

|AGENDA

Monday, June 13, 2011

|Public Services Committee

\*\*\*4:30 PM

Carnegie Town Hall

|West 10th Street

235

\* This meeting will start after the conclusion of the 4:00 p.m. Informational Meeting.

1. Call To Order
2. Review and approval of Minutes dated May 9, 2011
3. Council Procedures and Organization
4. Administrative Appeals Ordinance
5. Open Discussion
6. Adjournment

Date: 2011-06-13  
SIRE Meeting ID: 1479  
Meeting Type: Committee Meeting  
Subtype: Public Services Committee  
YouTube:[https://youtu.be/ZtJyHfjSF\\_0](https://youtu.be/ZtJyHfjSF_0)  
Agenda Item: Not Assigned  
Item ID: 58071

The following document(s) are public records obtained from the  
City of Sioux Falls.

# MINUTES

Monday, May 9, 2011

**Public Services Committee**

\* 5:44 PM  
Carnegie Town Hall  
235 West 10<sup>th</sup> Street



**Members Present:** Council Member Sue Aguilar, Council Member Kenny Anderson Jr., Council Member Vernon Brown, and Council Member Michelle Erpenbach

**Members Absent:** None

**Staff Present:** Tamara Jorgensen, CMC, Assistant City Clerk

**Guests:** Dean Karsky, Keith Allenstein, Greg VandeKamp, Matt Burns, Rich Oksol, Paul Bengford, Robert Kolbe, Dan Reynertson, Brett Briscoe, Dan Kaiser, Alicia Collura, Jill Franken, Doug Barthel and Jonathan Ellis.

## 1. Call To Order

Committee Chair Anderson, Jr. called the meeting to order at 5:44 p.m.

## 2. Review and approval of Minutes dated April 11, 2011

A motion was made by Council Member Michelle Erpenbach and seconded by Council Member Sue Aguilar to approve of minutes dated April 11, 2011.

Vote to approve: Roll Call: Yeses, Sue Aguilar, Kenny Anderson Jr., Vernon Brown, Michelle Erpenbach, 4. Noes, 0.

**Motion Passed.**

## 3. Pawnbrokers and Dealers in Precious Metals and Gems Ordinance

Lead Internal Auditor Rich Oksol gave an overview of the pawn shop audit and the proposed changes. This was a Special Request Audit requested by Council Member Anderson Jr. in October, 2010.

Keith Allenstein, City Attorney's Office, stated that in Sec. 28-1 (definitions), language was added to include the definition of 'media of electronic devices, computers, and other digital devices'. With this addition, this ordinance is now complete per the Police Department.

Sgt. Matt Burns discussed a letter recently distributed to the Public Services Committee regarding pawn shop activity regarding receiving stolen electronic devices.

Bob Kolbe spoke regarding the Pawn Shop ordinance regarding the definition of 'Second Hand Goods'. Discussion followed.

Discussion was held regarding Leads Online, licensing, and the reporting procedures/appeal process.

Bob Kolbe spoke regarding stores that purchase gold in the city and the methods of communication with these stores regarding the new ordinance changes.

A motion was made by Council Member Vernon Brown and seconded by Council Member Michelle Erpenbach to approve that the proposed ordinance move forward to the City Council for consideration.

Vote to approve: Roll Call: Yeses, Sue Aguilar, Vernon Brown, Michelle Erpenbach, 3. Noes, Kenny Anderson Jr., 1.

**Motion Passed.**

#### **4. Administrative Appeals Ordinance**

City Attorney Dave Pfeifle discussed the proposed changes to the Administrative Appeals Ordinance and gave some background information on the appeals process.

Brown asked about Sec. 2-60(4) regarding "a statement indicating whether the appellant desires the administrative appeal hearing to be open or closed to the public". Discussion followed regarding what types of information would determine the need for a hearing to be closed.

Anderson Jr. stated that the City Attorney's Office has requested one more month before this item moves forward to the City Council for consideration.

#### **5. Open Discussion**

There was none.

#### **6. Adjournment**

A motion was made by Council Member Michelle Erpenbach and seconded by Council Member Sue Aguilar to adjourn the meeting at 6:35 p.m.

Vote to adjourn: Roll Call: Yeses, Sue Aguilar, Kenny Anderson Jr., Vernon Brown, Michelle Erpenbach, 4. Noes, 0.

**Motion Passed.**

Tamara Jorgensen, CMC  
Assistant City Clerk

Date: 2011-06-13  
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YouTube:[https://youtu.be/ZtJyHfjSF\\_0](https://youtu.be/ZtJyHfjSF_0)  
Agenda Item: Not Assigned  
Item ID: 58072

The following document(s) are public records obtained from the  
City of Sioux Falls.

1st Reading: \_\_\_\_\_  
2nd Reading: \_\_\_\_\_  
Date Adopted: \_\_\_\_\_  
Date Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY **BY** AMENDING CHAPTER 2, ARTICLE II, OF CITY COUNCIL ORGANIZATION AND PROCEDURES.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

*Section 1. That Section 2-3 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Section 2-3. Council meetings.

- (a) All ~~meetings of the city~~ council meetings shall be open to the public, unless closed pursuant to state law.
- (b) The city council shall hold meetings on the first, second, and third Monday of each month at 7:00 p.m. at the Carnegie Town Hall. The first meeting of the month shall be designated the regular meeting. In addition, any meeting scheduled for the purpose of considering the override of a mayoral veto shall be deemed a regular meeting. When the day fixed for ~~a city any meeting of the council meeting~~ falls on a date designated by law as a legal or national holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday.
- (c) Any meeting of the city council may be adjourned to a later date and time, provided that no adjournment shall be for a longer period than until the next scheduled meeting.
- (d) The city council may by resolution, when necessary, change the time and place of any meeting. The resolution shall set forth the circumstances necessitating such change. Such resolution shall be published at least 24 hours prior to the rescheduled meeting. The city clerk, or the city clerk's designee, shall give each council member written notice, ~~personally, or either in person, by mail, email, or other electronic means by mail, or by facsimile~~ of any change from the meeting days established by this section.
- (e) All meetings of the city council shall be open to the media, subject to recording by radio, television, and photography at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings under such rules as the city council may prescribe.

Section 2. That Section 2-4 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

Sec. 2-4. Special meetings.

- (a) The mayor, acting mayor, or six members of the city council may call special meetings of the city council whenever in their opinion the public business may require it.
- (b) Whenever a special meeting is called, a notice in writing signed by the mayor, acting mayor, or the council members requesting the meeting shall be prepared by and filed with the city clerk, or the city clerk's designee, and served forthwith upon each member of the city council either in person, by facsimile, by email, or other electronic means, or by notice left at the city council member's place of residence. The notice shall state the date and hour of the meeting and the purpose for which such meeting is called. No business shall be transacted at the meeting except such as is stated in the notice.
- (c) No special meeting shall be held until at least 24 hours after the call is issued.

Section 3. That Section 2-5 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

Section. 2-5. Informational Briefing meetings and working sessions of the city council and informational meetings.

- (a) The city council may meet in briefing meetings and informational meetings and working sessions which shall be open to the general public to review and discuss matters pertaining to the affairs of the city council for the coming meeting agendas and programs of the city, receive progress reports on current programs or projects, or receive other similar information from the mayor, provided that all discussions and conclusions thereon shall be informal. All agendas for an informational meetings and working sessions is not a regularly scheduled briefing meeting, members of the council of the city council shall be posted with given at least 24 hours notice.
- (b) Informational ~~The regularly scheduled briefing meetings may~~ shall be held the first three Monday's of the month and on the last Monday of the month. When the day fixed for an informational meeting falls on a date designated by law as a legal or national holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday. Cancellations must be posted with at least 24 hours notice to the public. afternoon one week prior to each scheduled council meeting.
- (c) Working sessions of the council may be held as needed.
- (d) The city council chair and vice chair shall determine the agenda, with city council input, for all informational meetings and working sessions.

Section 4. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a section to be numbered 2-5.1 to read:

Section 2-5.1. Standing committees of the city council.

The city council shall establish an audit committee, a fiscal committee, a land use, and a public services committee as standing committees of the city council. The city council chair and vice chair shall appoint the members of each committee and shall designate the committee chair for each committee who shall serve as the presiding officer.

*Section 5. That Section 2-7 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-7. Minutes.

(a) The city clerk, or the city clerk's designee, shall prepare minutes of all regular and special meetings, ~~briefing meetings~~, informational meetings, committee meetings, and executive sessions. The minutes shall be maintained in the office of the city clerk. The minutes shall reflect:

- (1) The date, time, and place of the meeting or session;
- (2) The members recorded as either present or absent;
- (3) A general description of all matters proposed, discussed, or decided; and
- (4) Record of any votes taken.

(b) Approval of minutes of all city council meetings and informational meetings ~~but closed meetings or sessions~~ shall be considered at the next regular council meeting. Such minutes may be reviewed by the city clerk, or the city clerk's designee, to correct spelling, numbering, or other such technical defects.

(c) Minutes of ~~closed executive meetings or~~ sessions shall be sealed in the office of the city clerk. They may ~~shall~~ be reviewed periodically by the city council in ~~closed executive~~ session.

(d) Minutes of all city council meetings held pursuant to section 2-3(b) of this article shall be published in the city's official newspaper. ~~Minutes of other meetings, except closed meetings, may be published at the request of a majority of the city council.~~

*Section 6. That Section 2-8 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-8. Journal of proceedings.

(a) A journal containing the minutes of the council meetings shall be kept by the city clerk's office which shall constitute the official record of the council. Council meeting minutes will be



available on the city's website for public view and copies are available from the city clerk's office upon request.

(b) The ~~journal~~ minutes of all the city council meetings shall be open to public inspection, except for proceedings of ~~closed-executive~~ meetings as permitted by state law.

*Section 7. That Section 2-9 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-9. Presiding officer; duties.

(a) The presiding officer of the city council meetings shall be the mayor. ~~In~~During the absence of the mayor, the acting mayor shall ~~discharge the duties but not the powers of the mayor-act as the presiding officer at of the city council meetings.~~ The acting mayor may vote on all issues.

(b) The city council shall designate a council chair and council vice chair to perform the duties of acting mayor pursuant to city charter section 2.03. The chair and vice chair shall serve a one-year term. The election of the city council chair and vice chair shall occur on the third Monday in May of each year.

(1) If the vice chair is unable to serve as acting mayor, the council chair may designate a city council member to serve as acting mayor in his or her absence.

~~(bc)~~ The mayor, or acting mayor, shall preserve strict order and decorum at all regular and special meetings of the city council and confine members in debates to the question under discussion. The mayor, or acting mayor, shall announce the vote on all subjects voted on by the city council.

~~(cd)~~ The city clerk, or the clerk's designee, mayor shall state every question coming before the city council; and shall serve as the parliamentarian for meeting of the city council. ~~The mayor, or acting mayor, shall announce the decision of the council on all subjects, and~~ decide all questions of order; subject, however, to an appeal to the city council, in which event a majority vote of the city council shall govern and conclusively determine ~~such a~~ question of order.

~~(de)~~ The mayor shall vote only in the case of a tie vote, with his or her name being called last.

~~(e) The council shall designate a council chair and council vice chair to perform the duties of acting mayor pursuant to charter section 2.03. The chair and vice chair shall serve a one-year term.~~

~~(f)~~

~~(1) The acting mayor shall preside at meetings of the council in the absence of the mayor.~~

~~(2) —The acting mayor may perform the ceremonial duties of the mayor or as requested by the mayor.~~

*Section 8. That Section 2-10 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-10. Call to order for city council meetings.

- (a) The mayor shall take the chair precisely at the hour appointed for the meeting, and shall immediately call the city council meeting to order.
- (b) In the absence of the mayor, the city council chair, or in the chair's absence, the council vice chair, as acting mayor, shall call the city council meeting to order.
- (c) Upon the arrival of the mayor, the acting mayor shall relinquish the position of presiding officer upon the conclusion of the business immediately before the city council.

*Section 9. That Section 2-11 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-11. Roll call.

Before proceeding with the business of the city council, the city clerk, or the city clerk's designee, assistant clerk shall call the roll of the members. The names of those present and absent shall be entered in the minutes.

*Section 10. That Section 2-15 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-15. Agenda.

- (a) All reports, communications, ordinances, resolutions, or other matters to be submitted to the council for consideration shall be delivered to the city clerk's office no later than 10:00 a.m. on the Monday one week prior to the council meeting. If the Monday one week prior to the city council meeting is a holiday, the deadline is 10:00 a.m. on the preceding Friday. All documentation requiring council action will be delivered to the city clerk's office in its complete and final format. at least two business days prior to each council briefing meeting, whereupon T the city clerk's office shall prepare the agenda in both paper and electronic format and will furnish each member of the council, the mayor, and the city attorney with access to the information after 1:00 p.m. on the Wednesday prior to the city council meeting. a copy of the documents and an agenda on the day prior to the council briefing meeting.
- (b) During consideration of new business, the mayor or any two city council member may bring before the city council any business that person feels should be deliberated upon by the city council. These matters need not be specifically listed on the agenda. can be added to the agenda by a vote of six city council members and will be considered under new business. Formal action

on such matters shall be deferred until a subsequent city council meeting, unless consideration is necessary for the immediate preservation of the public peace, health, or safety of the municipal government. except that immediate action may be taken upon If the city council chooses to take immediate action on the newly-calendared agenda item, and notice to the public is provided as set forth in SDCL 1-25-1.1, an affirmative vote of six members of the council is required for approval.

*Section 11. That Section 2-16 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-16. Addressing the council; time limit.

- (a) No person shall address the city council without first securing the permission of the mayor, or acting mayor, to do so.
- (b) Each person addressing the city council shall step up to the microphone in front of the rail, shall give his or her name ~~and address~~ in an audible tone of voice for the record, and unless further time is granted by the city council, shall be limited to five minutes.
- (c) All remarks shall be addressed to the city council as a body and not to any member thereof.
- (d) No person, other than the city council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the city council without the permission of the mayor, or acting mayor.
- (e) No question shall be asked of a city council member except through the mayor, or acting mayor.
- (f) No person, except city council members, shall address the council after a motion is made and seconded unless requested by a city council member.

*Section 12. That Section 2-17 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-17. Rules of debate.

- (a) City ~~C~~council debate may occur only after a motion has been made and seconded.
- (b) The mayor, or acting mayor, shall not show themselves to be partisan in their duties as the presiding officer of a city council meeting. The mayor, or acting mayor, may shall relinquish the chair if he or she desires to enter into the debate of the merits of a pending question. The mayor, or acting mayor, shall not return until the pending main question has been disposed of by the city council, debate from the chair, subject to such limitations of debate as are imposed on all members by this article.

(bc) Every member desiring to speak shall address the mayor, or acting mayor, and, upon recognition, shall keep comments confined to the question under debate.

(ed) A member, once recognized, shall not be interrupted when speaking unless it is to be called to order, or as herein otherwise provided. If a member, while speaking, is called to order, the member shall cease speaking until the question of order be determined, and if in order, the member shall be permitted to proceed.

(de) A motion may be reconsidered at any time during the meeting of the city council or at the next regular meeting. A motion for reconsideration being once made and decided in the negative, shall not be renewed. A motion for reconsideration can only be made by a member who voted on the prevailing side.

*Section 13. That Section 2-18 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-18. Voting procedure.

~~(a) — City c~~Council members may not abstain from voting, but may absent themselves from the meeting by physically leaving the meeting at the time an item is called by the clerk. Members with a financial interest in a matter shall disclose such interest and shall absent themselves from the meeting by physically leaving the meeting while the matter is considered.

~~(b) — A member's silence in failing to respond to a roll call shall be recorded as an affirmative vote.~~

*Section 14. That Section 2-19 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-19. Decorum.

(a) While the city council is in session, the members must preserve order and decorum, and a member shall neither, by conservation or otherwise, delay or interrupt the proceedings or the peace of the council or disturb any member while speaking or refuse to obey the orders of the city council or the mayor, or acting mayor, except as otherwise herein provided.

(b) Any person making personal, impertinent, or slanderous remarks or who shall become boisterous while addressing ing the council shall be forthwith, by the mayor, or acting mayor, barred from further audience before the city council, unless permission to continue be granted by a majority vote of the city council.

*Section 15. That Section 2-20 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-20. Enforcement of decorum.

Upon instructions of the mayor, or acting mayor, the sergeant at arms shall place any person who violates the order and decorum of the meeting under arrest, and cause him or her to be prosecuted under the provisions of this Code.

*Section 16. That Section 2-21 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-21. Persons authorized to be within rail.  
No person, except city officials and their representatives shall be permitted within the rail in front of the city council chamber without the express consent of the mayor, or acting mayor.

*Section 17. That Section 2-22 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-22. Members' objections to city council action entered into the minutes.  
At the time of the vote, a council member may request to have the reasons for that member's dissent from, or protest against, any action of the city council entered in the minutes.

*Section 18. That Section 2-23 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-23. Ordinances, resolutions, motions, and other documents requiring council approval.

(a) ~~All ordinances shall be prepared by the city attorney and presented to the council only in printed or type-written form.~~ No ordinance shall be prepared considered by for presentation to the city council unless requested-sponsored by two city council members ~~of the council~~ or the mayor, ~~or prepared by the city attorney on the attorney's own initiative.~~

(b) All proposed ordinances, resolutions, and other documents requiring city council approval, shall, before presentation to the council, have been approved as to form and legality by the city attorney's office, ~~and been reviewed by the mayor or an authorized representative, where there are substantive matters of administration involved.~~ All proposed ordinances and resolutions of the administration, shall also be reviewed by the head of the department under whose jurisdiction the administration of the subject matter of the ordinance, resolution, or other document would devolve. ~~Any comments~~ A memo regarding the document ordinance or resolution shall be submitted to the mayor and the city council. All proposed ordinances may be assigned or referred to a council committee for consideration and recommendation.

(c) Ordinances, resolutions, and other matters or subjects requiring action by the city council must be introduced and sponsored by two a members of the city council, except that the mayor may present ordinances, resolutions, and other matters or subjects to the city council, and any city council member may move that such ordinances, resolutions, matters or subjects be adopted; otherwise they shall not be considered.

(d) No ordinance shall relate to more than one subject. The subject shall be clearly expressed in the title.

- (e) The city clerk, or the city clerk's designee, shall distribute electronic copies of all proposed ordinances to all members of the council on the Wednesday prior to the city council briefing meeting at which the ordinance is to be introduced. If the ordinance carries an emergency clause, copies of the ordinance must be distributed at least 2412 hours prior to the meeting of the city council at which the ordinance is to be considered.
- (f) When a proposed ordinance is referred to a committee of the city council, the committee shall give a report of the proposed ordinance's status to the city council at a subsequent meeting. The proposed ordinance shall stand for final action in accordance with the report of the committee, notwithstanding that such committee reports an amended or substituted ordinance, provided that such amendment or substitution is germane to the title of ~~to~~ the ordinance originally referred to such committee.
- (g) The yes and no votes shall be taken upon the passage of all ordinances and resolutions and entered upon the official record of the city council.
- (h) An affirmative vote of at least five ~~of the city~~ council members shall be necessary to pass an ordinance. A resolution, motion, or any other proposition may be adopted by a majority of those present. When any vote is called, each city council member shall respond "yes," "no," or "pass." A city council member who responds "pass" shall be given an opportunity at the end of the roll call to change his or her vote to "yes," or "no." ~~Any "pass" response not so changed shall be recorded as an affirmative vote.~~
- (i) Upon passage, a number shall be assigned to each ordinance or resolution by the city clerk, or the city clerk's designee.
- (j) When passed by the council, unless an ordinance has been vetoed by the mayor, an ordinance shall be signed by the mayor and be attested by the city clerk. If the mayor does not veto an ordinance, but fails to sign the ordinance, the city clerk shall so note the failure to sign on the ordinance, shall attest and file the ordinance.
- (k) Any member of the city council may request formal written city attorney opinions, relating to city business, ~~from the mayor~~.
- (l) Any member of the city council may, for purposes of inquiry, request verbal or written opinion or advice on city legal matters directly from the city attorney.

*Section 19. That Section 2-25 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

Sec. 2-25. Adjournment.

A motion to adjourn is ~~always in order and is~~ decided without debate.

Section 20. That Section 2-26.2 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

Sec. 2-26.2. ~~Reserved. Standing committees of the council. The council shall establish a fiscal policy committee, a land use and development policy committee, and a public services policy committee as standing committees of the council to serve in a research and advisory capacity only.~~

Section 21. That Section 2-27 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

Sec. 2-27. Fee for ~~special meetings of council~~ use of Carnegie Chambers. If a special meeting of the city council is held because of an individual request, that individual shall pay a special meeting fee of \$150.00 to the city clerk 's office prior to the scheduling of the meeting.

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Date: 2011-06-13  
SIRE Meeting ID: 1479  
Meeting Type: Committee Meeting  
Subtype: Public Services Committee  
YouTube:[https://youtu.be/ZtJyHfjSF\\_0](https://youtu.be/ZtJyHfjSF_0)  
Agenda Item: Not Assigned  
Item ID: 58735

The following document(s) are public records obtained from the  
City of Sioux Falls.



1st Reading: \_\_\_\_\_  
2nd Reading: \_\_\_\_\_  
Date Adopted: \_\_\_\_\_  
Date Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY BY REVISING THE DUE PROCESS REQUIREMENTS FOUND IN ARTICLE VI, ADMINISTRATIVE APPEALS, OF CHAPTER 2.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

*Section 1. That Section 2-60 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Sec. 2-60. Appeal permitted.**

Any party who is harmed by any action or decision of any agency or major organizational unit of the city concerning an administrative decision of a city official or officials from which an appeal is not otherwise provided, may appeal the decision. The party who wishes to appeal is referred to as the "appellant." ~~The mayor shall use his discretion and shall either assign three directors to sit as a board or hire a~~ An independent hearing examiner, who must be a member in good standing of the State Bar of South Dakota, shall be assigned to hear the appeal.

Appeals shall be commenced by filing a written notice of appeal with the responsible agency or major organizational unit either in person or postmarked within 15 ten days of the decision. The written notice of appeal shall ~~include a statement of the action complained of, why the same should be modified or rescinded, whether the appellant desires appointment of a board or hearing officer or an open or closed hearing and an address where the appellant can be mailed notice of hearings.~~ be printed legibly or typed and contain the following information:

(1) The reasons the appellant believes the administrative citation or decision is objectionable, incorrect, or illegal.

(2) The amount and type of claim or dispute involved and the time during which it accrued or occurred.

(3) The name, address, and telephone number of the appellant.

(4) The number of the citation being appealed, if applicable.

(4)(5) A statement indicating whether the appellant desires the administrative appeal hearing to be open or closed to the public. All administrative appeal hearings are presumed to be open

to the public. If either party requests a hearing that is closed to the public, the party requesting the closed hearing must present good cause to the hearing examiner that the public interest in having an open hearing is outweighed by the privacy interest involved in a particular case or that a closed hearing is legally required based upon the nature of the evidence to be presented at the administrative appeal hearing.

~~(5)~~(6) If the appellant is to be represented by a legal representative, the name, address, and telephone number of the representative.

~~(6)~~(7) The signature of the appellant, legal representative, and/or corporate agent.

A processing fee of \$50.00 shall be paid by cash, check, or certified funds simultaneously with the filing of the notice of appeal. Any party who requests a hearing to contest an administrative citation and/or decision and is financially unable to pay the processing fee may file a request for a hardship waiver in lieu of the processing fee. The request for hardship waiver must be filed simultaneously with the filing of the notice of appeal. The party requesting the hardship waiver must submit a sworn affidavit, together with any supporting documents, demonstrating to the satisfaction of the independent hearing examiner the party's financial inability to deposit with the city the full amount of the processing fee. Written proof of financial hardship at a minimum must include tax returns, financial statements, bank account records, salary records, or similar documentation demonstrating that the party is unable to pay the processing fee. The hearing examiner shall issue a written decision specifying the reasons for granting or denying a hardship waiver. The decision of the independent hearing examiner regarding the hardship waiver shall be final and shall be mailed by first class mail to the party requesting the waiver. If the request for a hardship waiver of the processing fee is denied, the party shall pay the \$50.00 processing fee within five days of the written decision or prior to the administrative appeal hearing, whichever occurs first. If the processing fee is not paid in full pursuant to these provisions, the request for hearing shall be deemed incomplete and waived and the administrative decision shall be deemed final. The processing fee is not refundable except as provided in Section 2-65 below. Compliance with the above time limit, notice of appeal contents, and payment of the processing fee or granting of a hardship waiver shall be jurisdictional prerequisites to any appeal. Failure to comply with any of these requirements shall be deemed to waive the right to a hearing.

If the appellant complies with the jurisdictional requirements for such an appeal, then the city will take no further action to enforce the fine, penalty, or result until the hearing examiner renders a final decision. However, the provisions for prior notice and hearing may be dispensed with when, in the opinion of the director of the responsible agency or major organizational unit of the city, immediate action is necessary to summarily abate a dangerous condition on public or private property or there is an imminent threat to life or safety on public or private property. The director shall take only such action as is reasonably necessary to summarily abate the danger, and then the city will take no further action to enforce the fine, penalty, or result until the hearing examiner renders a final decision.

The director of the responsible agency or major organizational unit, or his/her designee, shall immediately deliver a copy of the appeal to the city attorney who will act as legal counsel.

Section 2. That Section 2-61 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Sec. 2-61. Time of hearing and notice.**

A public hearing, or a closed hearing if the ~~board or~~ hearing ~~officer-examiner~~ determines it is necessary, shall be held on all appeals within ~~15 30 working~~ days after the filing of the appeal, unless a later date is scheduled by agreed upon by the appellant and the board or hearing examiner upon a showing of good cause why the matter should be scheduled beyond that date. The ~~city attorney's office major organizational unit or agency~~ shall cause written notice of the date, time, and place of such hearing to be served upon the appellant by personal service or certified mail to the address set forth in the notice of appeal at least ~~15 five~~ days before the hearing date. Simultaneously, the notice of hearing may be sent by first class mail. If the notice of hearing is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the notice of hearing sent by first class mail is not returned.

Section 3. That Section 2-62 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Sec. 2-62. Hearing procedures.**

The following rules shall govern the procedures for an administrative hearing:

- (1) Hearings and administrative appeals shall be governed by the rules of civil procedure and the rules of evidence as set forth in the South Dakota Codified Laws (SDCL). However, the foundational requirements of SDCL 19-16-10 and SDCL 19-16-12 will not be required as long as the hearing examiner is reasonably satisfied regarding the source of the document(s).~~need not be conducted according to the technical rules relating to evidence and witnesses.~~
- (2) Oral evidence shall be taken only on oath or affirmation.
- (3) The ~~chairman of the board or the~~ hearing examiner shall administer oaths or affirmations to witnesses.
- (4) ~~Any relevant evidence shall be admitted if it is the type of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence after objection in civil actions in courts of competent jurisdiction in this state. The city bears the burden of proof at the hearing. The standard of proof to be used by the hearing examiner is by a preponderance of the evidence.~~
- (5) ~~Irrelevant and unduly repetitious evidence and evidence that lacks trustworthiness shall be excluded.~~The proponent of any testimony to be offered by a party or witness who does not proficiently speak the English language shall provide an interpreter. The interpreter shall be approved by the independent hearing examiner conducting the proceeding as proficient in the English language and the language in which the witness will testify. The cost of the interpreter is to be paid by the party providing the interpreter.

Section 4. That Section 2-63 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Sec. 2-63. Rights of parties at hearing.**

The appellant, the major organizational unit or agency, and any other party to an appeal shall have these rights among others:

- (1) To call and examine witnesses on any matter relevant to the issue of the hearing;
- (2) To introduce documentary and physical evidence;
- (3) To cross examine opposing witnesses on any matter relevant to the issues of the hearing;  
~~and~~
- (4) To rebut evidence.
- (5) To subpoena witnesses to appear and give testimony on that party's behalf or to produce records, books, papers, and documents relating to any matters related to the hearing. Any application for a subpoena shall be submitted to the hearing examiner for consideration at least ten days in advance of the hearing. The hearing examiner shall not unreasonably refuse to issue the requested subpoena. Any subpoena must be issued and served no later than five days before the scheduled time of the hearing. All costs related to the subpoena, including the witness fee and mileage fee at the rate provided by statute, SDCL Chapter 19-5, shall be paid by the party requesting the subpoena.
- (6) Any party who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided.
- (7) The hearing examiner shall cause to be made a record of the hearing, either stenographically or by sound recording, and shall make available a recording of the hearing to any person upon request and payment in advance of the estimated cost of the recording.

Section 5. That Section 2-64 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Sec. 2-64. Decision.**

After each appeal hearing, the ~~board or~~ hearing examiner shall perform the following:

- (1) Make written findings of fact.
- (2) Based upon such written findings, sustain, remand for further hearing or action, or rescind the complained action or decision. The ~~board or~~ hearing examiner has the discretion to may in its discretion waive the payment of any ~~permit~~, reinstatement or late penalty fee.

Section 6. That Section 2-65 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Sec. 2-65. Report, costs.**

A written report of the decision, including the findings of fact, shall be served either in person or by certified mail upon ~~furnished to~~ the appellant and the major organizational unit or agency within 15 working days from the date the appeal hearing is concluded.~~closed~~. The city and the appellant shall bear their own respective costs of the appeal proceeding, except as specifically provided herein. If the hearing examiner determines that the appellant has prevailed at the hearing, then the appellant's \$50.00 processing fee shall be refunded. The decision of the ~~board or~~ hearing examiner shall be final.

Section 7. That Section 2-66 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Sec. 2-66. Subject to judicial review.**

The final decision of the ~~board or the~~ hearing examiner may be subject to judicial review as provided by law. If judicial review has been commenced by the aggrieved party within 30 days after the final decision has been entered by the hearing examiner, or as otherwise provided by law, the city will take no further action to enforce the fine, penalty, or result until the civil action is completed with the exception of those matters which require immediate abatement as set forth in Section 2-60.

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk