

## **Title 5**

### **BUSINESS LICENSES AND REGULATIONS**

#### **Chapters:**

**5.04 Licenses Generally**

**5.05 Peddling and Transient Merchants**

**5.06 Contractor License**

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## Chapter 5.04

### LICENSES GENERALLY

#### Sections:

- 5.04.010 Application.**
- 5.04.020 Action on application.**
- 5.04.030 Payment of license fee.**
- 5.04.040 Finance officer to issue licenses.**
- 5.04.050 Finance officer to keep license on file.**
- 5.04.060 Revocations.**

#### **5.04.010 Application.**

Except as otherwise provided, an applicant for a license shall first make and file with the finance officer an application in writing therefor. The application shall contain such information as required by the licensing authority and must show that the applicant is eligible for the license for which application is made. (Prior code § 11-101)

#### 5.04.020 Action on application.

The finance officer shall upon the filing of an application for a license, present such application to the proper licensing authority for approval. Except as otherwise provided, all applications for licenses must be approved by the city council. The decision of the licensing authority approving or disapproving an application for license shall be endorsed thereon and the amount of the license fee shall be determined by such licensing authority. (Prior code § 11-102)

#### 5.04.030 Payment of license fee.

Except as otherwise provided, all applicants for licenses shall pay the fee therefor to the finance officer and receive proper receipt. (Prior code § 11-103)

#### 5.04.040 Finance officer to issue licenses.

Except as otherwise provided, it shall be the duty of the finance officer to issue licenses. (Prior code § 11-104)

#### 5.04.050 Finance officer to keep license on file.

The finance officer shall make out licenses provided for under the ordinances of the city in duplicate and keep a copy thereof on file in his office. Any application presented to the finance officer on which a license is issued shall be retained by him and filed with a copy of the license issued thereon. (Prior code § 11-105)

#### 5.04.060 Revocations.

Any license authorized in this chapter, or which may be granted by the city council, is granted with the

understanding that the council may at any time revoke the same with cause. Whenever any license shall be granted and money accepted therefor by the city, and said license shall be revoked, the money paid to and held by the city for the unexpired term of said license shall be refunded to the licensee except in those cases where said license shall be forfeited as a punishment for a violation of any ordinances of the city. Any license granted by the city, its mayor and the city council, is granted subject to the provisions of this chapter and said licensee is bound to these provisions. The city shall issue no license of any character exempt from the provisions of this chapter. (Ord. 458, 1996: prior code § 11-106)

## Chapter 5.05

### PEDDLING AND TRANSIENT MERCHANTS

#### Sections:

#### Article I. Peddling

- 5.05.010 Peddling from vehicles on streets.**
- 5.05.020 Peddling in parks.**
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- 5.05.040 Transient merchant's and temporary use/structure license required.**
- 5.05.050 Application.**
- 5.05.060 Fee and duration of license.**
- 5.05.070 Issuance.**
- 5.05.080 Exemptions from license fees.**
- 5.05.090 Special provisions.**
- 5.05.100 Penalty.**

#### Article I. Peddling

#### **5.05.010 Peddling from vehicles on streets.**

No person shall sell or offer for sale any goods or merchandise from a cart, wagon, automobile, truck or other vehicle in the streets or thoroughfares of the city except as hereinafter permitted. This section does not apply to the delivery of farm or garden products, where the order for it has been placed in advance, nor does it apply to drayage or the delivery of goods sold in the regular course of an established business. Nothing in this section shall prohibit the city from entering into a contract for the sale of ice cream and sundries for immediate consumption agreed to by common council. (Ord. 707 (part): 2011; Ord. 541 (part), 2001)

#### **5.05.020 Peddling in parks.**

It is unlawful for any transient merchant, peddler or any other person, except a person occupying a portion of the park under a valid concession agreement, to sell or offer to sell, to any person within any municipal park of the city, any goods, wares, merchandise, books, pictures, novelties, services, souvenirs or trinkets or any other article of commerce and trade, including goods of his own production or manufacture. (Ord. 541 (part), 2001)

#### **Article II. Licensing of Transient Professional People and Merchants and Temporary Uses and Structures**

#### **5.05.030 Definitions.**

For the purposes of this section:

## 5.05.030

"Transient merchant" means any person, firm, corporation, partnership or association not having an operating place of business within the city who, for one to twelve (12) days, engages in temporary or transient business in the city, selling goods, wares, merchandise or services or a permanent business person, firm or corporation which is located within the city limits who, for one 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. Excluded herefrom, however, are farmer's markets retailing merchandise or products of the person's own manufacture or production (SDCL 9-34-7) and the sale of fruits, vegetables or farm or garden products in their natural state. 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 temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer.

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

"Business" means the activity of buying and selling.

"Operating" means functioning in business on a year-round basis.

"Temporary use and structure" means any use or structure that is not located in a permanent structure and is not the primary use of the property. (Ord. 739, 2014; Ord. 707 (part), 2011; Ord. 574 (part), 2002; Ord. 541 (part), 2001)

### **5.05.040 Transient merchant's and temporary use/structure license required.**

A. Any firm, person or corporation which intends to operate a temporary business or temporary use/structure 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 purchase a transient merchant's license 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 temporary or transient business in connection with, or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business.

B. The transient merchant/temporary use license must be posted in each individual stand during operation. (Ord. 574 (part), 2002; Ord. 541 (part), 2001)

### **5.05.050 Application.**

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

B. Upon application, all transient merchants/temporary use 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 merchants/temporary uses 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 or access to temporary sanitation facilities approved by the public works director or designee. Operations that include prepared foods or beverages shall provide or have contracted for access to approved toilet facilities by customers of the business.

D. All transient merchants/temporary uses 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 temporary business 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.**

A. Transient merchants/temporary use shall pay a license fee for each twelve 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 license the time period for which it is effective.

B. A business may purchase only two (2) transient merchant's/temporary use licenses per location per twelve-(12) month period. (Ord. 574 (part), 2002: Ord. 548 (part), 2001: Ord. 541 (part), 2001)

#### **5.05.070 Issuance.**

A. On filing the application and payment of the fee prescribed in this section, the finance officer shall issue a license to the applicant to do business at the place described in the application, and for the time which the license fee has been paid in advance. (Ord. 574 (part), 2002: Ord. 541 (part), 2001)

#### **5.05.080 Exemptions from license fees.**

All vendors as defined in Section 5.05.030 shall be required to obtain a transient merchant's license in accordance with Sections 5.05.040, 5.05.050, and 5.05.060. The following vendors, however, shall be exempted from any fees for such license:

A. Sales where the proceeds are to be used exclusively for religious, charitable or benevolent purposes. Written proof of charitable, nonprofit status as declared by the IRS (i.e., 501(c)(3) documentation) must be presented during application;

B. Sale to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufacturers;

C. The distribution of goods for which there is no charge. All persons, firms or corporations distributing goods or performing a service for which there is no charge, shall be required to register with the city finance officer, their name, address, location of such distribution or service and goods which he or she or it is distributing or service which they are performing. (Ord. 707 (part), 2011: Ord. 574 (part), 2002: Ord. 548 (part), 2001: Ord. 541 (part), 2001)



5.05.090

**5.05.090 Special Provisions.**

The following vendors/uses shall have the following specific regulations.

A. Carnival or Circus. In any nonresidential district, a transient merchant permit may be issued for a carnival or circus but the permit shall be issued for a period not longer than twelve (12) days. The use shall set back from all residential districts a distance of not less than one hundred (100) feet. All provisions of this code shall be met.

B. Christmas Tree Sale. In any district, a transient merchant permit may be issued for the display and open-lot sales of Christmas trees, but the permit shall be issued for a period of time commencing no earlier than the third Saturday of November and ending prior to December thirty-first of that year.

C. Temporary Contractor's Buildings. In any district, a transient merchant/temporary use permit may be issued for a contractor's temporary office and equipment sheds incidental to a construction project. The office or shed shall not contain sleeping or cooking accommodations. The permit shall be valid for the duration of the construction period. The office or shed shall be removed upon completion of the construction of the structure(s);

D. Any proposed transient merchant or temporary use/structure that does not meet the criteria as established by this article may be allowed as a permitted conditional use when approved by the community development director or designee. (Ord. 739, 2014; Ord. 574 (part), 2002)

**5.05.100 Penalty.**

A. Any person, firm and/or corporation violating this chapter or any state laws may be subject to license revocation upon written notice of such violation.

B. Violation of this chapter constitutes a Class II misdemeanor. (Ord. 574 (part), 2002; Ord. 541 (part), 2001)



## Chapter 5.06

### CONTRACTOR LICENSE

#### Section

<b>5.06.010</b>	<b>Definitions.</b>
<b>5.06.020</b>	<b>License required.</b>
<b>5.06.030</b>	<b>License application.</b>
<b>5.06.040</b>	<b>License term and renewal.</b>
<b>5.06.050</b>	<b>Excise tax number required.</b>
<b>5.06.060</b>	<b>License use restricted.</b>
<b>5.06.070</b>	<b>License fee.</b>
<b>5.06.080</b>	<b>Insurance.</b>
<b>5.06.090</b>	<b>Suspension, revocation and reprimand of license.</b>
<b>5.06.100</b>	<b>Cooperation required.</b>
<b>5.06.110</b>	<b>Action by the board of appeals.</b>
<b>5.06.120</b>	<b>Appeals.</b>
<b>5.06.130</b>	<b>Penalties.</b>

#### **5.06.010 Definitions.**

Building contractingö means the enlargement, alteration, repair, improvement, conversion or new construction of any single, two or three family dwelling or any accessory building, structure, or improvement associated with any such structure for which a building permit is required.

"Class A commercial/residential contractor" means any individual, firm, company or corporation that is the general contractor, project administrator or project manager in charge of any residential or commercial construction project, or the prime contractor for any portion thereof, including spec homes, for which a building permit is required.

"Class B residential contractor" means any individual, firm, company or corporation that is the general contractor, project administrator or project manager in charge of any residential construction project, or the prime contractor for any portion thereof, including spec homes, for which a building permit is required.

"Class C contractor" means any individual, firm, company or corporation who is not a Class A or Class B contractor who enters into a contract with another party, or hires out any service that is required to be licensed under this section.

"Commercial construction" means the enlargement, alteration, repair, improvement, conversion or new construction of any structure other than a one (1) or two (2) family dwelling or townhome, or any part thereof, and any accessory building, structure, or improvement associated with any such structure for which a building permit is required.



5.06.010

"Construction" shall include, but is not limited to, cement or concrete contracting except for flat-work; masonry contracting; carpenter contracting; excavation contracting; demolition; all building trade contracting which includes roofing, remodeling, siding, rough framing; all phases of new construction, alterations, additions, repairs and demolition of structures; and asphalt pavement contracting and any items requiring a building permit within the licensing jurisdictional limits of the City of Custer.

"Contracting" means entering into a binding agreement, either written or verbal, between two (2) or more persons or parties to provide and/or receive specific services, to include, but is not limited to, trades associated with the construction industry.

"Contractor, general" shall mean the prime contractor hired by the consumer to be responsible for overseeing the entire construction project. The general contractor is the contractor named on the building permit application as the general contractor. The general contractor pays the two percent (2%) state excise tax for the project and is responsible for issuing the excise tax exemption certificate to the sub-contractors.

Employee means a person whose compensation for construction work is reported by the employer on an Internal Revenue Service W-2 and is also otherwise considered an employee under the applicable law.

"Flat-work" shall mean concrete sidewalks or driveways not more than thirty inches (30") above grade, not over any basement or story below, and not more than six inches (6") in thickness.

Personal supervision means the building contractor of the designated construction supervisor who oversees and directs the work for which he is licensed and for which a permit has been issued and that he or she is available to his or her laborers and he or she is able to and does determine that all work performed is in compliance with this chapter.

"Residential construction" means the enlargement, alteration, repair, improvement, conversion or new construction of any one or two-family dwelling or townhome, or any part thereof, and any accessory building, structure, or improvement associated with any such structure for which a building permit is required.

"Speculation home" or "spec home" shall mean:

A. New residential construction or the remodeling of an existing structure by the person who owns the land with the intent that upon completion of the project the property will be sold.

B. New residential construction or the remodeling of an existing structure by the person who owns the land where the structure is not occupied by the owner and is used for rental or income purposes.

C. New residential construction or the remodeling of an existing structure by the person who owns the land, where the structure is sold within three (3) years of completion of the project.

"Sub-contractor" means a contractor who is hired by the general contractor for special or specific jobs on a project which the sub-contractor has been listed as a sub-contractor on the building permit application and who receives an excise tax exemption certificate from the general contractor. Sub-contractors who are not exempted by the general contractor are considered a general contractor for their portion of that project. (Ord. 762 (part), 2015; Ord. 679 (part), 2010)

(Custer Supp. No. 14, 3-16)

**5.06.020 License required.**

It shall be unlawful for any person or persons representing or operating under the auspices of a firm or corporation to conduct, carry on or engage in the business of residential or commercial contracting work which requires that a building permit be obtained from the City of Custer without first being approved by the City of Custer and having had issued to them a valid contractor's license by the city.

The following are exempt from the requirements of this section:

- A. W-2 employees of any individual, firm, company or corporation that is licensed in accordance with this chapter when they are under the direction and control of that entity.
- B. A dwelling owner for work to be done on his or her property which he or she occupies as his or her own home or will occupy as his or her own home when the dwelling owner is acting as his or her own building contractor.
- C. A landlord or his or her agent for work to be done on his or her property when the landlord is acting as his or her own building contractor.
- D. Home repair or handyman service which provides services which are exempt from requiring a building permit or services otherwise exempted from the licensing requirements. (Ord. 762 (part), 2015; Ord. 679 (part), 2010)

**5.06.030 License application.**

Any person desiring to engage in the business of building contracting shall first make an application for a contractor's license to the City of Custer on the forms furnished.

In addition to the insurance requirements in Section 5.06.080 of this code, the city may require proof of identification and compliance with other applicable ordinances and laws of this city and the State of South Dakota.

(Ord. 679 (part), 2010)

**5.06.040 License term and renewal.**

All licenses issued under the provisions of this chapter are annual and expire on December 31 of every year regardless of the issue date. All renewal fees shall be paid prior to the license being renewed. (Ord. 679 (part), 2010)

**5.06.050 Excise tax number required.**

A valid South Dakota contractor's excise tax license number is required on all applications. (Ord. 679 (part), 2010)

**5.06.060 License use restricted.**

No licensed building contractor shall allow his or her name to be used by any other person directly or indirectly, either to obtain a building permit or to perform building contracting outside his or her personal supervision. (Ord. 679 (part), 2010)



5.06.070

**5.06.070 License fee.**

Class A Commercial/Residential Contractor - \$200 (\$100 annual renewal)

Class B Residential Construction Contractor - \$100 (\$50 annual renewal)

Class C Contractor - Contracted Services - \$50 (\$25 annual renewal)

Licenses that lapse a complete license year shall not be considered 'annual renewal'.  
(Ord. 762 (part), 2015; Ord. 679 (part), 2010)

**5.06.080 Insurance.**

Each contractor shall maintain a minimum of two hundred thousand dollars (\$200,000.00) of liability insurance or a sum of ten percent of the cost of the work to be performed, whichever is higher, on each project, as determined by the building permit. (Ord. 679 (part), 2010)

**5.06.090 Suspension, revocation and reprimand of license.**

The City of Custer planning administrator may refuse to issue, refuse to renew, or revoke a contractor's license by preparing a written report of the reasons for such refusal or revocation, and providing a copy of the report of the reasons for such refusal or revocation, and providing a copy of the report to the applicant. An applicant or contractor aggrieved by the decision of the city planning administrator may, in writing, request a hearing and shall state the reasons for such objections, within fifteen (15) days of receipt of such decision. The city planning administrator shall promptly schedule a hearing on the matter before the city planning commission, which shall act as the board of appeals on the issue. Written notice of the hearing shall be provided to the public by publishing and to the applicant by first class mail. The board of appeals shall conduct a full hearing on the matter with both the planning administrator and the applicant presenting facts and arguments to the board of appeals. (Ord. 679 (part), 2010)

**5.06.100 Cooperation required.**

A licensee or an applicant who is subject of an investigation by the city or by the board of appeals shall cooperate fully with the city or the board in its investigation. Cooperation includes but is not limited to:

- A. Responding fully and promptly to questions raised by the city or the board; and
- B. Providing copies of records in the person's possession relative to the matter under investigation as requested by the city or the board;
- C. Appearing at conferences or hearings schedule by the city or the board. (Ord. 679 (part), 2010)

**5.06.110 Action by the board of appeals.**

A board of appeals may suspend, revoke or refuse to renew a contractor's license if the board finds that, by a preponderance of evidence, the applicant or licensee:

- A. Has filed an application for a license which is incomplete in any material respect or contains statements which are false or misleading; or
- B. Has engaged in any fraudulent, deceptive, or dishonest act or practice; or

- C. Has been convicted in the past twelve (12) months of a violation of this chapter; or
- D. Has failed to cooperate as required in Section 5.06.100. (Ord. 679 (part), 2010)

**5.06.120 Appeals.**

Decisions of the board of appeals may be further appealed to the Custer city council, within thirty (30) days after the board of appeals' decision. (Ord. 679 (part), 2010)

**5.06.130 Penalties.**

Violation of this chapter shall be a Class II misdemeanor, and each day shall constitute a separate violation.

In addition, the community development director may issue a cease and desist order requiring immediate cessation of work. Said order shall be served on the individual supervising the project. (Ord. 679 (part), 2010)





## Chapter 5.08

### ALCOHOLIC BEVERAGE ESTABLISHMENTS

#### Sections:

- 5.08.010**     **Definitions.**
- 5.08.020**     **License required.**
- 5.08.030**     **Application for license to conduct business pursuant to this chapter.**
- 5.08.040**     **Action by council.**
- 5.08.050**     **Place of business.**
- 5.08.060**     **Hours of sale.**
- 5.08.070**     **Violation as ground for revocation or suspension of license—multiple licenses.**
- 5.08.080**     **No delivery—purchase only from licensed dealers.**
- 5.08.090**     **Classification and fees.**
- 5.08.100**     **Special malt beverage retailer’s license and retail on-sale wine retailer’s license to organizations.**
- 5.08.110**     **Special malt beverage license by current licensee.**
- 5.08.120**     **Special permit for alcohol on public property (brown bag permit).**
- 5.08.130**     **Purchase of alcoholic beverages.**
- 5.08.140**     **Number of liquor licenses.**
- 5.08.150**     **Fee for alcoholic beverage licensees who have video lottery licenses.**
- 5.08.160**     **On-sale restriction by school property.**

#### **5.08.010**     **Definitions.**

The terms used in this chapter, unless the context otherwise plainly requires, shall mean the same as are defined in South Dakota Codified Laws (SDCL), Chapter 35-1. (Ord. 680, 2011; Ord. 459, 1996; prior code § 3-101)

#### **5.08.020**     **License required.**

No person shall sell, exchange, barter, distribute or keep for sale any alcoholic beverages, as herein defined, without having obtained a license therefor, pursuant to the provisions of Title 35 of the South Dakota Codified Laws. All classes of licenses shall also be set out in Title 35, except where otherwise indicated. (Ord. 680 (part), 2011; prior code §§ 3-102, 3-103)

#### **5.08.030**     **Application for license to conduct business pursuant to this chapter.**

Any person desiring to enter into the alcoholic beverage business in the city shall submit an application for a license under the provisions of SDCL Title 35, to the city finance officer. The application shall be presented along with a check for the license fee. (Ord. 680 (part), 2011)

5.08.040

**5.08.040 Action by council.**

The common council may approve or disapprove an application for a license depending on whether the council deems the applicant a suitable person to hold the license and whether the council considers the proposed location suitable. The common council may, at its discretion, require the applicant to appear personally at any meeting of the council and to answer any questions which may be asked pertaining to the applicant or the place of business which may in any way pertain to the carrying on of the business applied for. (Ord. 680 (part), 2011)

**5.08.050 Place of business.**

The common council shall not approve any application to sell alcoholic beverages in the city in any place of business unless that place of business is located in an area zoned commercial on the zoning map of the city. (Ord. 680 (part), 2011)

**5.08.060 Hours of sale.**

The days and hours for the sale of alcoholic beverages shall be in accordance with SDCL Title 35, except that all licensees may sell alcoholic beverages on Sundays and Memorial Day. (Ord. 723, 2012; Ord. 680 (part), 2011; Ord. 674, 2010; Ord. 594, 2003)

**5.08.070 Violation as ground for revocation or suspension of license—multiple licenses.**

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

- A. Any provision of SDCL Title 35;
- B. Any rule promulgated pursuant to SDCL Title 35; or
- C. Any ordinance or regulation relevant to alcoholic beverage control that has been adopted by the city.

For any licensees with multiple alcoholic beverage licenses for the same premises, upon suspension or revocation of any license issued pursuant to this chapter or SDCL Title 35, such licensee shall cease operation under all alcoholic beverage licenses held by such licensee for the same premises for the same period as the suspension or revocation. (Ord. 680 (part), 2011)

**5.08.080 No delivery—purchase only from licensed dealers.**

No package dealer or off-sale dealer as defined by this chapter shall permit or shall make any deliveries of alcoholic beverages outside their place of business. No person shall buy any alcoholic beverages in package except from a package dealer, holding a valid license. (Ord. 680 (part), 2011; Ord. 610 (part), 2005; Ord. 597, 2004; prior code § 3-107)

**5.08.090 Classification and fees.**

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

Off-sale liquor license	January 1 through December 31	\$1,500.00/year
On-sale liquor license	January 1 through December 31	\$1,200.00/year
Retail (on-off sale) wine license	January 1 through December 31	\$500.00/year
On-off sale malt beverage license	July 1 through June 30	\$300.00/year
Off-sale malt beverage license	July 1 through June 30	\$200.00/year
Off-sale malt beverage & SD farm wine license	July 1 through June 30	\$225.00/year
Transfer fees		\$150.00

(Ord. 680 (part), 2011; Ord. 610 (part), 2005; prior code § 3-106)

**5.08.100 Special malt beverage retailer’s license and retail on-sale wine retailer’s license to organizations.**

The city may issue a special malt beverage retailer’s license and/or a special retail on-sale wine retailer’s license to any public, civic, charitable, educational, fraternal or veterans organization in conjunction with a special event within the municipality. An educational organization does not include any elementary, secondary or higher educational institution in the public school system of this state. A special license issued pursuant to this section shall only be issued to the organization for the location and dates specified on the application. Any license issued pursuant to this section may be issued for a period of time established by the common council, however, such period may not exceed fifteen (15) consecutive days, with each day expiring at twelve o’clock (12:00) midnight.

There shall be a special license fee of fifty dollars (\$50.00) for the first day and five dollars (\$5.00) per day thereafter.

The license must be issued in the same manner as any other alcoholic beverage license including the requirement that notice of the application be published and a public hearing be held, with the exceptions that the state does not have to grant approval. The common council shall have sole discretion to approve or disapprove the application, depending on whether it deems the applicant to hold such license and whether it considers the proposed location suitable.

If an organization receiving a license pursuant to this section conducts a street dance in conjunction with the special event, the organization shall provide qualified security personnel as deemed necessary by the governing body which issued the license to maintain order during the street dance.

The applicant must apply for this license not less than forty-five (45) days prior to the scheduled event. (Ord. 680 (part), 2011)

**5.08.110 Special malt beverage license by current licensee.**

The city may issue a special malt beverage license to any holder of an alcoholic beverage license issued pursuant to SDCL 35-4-2(4), (6), or (16) in conjunction with a special events temporary malt beverage license in

addition to any other licenses held by the special events applicant. A special license issued pursuant to this section may only be issued to the person and location specified and for the dates specified on the application.

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(Custer Supp. No. 9, 2-11)

## 5.08.110

The fee for the license shall be the same as the fee established in SDCL 35-4-2(16).

The license must be issued in the same manner as any other alcoholic beverage license, including the requirement that notice of the application be published and a public hearing be held, with the exceptions that the state does not have to grant approval. The common council shall have sole discretion to approve or disapprove the application, depending on whether it deems the applicant suitable to hold such license and whether it considers the proposed location suitable.

Any license issued pursuant to this section may be issued for a period of time established by the common council, however, such period may not exceed fifteen (15) consecutive days, with each day expiring at twelve o'clock (12:00) midnight.

The applicant must apply for this license not less than forty-five (45) days prior to the scheduled event. (Ord. 680 (part), 2011)

### **5.08.120 Special permit for alcohol on public property (brown bag permit).**

The consumption of alcoholic beverages in any public place except at on-sale locations is prohibited. "Public place" is defined as any place, in or out of a building, commonly and customarily open or used by the general public and any street, highway, alley, public parking area or park.

The city may issue a permit for the consumption or blending of alcoholic beverages at a public place upon receipt of a written request from the person(s) or organization.

A permit granted pursuant to this provision shall be for a length of time authorized by the common council which shall not exceed twenty-four (24) hours and shall not be permitted between the hours of two o'clock (2:00) a.m. and seven o'clock (7:00) a.m.

The granting of a permit pursuant to this provision does not authorize person(s) or organization granted a permit to sell alcoholic beverages and the person(s) or organization granted a permit pursuant to this provision is prohibited from selling alcoholic beverages.

A special permit issued pursuant to this section may only be issued to the person(s) or organization, location and date specified on the application.

An application fee of five dollars (\$5.00) shall be submitted with the application for the special permit.

The applicant must submit an application permit not less than forty-five (45) days prior to the scheduled event in order to allow sufficient time for the common council to consider the request.

The applicant must be at least twenty-one (21) years of age and provide an acceptable form of identification, together with a signed hold harmless agreement and the name, policy number and expiration date of the applicant's homeowner's insurance or liability insurance carrier. (Ord. 680 (part), 2011)

### **5.08.130 Purchase of alcoholic beverages.**

Each licensee classified in Sections 5.08.090 and 5.08.110 of this chapter shall buy all alcoholic beverages through the city's alcoholic beverage license and shall be subject to all provisions of SDCL Title 35. The licensee shall pay directly the distributor of all alcoholic beverages for any and all invoices attributable to such establishment.

Each licensee classified in Sections 5.08.090 and 5.08.110 of this chapter shall pay to the city on or before the tenth of each month, a mark-up of ten percent on all alcoholic, non-alcoholic wine and malt beverage, or malt beverage invoices from the preceding month and submit the monthly remittance form itemizing all costs. All freight or delivery charges shall be considered part of the invoice cost. Additionally, establishments that brew their own malt beverage shall remit to the city fifty cents (\$0.50) per gallon for the mark-up on all malt beverage that is brewed at their establishment. (Ord. 708, 2012; Ord. 680 (part), 2011)

**5.08.140 Number of liquor licenses.**

The number of liquor licenses issued in the city shall be subject to the determination as set forth in SDCL 35-4-11, as amended. No person, corporation, or business entity other than the city may be the holder of, have an interest in, or participate in an operating agreement for more than one retail license issued under SDCL 35-4-2(3), off-sale liquor license. (Ord. 680 (part), 2011; Ord. 615, 2005; prior code § 3-108)

**5.08.150 Fee for alcoholic beverage licensees who have video lottery licenses.**

Any person who is licensed pursuant to SDCL 35-4-2(4), (6), (11), (12), (13), or (16), and who is issued a video lottery establishment license pursuant to SDCL 42-7A-41 must pay an additional annual fee for locating video lottery machines on the licensed premises. The fee is established at fifty dollars (\$50.00) for each video lottery machine and the fee shall be paid at the same time and in the same manner as the fees paid on licenses issued pursuant to SDCL 35-4-2. All fees received under this section shall be deposited into the general fund of the city. (Ord. 680 (part), 2011; Ord. 457, 1996; Ord. 374 (part), 1992; prior code § 3-109)

**5.08.160 On-sale restriction by school property.**

Any on-sale licensed property, that is, property to property, within two hundred (200) feet of school property may not serve alcoholic beverages outside of the building and all alcoholic beverages must stay within the structure. (Ord. 680 (part), 2011)





## Chapter 5.12

### COMMERCIAL ANIMAL-DRAWN VEHICLES

#### Sections:

5.12.010 Definitions.

5.12.020 Animal-drawn vehicles--Permit required.

5.12.030 Animal trailrides--Permit required.

5.12.040 Conditional use-on-review permit.

5.12.010 Definitions.

"Commercial horse- or other animal-drawn vehicle" means and includes but is not limited to wagons, buggies, stagecoaches or other horse- or animal-drawn vehicles operated on a regular and commercial basis for hire or as a part of any commercial promotion or development, but excluding occasional casual noncommercial use of streets and alleys, and excluding use during authorized parades and other celebrations within the city.

"Commercial horse or other animal trailrides" means any commercial use or rent of horses or the conducting of guided trailrides within the streets and alleys of Custer, or use as a part of any commercial development or promotion, but shall exclude casual personal use, and use of the streets and alleys during parades and other special events authorized by the common council of the city. (Ord. 389 (part), 1993: prior code § 9-116 (A))

5.12.020 Animal-drawn vehicles--Permit required.

No commercial horse- or other animal-drawn vehicle as defined in Section 5.12.010, shall be allowed to travel or be permitted in any manner upon the streets and alleys of the city, unless a conditional use-on-review permit has been granted under Section 5.12.040 of this chapter. (Ord. 389 (part), 1993: prior code § 9-116 (B))

5.12.030 Animal trailrides--Permit required.

No commercial horse or other animal trailride or other commercial operation shall be permitted to travel or be permitted in any manner upon the streets and alleys of the city, unless a conditional use-on-review permit has been granted under Section 5.12.040 of the chapter. (Ord. 389 (part), 1993: prior code § 9-116 (C))

5.12.040 Conditional use-on-review permit.

A. Owners of commercial animals and/or animal-drawn vehicles as defined in Section 5.12.010 may apply for a conditional use-on-review permit allowing a commercial trailride or animal-drawn vehicle ride to operate on the public streets of Custer City. Applications shall be in writing and shall state the following:

1. Name and address of owner;
2. Name and address of business entity responsible for daily operations;
3. Description of the proposed operation (number of animals, types of vehicles, proposed location and proposed route);
4. Planned safety precautions.

Applications shall be filed with the finance officer, who shall then place the application upon the agenda of a regular city council meeting within one month. There shall be a fee of twenty-five dollars (\$25.00) payable annually to the city finance officer for the conditional use-on-review permit.

- B. A conditional use-on-review permit shall only be granted if approved by a majority vote of the city

council.

C. If the city council grants the applicant a conditional use-on-review permit, the applicant must, prior to opening for operation procure one million dollars (\$1,000,000.00) in liability insurance coverage, with Custer City as an additional named insured; and shall cause proof of the aforementioned coverage to be transmitted to the city finance officer on a monthly basis. Lapse of insurance coverage for any reason is a violation of the conditional use-on-review permit and operates as an automatic withdrawal of the permit.

D. While the conditional use-on-review permit is in force all horses or animals used for a commercial venture operating under the conditional use-on-review permit must wear fecal waste collection bags while travelling on the public streets and/or alleys; horse- or other animal-drawn wagon teams must be equipped with a "Flying W" or other comparable safety device, regardless of team size. Failure to comply with the provisions of this section operates as an automatic withdrawal of the permit.

E. None of the provisions of this section shall in any way abrogate or negate the municipal ordinance in regard to public nuisances. (Ord. 389 (part), 1993: prior code § 9-116 (D))

## Chapter 5.16

### PAWNBROKERS

#### Sections:

5.16.010 Pawnbroker defined.

5.16.020 License required--Fee.

5.16.030 Fixed premises.

5.16.040 License--Revocation.

5.16.050 Records required.

5.16.060 Inspection of records or license and pledged property.

5.16.070 Pawn tickets.

5.16.080 Reports to the chief of police or county sheriff--Duty of police department/sheriff department.

5.16.090 Effect of hold order.

5.16.100 Accepting articles from other than lawful owner.

5.16.010 Pawnbroker defined.

A. For the purposes of this chapter, a "pawnbroker" is any person who:

1. Engages in the business of lending money on the deposit of pledge of personal property, other than securities, or evidence or indebtedness; or

2. Purchases personal property with an expressed or implied agreement or understanding to sell it back at a stipulated price.

B. This definition shall exempt the following transactions:

1. Any person, firm or corporation selling new, unused articles, and any receiving or taking in used articles or trade from the purchasers of the new articles against the purchase price of said new articles which are sold for their market value;

2. Casual and occasional sales of used household goods by the owner thereof to the public, on a nonreceiving basis, if the seller, at time of sale, is not engaged for profit in the business of selling goods of that or similar nature. This category includes those sales commonly referred to as "garage sales";

3. Transaction in secondhand goods at stores or events sponsored by nonprofit corporations or associations or fraternal or religious organizations. (Ord. 344 § 1, 1990)

5.16.020 License required--Fee.

No person shall carry on the business of pawnbroker without first applying for and securing a license. The annual license fee for pawnbrokers shall be one hundred dollars (\$100.00). (Ord. 344 § 2, 1990)

5.16.030 Fixed premises.

A. No person shall engage in business as a pawnbroker unless said person has a fixed premises where said business is conducted, either on a continuing basis or from time to time, and unless said person has first obtained a license to engage in that business at that premises.

B. For the purpose of this section, "fixed premises" means and includes any nonmobile premises where such business is conducted and said owned or purchased secondhand articles are held whether or not that premises remains in the same location during the period the license is in effect. (Ord. 344 § 3, 1990)

5.16.040 License--Revocation.

A license issued to a licensee under this chapter, who shall have violated the provisions of this chapter, may be revoked by the common council of the city after ten (10) days' written notice and a public hearing. (Ord. 344 § 4, 1990)

5.16.050 Records required.

A. Every pawnbroker shall keep books or records of pawn tickets in a manner satisfactory to the chief of police or Custer County sheriff, where he shall accurately enter, at the time of purchasing or receiving any personal property and after requiring and observing identification from the person seeking to pawn the property, a record of the following information:

1. The name of the person from whom the property is purchased or received, his place of residence, and his date of birth;
2. A detailed and accurate description of each article which shall include, if available, the manufacturer's name, style, model number, engraved initials or other identifying marks;
3. The date and time of transaction;
4. The amount necessary for redemption;
5. The date when the article is to be redeemed;
6. Any mortgage or bill of sale taken, or receipt of pawn ticket given;
7. The rate of interest being charged;
8. The pawnbroker is required to obtain the persons driver's license number and the state of issuance or, if available, the identifying number from at least one form of government-issued identification.

B. Every pawnbroker shall also record the date of disposition or redemption from pawn of said article or any part or portion thereof. Said disposition report shall be located in the same book and at the same place where the receiving records of said article are located.

C. Any person who fails to keep such records or fails to make the required entries therein, or shall intentionally or knowingly make any false or unintelligible entry, or any entry which he has reason to believe is untrue, or who shall fail to make the inquiries necessary to enable him to make such entries for any of them, or who shall fail to produce his records when requested by a city police officer or deputy sheriff during reasonable business hours, or who shall destroy or wilfully permit such records to be destroyed or lost, shall be guilty of a misdemeanor.

D. The records required by this section shall be maintained for one year after the date of purchase or receipt and shall be made available for inspection to city police officers or deputy sheriffs during reasonable business hours. (Ord. 344 § 5, 1990)

**5.16.060 Inspection of records or license and pledged property.**

A. The books or records required by Section 5.16.050 to be kept by pawnbrokers shall be open to the inspection by law enforcement officers during reasonable business hours.

B. The pawnbroker shall produce and show any article pledged in connection with any loan.

(Ord. 344 § 6, 1990)

**5.16.070 Pawn tickets.**

At the time of receiving a pledge and upon the subsequent renewal of a loan, the pawnbroker shall deliver to the pledgor or his agent a pawn ticket, which pawn ticket shall be correspondingly serially numbered, and shall contain the following information: The name and address of the pawnbroker; a generic description of the pledge with such particular details of description noted whenever possible in order to distinguish the article or articles; the date and time of the transaction; the amount, duration and terms of the loan. The pawnbroker may insert on the pawn ticket any other terms, conditions and information that are not inconsistent with the provisions of this chapter.

(Ord. 344 § 7, 1990)

**5.16.080 Reports to the chief of police or county sheriff—Duty of police department/sheriff department.**

It shall be the duty of the Custer police department or Custer County sheriff department to periodically contact the licensed premises under this chapter to inspect or obtain copies of records required to be kept according to Section 5.16.050 of this chapter, setting forth a description of the person by whom they were left in pledge or sold.

(Ord. 344 § 8, 1990)

**5.16.090 Effect of hold order.**

The chief of police, county sheriff or any authorized law enforcement officer may, by written order, order a pawnbroker or secondhand dealer to hold any specified article or articles, deposited with or in custody of such pawnbroker or secondhand dealer, for purposes of further investigation by said law enforcement agency, when said item or items are believed to be stolen. A hold order shall remain in effect for a period of thirty (30) days commencing the day on which the hold order was delivered to the pawnbroker or secondhand dealer. No sale or other disposition may be made of the article or articles while such hold order remains outstanding, unless released by officers issuing the hold order.

(Ord. 344 § 9, 1990)

**5.16.100 Accepting articles from other than lawful owner.**

A pawnbroker who accepts in pledge any article as security for a loan from a pledgor who is not the owner thereof, obtains no property in the article, either by reason or maturation of the loan or by transference of the pawn ticket to the pawnbroker by the pledgor or holder thereof. Ignorance of the fact that the pledged article was lost or stolen shall not be construed to affect the question of title, and if the pawnbroker shall sell such article to a third person, he shall remain liable to the original owner.

(Ord. 456, 1996: Ord. 344 § 10, 1990)



5.24.010

## **Chapter 5.24**

### **MISCELLANEOUS BUSINESS REGULATIONS**

#### **Sections:**

**5.24.010 Concession stands.**

#### **5.24.010 Concession stands.**

Any person or corporation desiring a concession for the maintenance of any amusement stand, merchandise selling stand, lunch counter or any form of entertainment provided by means of apparatus upon any holiday or celebration day observed by the city and such business stand shall be of a temporary character for the duration of the observed celebration or holiday only, said person or corporation may secure such concession from the mayor with the approval of the city council upon payment of such sums and acceptance of terms as set forth by resolution of the city council.

(Prior code § 11-401)

(Custer Supp. No. 8, 3-10)

**Chapter 5.60****TAXIS****Sections:****Article I. General Provisions****5.60.010 Definitions.****5.60.020 Transporting intoxicating liquor prohibited.****5.60.030 License—Application—False statements.****Article II. Business License****5.60.040 Required.****5.60.050 Application.****5.60.060 Issuance—Required findings.****5.60.070 Fee.****5.60.080 License number to be displayed on vehicle.****5.60.090 Commercial Auto Insurance****Article III. Driver's Licenses****5.60.100 Required.****5.60.110 Qualifications of applicant.****5.60.120 Applicant to be fingerprinted.****5.60.130 Application—Investigation—Issuance.****5.60.140 Application—Denial—Appeals.****5.60.150 Fee.****5.60.160 Term.****5.60.170 To be carried on person and exhibited upon request.****5.60.180 Suspension—Revocation.****Article I. General Provisions****5.60.010 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ōDriverö means one who actually engages in the driving of a taxicab.

ōOperatorö means a person engaged in operating a taxicab business.

ōSeating capacityö means the number of persons, not including the driver, who can be conveniently seated in

a taxicab without crowding.

õTaxicabõ means a motor vehicle for carrying passengers, with a seating capacity for seven (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 õtaxicabõ shall not include funeral cars or ambulances.

õWheelchair transportõ means a motor vehicle for carrying passengers using a wheelchair and their accompanying guests, with a seating capacity for seven (7) persons or less, not including the driver, not traveling

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any definite or prescribed route, operated by a driver, and carrying or accepting passengers using a wheelchair and their accompanying guests for hire, but shall not include funeral cars or ambulances. Except as otherwise provided, wheelchair transports shall be subject to the same rules and regulations as taxicabs.

(Ord. 670 (part), 2009)

**5.60.020 Transporting intoxicating liquor prohibited.**

All licenses issued under this chapter shall be subject to revocation at any time by the city council, if any taxicab operated or used by the licensee shall be used for the delivery of intoxicating liquor or for any other unlawful purpose. Upon the revocation, the license fee paid shall be retained by the city.

(Ord. 670 (part), 2009)

**5.60.030 License—Application—False statements.**

Any license issued under the provisions of this chapter shall be revoked by the Custer County sheriff's office upon discovery of any false material statement made in the application for the license.

(Ord. 670 (part), 2009)

**Article II. Business License**

**5.60.040 Required.**

No person shall engage in the business of operating a taxicab upon the streets, without a license as provided by this article.

(Ord. 670 (part), 2009)

**5.60.050 Application.**

Every person desiring a license to operate a taxicab business in the city shall make application in writing to the finance office in the general form required for all applications for licenses and shall also give the following additional information:

- A. Previous experience in the business, if the applicant has not been licensed before; and
- B. Number of taxicabs to be operated.

(Ord. 670 (part), 2009)

**5.60.060 Issuance—Required findings.**

The finance officer or his or her designee shall approve the issuance of a license applied for under this article, if it is satisfied that the applicant has met the following requirements:

- A. That he or she is a fit person to engage in the business; and
- B. That his or her vehicles and equipment are such as are consistent with the safety of the public.

(Ord. 670 (part), 2009)

**5.60.070 Fee.**

The fee for a license under this article shall be as follows:

- A. Initial fee: seventy-five dollars (\$75.00); and

B. Annual renewal fee: fifty dollars (\$50.00).  
(Ord. 670 (part), 2009)

**5.60.080 License number to be displayed on vehicle.**

Every operator of any taxicab licensed under this article shall carry on each vehicle, on the rear of same and in a conspicuous place, a license plate showing his or her license number as provided by the city at the time of issuing the license.

(Ord. 670 (part), 2009)

**5.60.090 Commercial auto insurance.**

Every operator of any taxicab or bus licensed under this article must maintain insurance liability coverage in a minimum of two million dollars (\$2,000,000) per occurrence with Custer City as an additional insured, and shall provide proof of such insurance coverage to the finance officer on a quarterly basis.

(Ord. 670 (part), 2009)

**Article III. Driver's Licenses****5.60.100 Required.**

No person shall drive, or be engaged or employed in the business of driving, upon the public streets of the city, any taxicab, without first having procured a license therefore from the finance office.

(Ord. 670 (part), 2009)

**5.60.110 Qualifications of applicant.**

Each applicant for a driver's license must comply with the following:

- A. Be of the age of eighteen (18) years or over;
- B. Have a Class C drivers license endorsement;
- C. Be free from any impairment that would affect applicant's ability to properly operate a taxicab;

D. Make a sworn statement giving full name, residence, length of time applicant has resided in the city, previous employment history, whether applicant has ever been convicted of a felony or a misdemeanor, and whether applicant has been previously licensed as a driver, and if so, where and when, and whether applicant's license has ever been revoked, and for what cause.

(Ord. 670 (part), 2009)

**5.60.120 Applicant to be fingerprinted.**

Each applicant for a license under this article shall be fingerprinted by the Custer County sheriff's department.

(Ord. 670 (part), 2009)

**5.60.130 Application—Investigation—Issuance.**

The application for a taxicab driver's license shall be investigated by the Custer County sheriff's office who shall approve or deny the application based on the results of the criminal background investigation and applicant's submitted information. Any denial is subject to appeal to the city council.

(Ord. 670 (part), 2009)

**5.60.140 Application—Denial—Appeals.**

If the application is rejected, the applicant may request a personal appearance before the city council to offer evidence why the application should be reconsidered. If, upon consideration, a majority of the council votes for authorization of the license, the city's finance office shall issue a license pursuant to the provisions of this chapter.

(Ord. 670 (part), 2009)

**5.60.150 Fee.**

A. The fee for a license under this article shall be as follows:

1. Initial fee: fifty dollars (\$50.00);
2. Renewal fee: twenty-five dollars (\$25.00); and
3. Holder of an individual merchant security/private security license for the same period: ten dollars (\$10.00).

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B. If any taxicab driver license application is withdrawn, recommended for denial by the sheriff's department, or denied by the council, no portion of the fee shall be refunded.  
(Ord. 670 (part), 2009)

**5.60.160 Term.**

Any license issued under this article shall expire on December 31 next following its issuance; provided, however, any license applied for after October 1 of any calendar year shall remain in effect until December 31 of the succeeding calendar year, unless sooner revoked, canceled or otherwise terminated.  
(Ord. 670 (part), 2009)

**5.60.170 To be carried on person and exhibited upon request.**

Each person licensed under this article shall have such license in his or her possession whenever he or she is engaged in driving a taxicab, and shall exhibit the same for inspection whenever he or she is requested to do so by a law enforcement officer.  
(Ord. 670 (part), 2009)

**5.60.180 Suspension—Revocation.**

Any license issued under this chapter may be revoked, for cause, by the city council, after notice to the holder of the license and an opportunity for hearing before the city council. The Custer County sheriff's office shall have the authority to suspend any license issued under this chapter for good cause pending a hearing before the council. The power to suspend the license shall be exercised only if it shall appear to the Custer County sheriff's office that there is probable cause to believe that the holder of the license has committed a crime involving moral turpitude. The holder of any license suspended by the Custer County sheriff's office shall have a right to a hearing before the Custer County sheriff's office within forty-eight (48) hours of a written request therefore. As used herein the term Custer County sheriff's office shall include the Custer County sheriff's office and any subordinate officer temporarily acting as the officer in charge of the sheriff's office.  
(Ord. 670 (part), 2009)

(Custer Supp. No. 8, 3-10)

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