police Department. All pedicabs must pass inspection before operation.
- (f) All pedicabs must display a valid license issued by the City on the Pedicab.
- (g) Pedicab drivers must have in their possession both a valid driver's license and proof of insurance while in control of any pedicab, and must make these documents available to law enforcement or a City inspector.
- (h) All pedicab drivers must obey and comply with any lawful order or discretion of any law enforcement officer, traffic control agent, or City inspector, and must refrain from the use of any profane language or from interference with such officials while in the performance of their duties.
- (i) No pedicab driver may consume alcoholic beverages, or any other mind-altering substance while on duty or allow any occupant of the pedicab to drink alcoholic beverages or possess an open container of alcoholic beverages.
- (j) No pedicab driver may allow a passenger to stand up while the pedicab is in motion.
- (k) No pedicab driver may permit more passengers to be carried in a pedicab than the pedicab is designed to accommodate, with the exception that children under forty (40) pounds may be seated upon the lap of another passenger.
- (l) No pedicab driver may allow a passenger or other individual to drive their pedicab unless that individual is identified in the application as an authorized driver.
- (m) Pedicabs may be operated on city parks and recreation property only with prior written approval from the Public Works Director.
- (n) Pedicabs are prohibited from blocking traffic, waiting for passengers, or picking up/dropping off passengers on Main Street.

37.03.13 REVOCATION OR SUSPENSION

Any violation of any federal or state law, or ordinance, may result in the revocation or suspension of any pedicab license. Additionally, if the applicant holds more than one (1) license, the City may revoke or suspend all licenses held by the applicant. Additionally, any applicant who has their license revoked or suspended may be denied future licenses. The license holder has no property rights or entitlement in a pedicab license.

37.03.14 ADDITIONAL PENALTY AND ENFORCEMENT

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In addition to any penalty provided under federal law, state law, or ordinance, any pedicab applicant, operator, or driver who violates any traffic law, city ordinance, inspection requirement, or operation condition while operating a pedicab may result in the seizure of the pedicab license. Additionally, any pedicab driver operating a pedicab without a license may be subject to arrest, and the pedicab towed or seized. All laws, ordinances and regulations may be enforced by any law enforcement officer, designated inspector, and the City Code Enforcement Officers.

Adopted this 4th day of March, 2024.

First Reading: 02/20/2024
Second Reading: 03/04/2024
Adopted: 03/04/2024
Published: 03/13/2024
Effective: 4/03/2024

Moved by Wilkerson, seconded by Bachand, to approve the second reading of Ordinance 2024-02 adopting SMC Chapter 37.04 and amending Section 37.01.02.
Members present carried unanimously.

ORDINANCE 2024-01

AN ORDINANCE TO REPEAL STURGIS MUNICIPAL CODE (SMC) CHAPTER 37.03 – TRANSPORTATION NETWORK COMPANY DRIVER REGISTRATION & REGULATON

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota that Chapter 37.03: Transportation Network Company Driver Registration & Regulation be repealed.

WHEREAS the City of Sturgis has the power to enact and repeal ordinances and exercise jurisdiction over all territory within its corporate limits for the purpose of promoting the health, safety, morals, and general welfare of the community pursuant to state statute, including but not limited to SDCL §§ 9-19-3, 9-29-1, and SDCL Title 9 Generally; and

WHEREAS the City additionally has statutory authority under SDCL § 32-40-23 to regulate Transportation Network Companies (TNCs) within the City; and

WHEREAS the City of Sturgis adopted provisions regulating TNCs operating within the City; and

WHEREAS as a result of the TNC provisions, the TNCs have blocked the City of Sturgis from their respective apps; and

WHEREAS the Sturgis Common Council finds the state statutory regulations under SDCL Chapter 32-40 sufficiently regulates TNCs operations, and sufficiently protects the health, safety, morals, and general welfare of the community; and

WHEREAS the Sturgis Common Council desires to open TNC operations within the City; and

03/11/24

WHEREAS the Sturgis Common Council deems it to be in the City's best interests to repeal Chapter 37.03 of the Sturgis Municipal Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF STURGIS that Chapter 37.03 of the Sturgis Municipal Code is hereby repealed in its entirety.

Dated this 4th day of March, 2024.

First Reading: 02/20/2024

Second Reading: 03/04/2024

Adopted: 03/04/2024

Published: 03/13/2024

Effective: 04/03/2024

Moved by Dargatz, seconded by Wilkerson, to approve the Second Reading of Ordinance 2024-01 - Repealing SMC Chapter 37.03.

Members present carried unanimously.

Executive Session

Moved by Zerbst, seconded by Dargatz, to enter Executive Session for 0 personnel, 2 legal, 4 contracts, 0 marketing, and 0 security issues at 8:54 pm.

Members present carried unanimously.

Resume Open Meeting

Moved by Forrester, seconded by Dargatz, the Council adjourned their Executive Session at 9:50 pm. Members present carried unanimously.

Adjourn

Moved by Zerbst, seconded by Forrester, to adjourn Council meeting at 9:50 pm. Members present carried unanimously.

ADA ACCOMMODATION

If you desire to attend this public meeting and are in need of special accommodations (including participation by telephone), please notify the Finance Office by 10am on the day of the meeting so

that appropriate auxiliary aids and services may be coordinated. The Finance Office can be reached at (605) 347-4422, option 1.

ATTEST: _____
Adam Hosch, Finance Officer

APPROVED: _____
Angela Wilkerson, Mayor

Published once at the total approximate cost of \$ _____



How Can We Help You?

Sturgis City Council plans special meeting



STURGIS – The Sturgis City Council has planned a special meeting for 6:30 p.m. Thursday, Feb. 16, at the city council chambers, 1040 Harley-Davidson Way, Sturgis.

The only agenda item for the evening is an executive session focused on personnel matters.

Sturgis Mayor Mark Carstensen said he and the council are working on putting together a top-notch transition team to determine the best path forward in light of the recent announcement by Sturgis City Manager Daniel Ainslie that he will be taking a new job in Rapid City.

With the recent court cases concerning the city manager still in litigation, it will be important to consider the question of hiring either a city manager or a city administrator.

The Sturgis City Council and the mayor plan to discuss just that in open session at the Tuesday, Feb. 21, city council meeting.

EXHIBIT 11

"We welcome all suggestions. We know that a city manager or administrator will serve our community well, but we want to know what the residents want," the mayor said.

Carstensen said Ainslie has done a phenomenal job of putting the city in a great financial position moving forward.

"From past experience, we know we need a professional guiding the day-to-day business of our community," Carstensen said.

The mayor explained it in everyday terms.

"When you have an electrical problem, you call a professional. The same is true in our case. Just as you are probably not comfortable in fixing an electrical problem, we feel a professional manager or administrator would be appropriate to lead our city," he said.

The transition team will make sure that priorities set for this year will continue to be addressed in the interim, Carstensen said.

"Please know that we are working on the best path forward for the future of the city of Sturgis," he said.

More: [Home News](#)

Contact Us

City of Sturgis
1040 Harley-Davidson Way
Sturgis, SD 57785

Our Mission:

To provide an attractive, growing community being served by a professional staff that offers reliable, quality municipal services.

Website By EvoGov



City Council Meeting
AGENDA

DATE: Thursday, February 16, 2023
TIME: Regular Meeting - 6:30 PM
PLACE: Council Chambers - City Hall, 1040 Harley-Davidson Way, Sturgis SD

1. **CALL TO ORDER**

2. **APPROVAL OF THE AGENDA**

3. **PLEDGE OF ALLEGIANCE**

4. **OTHER MATTERS THAT MAY COME BEFORE THE COUNCIL**

To address the City Council, please stand behind the front table and state your name clearly into the microphone for the public record. Please keep your comments respectful and complete your comments in three minutes or less. If you are unable to approach the podium due to a physical limitation, a portable microphone will be provided.

5. **EXECUTIVE SESSION**
 - 5.1. a. Pursuant to SDCL 1-25-2 (1), Personnel: 1
 - b. Pursuant to SDCL 1-25-2 (3), Legal: 0
 - c. Pursuant to SDCL 1-25-2 (4), Contracts: 0
 - d. Pursuant to SDCL 1-25-2 (5), Marketing: 0
 - e. Pursuant to SDCL 1-25-2 (6), Security: 0

6. **ADJOURN**



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

July 31, 2024

Kellen B. Willert
Bennett Main Gubbrud & Willert
618 State Street
Belle Fourche, SD 57717-1419

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council –
Meade County

Dear Mr. Willert,

This letter is to acknowledge receipt of an open meetings complaint filed by your client Tammy Bohn against the Sturgis City Council. Meade County State's Attorney Michele A.A. Bordewyk forwarded the complaint to the Open Meetings Commission for its review. Enclosed is a copy of all the materials I have received. A copy of the complaint materials has also been submitted to the City Council for their response. I have asked the City Council to file a response no later than August 30, 2024. I have also requested that the City Council mail you a copy of any response they file.

The Open Meetings Commission meets periodically and has not scheduled its next meeting. I will notify you of the date, time and location of the next Commission meeting.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "SRB", with a long horizontal flourish extending to the right.

Steven R. Blair
Assistant Attorney General

SRB/jm

Enclosures

Cc w/o Encl: Mark Marshall, City Attorney – Sturgis City Council
Michele A.A. Bordewyk – Meade County State's Attorney



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MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

July 31, 2024

Mark Marshall, Attorney
Sturgis City Council
1040 Harley-Davidson Way
Sturgis, SD 57785

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council –
Meade County

Dear Mr. Marshall,

I assist the South Dakota Open Meetings Commission with their duties. Meade County State's Attorney Michele A.A. Bordewyk has forwarded to the Commission, pursuant to SDCL 1-25-6(3), a complaint concerning the Sturgis City Council. The complaint was signed by Tammy Bohn. Enclosed is a copy of all the materials I have received.

If the City Council wishes to file a response to the complaint, please send it to the above address on or before August 30, 2024. Please also send copies of any response to Tammy Bohn's attorney, Kellen B. Willert, Bennett Main Gubbrud & Willert, 618 State Street, Belle Fourche, South Dakota 57717, and to Meade County State's Attorney Michele A.A. Bordewyk.

After I have received your response, all materials will be sent to the members of the Commission for their review. The Commission meets periodically and has not yet scheduled its next meeting. You will be given further notice of the meeting date, location, and time once the meeting has been scheduled.

July 31, 2024

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council – Meade County
Page 2

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'SRB', with a horizontal line extending to the right.

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosures

Cc w/o Encl: Kellen B. Willert, Attorney for Complainant
Michele A.A. Bordewyk, Meade Co State's Attorney

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

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MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

September 11, 2024

Mark Marshall, Attorney
Sturgis City Council
1040 Harley-Davidson Way
Sturgis, SD 57785

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council –
Meade County

Dear Mr. Marshall,

This letter is to remind you that the complaint filed by Tammy Bohn against the Sturgis City Council remains pending before the Open Meetings Commission.

As of the date of this letter, the Commission has received no response to the complaint from the City Council. If the City Council intends to respond to the Complaint, you have until **September 27, 2024** to do so. When responding, please send copies of any response to Tammy Bohn's attorney Kellen B. Willert, Bennett Main Gubbrud & Willert, 618 State Street, Belle Fourche, SD 57717-1419 and to Meade County State's Attorney Michele A.A. Bordewyk.

The Commission meets periodically and has not yet scheduled its next meeting. You will be given further notice of the meeting date, location, and time once the meeting has been scheduled.

September 11, 2024

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council – Meade County

Page 2

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "SRB", with a long horizontal flourish extending to the right.

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosures

Cc w/o Encl: Kellen B. Willert, Attorney for Complainant
Michele A.A. Bordewyk, Meade Co State's Attorney

SEP 30 2024



MARK F. MARSHALL, CITY ATTORNEY
1040 HARLEY-DAVIDSON WAY
STURGIS, SD 57785
605.347.4422 | STURGIS-SD.GOV

September 26, 2024

Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council, Meade County, SD

Dear Mr. Blair,

The purpose of this letter is to respond to the above-referenced complaint on behalf of the City of Sturgis. The City will respond to the Complaint in the order and following the format used by the Meade County States Attorney.

1. Roll Call Vote. The City agrees with the Meade County States Attorney that its use of a secret ballot for appointment of the mayor, president, and vice-president of the City Council is not a violation of the open meeting laws.

2. May 6, 2024, Executive Session. The City respectfully suggests there is no merit to this allegation. It is important to note that the May 6, 2024, City Council meeting was the last meeting of the 2023-24 Council Session, as well as the first meeting of the 2024-25 Council Session. Newly elected council members took the oath of office after the 2023-24 session adjourned *sine de* as the first action item of the 2024-25 Council Session. Some Council members were not familiar with the meaning or import of adjourning *sine de*, or the impact of Robert's Rules of Order, which the City has adopted by Sturgis Municipal Ordinance 7:03:05, on Council proceedings. This understandable but unfortunate confusion may have led to the failure to announce the purpose of the executive session during the meeting. Nevertheless, the purpose of the executive session was clearly stated in the meeting minutes:

Executive Session

Moved by Forrester, seconded by Thompson, to enter Executive Session at 9:31 pm for 1 Personnel issue.

Carried by the following votes:

Ayes: Bachand, Forrester, Dargatz, Williams, Blakeman,
 Thompson, Jones, and Kopp

Accordingly, the City contends that its actions did not violate the open meeting laws.

3. January 16, 2024, Executive Session. The City agrees with the Meade County States Attorney that there is no merit in prosecuting this claim. As the States Attorney Bordewyk succinctly stated quoting SDCL 1-25-2(1), “[d]iscussing the ‘qualifications, competence, performance, character of fitness’ of a public employee is a proper reason for an executive session.”

4. Three Minute Public Comment Limitation. The City agrees with the Meade County States Attorney that there is no merit in prosecuting this claim. As State’s Attorney Bordewyk correctly stated “There are no requirements or guidance as to how to conduct the public comment portion of the agenda. Case law supports government may place reasonable time, place and manner limitations on speech. Such restrictions must serve a significant governmental interest and be content neutral. The chair of a meeting preside over the meeting and can set restrictions such as in place here.”

5. February 16, 2023, Executive Session. The City respectfully suggests there is no merit to this allegation. The Meade County States Attorney has speculated about the purpose of the Executive Session based on incomplete knowledge. Former City Manager Daniel Ainslie submitted two letters of resignation on February 8, 2023. One letter intended to be public, while the other letter in which he made a demand for his severance package, was not. With Mr. Ainslie’s permission, a copy of the confidential letter has been attached to this submission.

SDCL § 1-25-2 explicitly provides:

Executive or closed meetings may be held for the sole purposes of:

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

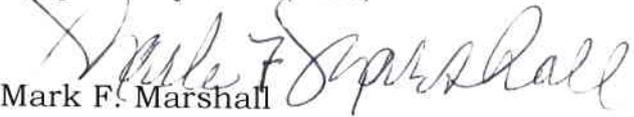
(4) Preparing for contract negotiations or negotiating with employees or employee representatives.

Mr. Ainslie's demand for his severance packages fits squarely within the statutory purpose of an executive session. Moreover, the discussion about whether to file Mr. Ainslie's position with a new city manager or a city administrator was the topic of an open discussion during the February 21, 2023, City Council meeting.

Mr. Ainslie's comments about the conditions of his employment were also the subject of a Complaint by City of Sturgis Council member Mike Bachand, a copy of which is also attached. Finally, the conduct with which both Ainslie and Bachand had to contend has contributed to the resignation of at least six members of the City staff this year alone.

Accordingly, the City contends that its actions on February 16, 2023, did not violate the open meeting laws.

Respectfully submitted,


Mark F. Marshall
City of Sturgis City Attorney

Enc.

CC: Michele Bordewyk
Kellen Willert



Office of the City Manager

1040 Harley -Davidson Way
Sturgis, SD 57785
(605)-347-4422

February 6, 2023

To the Honorable Mayor Carstensen,

During the past 11 years, there has been numerous challenges and hundreds of successes. Through all the trials, our community has emerged far stronger. However, that progress unfortunately began to wane in late 2020.

As you know, three disgruntled former employees began a crusade to destroy my reputation, future employment capabilities and position with the City of Sturgis. This was in retaliation for the employees not being rehired in their former position (an act that the Council wisely steadfastly refused). This effort has included the development of countless social media pages and personas that regularly post slanderous and libel accusations against my family and myself. These accusations have included firearm thefts, theft of public funds, racist attacks, fascist allegations and assertions, DUI convictions, auditing fraud and countless others. In nearly every instance, the City remained silent.

These unmitigated attacks have significantly affected my family's personal life. Beyond personal relations, the personal investment my family has made in the community has come under attack. Slanderous posters have been hung outside my family's store and residents have verbally attacked my family while they have worked within the store.

The lack of a unified governing body supporting my position and my efforts to implement the Council's directions have allowed these attacks to continue unabated for years. Beyond the lack of a unified voice from the Council, a Councilor has actively undermined my efforts while fueling the sparks set by these disgruntled former employees.

In numerous instances, the Councilor has stoked the division within the organization and greater community. One such instance occurred on October 14, when I had sent an email to members of the Legal and Finance Committee. I sought direction as to how the Committee wished me to proceed regarding the participation of the Chamber of Commerce during the upcoming Post-Rally Summit. The Councilor leaked this confidential question to the Chamber which in turn inflamed the situation. Instead of providing leadership guidance, the Councilor's intent was clearly to disrupt the efforts of the City. During this same time period, the same Councilor contacted the

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Chamber Director to forewarn her about the intent of the City, Chamber, SEDC and Downtown Foundation Collaborative. The message portrayed by the Councilor included the potential for reduced or elimination of City funding. This was the exact opposite of the direction of intent I provided the Collaborative facilitator which was set by the Legal and Finance Committee (a Committee which the Councilor chairs). Once again, the Councilor's actions caused significant damage to my professional reputation and the City's stated goals of the initiative. During this same time period, the Councilor returned a new City owned motorcycle which he had borrowed for some time. While returning the bike, a resident of Sturgis watched him return the bike and inquired as to why he was on the bike. Apparently, the resident was told by the Councilor that the City needed him to move the bike from City Hall to the Armory. The resident asked me to verify the story he had been told by the Councilor. I was unable to do so as the story I was asked to verify was not true. The following workday I was told by one of my direct reports that following his return of the bike, the same Councilor had invested a significant amount of time in the employee's office berating myself and another City employee. The Councilor apparently stated that he knows that we have been lying and misleading the City Council but has not been able to prove the deceit.

The Councilor admitted in Executive Session that he had discussions with clients of opposing Counsel regarding open litigation against the City and me personally. The litigation includes a claim against me that includes all my personal earnings for more than a decade. The Councilor was warned that these communications could threaten the City's (and by extension my personal) case. The Councilor did not show remorse and further implied that he had had discussions with the opposing attorney. This is further concerning given that his public statements made shortly after this warning were used in the opposing counsel's brief.

The same Councilor negotiated a rebate of long overdue Ambulance claims for a group in which he is affiliated. He has continued to push for continued special considerations for the same group's use of municipal utilities. This has occurred as he has pressed me to ensure that the City adopts a goal of fundraising \$100,000 for a group in which he is a board member. These actions and others lead me to firmly believe that he will willingly cross any line to ensure that his desired outcome comes to pass. Any reasonable employee would understand that these actions are a direct threat to their continued employment. In this particular situation it is even more concerning given that it not only threatens my continued employment, but my family's financial wellbeing given the propensity of his associates to launch litigation against me personally. These facts have unfortunately led me to understand that I have been discharged from the City of Sturgis.

Despite the actions that have occurred, I am willing to work cooperatively with you and your staff both of whom I greatly admire. I would like to develop a transition plan with you to ensure that the Council's priorities are achieved to the greatest degree possible. In accordance with my contract, my last day will be April 7, 2023.

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I would like to offer my advice to you before hiring my replacement. In order to provide the highest chance of success, I would highly encourage you to develop a job description that fully describes the job duties and details the responsibilities that the Council will stand behind. The constant vacillation between roles and duties and the inability for the entire Council to finalize expectations creates an environment where success is impossible and intolerable.

Sincerely,

Daniel Ainslie
Sturgis City Manager

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March 1st 2023

Presented to the Chairman of Sturgis City Council Legal & Finance Committee

Mr. Chairman

I have developed concerns about the way in which certain matters of the Council have been handled.

Those matters include the decisions regarding:

1. The 3-mile agreement with Meade County.
2. The City's financial relationship with the Jackpine-Gypsies *M/C*;
3. The timing of negotiated agreements with the Chamber & SEDC; and
4. Conflicts of Interest where a councilman has acted on behalf of a non-profit as well as the City Council.

I would further request that these issues be addressed by the entire City Council.

I also ask this committee to direct the City Attorney to recommend a process consistent with Robert's Rules of Order for consideration of these issues.



Mike Bachand

Councilman, Ward 1
City of Sturgis



Sara Frankenstein

Attorney

Phone: (605) 342-1078 | Fax: (605) 342-9503

506 Sixth Street | P.O. Box 8045 | Rapid City, SD 57709

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Mark Marshall

From: Mark Marshall
Sent: Wednesday, September 11, 2024 5:23 PM
To: 'Aj Wilkerson'; Angela Wilkerson
Subject: FW: Your hotline call

Here is Sara's response from the contact you directed me to make.

Mfm

From: Sara Frankenstein <sfrankenstein@gpna.com>
Sent: Wednesday, September 11, 2024 4:16 PM
To: Mark Marshall <MMarshall@sturgisgov.com>
Subject: Your hotline call

Mark,

Thanks for your call regarding the propriety of the President of the city council calling a special meeting while the Mayor is out of town for purposes of reviewing your employment as city attorney. The following is as much as I can get you within the one hour allowed by the SDPAA. If the City is interested in hiring me as special counsel just for this limited purpose to speak on this tonight, I am available tonight. After hours, I can be reached on my cell phone, which is 605-381-1693. Please don't give that number out to more than maybe the one person who might need it to place a call tonight, if need be.

You noted that the President of the city council is relying upon SDCL § 9-8-7 and the phrase "during the absence of the mayor from the municipality", highlighted below.

SDCL § 9-8-7. President and vice president of council--Election and duties.

At the first regular meeting after the annual election in each year and after the qualification of the newly elected aldermen, the council shall elect from among its members a president and vice president, who shall hold their respective offices for the municipal year.

The president of the council in the absence of the mayor acts as the presiding officer of the council. During the absence of the mayor from the municipality or the mayor's temporary disability, the president of the council is acting mayor and has all the powers of the mayor.

In the absence or disability of the mayor and president of the council, the vice president of the council shall perform the duties of the mayor and president of the council.

However, the president of the council or vice president of the council acting as the mayor shall only vote as an alderman. No alderman acting as mayor may vote as the mayor to break a tie vote.

In my opinion, the spirit of this statute is to allow another person to run the meetings and attend to mayoral duties while the mayor is unable to attend or handle matters. To interpret the statute strictly (rather than pursuant to its likely intent) would allow city council presidents to call special meetings whenever a mayor is out of town in order to undue or supplant the mayor's actions and decisions. That is an unworkable interpretation of that statute. It also leads to the mayor, upon his physical return to town, to simply re-appoint his original appointee, or re-do whatever the action was

that the president sought to supplant. That interpretation may lead to litigation, gamesmanship, and a rather chaotic method of municipal governance.

On another note, I assume Sturgis is aldermanic, so that SDCL § 9-14-13 applies.

SDCL § 9-14-3. Appointment of officers.

Such officers as needed and provided for by ordinance shall be appointed. Each appointive officer of a municipality governed by a mayor and common council shall be appointed by the mayor with the approval of the council, and in other municipalities, each officer shall be appointed by a majority vote of the members elected to the governing body, except as provided in the city manager law and subject to the provisions of the civil service applying to employees, police, and firefighters. Such officers shall be appointed annually or at intervals determined by the governing body.

SDCL § 9-14-13. Removal of appointive officers.

In an aldermanic-governed municipality, the mayor, except as otherwise provided, may remove from office any officer appointed by the mayor, if the mayor believes that the interests of the municipality demand such removal. The mayor shall report the reasons for removal to the council at its next regular meeting.

If Sturgis is aldermanic, the mayor removes an appointed official *not* in a city council meeting. The mayor simply attends the next city council meeting to *inform* the council that he already removed an official he appointed and reports the reasons why.

Only if Sturgis is not aldermanic does the governing board vote at a meeting to remove an appointive officer:

SDCL § 9-14-12. Removal from office of officer appointed by governing board.

Except as otherwise provided any appointive officer of a municipality governed by a board of commissioners or board of trustees may be removed by a majority vote of the members of such board.

I have not seen and have no idea whether you have a contract with the City, which may have provisions that speak to or even govern this issue. Below is the statute on contracts:

SDCL § 9-14-23. Employment of attorney--Contract by ordinance or resolution.

The governing body of any municipal corporation may contract for legal services or employ an attorney under such terms and conditions as the governing body shall deem proper. Any contract for legal services with an attorney shall be made by ordinance or resolution. Such contract shall set forth the compensation to be paid and the specific services to be rendered.

Determining the fitness, competence, etc. of any employee or official can be discussed in executive session under SDCL § 1-25-2(1), and that is almost always good practice for a number of reasons.

There is also the complicating factor that the mayor will be calling in tonight to participate telephonically, which lends credence to my opinion that SDCL § 9-8-7 should not be used in this scenario.

Please let me know if you'd like anything further.

Sara Frankenstein

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

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Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

October 21, 2024

Kellen B. Willert
Bennett Main Gubbrud & Willert
618 State Street
Belle Fourche, SD 57717-1419

Mark Marshall, Attorney
City of Sturgis
1040 Harley-Davidson Way
Sturgis, SD 57785

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council – Meade County

Dear Mr. Willert & Mr. Marshall,

Enclosed please find a Notice of Hearing regarding the above referenced open meetings complaint. Also enclosed, please find a courtesy copy of the proposed agenda for the Commission's November 25, 2024 meeting. As you can see from the agenda, presentations regarding complaints will begin at 9:00 a.m. central time, or as soon thereafter as matters may be heard.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "SRB".

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-08
MEETINGS COMPLAINT AGAINST)	
STURGIS CITY COUNCIL – MEADE)	NOTICE OF HEARING
COUNTY)	
)	

TO: Kellen B Willert, Bennett Main Gubbrud & Willert, 618 State Street, Belle Fourche, SD 57717-1419; and Mark Marshall, Attorney, City of Sturgis, South Dakota 57785:

Please take notice that a hearing regarding the above referenced open meetings complaint will be held before the South Dakota Open Meetings Commission, at the Matthews Training Center – Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota, on Monday, November 25, 2024. Oral presentations regarding pending complaints will commence at 9:00 a.m. central time, or as soon thereafter as matters may be heard, and proceed in the order noted in the attached agenda.

Dated this 21st day of October, 2024.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

SOUTH DAKOTA OPEN MEETINGS COMMISSION

AGENDA

Matthews Training Center – Foss Building
523 E. Capitol Avenue
Pierre, South Dakota 57501

November 25, 2024
9:00 a.m. Central Time

1. Approval of the Agenda
2. Public Comment period as per SDCL 1-25-1
3. Consideration of Pending Complaints

A. In the Matter of Open Meeting Complaint 2024-06 Carlyle Township

Oral Presentations:

Complainants Terry and Todd Koerner -15 minutes (a portion of this time may be reserved for rebuttal)

Carlyle Township -15 minutes

B. In the Matter of Open Meeting Complaint 2024-07 Pennington County Board of Commissioners

Oral Presentations:

Complainants Deb Hadcock and Travis Lasseter -15 minutes (a portion of this time may be reserved for rebuttal)

Pennington County Board of Commissioners -15 minutes

C. In the Matter of Open Meeting Complaint 2024-08 Sturgis City Council

Oral Presentations:

Complainant Tammy Bohn -15 minutes (a portion of this time may be reserved for rebuttal)

Sturgis City Council -15 minutes

D. In the Matter of Open Meeting Complaint 2024-09 City Of Lead Commission

Oral Presentations:

Complainant Gordon Phillips -15 minutes (a portion of this time may be reserved for rebuttal)

City of Lead Commission -15 minutes

[LUNCH BREAK 12:00-1:00 P.M CENTRAL TIME]

E. In the Matter of Open Meeting Complaint 2024-10 Green Valley Sanitary District

Oral Presentations:

Complainant Steven Myers -15 minutes (a portion of this time may be reserved for rebuttal)

Green Valley Sanitary District -15 minutes

F. In the Matter of Open Meeting Complaint 2024-11 Charles Mix County Commission

Oral Presentations:

Complainants Jeff and Jolene Stewart -15 minutes (a portion of this time may be reserved for rebuttal)

Charles Mix County Commission -15 minutes

G. In the Matter of Open Meeting Complaint 2024-12 Tripp City Council

Oral Presentations:

Complainants Cody Fischer -15 minutes (a portion of this time may be reserved for rebuttal)

Tripp City Council -15 minutes

8. Discussion regarding future meeting.

All items are scheduled for 09:00 a.m. Central Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Attorney General's Office, 605-773-3215, at least 48 hours before the meeting if you have a disability for which special arrangements must be made.

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-08
MEETINGS COMPLAINT AGAINST)	
STURGIS CITY COUNCIL – MEADE)	CERTIFICATE OF SERVICE
COUNTY)	
)	

The undersigned hereby certifies that a true and correct copy of the Notice of Hearing and proposed Agenda in the above-captioned matter, were served by United States mail, first class, postage prepaid upon Kellen B Willert, Bennett Main Gubbrud & Willert, 618 State Street, Belle Fourche, SD 57717-1419; and Mark Marshall, Attorney, City of Sturgis, South Dakota 57785, on this 21st day of October 2024.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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Pierre, South Dakota 57501-8501

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Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

November 4, 2024

Kellen B. Willert
Bennett Main Gubbrud & Willert
618 State Street
Belle Fourche, SD 57717-1419

Mark Marshall, Attorney
City of Sturgis
1040 Harley-Davidson Way
Sturgis, SD 57785

Re: In the Matter of Open Meeting Complaint 2024-08, Sturgis City Council – Meade County

Dear Mr. Willert & Mr. Marshall,

Enclosed please find a courtesy copy of the revised proposed agenda for the Commission's November 25, 2024 meeting. A Microsoft Teams link has been arranged that will allow the parties to appear remotely if they desire. Please let me know, as soon as possible, if you intend to appear remotely or in person. Also, please provide your email address and phone number so that you can be reached if technical difficulties arise. I can be reached at steven.blair@state.sd.us. As previously indicated, presentations regarding complaints will begin at 9:00 a.m. central time or as soon thereafter as matters may be heard.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Blair".

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure

SOUTH DAKOTA OPEN MEETINGS COMMISSION

AGENDA

Matthews Training Center – Foss Building
523 E. Capitol Avenue
Pierre, South Dakota 57501

November 25, 2024
9:00 a.m. Central Time

1. Approval of the Agenda
2. Public Comment period as per SDCL 1-25-1
3. Consideration of Pending Complaints

A. In the Matter of Open Meeting Complaint 2024-06 Carlyle Township

Oral Presentations:

Complainants Terry and Todd Koerner -15 minutes (a portion of this time may be reserved for rebuttal)

Carlyle Township -15 minutes

B. In the Matter of Open Meeting Complaint 2024-07 Pennington County Board of Commissioners

Oral Presentations:

Complainants Deb Hadcock and Travis Lasseter -15 minutes (a portion of this time may be reserved for rebuttal)

Pennington County Board of Commissioners -15 minutes

C. In the Matter of Open Meeting Complaint 2024-08 Sturgis City Council

Oral Presentations:

Complainant Tammy Bohn -15 minutes (a portion of this time may be reserved for rebuttal)

Sturgis City Council -15 minutes

D. In the Matter of Open Meeting Complaint 2024-09 City Of Lead Commission

Oral Presentations:

Complainant Gordon Phillips -15 minutes (a portion of this time may be reserved for rebuttal)

City of Lead Commission -15 minutes

[LUNCH BREAK 12:00-1:00 P.M CENTRAL TIME]

E. In the Matter of Open Meeting Complaint 2024-10 Green Valley Sanitary District

Oral Presentations:

Complainant Steven Myers -15 minutes (a portion of this time may be reserved for rebuttal)

Green Valley Sanitary District -15 minutes

F. In the Matter of Open Meeting Complaint 2024-11 Charles Mix County Commission

Oral Presentations:

Complainants Jeff and Jolene Stewart -15 minutes (a portion of this time may be reserved for rebuttal)

Charles Mix County Commission -15 minutes

G. In the Matter of Open Meeting Complaint 2024-12 Tripp City Council

Oral Presentations:

Complainants Cody Fischer -15 minutes (a portion of this time may be reserved for rebuttal)

Tripp City Council -15 minutes

8. Discussion regarding future meeting.

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If you wish to join this meeting by **Microsoft Teams** please join meeting at:

Meeting ID: 237 127 537 841

Passcode: YmqUmF

Or to join by **telephone** dial:

(605) 679-7263 with Phone conference ID: **212 419 247#**

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