ORDINANCE NO. 766

AN ORDINANCE AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS, BY AMENDING SECTIONS RELATING TO TRANSIENT MERCHANTS AND TEMPORARY BUSINESSES.

BE IT ORDAINED by the Common Council of the City of Custer, Custer County, South Dakota:

Section1. That Chapter 5.05, Article I, of the Custer Municipal Code of the City of Custer, South Dakota is hereby amended to add Section 5.05.025 and shall read as follows:

5.05.025. For the purpose of this section peddlers shall be considered the same as transient merchants for the purpose of permitting and licensing.

Section 2. That the title of Chapter 5.05 of the Custer Municipal Code of the City of Custer, South Dakota is hereby amended to read as follows:

PEDDLING, TRANSIENT MERCHANTS AND TEMPORARY BUSINESSES

Section 3. That Chapter 5.05 of the Custer Municipal Code of the City of Custer, South Dakota is hereby amended to include Section 5.05.000 Purpose to read as follows:

5.05.000 Purpose.

The purpose of the following regulations is to protect the local business owner's brick and mortar investments and livelihoods from unfair or unequal commercial competition by providing processes in which special event vendors, transient merchants and temporary/seasonal businesses can set up tents or booths within the city for a specific amount of time to display and sell their wares, for a fee, and augment sales tax revenues for the benefit of the community.

These regulations also provide owners of real property within the Central Business Districts, Highway Commercial Districts and Industrial Districts that do not have brick and mortar improvements to rent or lease their real property for seasonal/temporary businesses for a length of time not to exceed five months.

The intent of this ordinance is to discourage year-round businesses in temporary tents or structures and encourage the property owner to make improvements for a permanent business. This provides owners of vacant real property reasonable use of their property but at the same time protects permanent business owners. If such a business wishes to be year-round they must operate out of a suitable structure that meets the minimum building standards of the City.

The fees paid to the City by vendors, transient merchants and temporary businesses are meant to off-set the fact that these short term, seasonal or temporary commercial enterprises take advantage of the seasonal tourist business but do not pay back to the community through property taxes or increased property taxes for brick and mortar improvements on their property.

Section 4. That the title of Article II. Licensing of Transient Professional People and Merchants and Temporary Uses and Structures be amended to read as follows:

Article II. Licensing of Transient Merchants and Temporary Businesses.

Section 5. That Section 5.05.030 of Chapter 5.05, Article II, of the Custer Municipal Code of the City of Custer, South Dakota is hereby amended to read as follows:

5.05.030 Definitions.

For the purposes of this section:

"Transient merchant" means

a. any person, firm, corporation, partnership or association not having an operating place of business within the city who, for one (1) to twelve (12) days, engages in transient business in the city, selling goods, wares, merchandise or services or,
b. any person, firm or corporation operating a permanent business which is located within the city limits who, for one (1) to twelve (12) days, is selling such goods, wares, merchandise or services, away from his or her or its usual operating place of business and who, for the purpose of carrying on such business, hires, leases or occupies any public or private property or right-of-way. The person, firm or corporation so engaged shall not be relieved from the provisions of this section by reason of association with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer.

"Seasonal/Temporary business" means any person, firm, corporation, partnership or association that is operating place of business within the city for at least three (3) months but not more than five (5) months in any calendar year, selling goods, wares, merchandise or services on real property located in a Central Business District, Highway Commercial District or Industrial District.

"Year" means a twelve (12) month calendar period.

"Business" means the activity of buying and selling.

"Permanent business" means a brick and mortar business that operates more than five (5) months each calendar year, subject to verification through sales tax receipts.

(Ord. 574 (part), 2002: Ord. 541 (part), 2001)

5.05.040 Transient Merchant Permit and Temporary Business required.

A. Any firm, person or corporation which intends to operate as a transient merchant within

the corporate limits of the city and is located on property that is either zoned central business district, highway commercial district or industrial district shall be required to obtain a transient merchant's license from the City for each structure, stand, tent, vehicle, booth, location or place which is used by such merchant for the sale or distribution of goods or any other commercial activity and which occupies any public or private property or right-of-way. The person so engaged shall not be relieved from the provisions of this section by reason of association with any local operating business, dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business.

B. Any firm, person or corporation which intends to operate a seasonal/temporary business within the corporate limits of the city shall be required to obtain a seasonal/temporary Business License from the City.

C. The transient merchant permit/temporary business license must be posted in each individual stand during operation. (Ord. 574 (part), 2002: Ord. 541 (part), 2001)

D. A bona fide business that rents, leases or otherwise contracts to occupy all of or a portion of a commercial building for the purpose of conducting business is not subject to the regulations of this Chapter.

5.05.050 Application.

A. To obtain a permit or license, the owner of a transient merchant business or seasonal/temporary business shall file, in the office of the city finance officer, a verified application stating his or her name, and physical address, description and identification of the place in which he or she proposes to do business, dates of operation, name, address and phone number of the owner and the description of the goods he or she intends to handle.

B. Upon application, all transient merchant and seasonal/temporary businesses must provide proof that all applicable requirements of the Custer Municipal Code, South Dakota Department of Revenue, South Dakota Department of Health, South Dakota Electrical Code and the South Dakota State Plumbing Code for licensing, plumbing and electrical are being met.

C. All transient merchant and seasonal/temporary businesses shall contain approved toilet facilities or shall have contracted with the owners of permanent toilet facilities within three hundred (300) feet for employee access to the facilities. Operations that provide seating for the consumption of prepared and/or served foods or beverages shall provide, or have contracted for access to, approved toilet facilities by customers of the business within one hundred feet (100').

D. All transient merchant and seasonal/temporary businesses shall be located outside of clear sight triangles at streets, alleys and driveways. The leg of a clear sight triangle along a public street shall be seventy (70) feet in length. The leg of a clear sight triangle along an alley or driveway shall be twenty-five (25) feet in length.

E. Each seasonal/temporary business and transient merchant may display one sign to

advertise the business. The sign shall be in compliance with the Custer sign code, except that the sign may be no larger than sixteen (16) square feet. (Ord. 574 (part), 2002: Ord. 541 (part), 2001)

5.05.060 Fee and duration of license and permit.

A. Transient merchants shall pay a fee for each permit, to be valid for one (1) twelve (12) consecutive day period, or portion thereof, in any calendar year. Such fee shall be set by resolution of the city council. The finance officer shall note on the permit the time period for which it is effective. A business may purchase only two (2) transient merchant calendar year.(Ord. 574 (part), 2002: Ord. 548 (part), 2001: Ord. 541 (part), 2001)

B. Seasonal/temporary businesses shall pay a license fee for not less than three (3) months but not greater than five (5) months. Such fee shall be set by resolution of the city council. The finance officer shall note on the license the time period for which it is effective. A seasonal or temporary business wishing to operate more than five (5) months in any calendar year shall be required to meet the definition of a permanent business.

C. All seasonal/temporary businesses and transient merchants subject to these regulations shall pay a One-Hundred Dollar ($100.00) damage/cleanup deposit to the City which shall be returned to the applicant upon cessation of the business and after inspection and acceptance of the business area by the City.

NOW BE IT ORDAINED that all ordinances or parts thereof in conflict with this ordinance are hereby repealed. Should any section or part of this ordinance be determined to be invalid, the same shall not invalidate the remaining section(s) of this Ordinance.

Dated this 19th day of October, 2015

City of Custer City

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Jared Carson, Mayor

Attest _____

Laurie Woodward, Finance Officer

(SEAL)

First Reading: October 5, 2015

Second Reading: October 19, 2015

Publication: October 28, 2015

Vote:

Schleining: Maciejewski:

Heinrich: Herman:

Fischer: Nielsen: