

CHAPTER 10 LICENSES

(Amended and Established Ord. #2021-14 on 11/8/2021; Ord. #2022-08 Establishing Section 600 on 07/05/2022)

10-101 APPLICATION FOR LICENSE

Except as otherwise provided, an applicant for a license shall first make and file with the City Office application in writing therefor. The application shall contain such information as required by the license authority and must show that applicant is eligible for the license for which is made.

10-102 ACTION ON APPLICATION

The City Office shall upon the filing of an application for a license, present such application to the proper licensing authority for approval. Except as otherwise provided, all applications for licenses must be approved by the City Council. The decision of the licensing authority, approving or disapproving an application for license, shall be determined by such licensing authority.

10-103 PAYMENT OF LICENSE FEE

Except as otherwise provided all applicants for licenses shall pay the fee therefor to the City Office and receive proper receipt.

10-104 CITY OFFICE TO ISSUE LICENSES

Except as otherwise provided, it shall be the duty of the City Office to issue licenses.

10-105 CITY OFFICE TO KEEP LICENSE FILE

The City Office shall make out all licenses provided for under the ordinances of this city in duplicate and keep a copy thereof on file. Any application presented to the City Office, on which a license is issued, shall be retained by the City Office, and filed with the copy of the license issued thereon.

10-106 REVOCATIONS

Any license authorized in this section, or which may be granted by the City Council, is granted with the understanding that the Council may at any time revoke the same with or without cause. Whenever any license shall be granted and money accepted therefor by the city, and said license shall be revoked, the money paid to and held by the City of Philip for the unexpired term of said license, shall be refunded to the licensee, except in those cases where license shall be forfeited as a punishment for a violation of any ordinance of this city. Any license granted by the City of Philip, its Mayor, and the City Council, is granted subject to the provisions of this section and said licensee is bound by these provisions. The City of Philip shall issue no license of any character exempt from the provisions of this section.

10-200 PEDDLERS

10-201 DEFINITION

The word "peddler" as used herein shall mean any person, whether a resident of this city or not, locating upon any public property or travelling from place to place, from house to house, or from street to street, by foot or by any vehicle for the purpose of selling anything including goods, wares, merchandise or services, and who does not maintain a regular stock of said items in the city for at least six (6) months during the year in which he/she is selling.

Said definition shall include the terms “solicitor,” “transient or itinerant merchant or vendor,” or “transient or itinerant photographer.”

10-202 EXCEPTIONS

The provisions of this section shall not apply to solicitations, sales or distributions made by charitable, educational, or religious organizations which have their principal place of activity in the city.

10-203 SALES FROM VEHICLES

No person shall sell or offer for sale any goods or merchandise from a car, wagon, automobile, truck or other vehicle in the thoroughfares of the City of Philip. This section does not apply to the delivery of farm or garden products ordered in advance, drayage or to the delivery of goods sold in the regular course of an established business.

10-204 PROHIBITING DISTRIBUTION OR SALE OF OFFENSIVE ARTICLES

No person shall distribute or sell any publication, paper or article which may tend to invite a riot, advocate disloyalty to the government of the United States, urge unlawful conduct, cause a breach of the public peace or which is offensive to the public decency or which contains blasphemous, offensive, libelous or scurrilous language.

10-205 ENTRANCE TO PREMISES RESTRICTED

It shall be unlawful for any peddler to enter upon a private premises when the same are posed with a sign stating, “No Peddlers Allowed,” “No Solicitors Allowed,” or the like.

10-206 REFUSING TO LEAVE

Any peddler who enters upon premises owned or leased by another and willfully refuses to leave the premises having been notified by the owner or possessor of the premises, or his/her agent to leave the same.

10-207 MISREPRESENTATION

It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of goods, wares, merchandise, or services for the purpose of inducing another to purchase the same.

10-208 HOURS OF OPERATION

It shall be unlawful for any peddler to engage in business of peddling between the hours of 8:00 p.m. to 8:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with an invitation from the prospective customer.

10-209 LICENSE REQUIRED

It shall be unlawful for any person to engage in business as a peddler within the city without first obtaining a license and paying the license fee. No two or more persons shall operate under the same license for any reason. The license fee for a peddler shall be set from time to time by the City Council.

10-210 INFORMATION REQUIRED

The applicant shall apply for a license on forms provided by the City Office which shall state:

- 1) The applicant and business information including permanent addresses;
- 2) The type of goods, wares, merchandise or services the applicant wishes to engage in such business within the city;

- 3) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery;
- 4) The period of time the applicant wishes to engage in business within the city;
- 5) Such other relevant information as the city may require for investigation of the applicant

License application shall be accompanied by a governmental identification card issued to the applicant; business' sales tax license; and, fee in the form of cash, check or money order.

10-211 LICENSE FEE

Any person engaged in the business of peddling as defined in Section 10-201, shall pay a license fee as set from time to time by resolution of the City Council.

10-212 ISSUANCE

No license shall be issued by the City Office under the provisions of this section until the applicant shall have complied with all the provisions and requirements of this chapter.

No license shall be issued to a corporation, partnership, or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit whether acting for himself/herself or as an agent or representative of another.

10-213 CONTENTS OF THE LICENSE

Each license issued under the provisions of this section shall be signed by City Office staff, shall be dated as the date of its issuance, and shall state the duration or term of such license on the face thereof. Any license not dated and signed as herein provided, or which was issued in violation of this section shall be void.

10-214 DURATION

Every license issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit be issued for a period of time in excess of twelve (12) months.

10-215 DISPLAY

Every peddler having a license issued under the provisions of this section and doing business within the city shall display the license upon the request of any person; and failure to do so shall be deemed a misdemeanor.

10-216 REVOCATION

Any license issued under the provisions of this section may be revoked for the violation by the permittees of any provision of this Code, state law or city ordinance. Upon such revocation such permit shall immediately be surrendered to the City Office or Police Department, and failure to do so shall be a misdemeanor.

10-217 SALES OF GOODS AND MERCHANDISE ON CITY PROPERTY PROHIBITED; EXCEPTIONS.

No person shall sell or offer for sale any goods or merchandise within the streets, sidewalks, thoroughfares, municipal parks, or any property owned by the city. This section does not apply to:

- 1) Individuals that possess a valid mobile food and beverage license;

- 2) The delivery of farm and garden products where the orders have been placed in advance;
- 3) The delivery of goods sold in the regular course of an established business in the city; or,
- 4) Stands, carnivals, concessions and other businesses of a temporary nature or days of public celebration when authorized by the City Council.

10-218 PENALTIES

A violation of this section is subject to the general penalty provision in Sec. 13-101.

10-300 MOBILE FOOD AND BEVERAGE VENDING

10-301 DEFINITIONS

Food Truck - For the purposes of this section, the term “food truck” shall be defined as a licensed motor vehicle that has equipment for cooking, preparing, or selling food or beverages. This definition shall not include deliveries of prepared food or beverages by passenger vehicles, vans, or trucks having only devising installed for securing food or beverages during transport and is not equipped with any equipment for food or beverage preparation.

Food Cart - For the purpose of this section, the term “food cart” shall be defined as any type of mobile carrier designed to facilitate the sale and marketing of food or beverages, and is not defined as a food truck.

Mobile Food and Beverage Vending/Vendor(s) – For the purpose of this section, the term “mobile food and beverage vending/vendors(s) shall be defined as an activity whereby prepared food or beverages are sold to the general public from a food truck or food cart. This definition shall not include food and beverage delivery services.

10-302 LICENSE REQUIRED

It shall be unlawful to operate a food truck or food cart in the City of Philip without first having obtained a license as described herein.

10-303 FEES AND LICENSING PROCEDURES

The operator of all food trucks and food carts shall apply for a license on forms provided by the City Office.

The annual license fee shall be set from time to time by the resolution of the City Council.

The annual license and fee shall not apply in the following instances:

- 1) Mobile food and beverage vendors operating where a city approved special event permit has been issued, and with authorization from the special event sponsor, and if the vendor does not operate from any public street, sidewalk, or city park at any other time.
- 2) Mobile food and beverage vendors that operate on public or private property for a one-time event lasting three calendar days per year or less.
- 3) Caterers and food delivery services where food or beverage is prepared in a place other than the delivery vehicle.

10-304 PERMITTED LOCATIONS

Mobile food and beverage vending shall be permitted at the following locations:

- 1) On private property zoned commercial or industrial.

- 2) Parked lawfully on a public street except where prohibited.
- 3) Any parking lot that serves a City of Philip park, and the parking lot is owned by the City of Philip.
- 4) On public sidewalks, only food carts are permitted. A clear space of four feet in any direction around the food cart must be provided on the public sidewalk.

10-305 LOCATIONS AND TIMES PROHIBITED

- 1) Mobile food and beverage vending is prohibited where vending activity is blocking access to a public street, alley, bike path, sidewalk, or access to an adjacent property.
- 2) Mobile food and beverage vending is prohibited between the hours of 9:00 p.m. and 6:00 a.m. the following morning.
- 3) The above prohibited times do not apply to vendors operating where a city approved special event permit has been issued, and with authorization from the special event sponsor.

10-306 HEALTH, SAFETY AND SANITATION

Mobile food and beverage vendors shall:

- 1) Operate according to the minimum public health and food safety requirements determined by the South Dakota Department of Health.
- 2) Comply with the licensing requirements of the State of South Dakota including food, sales tax, and mobile food and beverage vending.
- 3) Provide a trash bin for public use and remove all garbage within twenty-five feet of any food truck or food cart.
- 4) Not broadcast loud noise that results in a nuisance to the surrounding properties.

10-307 SIGNAGE

No signage shall be permitted except for what appears on the mobile food and beverage truck or cart.

10-308 ALCOHOL

Mobile food and beverage vendors shall not sell or distribute alcoholic beverages.

10-309 LIABILITY AND INSURANCE

Mobile food and beverage vendors operating from public streets and sidewalks or other City-owned property shall maintain commercial general liability insurance with a limit of not less than one million dollars per occurrence and two million dollars general aggregate naming the City of Philip as an additional insured. A copy of the certificate of coverage shall be provided to the City of Philip at all times when the license is in effect and notice to the City Office shall be provided when coverage is terminated.

10-310 VIOLATIONS AND REVOCATION OF LICENSE

Licenses shall be subject to revocation by the City Council for violation of any provisions of the State Law and City Ordinance according to the following procedure:

- 1) Vendor shall be provided with written notice that describes the nature of the violation and a timeline for correction.
- 2) If correction is not completed within the time specified, the City Council may revoke the license at a regularly scheduled City Council meeting.

10-400 VIDEO LOTTERY MACHINES

10-401 VIDEO LOTTERY MACHINE FEES

- a) There is hereby imposed upon any person, firm or corporation operating video lottery machines within the City limits of the City of Philip, an annual license fee of fifty dollars (\$50.00) per video lottery machine per year.
- b) The fee imposed hereby shall be due and payable at the time of application for issuance or renewal of an alcoholic beverage license. In the event any licensee shall increase the number of video lottery machines during the period an alcoholic beverage license is in force, the licensee shall immediately apply for, and pay the annual fee for, a license for each additional video lottery machine. The fee provided for herein shall not be prorated for a partial year.

10-500 CANNABIS LICENSES

The City Council of the City of Philip enacts the following section in order to ensure that a cannabis establishments within the municipal boundaries of the city 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.

10-501 DEFINITIONS AND GENERAL PROVISIONS

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.

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. (hemp) 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.

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.

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.

Cannabis Establishment - Cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

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.

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

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.

Church – A building used for public worship.

Department – The South Dakota Department of Health.

License Holder - A cannabis establishment that possesses a license under this article to operate the cannabis establishment for which the license was issued.

Public or Private School - Any preschool, elementary school, middle school, secondary school, or high school. The term also includes any daycare or childcare center.

Unlicensed Cannabis Establishment - An entity that would otherwise meet the definition of a cannabis establishment, but which is not legally licensed by the City of Philip and does not have a current and valid registration certificate issued by the Department.

10-502 PROHIBITED USES

No person shall produce, transport, store or sell any cannabis products except as authorized by SDCL title 34.

No cannabis cultivation facility, cannabis product manufacturing facility and cannabis testing facility may operate and/or be licensed in the city.

10-503 LICENSE REQUIRED

No cannabis dispensary may be operated in the city without the appropriate valid and current cannabis dispensary license issued by the city pursuant to this article. A violation of this provision is subject to a penalty of \$500. Each day of the violation constitutes a separate offense.

No cannabis dispensary may be operated in the city without the appropriate valid and current cannabis dispensary registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to a penalty of \$500. Each day of the violation constitutes a separate offense.

10-504 LICENSE APPLICATION

An application for a cannabis dispensary license must be made on a form provided by the city. No other application form will be considered.

The applicant must submit the following:

- (1) Application fee of \$5,000. The city will reimburse 80% of the application fee to applicants who fail to obtain a registration certificate from the Department. The City Council of the City of Philip reserves the right and authority to review and adjust the application fee through resolution of the said City Council.

- (2) An application that will include, but is not limited to, the following:
 - a) The legal name of the prospective cannabis dispensary.
 - b) The physical address of the prospective cannabis dispensary.
 - c) The name and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.
 - d) A sworn statement that no principal officer, owner, and board member has been convicted of a felony offense in the previous ten (10) years in any jurisdiction.
 - e) Any additional information requested by the city.
- (3) Proof of a valid and current registration certificate issued by the Department.

Each principal officer, owner, and board member of the cannabis dispensary must meet the qualifications of a license holder.

The city may be a license holder. The city's application for a cannabis dispensary license will be given preference over any other application.

10-505 ISSUANCE OF LICENSE

Once an application is filed, the application will be referred to the appropriate city departments for an investigation into the applicant's eligibility for a license. If applicant meets the requirements in 10-503, the City Council shall hold a public hearing to consider the application.

- (a) Public hearing shall be scheduled along with a notice of said hearing published once in the official newspaper of the City not less than seven (7) days prior to the hearing date. Public hearings are required for new and renewal licenses.
- (b) The City Council may issue a license unless:
 - (1) The applicant has made a false statement on the application or submits false records or documentation; or
 - (2) Any owner, 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 felony offense in the previous ten (10) years in any jurisdiction; or
 - (4) The proposed location of the dispensary is within two hundred feet (200') of any city building and park, school, church or residential property existing before the date of the application; or
 - (5) The proposed location does not share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco products.
 - (6) The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder; or
 - (7) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
 - (8) Any owner, principal officer or board member of the applicant has had a cannabis dispensary license revoked by the city or a registration certificate revoked by the state; or
 - (9) An applicant, or any owner, principal officer, or board member thereof, is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or

- (10) The applicant will not be operating the business for which the license would be issued.
- (e) The city will reject any application if the limit on the number of cannabis dispensaries has been reached.
- (d) The license must be posted in a conspicuous place at or near the entrance to the cannabis dispensary so that it may be easily read at any time.
- (f) If applicant requests the City Council hold a special meeting to consider the application for new license or the transfer thereof regulated through this Section, the applicant requesting said meeting shall pay all costs associated with the meeting.

10-506 CITY NEUTRALITY AS TO APPLICANTS

Upon request from the Department as to the City's preference of dispensary license applicants, the City will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the city will abstain from endorsing any dispensary license application as beneficial to the community.

10-507 NUMBER OF LICENSES

No more than one (1) cannabis dispensary shall be allowed to operate in the City at any given time.

10-508 HOURS OF OPERATION

- (a) Cannabis dispensaries are allowed to operate between the hours of 7:00 a.m. and 7:00 pm on Monday through Saturday.
- (b) Cannabis dispensaries are not allowed to be open on Sundays, New Years Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Native American Day or Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day, and other holidays as designated by the City Council.

10-509 EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license shall be for a calendar year and may be renewed only by making application as provided in section 10-503 and 10-504. Application for renewal must be submitted at least sixty (60) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (b) The renewal fee is \$5,000. The city will reimburse 80% to applicants who fail to obtain renewal of their registration certificate from the Department. The City Council of the City of Philip reserves the right and authority to review and adjust the renewal fee through resolution of the said City Council.
- (c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the city may order closure of the cannabis establishment.
- (d) If a license holder has not operated a cannabis dispensary for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

10-510 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 dispensary.
 - (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 registration certificate issued by the Department 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 on the premises of the cannabis dispensary.

10-511 REVOCATION

- (a) A license may be revoked if the license is suspended under Section 10-508 and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section 10-508 because of a violation outlined in that section and the license has been previously suspended in the preceding 12 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 dispensary for which a license is required under this article while the license was suspended;
 - (4) Repeated violations of Section 10-508(a)(3);
 - (5) Operated a function of the cannabis dispensary for which the license holder was not licensed (e.g., a licensed cannabis dispensary 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 dispensary;
 - (7) A license holder, or an owner, principal officer, 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;
 - (8) The license holder has its Department-issued registration suspended, revoked, or not renewed or the registration certificate is expired; or
 - (9) The license holder allows a public nuisance to continue after notice from the city.

10-512 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 city'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 dispensary.

- (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 Mayor, Police Committee, City Administrator and Chief of Police.
- (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 a cannabis dispensary license for one year from the date the revocation became effective.

10-513 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 City Council 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 City Administrator's Office. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

10-514 LICENSES NOT TRANSFERABLE

No cannabis dispensary 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 dispensary at any place other than the address designated in the application.

10-515 LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis dispensary that constitutes grounds for suspension or revocation will be imputed to the cannabis dispensary 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 dispensary, knowingly allowed such act to occur on the premises.

10-516 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.

10-600 SHORT TERM RENTALS

10-601 DEFINITIONS

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the

definitions for lodging related terms which are defined by SDCL 34-18-1.

Bed and Breakfast Facility - A small lodging establishment that offers overnight accommodation and breakfast.

Department – The South Dakota Department of Health.

License Holder – The property owner of a short term rental property that possesses a license under this article to operate the short term rental for which the license was issued.

Property Owner - The individual, individuals or company that has proprietors' rights to the property.

Short Term Rental - Bed and breakfast facilities and vacation home rentals that are available for rental to the same guest(s) for a period not exceeding thirty consecutive days. A short term rental does not include a bed and breakfast facility or a vacation home rental that is available for rent for fourteen or fewer days in a calendar year. Any short term rental which may be used occasionally as a bed and breakfast facility and at other times be used as a vacation home rental shall be reviewed as a vacation home rental.

Transfer - The grant or conveyance of an ownership interest in the short term rental property from an entity, trust, person, or combination thereof to another entity, trust, person, or combination thereof. The grant or conveyance of an ownership interest in the short term rental property from one spouse to his or her respective spouse by lawful marriage shall not be considered a transfer.

Vacation Home Rental (VHR) - A short term rental in which a private dwelling is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for a charge, and where the dwelling is not also occupied by an owner or manager during the time of rental.

10-602 GENERAL PROVISIONS

- (a) Occupancy of recreational vehicles (RVs), camper trailers and tents shall not be allowed as a VHR. Cross reference ordinance 11.1901.1.
- (b) The minimum age allowed for the principal renter of a VHR is 21 years of age.
- (c) The use of open fires, fire pits, fireworks, charcoal burning grills, gas fired grills, or other devices (as applicable) shall not be allowed without permission from the owner, property manager or local contact. The owner, property manager or local contact must comply with all federal, state and/or local laws, ordinances, or rules regarding open burning, burn barrels, fire pits, fireworks, fireplace, or the burning of any flammable material.

10-603 LICENSE REQUIRED

No short term rental may be operated in the city without the appropriate valid and current license issued by the city pursuant to this article. A violation of this provision is subject to a penalty of \$500. Each day of the violation constitutes a separate offense.

No short term rental may be operated in the city without the appropriate valid and current license issued by the Department pursuant to rules promulgated under SDCL 34-18. A violation of this provision is subject to a penalty of \$500. Each day of the violation

constitutes a separate offense.

10-604 LICENSE APPLICATION

An application for a short term rental license must be made on a form provided by the city. No other application form will be considered.

The applicant must submit the following:

- (1) Application fee as contained within the Rates and Fee Schedule, which is set and amended by resolution.
- (2) An application that will include, but is not limited to, the following:
 - a) Each property owners name, permanent address, and phone number.
 - b) The legal description and physical address of the property to be used as a short term rental.
 - c) A description of the proposed use (including any outdoor use), the maximum number of rooms and occupancy available, and the anticipated dates the short term rental will be available for overnight accommodations.
 - d) Contact information for the property manager or local contact individual to comply with the requirements of this Section, and to be contacted in case of complaint or emergency.
 - e) Any additional information requested by the city.
- (3) A copy of the Lodging License issued by the Department.
- (4) A copy of the owner's South Dakota Sales Tax License issued by the South Dakota Department of Revenue.
- (5) A copy of the property's insurance coverage reflecting the endorsement for the short term rental.

10-605 ISSUANCE OF LICENSE

Once an application is filed, the application will be referred to the appropriate city departments for an investigation into the applicant's eligibility for a license. If applicant meets the requirements in 10-604, the City Council shall consider the application.

- (a) The City Council may issue a license unless:
 - (1) The owner has made a false statement on the application or submits false records or documentation; or
 - (2) The property is not in compliance with the Department.
 - (3) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
 - (4) Any applicant or property owner has had a short term rental license revoked by the city or a lodging license revoked by the state; or
 - (5) Any property owner of the property is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any short rental property; or
 - (6) The applicant will not be operating the business for which the license would be issued.
- (b) The city will reject any application if the limit on the number of short term rentals has been reached.
- (c) If applicant requests the City Council hold a special meeting to consider the application

for new license, the applicant requesting said meeting shall pay all costs associated with the meeting.

10-606 NUMBER OF LICENSES

No more than one (1) bed and breakfast facility; and, no more than four (4) vacation home rentals shall be allowed to operate in the City at any given time.

The two (2) vacation home rentals already existing on Airbnb at the time of the passage of this ordinance shall be considered grandfathered in if fully compliant within sixty of passage of this ordinance, including annual renewal.

10-607 EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license shall be for a calendar year. A license holder must renew the license on an annual basis in order to continue the short term rental operation. Renewal applications shall include the following:
 - (1) The annual application fee as contained within the Rates and Fee Schedule, which is set and amended by resolution.
 - (2) A copy of the current Lodging License issued by the Department.
 - (3) A copy of the property's insurance coverage reflecting the endorsement for the short term rental.
 - (4) Contact information for the property manager or local contact individual to comply with the requirements of this Section, and to be contacted in case of complaint or emergency.
- (b) It may be renewed within thirty (30) days of its expiration, but if a license holder fails to renew the permit within thirty (30) days of expirations, he or she must submit a new license application. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the city may order closure of the short term rental.
- (d) If a license holder has not operated a short term rental for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

10-608 SUSPENSION OR REVOCATION OF LICENSE

The City may suspend or revoke any short term rental license, or refuse to issue a license, for any of the following grounds:

- (a) Failure to adhere to applicable regulations or laws.
- (b) Concerns expressed to the City about the operation of the short term rental, including nuisance issues, noise complaints, safety concerns, calls for service to the Police department, or similar complaints.
- (c) Commission of fraud or willful misrepresentation in the application for or in obtaining a license.
- (d) Commission, or permitting, aiding, or abetting in the commission of any unlawful act in the short term rental.
- (e) Conduct or practices detrimental to the public health, safety, or welfare.
- (f) Any property owner is delinquent in payment to the city, county, or state for any taxes or fees related to the short term rental.

- (g) The Department issued registration is suspended, revoked, or not renewed or the registration certificate is expired.

10-610 SUSPENSION AND REVOCATION PROCESS

- (a) The license holder will be issued a notice of intent to suspend or revoke a short term rental license and the reasons for the suspension or revocation by first class mail to the license holder's address on record.
- (b) If the license holder disputes the suspension or revocation, the owner has ten (10) days from the postmark date on the notice to request a hearing before a hearing panel, which will consist of the Mayor, Building Committee, and City Administrator.
- (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 owner appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- (e) Any property owner who has had a license revoked may not be issued a short term rental license for one year from the date the revocation became effective.

10-611 APPEAL

A property owner 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 City Council 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 City Administrator's Office. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

10-612 LICENSES NOT TRANSFERABLE

A short term rental license may not be transferred to a different location or to a different property owner.

10-613 LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by any property owner, manager or local contact of a short term rental that constitutes grounds for suspension or revocation will be imputed to the short term rental property owner for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if a property owner or a person who managed, supervised or controlled the operation of the short term rental, knowingly allowed such act to occur on the premises.

10-614 PENALTIES

Any person who operates or causes to be operated a short term rental 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 short term rental so operates is a separate offense or violation.