

**Custer County Commission Meeting (Wednesday, August 25, 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 Linde and seconded by Hartman to add item #4 under Planning – Approval of Final Plat of Airport Tract and approve the agenda as amended; vote taken, all aye; motion carried.

**C. Consent Agenda**

1. Motion by Hartman and seconded by Bies to approve the minutes of the August 11, 2021 Commission Meeting, the following vouchers and travel requests; vote taken, all aye; motion carried.

Travel requests approved: Steve Esser to EM 103 Class in Pierre, SD, at a cost of \$174 and use of a county vehicle.

Vouchers approved as follows:

**PAYROLL:** Pay Period ending 8/20/2021; Commissioners \$6,380.49; Auditor \$8,077.92; Treasurer \$11,447.20; Info Systems & Tech \$2,850.53; States Attorney \$12,744.87; Courthouse Building \$6,734.83; Director of Equalization \$14,116.14; Register of Deeds \$4,574.84; Veterans Service \$1,142.31; Human Resources \$2,268.76; Sheriff \$51,860.87; Coroner \$433.66; Nurse \$559.60; Library \$8,695.95; Conservation \$454.91; Weed & Pest Control \$4,804.09; Planning \$7,407.39; County Road & Bridge \$33,880.56; Emergency Management \$2,684.16; 24/7 Sobriety \$1,065.01; 911/Communications \$15,880.16

**COMMISSIONERS:** Pitney Bowes \$2,015; SD Association of County Commissioners \$185; Thomson Reuters \$236.27

**TREASURER:** Thomson Reuters \$41.94

**STATE'S ATTORNEY:** Kimberly Johnson \$79.80; Thomson Reuters \$726.27

**COURTHOUSE BUILDING:** Custer Ace Hardware \$4.59

**DIRECTOR OF EQUALIZATION:** Quill \$54.71; Charles Wuestewald \$106.49; Thomson Reuters \$41.94

**REGISTER OF DEEDS:** Thomson Reuters \$62.91

**SHERIFF:** Black Hills Electric \$73.31; Pheasantland Industries \$122.50; Verizon Connect \$194.28; Battle Mt Humane Society \$1,000

**PRISONER CARE:** City of Rapid City \$240; Pennington County Jail \$15,745; Ann Allen \$75; South Dakota Public Health Laboratory \$225; Redwood Toxicology Lab \$120; Linda Nohr \$375

**SEARCH & RESCUE:** Lynn's Dakota Mart \$293.41

**AIRPORT:** Hillyard \$308.07; Quill \$212.98; Equipment Blades Inc. \$2,754; MG Oil Company \$7,153.50

**LIBRARY:** Century Link \$15.24

**WEED & PEST:** Black Hills Electric \$52.55; French Creek Supply \$50.81

**PLANNING:** IWORQ Systems \$1,584

**COUNTY ROAD & BRIDGE:** A & B Welding \$240.90; Black Hills Electric \$727.03; Floyd's Truck Center \$3,839.78; French Creek Supply \$134.40; Fastenal Company \$82.92; Grimm's Pump Service \$1,986.79; Lynn's Dakota Mart \$24.35; Pheasantland Industries \$1,630.13; Rushmore Communications \$554.75; Oberle's Radiators & Repair \$200; Kieffer Sanitation \$182.85; Servall Towel & Linen \$124.32; Black Hills Gravel \$22,015; Custer Ace Hardware \$17.18; Acuity Specialty Products \$107.13; M & W Towing & Recovery \$375; J.V. Bailey Company Inc. \$12,549; Culligan Water \$12; Century Link \$18.39; Nelson's Oil & Gas \$4,880.25; Great Western Tire \$2,006.55; Forward Distributing \$14.95; CBH Cooperative \$3,271.29

**EMERGENCY MANAGEMENT:** United States Geological Survey \$1,500

**24/7 SOBRIETY:** Arrowwood Resort \$77

**STATE GRANTS-GENERAL GOVERNMENT:**

**BUILDING:** Wegner Auto Company \$29,623; Black Hills Electric \$525.87; Black Hills Energy \$769.18; French Creek Supply \$58.49

**EMERGENCY LINE:** Pheasantland Industries \$58.68

**LAW LIBRARY:** Thomson Reuters \$930.27

**TREASURER'S TRUST:** Argyle Fire Department \$2,657.92; Buffalo Gap Fire Department \$1,114.07; Custer Fire Department \$26,169.84; Dewey Fire Department \$188.08; Folsom Fire Department \$731.67; Fairburn Fire Department \$2,423.58; Highlands Fire Department \$1,328.01; Hot Springs Fire Department \$625.44; Pringle Fire Department \$1,580.61; Battle Creek Fire Department \$8,302.13; United States Geological Survey \$1,500

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

**E. Emergency Management**

1. Motion by Hartman and seconded by Hindle to approve and authorize the chairman to sign the 2022 Local Emergency Management Performance Grant; vote taken, all aye; motion carried.

2. Emergency Management Director, Steve Esser, gave an update on the relocation of a radio tower to the Custer County Search & Rescue building site on Montgomery Street in Custer, SD. Total estimate to relocate the tower from its current location to the Search & Rescue location is approximately \$13,000.

**F. Ordinance No. 22**

1. The commission acknowledged the second reading of Custer County Ordinance No. 22.

**G. Ordinance No. 23**

1. Motion by Hartman and seconded by Hindle to approve the first reading of Custer County Ordinance No. 23 as amended with the second reading to be held at the September 7, 2021 Commission Meeting; vote taken, all aye; motion carried.

**CUSTER COUNTY ORDINANCE NO. 23**

**AN ORDINANCE CREATING LICENSING PROVISIONS**

**FOR CANNABIS ESTABLISHMENTS WITHIN CUSTER COUNTY**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, SOUTH DAKOTA:**

**1. PURPOSE AND INTENT**

The Board of County Commissioners of Custer County (the "County") enacts the following licensing ordinances in order to ensure that cannabis establishments within the unincorporated areas of the County operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

**2. DEFINITIONS**

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL 34-20G-1.

- (a) **Cannabis (or Marijuana):** all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

- (b) **Cannabis Cultivation Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.
- (c) **Cannabis Dispensary:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.
- (d) **Cannabis Establishment:** cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.
- (e) **Cannabis Product Manufacturing Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.
- (f) **Cannabis Products:** any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures
- (g) **Cannabis Testing Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.
- (h) **Department:** the South Dakota Department of Health

**3. LICENSE REQUIRED**

- (a) No cannabis establishment may be located or operate in the unincorporated area of the county without the appropriate valid and current cannabis establishment license issued by the County pursuant to this article. A violation of this provision is subject to the general penalty provision in Section 16 herein. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate in the unincorporated area of the County without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to the rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision of Section 16 herein. Each day of the violation constitutes a separate offense.

**4. LICENSE APPLICATION**

- (a) An application for a cannabis establishment license must be made on a form provided by the County. No other application form will be considered.
- (b) The applicant must submit the following:

1. Application fee of \$50,000.
2. An application that will include, but is not limited to, the following:
  - i. The legal name of the prospective cannabis establishment;
  - ii. The physical address of the prospective cannabis establishment that meets the location requirements in Section 7 herein, as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.
  - iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.
  - iv. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
  - v. Any additional information requested by the County.

## **5. ISSUANCE OF LICENSE**

- (a) The County will issue a license unless:
1. The applicant has made a false statement on the application or submits false records or documentation; or
  2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
  3. Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction;
  4. The proposed location does not meet the applicable location requirements found in Section 7 herein and under SDCL 34-20G;
  5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
  6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or

7. Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the County or a registration certificate revoked by the state; or
  8. An applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the County of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
  9. The applicant will not be operating the business for which the license would be issued.
- (b) In the case of an application for a cannabis dispensary license, the County will reject the application if the limit on the number of cannabis dispensaries has been reached.
- (c) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

## **6. COUNTY NEUTRALITY AS TO APPLICANTS**

- (a) Upon request from the Department as to the County's preference of applicants, the County will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the County will abstain from endorsing any application as beneficial to the community.

## **7. LOCATIONS**

### **(a) Cannabis Dispensary**

1. Dispensary shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the dispensary is proposed, to the lot line of the protected uses listed below:
  - i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis dispensary establishment application. (34-20G-55)
  - ii. Shall not be located within 1,000 feet from a nonresidential daycare facility
  - iii. Shall not be located within 1,000 feet from a public park, public pool or public recreational facility or library
  - iv. Shall not be located within 1,000 feet of a religious institution
  - v. Shall not be located within 1,000 feet of a residence.
  - vi. No future development will cause a dispensary to become nonconforming due to the establishment of a protected use within the distance prescribed herein.
2. Other location standards are as follows:
  - i. No cannabis dispensary shall share premises with or permit access directly from another cannabis establishment, business that sells alcohol or tobacco, or if allowed by law, other

cannabis establishment. (44:90:04:14)

- ii. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

3. General Provisions and Performance Standards for Dispensaries are shown below:

- i. No more than one (1) cannabis dispensaries shall be allowed to operate in the unincorporated area of the County at any time.
- ii. No dispensary shall allow access entry to anyone under 21 years of age
- iii. Access control methods shall be installed pursuant to state requirements
- iv. Shall be located within a completely enclosed permanent structure. Mobile dispensaries are prohibited.
- v. Drive-through dispensaries are prohibited.
- vi. A cannabis dispensary may operate between the hours of 8 AM and 6 PM, Monday through Saturday. No cannabis dispensary may operate in the County on any federal or state holiday, or on days when County government offices are closed.
- vii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
- viii. Retail products, storage, sales, and display areas shall be kept out of the public view and shall not be visible from the exterior of the building.
- ix. Signage and advertising shall be limited to on premise signage only, no billboard advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

(b) Cannabis Cultivation Facility

1. Cannabis Cultivation Facility shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the cultivation facility is proposed, to the lot line of the protected uses listed below:
  - i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis cultivation establishment application. (34-20G-55)
  - ii. Shall not be located within 1,000 feet from a nonresidential daycare facility
  - iii. Shall not be located within 1,000 feet from a public park, public pool or public recreational facility or library
  - iv. Shall not be located within 1,000 feet of a religious institution
  - v. Shall not be located within 1,000 feet of a residence.
  - vi. No future development will cause a cultivation facility to become nonconforming due to the establishment of a protected use within the distance prescribed herein.

2. General Provisions and Performance Standards for Cannabis Cultivation Facilities

- i. No more than one (1) cannabis cultivation facilities shall be allowed to operate in the

unincorporated area of the County at any time.

- ii. All cultivation operations shall be within a completely enclosed permanent building.
- iii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
- iv. Shall provide for a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the property line. Ventilation and filtration systems shall meet the standards set forth by the State of South Dakota. All cultivation operations shall be within a completely enclosed permanent building or secured greenhouse facility.
- v. Security measures shall be installed as required by state regulations.
- vi. Perimeter of the property shall be fenced with minimum of a six (6) foot high solid fence and security access gates.
- vii. Signage and advertising shall be limited to on premise signage only, no billboard advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

(c) Cannabis Testing Facility

1. Cannabis Testing Facility shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the testing facility is proposed, to the lot line of the protected uses listed below:

- i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis testing establishment application. (34-20G-55).
- ii. Shall not be located within 1,000 feet from a nonresidential daycare facility.
- iii. Shall not be located within 1,000 feet from a public park, public pool or public recreational facility or library.
- iv. Shall not be located within 1,000 feet of a religious institution.
- v. Shall not be located within 1,000 feet of a residence.
- vi. No future development will cause a testing facility to become nonconforming due to the establishment of a protected use within the distance prescribed herein.

2. General Provisions and Performance Standards for Cannabis Testing Facilities

- i. No more than one (1) cannabis testing facilities shall be allowed to operate in the unincorporated area of the County at any time.
- ii. All testing operations shall be within a completely enclosed permanent building.
- iii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
- iv. Shall provide for a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the property line. Ventilation and filtration systems shall meet the standards set forth by the State of South Dakota. All cultivation operations shall be within a completely enclosed permanent building or secured greenhouse facility.
- v. Security measures shall be installed as required by state regulations.

- vi. Perimeter of the property shall be fenced with minimum of a six (6) foot high solid fence and security access gates.
- vii. Signage and advertising shall be limited to on premise signage only, no billboard advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

(d) Cannabis Product Manufacturing Facility

1. Cannabis Product Manufacturing Facility shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the manufacturing facility is proposed, to the lot line of the protected uses listed below:
  - i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis testing establishment application. (34-20G-55).
  - ii. Shall not be located within 1,000 feet from a nonresidential daycare facility.
  - iii. Shall not be located within 1,000 feet from a public park, public pool or public recreational facility or library.
  - iv. Shall not be located within 1,000 feet of a religious institution.
  - v. Shall not be located within 1,000 feet of a residence.
  - vi. No future development will cause a manufacturing facility to become nonconforming due to the establishment of a protected use within the distance prescribed herein.
  
2. General Provisions and Performance Standards for Cannabis Manufacturing Facilities
  - i. No more than one (1) cannabis manufacturing facilities shall be allowed to operate in the unincorporated area of the County at any time.
  - ii. All manufacturing operations shall be within a completely enclosed permanent building.
  - iii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
  - iv. Shall provide for a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the property line. Ventilation and filtration systems shall meet the standards set forth by the State of South Dakota. All cultivation operations shall be within a completely enclosed permanent building or secured greenhouse facility.
  - v. Security measures shall be installed as required by state regulations.
  - vi. Perimeter of the property shall be fenced with minimum of a six (6) foot high solid fence and security access gates.
  - vii. Extraction processes utilizing flammable liquefied gas shall not be located in any building containing Group A, E, I, or R occupancies as defined by the International Building Code.
  - viii. Exit doors from extraction rooms shall swing in the direction of egress and be self-closing. Panic hardware shall be provided on door and where latching door hardware is provided panic hardware shall also be provided.
  - ix. Extraction rooms, booths, or hoods, including ductwork where required for hazardous

- exhaust systems shall be protected by an approved automatic fire extinguishing system.
- x. Signage and advertising shall be limited to on premise signage only, no billboard advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

## **8. BUILDING CODE**

All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

## **9. EXPIRATION OF LICENSE AND RENEWAL**

- (a) Each license expires one year from the date of issuance and may be renewed only by making application as provided in Section 4 herein. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (b) The annual renewal fee is \$50,000 for each license.
- (c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the County may order closure of the cannabis establishment.
  
- (d) If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

## **10. SUSPENSION**

- (a) A license may be suspended if the license holder or an employee or agent of the license holder:
  - 1. Violates or is otherwise not in compliance with any section of this article.
  - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
  - 3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- (b) A license may be suspended if the license holder has its Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.
- (c) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

## **11. REVOCATION**

- (a) A license may be revoked if the license is suspended under Section 10 herein and the cause for the

suspension is not remedied.

(b) A license may be revoked if the license is subject to suspension under Section 11 herein because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.

(c) A license is subject to revocation if a license holder or employee of a license holder:

1. Gave false or misleading information in the material submitted during the application process;
2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
3. Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;
4. Repeated violations of Section 12 herein;
5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;
7. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G; or
8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
9. The license holder allows a public nuisance to continue after notice from the County.

## **12. SUSPENSION AND REVOCATION PROCESS**

(a) The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the County's intention to suspend or revoke the license. The

notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested to the physical address of the cannabis establishment.

- (b) If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the County Commission Chairperson, Auditor, and Sheriff.
- (c) A suspension will be for thirty (30) days and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises its rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- (d) A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- (e) The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective.

### **13. APPEAL**

An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the Board of County Commissioners by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to Custer County Auditor's Office, Custer County Courthouse, 420 Mt. Rushmore Road, Custer, South Dakota, 57730. The appeal will be considered by the Board of County Commissioners at a regularly scheduled meeting within one month of the receipt of the appeal.

### **14. LICENSES NOT TRANSFERRABLE**

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.

### **15. LIABILITY FOR VIOLATIONS**

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.

### **16. PENALTIES**

Any person who operates or causes to be operated a cannabis establishment without a valid license or

in violation of this article is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

#### **17. SEVERABILITY**

The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

Adopted by the Custer County Board of County Commissioners on this 25<sup>th</sup> day of August, 2021.

#### **H. Ordinance No. 24**

1. Motion by Linde and seconded by Hindle to approve the first reading of Custer County Ordinance No. 24 with the second reading to be held at the September 7, 2021 Commission Meeting; vote taken, all aye; motion carried.

### **CUSTER COUNTY ORDINANCE NO. 24**

#### **AN ORDINANCE PROHIBITING THE CONSUMPTION OR SMOKING OF CANNABIS IN PUBLIC PLACES WITHIN CUSTER COUNTY**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY,  
SOUTH DAKOTA:**

#### **ARTICLE I: GENERAL PROVISIONS**

##### **Section 1. Authority**

This Ordinance is enacted under the authority of SDCL 7-8-33. The Custer County Board of County Commissioners (the "Commission") hereby makes a determination that consuming or smoking cannabis in any public place is a public nuisance in that such act annoys, injures, or endangers the comfort, repose, health, or safety of others.

##### **Section 2. Purpose**

It is the purpose of this Ordinance to prohibit the consumption or smoking of cannabis in any public place in Custer County outside the corporate limits of municipalities.

#### **ARTICLE II:**

## Section 1: Application and Interpretation

The definitions listed hereafter shall apply to this Ordinance. The definitions set forth are to be understood in their plain and ordinary meaning.

The definitions set forth herein correspond to the definitions of SDCL 34-20G-1. Any interpretation of terms under that statute shall apply to the same term in this Ordinance.

## Section 2: Definitions

- A. "Cannabis products," any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.
- B. "Edible cannabis products," any product that:
  - a. Contains or is infused with cannabis or an extract thereof;
  - b. Is intended for human consumption by oral ingestion; and
  - c. Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, or other similar products.
- C. "Medical cannabis" or "cannabis," marijuana as defined in SDCL 22-42-1.
- D. "Public place," any area to which the public is invited or in which the public is permitted.
- E. "Place Open to the Public," any place to which the public is invited or permitted, including in, on, or around any place of business, parking lot, or place of amusement including in, on, or around any place of business, parking lot, or place of amusement or entertainment and includes the elevator, lobby, hallways, corridors, and area open to the public of any store, office, or multifamily residential buildings.

## ARTICLE III: UNAUTHORIZED ACTS

Section 1: It is unlawful for any person to consume or smoke cannabis, medical cannabis, or cannabis products in any public place, whether or not the cannabis, medical cannabis, or cannabis product is prescribed by a practitioner of the medical arts.

## ARTICLE IV: PENALTIES

Section 1: Criminal Penalty. Violation of the terms of this Ordinance may be enforced through a fine not to exceed the fine established by SDCL 22-6-2(2) for each violation or by imprisonment for a period not to exceed thirty (30) days for each violation, or by both the fine and imprisonment.

## ARTICLE V: SEVERABILITY AND SEPERABILITY

Section 1: Should any Article, Section, subsection or part of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional, invalid, or otherwise affected by law, such determination shall not affect the validity or constitutionality of this Ordinance as a whole or any part thereof other than the part so determined.

ARTICLE VI: EFFECTIVE DATE

Section 1: This Ordinance is necessary to protect and immediately preserve the public peace, health, or safety, and is, therefore, immediately effective following the second reading pursuant to SDCL 7-18A-8.

Adopted by the Custer County Board of County Commissioners on this 25<sup>th</sup> day of August, 2021.

**I. Auto Supplement**

1. Motion by Linde and seconded by Bies to approve the Auto Supplement from Account #101-334.02 Summer Reading Grant to Account #101-4-511-426.10 Library Summer Reading in the amount of \$900; vote taken, all aye; motion carried.

**J. 8:30 a.m. Planning Public Hearing**

1. A public hearing was held for a Petition For Vacation of Section Line Highway Right of Way from Leroy & Ruth Anne Spencer & Jody York to vacate said portion of Section Line Highway Right of Way running north to south starting at the Northerly point of Spangler Tract and running south approximately 2,622 feet, between sections 25 and 30 to the Southerly Edge of Lot 2R all within Shirttail Subdivision, Township 5 South, Range 4 East, B.H.M., Custer County, South Dakota. There was no one in attendance to either oppose or support the petition.
2. Motion by Hartman and seconded by Hindle to approve Resolution 2021-16 Vacation of Section Line Highway Right of Way; vote taken, all aye; motion carried.

**Resolution 2021-16**

**Vacation of Section Line Highway Right of Way**

WHEREAS, application has been made for the purpose of vacating that portion of Section Line Highway Right- of- Way running North to South starting at the Northerly point of Spangler Tract and running South approximately 2,622 feet, between sections 25 and 30 to the Southerly Edge of Lot 2R all within Shirttail Subdivision, Township 5 South, Range 4 East, BHM Custer County South Dakota. All Referenced on 12 Plat 777 filed at the Custer County Register of Deeds office.

WHEREAS, The Board of Custer County Commissioners have determined that the public's interest will be better served by vacation of this public access easement.

NOW THEREFORE< BE IT RESOLVED THAT The Custer County Board of Commissioners approves the vacation of the before mentioned public access easement.

Dated this 25<sup>th</sup> day of August, 2021

**K. 8:35 a.m. Planning Public Hearing**

1. A public hearing was held for a Petition For Vacation of Section Line Highway Right of Way from Beecher Rock LLC to vacate that portion of the East 33' wide Section Line Highway Right of Way beginning at the meeting point of the NE4NE4 of Section 14 and NW4W2NW4 in Section 13; Running North to South approximately 988 feet. Commencing from there the vacation shall include the entirety of the 66" wide Section Line of Highway Right of Way less portion of Section Line that runs across Cemetery Lot running south approximately 1,567 feet to the southern boundary of the W2NW4 of Section 13 and SE4NE4 of Section 14, all located in Township 4 South, Range 4 East, B.H.M., Custer County, South Dakota. There was no one in attendance to either oppose or support the petition.
2. Motion by Bies and seconded by Linde to approve Resolution 2021-17 Vacation of Section Line Highway Right of Way; vote taken, all aye; motion carried.

**Resolution 2021-17**

**Vacation of Section Line Highway Right of Way**

WHEREAS, application has been made for the purpose of vacating that portion of Section Line Highway Right- of- Way beginning at the meeting point of the NE ¼ NE ¼ of Section 14 and Northwest quarter of the W ½ NW ¼ Section 13; Running North to South approximately 988 ft. Commencing from there the vacation shall include the entirety of the 66' wide section line highway right of way less portion of section line that runs across Cemetery Lot running south approximately 1,567 ft. To the southern boundary of the W ½ NW ¼ Section 13 and SE ¼ NE ¼ Section 14 all in T4S, R4E, BHM, Custer County, South Dakota

WHEREAS, The Board of Custer County Commissioners have determined that the public's interest will be better served by vacation of this public access easement.

NOW THEREFORE< BE IT RESOLVED THAT The Custer County Board of Commissioners approves the vacation of the before mentioned public access easement.

Dated this 25<sup>th</sup> day of August, 2021

**L. Planning**

1. Motion by Linde and seconded by Hindle to approve the Final Plat of Bailey Tract 1 and Bailey Tract 2 of Bellemare Subdivision of the Homestead of Ernest Bellemare, Located in Gov't Lot 5 of Section 15, Township 3 South, Range 3 East, B.H.M. Custer County, South Dakota; vote taken, all aye; motion carried.
2. Motion by Hindle and seconded by Hartman to approve the Final Plat of Lots 1 thru 4, JLR Tract and Polito Tract of Pleasant Valley Ranch Subdivision, Located in Gov't Lots 8 and 11 of Section 5 and the N2NW4 of Section 8, all in Township 4 South, Range 4 East, B.H.M., Custer County, South Dakota contingent upon Polito's signature; vote taken, all aye; motion carried.
3. Motion by Bies and seconded by Hindle to approve and authorize the chairman to sign the US Department of the Interior US Geological Survey Joint-Funding Agreement for the Dakota Water Science Center Water Resources Investigations project, operation and maintenance of three crest-stage gages at Ruby Creek, Laughing Water Creek, and French Creek, during the

period October 1, 2021 through September 30, 2022 in the amount of \$3,030 ( half will be billed to City of Custer); vote taken, all aye; motion carried.

4. Motion by Hartman and seconded by Linde to approve the Final Plat of Airport Tract Located in Government Lots 13, 14, 15, 16 and 17 of Section 3 and also Government Lots 7 and 8 of Section 2, all in Township 4 South, Range 4 East, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.

**M. Equalization**

1. Motion by Linde and seconded by Hindle to approve the placement of the Deputy Director of Equalization position on the current payscale at \$1.00 more per hour than the Certified Appraiser position; vote taken, all aye; motion carried.

**N. Custer County Housing**

1. Motion by Hindle and seconded by Linde to approve the appointment of Todd Fish to the Custer County Housing Board to replace retiring member Dennis Moulton; vote taken, all aye; motion carried.

**O. Public Comment** – There were no comments from the public.

**P. 9:00 a.m. Public Hearing**

1. A public hearing was held for a new Malt Beverage & SD Wine license from Peter Johncour, new owner of Timber Ridge Campground. There was no one in attendance to either oppose or support the license application. Motion by Bies and seconded by Hartman to approve the application from Johncour; vote taken, all aye; motion carried.

**Q. Commission**

1. Mail call – An email was received from the SD Association of County Commissioners regarding counties participating in a consulting service regarding ARPA funds; an email was received from a property owner regarding a sanitation problem in the Custer Highlands area.
2. Meeting Schedule – no meetings scheduled
3. Meeting Reports – no meeting reports

**R. Old Business**

1. Chairman Jim Lintz presented a proclamation to Custer Senior Citizen’s Director Roxanne Horkey declaring Friday, August 27, 2021 as Custer Senior Citizen Center Day.

**S. Maintenance**

1. Maintenance Director, Robert Skinner, updated the commission on projects completed and in the process of being completed at the Custer County Courthouse and Annex Building. Skinner also reported the need to advertise a maintenance position to replace retiring maintenance worker Gordon Heggen.

**T. Executive Session**

1. Motion by Linde and seconded by Hindle to go into Executive Session pursuant to SDCL 1-25-2(1) and SDCL 1-25-2(3) and SDCL 1-25-2(4); vote taken, all aye; motion carried. Executive Session started at 9:26 a.m. to discuss personnel, consult with legal counsel and contract negotiations or negotiating with employees or employee representatives and concluded at 11:15 a.m. with no action taken.

**U. Adjourn**

Motion by Hartman and seconded by Hindle to adjourn the meeting at 11:50 a.m. The next meeting will be at 8 a.m. September 7, 2021 in the Commissioner's Room in the Custer County Courthouse.

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Jim Lintz, Chairman

Attest:

Terri Cornelison, Custer County Chief Deputy Auditor

Published once at the total approximate cost of \_\_\_\_\_.