

Custer County Commission Meeting (Wednesday, August 11, 2021)

Members present:

Commissioners Jim Lintz, Mark Hartman, Mike Linde, Craig Hindle, Travis Bies and Commission Legal Counsel Susan Anderson.

A. Commission Meeting was called to order at 8:00 AM followed by the Pledge of Allegiance.

B. Adopting of the agenda

1. Motion by Hartman and seconded by Linde to approve the agenda as presented; vote taken, all aye; motion carried.

C. Consent Agenda

1. Motion by Hindle and seconded by Bies to approve the minutes of the July 28, 2021 Commission Meeting, the minutes of the August 3, 2021 Special Commission Meeting, the following travel requests, vouchers and monthly reports; vote taken, all aye; motion carried.

Travel requests approved: Todd Fish to SDDVA Annual Benefits Conference in Pierre, SD, at a cost of \$294.50; Dawn McLaughlin, Teri L Morgan and Terri Cornelison to 2021 County Convention in Rapid City, SD, at a cost of \$555.

Vouchers approved as follows:

PAYROLL: Pay Period ending 8/05/2021; Commissioners \$6,409.10; Auditor \$8,443.48; Treasurer \$13,950.30; Info Systems & Tech \$2,850.53; States Attorney \$13,101.88; Courthouse Building \$7,021.86; Director of Equalization \$14,812.14; Register of Deeds \$4,871.86; Veterans Service \$1,039.39; Human Resources \$2,164.16; Sheriff \$45,708.95; Coroner \$322.95; Nurse \$555.76; Library \$9,028.75; Conservation \$454.91; Weed & Pest Control \$5,183.08; Planning \$8,190.95; County Road & Bridge \$39,381.93; Emergency Management \$2,927.70; 24/7 Sobriety \$1,073.82; 911/Communications \$16,061.69

COMMISSIONERS: Southern Hills Publishing \$486.02; Golden West Telecommunications \$30.27

COURT: Kayla Maruska \$41.80; Michael Morgan \$24.20

AUDITOR: Golden West Telecommunications \$111.09; SD Association of County Commissioners and County Officials \$185

TREASURER: Golden West Telecommunications \$139.55; SD Association of County Commissioners and County Officials \$185

INFO SYSTEMS & TECH: Golden West Telecommunications \$55.54

STATE'S ATTORNEY: Blue 360 Media \$6.75; Lexisnexis \$348; Golden West Telecommunications \$138.86; Culligan Water \$37

COURT APPOINTED ATTORNEY: Beesley Law Office \$744.55; Garland Goff \$781.15; Grey & Eisenbraun Law \$2,066.80

COURTHOUSE BUILDING: Golden West Telecommunications \$27.77; Culligan Water \$50.72

DIRECTOR OF EQUALIZATION: Arrowwood Resort & Conference Center \$847.60; Quill \$482.77; Golden West Telecommunications \$166.88

REGISTER OF DEEDS: Quill \$387.53; Golden West Telecommunications \$111.09; SD Association of County Commissioners and County Officials \$185

VETERANS SERVICES: Golden West Telecommunications \$27.77

INFO TECHNOLOGY: Golden West Technologies \$7,668.51; Golden West Telecommunications \$10; Schneider Geospatial LLC \$2,715

HUMAN RESOURCES: Golden West Telecommunications \$27.77; Evergreen Office Products \$46.59

SHERIFF: Black Hills Energy \$65.18; Pennington County Sheriff \$320.98; McLeod's Printing \$90.26; Verizon Connect \$193.20; City of Custer \$340; Golden West Telecommunications \$287.71; Sonnel Technologies \$2,436.78; Active 911 Inc. \$390; Dale's Tire & Retreading \$737; Culligan Water \$53; SD Department of Public Safety \$2,700; Leads Online \$1,428

PRISONER CARE: Pennington County Jail \$184.44; Mary Seifert \$75; Ann Allen \$150; CMi \$2,500; Satellite Tracking of People \$100.75

SEARCH & RESCUE: Black Hills Energy \$287.04; Lynn's Dakota Mart \$64.46; Sander Sanitation \$16.53; Custer Ace Hardware \$6.99; Golden West Telecommunications \$95.95; Nelson's Oil & Gas \$133.77

AIRPORT: Custer Do It Best \$97.20; Jenner Equipment \$1,205.08; The Overhead Door Company \$1,4402.45; Brenden Hendrickson \$3,666.67; Golden West Telecommunications \$113.83; Custer Chamber of Commerce \$260

MENTALLY ILL: Den Herder Law Firm \$151.10; Kennedy Pier Loftus Reynolds LLP \$188.10

MENTAL ILLNESS BOARD: Pennington County State's Attorney \$215; Yankton County Treasurer \$125

LIBRARY: Mt Rushmore Telephone \$132.82; Golden West Telecommunications \$141.90

EXTENSION: Quill \$52.24; Golden West Telecommunications \$119.73

WEED & PEST: Warne Chemical & Equipment \$42; Shirley Kopka \$82.49; Golden West Telecommunications \$27.77; Adams Industrial Supply \$67.60; Terry Hughes \$24.38; Culligan Water \$13.59

PLANNING: Southern Hills Publishing \$93.54; Golden West Telecommunications \$113.34

COUNTY ROAD & BRIDGE: A & B Welding \$104.77; Black Hills Energy \$72.10; Floyd's Truck Center \$1,119.48; French Creek Supply \$75.95; Grimm's Pump Service \$50.39; Prairie Auto Parts \$58.72; Mt Rushmore Telephone \$118.07; Pheasantland Industries \$2,049.06; S & B Motor Parts \$715.26; Town of Buffalo Gap \$61; Snap On Tools \$370; Black Hills Gravel \$18,870; Custer Ace Hardware \$46.99; Golden West Telecommunications \$219.73; Silverback Plumbing LLC \$196.65; Stern \$17,869.82; Running's Supply \$79.34; Matco Tools \$136.95; Nelson's Oil & Gas \$20.62

FIRE PROTECTION: Buffalo Gap Fire Department \$28,570

EMERGENCY MANAGEMENT: Golden West Technologies \$5,441.86; Golden West Telecommunications \$44.87

24/7 SOBRIETY: Intoximeters Inc. \$878.50

BUILDING: Black Hills Energy \$4,020.77; Summit Signs & Supply \$60; McPherson Propane \$89; Floors & More Cleaning & Restoration \$3,390.05; A-Z Shredding \$12.12

EMERGENCY LINE: Golden West Telecommunications \$744.87; Culligan Water \$33.50; SD Department of Public Safety \$2,700

Monthly Reports approved:

- Register of Deeds July 2021 statement of fees with \$640 collected in state fees, \$24,147 in county fees, and \$582 for SDACO fees for a total of \$25,369.
- The Auditor's report with the Treasurer for July 2021 as follows: Cash \$2,404.32; Checks/Drafts \$440,300.76; Petty Cash \$1,050; SD Fit \$520,413.59; 1st Interstate Bank checking \$397,688.30; 1st Interstate Bank Savings \$2,999,126.73; ED Jones MM \$273,303.97; 1st Interstate Flex \$61,766.63; 1st Interstate Investments \$37,981.70; Sentinel CU Checking \$208.03; Sentinel CU TIIA \$107,483.75; Sentinel CU Savings \$10,107.89; Highmark Investment \$154,402.71; Highmark Savings \$10,199.31; Highmark Checking \$5,000; Dacotah Bank Checking \$12,727.50; Dacotah Investments \$719,119.83; Ed Jones Investments \$2,698,632.39.36 for a total of \$8,051,917.41.
- Custer County Sheriff's July 2021 report: \$118 accident/accruing reports; \$54 basic concealed weapon permits; \$400 enhanced concealed weapon permits; \$60 gold concealed weapon permits; \$235.33 mileage; \$1,255 basic paper service; \$75 distress warrants; \$190 executions; \$50 commissons; \$25 warrant processing; for a total of \$2,462.33.

D. Conflict of Interest Declarations – There were no conflicts of interest declared by the commission.

E. Highway

1. Motion by Hartman and seconded by Linde to approve the Application For Occupancy of the Right of Way of County Roads from Golden West Telecommunications for a telecommunications facility on Beaver Creek Road in Section 16, T5S, R5E, Custer County, South Dakota; vote taken, all aye; motion carried.
2. Motion by Linde and seconded by Hindle to approve the surplus of all existing posts and signs to be disposed of as the current sign project will be replacing these; vote taken, all aye; motion carried.

3. Robin Pladson, Keystone Chamber of Commerce & Vacation Races presented on an upcoming foot race to be held on Playhouse and Ghost Canyon Roads.

F. Planning

1. Motion by Hartman and seconded by Linde to approve the Cell Tower Modification Application from SMJ International for AT & T to remove 9 antennas and install 12 antennas on the Pringle tower located in Section 13, T5N, R4E, Custer County, South Dakota; vote taken, all aye; motion carried.
2. Motion by Bies and seconded by Hindle to approve the Cell Tower Modification Application from Verizon Wireless to remove 9 existing antennas and install 12 new antennas on a cell tower located in Custer State Park on Wildlife Loop, Custer County, South Dakota; vote taken, all aye; motion carried.
3. Motion by Hindle and seconded by Linde to approve the Cell Tower Modification Application from Verizon Wireless to replace 3 antennas on a tower located at 26151 SD Hwy 79, Custer County, South Dakota; vote taken, all aye; motion carried.
4. Motion by Hartman and seconded by Bies to approve the Final Plat of Red Canyon Tract North and Red Canyon Tract South, Located in the E2NE4SE4 of Section 28, T2S, R7E, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.
5. Motion by Linde and seconded by Hindle to approve the Final Plat of Tract A and Tract B of N2SW4 of Section 29, T2N, R7E, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.
6. Leah Berg from Aces Engineering presented on preliminary plats for a new subdivision located north of the Town of Hermosa and overlapping into Pennington County. The 3 preliminary plats presented are for water and sewer services and will be annexed into the Town of Hermosa. There are approximately 120 home sites included in the Lone Coyote Subdivision with approximately 10 of them located in Custer County.
7. Motion by Hindle and seconded by Bies to approve the Variance from Ordinance #2's building and lot requirements, Article IV Section 1-7-A, in no case shall a lot be less than one (1) acre (45,560 Sqft) in size application from the Town of Hermosa. Applicant is requesting a utility lot of .272 acres for the use of utilities only; vote taken, all aye; motion carried.

G. Search & Rescue

1. Motion by Hartman and seconded by Hindle to approve and authorize Sam Smolnisky, Search & Rescue Director, to sign the State of South Dakota Consulting Contract between the South Dakota Department of Public Safety, Wildland Fire Division and Custer County; vote taken, all aye; motion carried.

H. Ordinance No. 22

1. Motion by Linde and seconded by Hartman to approve the first reading of Custer County Ordinance No. 22 with the second reading to be held at the August 25, 2021 Commission Meeting; vote taken, all aye; motion carried.

CUSTER COUNTY ORDINANCE NO. 22

AN ORDINANCE ESTABLISHING THE REQUIREMENTS, FEES, AND REGULATIONS FOR ISSUANCE OF ALCOHOLIC BEVERAGE LICENSES WITHIN CUSTER COUNTY

BE IT ORDAINED BY CUSTER COUNTY, SOUTH DAKOTA:

WHEREAS, the Custer County Board of County Commissioners (hereinafter the “Board”) believes that alcoholic beverage licenses are a privilege and not a right, and Custer County (hereinafter the “County”) reserves the right to refuse the approval, renewal, or transfer in the event an applicant refuses to comply with the requirements of this Ordinance or other applicable local, state, or federal laws; and

WHEREAS, Custer County issues multiple types of alcoholic beverage licenses, as those terms are defined by SDCL 35-1-1, and that it would be to the benefit to the County to specify by Ordinance the requirements, fees, and regulations for certain alcoholic beverage licenses; and

WHEREAS, the Commission previously enacted a similar ordinance, dated September 11, 1984; and

WHEREAS, the Commission desires to repeal the Custer County Ordinance dated September 11, 1984 and replace the provisions of that ordinance with this Ordinance No. 22; and

THEREFORE, BE IT ORDAINED BY CUSTER COUNTY, SOUTH DAKOTA, that the requirements, fees, and regulations for the issuance of certain alcoholic beverage licenses within the County be adopted as follows:

SECTION A. ON-SALE OR OFF-SALE LIQUOR LICENSE:

1. Availability and Notice of New License
 - a. By September 2nd of each year, the Custer County Auditor’s Office shall determine the number of on-sale and off-sale liquor licenses available for the ensuing calendar year and report the same to the Board and the number of on-sale and off-sale licenses and appropriate fees shall be set by resolution of the Board, and revised from time-to-time.
 - b. The number of on-sale and off-sale liquor licenses available shall be based upon the population of Custer County as set forth in SDCL 35-4-11.1.
 - c. No off-sale liquor licenses will be issued to any establishment less than three (3) miles from an incorporated municipality.

- d. If an additional on-sale or off-sale liquor license becomes available in Custer County, a notice will be published in the legal newspaper of the County for at least two (2) consecutive weeks, stating that the Board will be accepting applications for the new license, and setting a deadline or applications to be submitted.
- e. After the deadline has passed, all applications submitted to the Auditor's Office shall be submitted to the Board for consideration.

2. Application Process

- a. The application for an on-sale or off-sale liquor license, or the transfer of an existing license, intending to operate outside the corporate limits of a municipality within Custer County, shall be submitted to the Board for approval pursuant to SDCL 35-2-1.2.
- b. The application shall be accompanied by the required fee as set by state law or county resolution.
- c. An application for the transfer of an existing license to a new location or to another person shall comply with the requirements of SDCL 35-2-7.

3. Approval Process

- a. The Board shall fix the time and place for hearing upon all such applications that come before the Board.
- b. The Auditor's Office shall publish notice once in the legal newspaper of the County after a hearing date has been set. The notice shall be headed "Notice of Hearing Upon Application for Sale of Alcoholic Beverages." The notice shall state the time and place and where such applications will be considered by the Board, and shall state that any person interested in the approval or rejection of any such application may appear and be heard. The notice shall be published at least one (1) week before the hearing, pursuant to SDCL 35-2-5.
- c. At the time and place stated in the notice, the Board shall consider each application and any objection to the application before making its final decision on the application.
- d. The Board may approve or disapprove the application for an on-sale liquor or off-sale liquor license, or transfer of an existing license, depending on whether the Board considers the proposed location suitable, pursuant to SDCL 35-2-1.2.
- e. License application fees will not be refunded once the license is approved by the Board and issued by the State of South Dakota.

- f. If the Board does not approve an application, it shall endorse on the application the reasons for the denial and return the application and fee to the applicant. No further application may be received from the applicant until after the expiration of one (1) year from the date of a denied application. However, if the application was denied based on the suitability of the location for the license, no further application may be received from the applicant until the expiration of three (3) months from the date of the denied application only if the application is for a different location, pursuant to SDCL 35-2-5.1.

4. Renewal Process

- a. Applicants for the renewal of an on-sale or off-sale liquor license shall follow the same application process as set forth above, by December 1st of each year for the ensuing year.
- b. An application for the reissuance of an on-sale or off-sale license may be approved by the Board without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation of the alcoholic beverage control law or the license has been suspended, pursuant to SDCL 35-2-1.2.
- c. The Board may not reissue any on-sale or off-sale liquor license issued pursuant to SDCL 35-4-2(4), (6), or (13) to the same licensee or the licensee's transferee if the license has not been actively used by the applicant during the two (2) years preceding the date of the current application, pursuant to SDCL 35-2-5.3.
- d. The term, actively used, as defined in SDCL 35-2-5.3, means that the licensed premise was open to the public during regular business hours for the sale and consumption of distilled spirits for at least sixty (60) days during the two (2) preceding years. However, the licensed premise is only required to be open five (5) days per year if it is open to the public during a special event that has at least twenty-five thousand visitors.
- e. No license granted under this ordinance may be reissued until all taxes incurred by the licensee as a result of the operation of the licensed premises, including municipal and state sales and use taxes, unemployment insurance tax, or any other state tax, are paid or are not delinquent. No license under this ordinance may be reissued until all property taxes which are the liability of the licensee levied on the licensed premises are paid or are not delinquent.

5. Other Alcoholic Beverage Licenses

Applicants for any other alcoholic beverage licenses issued by the County shall follow the requirements as set forth above, unless otherwise specified by South Dakota Codified Law or the South Dakota Department of Revenue.

6. Provisions Pertaining to All Licenses

All alcoholic beverage licenses issued by Custer County shall be subject to the following provisions:

a. Special Event Licenses

- i. Applications for special events licenses shall only be received by civic, charitable, educational, fraternal, or veterans organizations or any licensee licensed pursuant to SDCL 35-4-2(4), (6), or (16).
- ii. No fee is required with the application for a special events license.
- iii. Any license issued pursuant to SDCL: 35-4-124 shall be issued for a period of time established within the sole discretion of the Board, not to exceed fifteen (15) consecutive days.
- iv. No person or organization may be issued a permit pursuant to SDCL 35-4-124 more than three (3) times in any one (1) calendar year.
- v. No public hearing is required for issuance of a license pursuant to this section if the person applying for the license holds an on-sale alcoholic beverage license or a retail malt beverage license in the municipality or county or hold an operating agreement for a municipal on-sale alcoholic beverage license and the license is to be used in a publicly –owned facility.
- vi. The licensee must comply with all applicable state laws concerning the consumption of alcoholic beverages as set forth in SDCL Chapter 35-4.
- vii. Special events licenses may be issued for different alcoholic beverage licenses as specified in SDCL 35-4-124.

b. Time for Selling or Serving

- i. No on-sale or off-sale licensee, licensed under SDCL 35-4-2, may sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of two (2) AM and seven (7) AM or at any time on Christmas Day, pursuant to SDCL 35-4-2.1, except for holders of on-off sale malt beverage licenses and on-off sale wine licenses which shall be permitted to sell, serve and allow consumption on the premises covered by the license on Christmas Day.

- ii. The sale, service, and consumption of alcoholic beverages shall be permitted on Sundays and Memorial Day, except between the hours of two (2) AM and seven (7) AM, pursuant to SDCL 35-4-81.
- iii. A violation of this section is a Class 2 misdemeanor, punishable by up to thirty (30) days imprisonment in the jail or a five hundred dollar (\$500.00) fine or both.

7. Miscellaneous

This Ordinance shall replace any and all prior ordinances or resolutions adopted by the Custer County Board of County Commissioners regarding the regulations, requirements, or distribution of alcoholic beverage licenses within the County, specifically the Ordinance dated September 11, 1984.

The County, by resolution, may periodically establish the number of current on-sale and off-sale liquor licenses available for the calendar year as well as the application and renewal fees.

Any provision regarding the requirements, fees, regulation, or distribution of alcoholic beverage licenses not addressed within this Ordinance shall be followed pursuant to South Dakota Codified Law.

Adopted by the Custer County Board of County Commissioners on this 11th day of August, 2021.

I. **Resolution 2021-15**

- 1. Motion by Hindle and seconded by Linde to Approve Resolution 2021-15 with the Initial Fee for Off-sale Alcoholic Beverage License to be set at \$1,500 and the Annual Renewal Fee for Off-sale Alcoholic Beverage License to be set at \$500; vote taken, all aye; motion carried.

Resolution 2021 – 15

A RESOLUTION ESTABLISHING THE NUMBER OF ON-SALE AND OFF-SALE ALCOHOLIC BEVERAGE LICENSES AND THE FEES TO BE CHARGED THEREFORE

WHEREAS, SDCL Chapter 35-4 grants to counties certain powers to determine the number of on-sale and off-sale alcoholic beverage licenses available outside the corporate limits of municipalities in such county as the fees to be charged for such licenses; and

WHEREAS, SDCL 35-4-11.1 sets out the formula for county boards of commissioners to determine the number of on-sale and off-sale licenses are available in such county; and

WHEREAS, SDCL 35-4-2 enumerates the fees of each class of alcoholic beverage licenses;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Custer County that, pursuant to SDCL 35-4-11.1 and based on the current population calculation of individuals residing within Custer County but outside the incorporated municipalities, the maximum number of on-sale alcoholic beverage licenses, as classified by SDCL 35-4-2(6), is six (6), and the maximum number of off-sale alcoholic beverage licenses, as classified by SDCL 35-4-2(3), is five (5).

BE IT FURTHER RESOLVED by the Board of County Commissioners of Custer County that the following license fees are as follows:

- On-sale Alcoholic Beverage License, as classified by SDCL 35-4-2(6):
 - Initial Fee: Shall be the same fee for a similar license in the nearest municipality to the license location, as established in SDCL 35-4-2(6)
 - Annual Renewal Fee: \$500
- Off-sale Alcoholic Beverage License, as classified by SDCL 35-4-2(3):
 - Initial Fee: \$1,500
 - Annual Renewal Fee: \$500

This Resolution shall become effective on the twentieth day after its completed publication.

Dated this 11th day of August, 2021 at Custer, South Dakota.

J. 2022 Provisional Budget

1. The proposed 2022 Provisional Budget was presented. The Department Heads will meet on Wednesday, August 18, 2021 along with Commissioner Bies to discuss 2022 Custer County employee wages. Motion by Hartman and seconded by Hindle to move the scheduled Commission Meeting on Wednesday, September 8, 2021 to Tuesday, September 7, 2021; vote taken, all aye; motion carried.

K. Public Comment – Veteran Service Officer, Todd Fish, presented to the commission on price estimates for proposed projects to possibly be funded with funds from the American Rescue Act; Resident, Mark Sullivan, inquired on fencing rules and rural water in the county.

L. Commission

1. Mail call – There were 3 requests for agenda presentation and 8 public records requests received from Chet Ellsworth. Per Custer County State’s Attorney, Tracy Kelley, Chief Deputy Auditor, Terri Cornelison, sent the commission minutes from the July 14, 2021 and July 28, 2021 Commission Meeting, along with a copy of the American Recovery Act information

presented at the July 28, 2021 Commission Meeting and a copy of the 2018-2019 Audit presented at the July 14, 2021 Commission Meeting; A letter was received from the Department of Revenue regarding the Soil Tables Project; A letter was received from Safety Benefits with improvement recommendations to assist in loss control efforts.

2. Meeting Schedule – The County Convention will be held in Rapid City on September 13-14, 2021.
3. Meeting Reports – Commissioner Hindle and Legal Counsel Anderson attended a meeting with the US Forest Service regarding the plat that will come to the County for the Airport expansion.
4. The commission discussed the possibility of developing a procedure for requests for items to be placed on the Commission Meeting agenda.

M. Old Business

1. Commission Legal Counsel, Susan Anderson, reported on the donation of the lot located in the Desperado Ranch Subdivision that will be deeded to Custer County from Gold Rush Ranch LLC.

N. Adjourn

Motion by Linde and seconded by Hindle to adjourn the meeting at 9:26 a.m. The next meeting will be at 8 a.m. August 25, 2021 in the Commissioner’s Room in the Custer County Courthouse.

Jim Lintz, Chairman

Attest:

Terri Cornelison, Custer County Auditor

Published once at the total approximate cost of _____.