

CITY HALL, CITY OF ARLINGTON, SOUTH DAKOTA  
November 2, 2015

The City Council met as the Zoning Commission. There was no business. Meeting adjourned.

The City Council met in regular session in the Municipal Building. Present on Roll Call were Mayor Amiel Redfish and Council Members: Curt Lundquist, Terry Rowbotham, Garth Johnson, Todd Bunker and Keith Wendland. Absent: Jared Steffensen.

Motion was made by Bunker, seconded by Johnson to approve the minutes of the October 5<sup>th</sup> meeting. All in favor—Carried.

Bills on file were submitted for consideration and on Motion by Lundquist, seconded by Wendland, the Finance Officer was instructed to issue payment for same. All in favor on Roll Call Vote—Carried.

Bills approved as follows:

23046	Prairie Ag Partners	Fuel		4160.00
29047-23054	Salaries	General Fund	101	7617.40
		Water	602	713.57
		Electric	603	3466.51
		Sewer	604	527.36
23055	Birch Communications	Phone Chges		226.61
Auto Debit	Citizens State Bank	EFTPS—Oct 15 <sup>th</sup> WH-SS-Medicare		3876.22
23056	Shane Duffy	Refund Meter Deposit		100.00
23057	Electric Fund	City Utility Bills		3139.59
23058	Heartland Consumer Power Dist	Energy		22251.28
23059	Kingsbury County Auditor	County Law Enforcement Contract		5265.00
23060	Mediacom LLC	Internet		148.30
23061	SD State Treasurer	Sales Tax		6178.77
23062	Western Area Power Adm	Energy		18917.12
23063-23097	Salaries	General Fund	101	14602.85
		Water	602	902.64
		Electric	603	2816.26
		Sewer	604	1124.37
23098	AFLAC	Payroll Deductions		172.53
23099	AT&T	Cell Phone Chges		33.02
Auto Debit	Citizens State Bank	EFTPS—Oct 30 <sup>th</sup> WH-SS-Medicare		5364.74

23100	East River Electric Power Co	Energy	4354.55
23101	Northwestern	Service to Shop & Coop Shop Bldgs	20.00
23102	SD Retirement System	Oct Retirement	2977.74
23103	Sioux Valley Energy	Electricity @ Airport	81.00
23104	SD Supp Retirement	Supp Retirement/Steve Carlson	100.00
23105	The Health Pool of SD	Nov Health Insurance Premiums	4764.35
23106	Amaril Uniform Co	2 t-shirts/Jason	95.90
23107	Amazon Credit Plan	Books/Library	263.35
23108	A-Ox Welding Supply Co	Cylinder Rent	175.50
23109	Arlington Hardware Hank	Bulbs/Mr Clean/drum liner/bolts/washers/sea foam/ antifreeze/shop towels/repairs/gloves/tarp/bolts/ silicone/sealant/foam insulation	143.22
23110	Arlington Sun	Publications	180.52
23111	Avera Occupational Medicine	Random Drug Test-Marshal Mix	88.90
23112	Jerry Baker	Book/Library	39.94
23113	Banner Associates	Engineering Services—presented Bowes bill & Change order	440.50
23114	Bunker Auto Inc	Wipers/bulbs/switch/filters/oil/repairs/headlamp-JD/ Replace batteries-1996 Ambulance	496.81
23115	Citizens State Bank	Nov Service Chge	20.00
23116	Cook's Wastepaper & Recycling	Sept Garbage	4731.17
23117	Dakota Supply Group	Switches Top Lot/Meter Socket/Wire/PVC/Materials Badger Project & Main Street Alley Project	1932.32
23118	Dept of Revenue	Water testing	13.00
23119	DGR Engineering	Electric System	2090.00
23120	Eighty-One Auto Clinic	Labor & Carb Kit—weed trimmer	70.17
23121	Electric Fund	Meter deposits app to RO bills	300.00
23122	Fastenal Company	Electric Materials/Drill Set/Bin/SPP Tap	699.18
23123	HD Supply Waterworks	Stock for sewer & water repairs	1321.17
23124	Infotech Solutions LLC	Monthly maintenance/backup/hosting	315.00
23125	Interstate All Battery Center	Battery—Ford Pick-up	116.95
23126	J & J Tree Service	Remove trees in Main Street Alley for Electric Project	875.00
23127	Kaufmann-Ust Construction	Remodeling Project—Municipal Bldg	21017.09

23128	Kingbrook Rural Water System	October Water & Lease	7466.28
23129	Metron-Farnier LLC	Metering Equipment	588.72
23130	Milbank Winwater Works	PVC Pipe/couplings/pool gate/storm drain lids/ check valve	910.78
23131	Nelson Drug	Notebook/Epipens-ambulance	528.03
23132	Office Peeps Inc	Adding machine paper/service agreement-copier/ink cartridge-ambulance	81.12
23133	PCC Ambulance Billing Service	Ambulance billings Sept 2015	423.87
23134	Petty Cash	Postage	37.20
23135	Plagman's Food Center	Cleaning supplies/paper products	22.48
23136	Prairie Ag Partners	Chemicals/bolts/hose/welding supplies/packer tires/ grass seed/bucket truck tire-labor	2164.28
23137	Amiel Redfish	Mileage/SDML Conference	46.00
23138	Rental Depot	Tractor & Seeder rent	187.20
23139	Runnings Suppling Inc	Utility gate	65.99
23140	Snap On Tools	Socket set/plier set/addt'l tools	661.15
23141	South Dakota One Call	Locates July-Sept 2015	89.60
23142	Stuart Irby Co	Switchgear pad	1650.00
23143	Titan Machinery	Filters & oil-Payloader/extra filters	1830.20
23144	US Post Office	Postage Stamps-Library	9.80
23145	Utility Boring Inc	Backhoe use/prep work for ground sleeves & transformers/hauling street lites/trenching & boring power in Main Street Alley	5521.94
23146	WW Tire Service	Used truck tire—Bucket Truck	150.00
23147	Wesco Distribution Inc	Sweatshirt-Jason/connectors/molded rubber inlines/ repairs	769.14
23148	Wilkinson & Wilkinson	Legal fees Jan 29 – July 31	2702.09
Auto Debit	Rural Development	Water Improvement Loan	1343.00
Auto Debit	Rural Development	Wastewater Improvement Loan	2859.00

Motion was made by Johnson, seconded by Bunker to approve the building permit application from Alvin Henry to install a 4-foot chain link fence at Lot 4 & 5A, Block 25, County Auditors Plat-Block 20-24. All in favor—Carried

Motion was made by Bunker, seconded by Rowbotham to approve the building permit application from Randy Nelson for a 40 X 30 steel building at Lot 6, Block 19, WTL Co 4<sup>th</sup> Addition as long as the building is at least 25 feet from the lot pin on the east side of the lot. All in favor—Carried.

Marshal Mix reported that the city crew has called in locates and plans to start on the west end of the drainage along South 3<sup>rd</sup> Street and work their way back in toward Plum Street. They will be digging in new drain pipe unless the weather conditions put an end to the work for the season.

Now was the time as advertised for the public hearing for the issuance of the 2016 Liquor Licenses. Motion was made by Rowbotham, seconded by Bunker to approve issuing 2016 licenses to the Handi-Mart, Kings Lanes, Dakota Ram/1481 Grille and Frontier Logic-Cardinal Tap for liquor. And, also add an Off Sale Liquor License for The Cardinal Tap. All in favor—Carried.

Jason Niemann did not have an electric report for the council.

Bruce Westergaard from Minnesota Municipal Utilities Association met with the council to explain the safety training program that he had been providing to the city employees during 2015. The contract is expiring and he felt that it might be beneficial to explain the program so that the council has some idea of what it consists of when deciding on whether or not to continue the program.

Motion was made by Bunker, seconded by Johnson to approve the Employee Overtime, Library and Police Reports. All in favor—Carried.

Motion was made by Johnson, seconded by Lundquist to approve two vacation days for Marshal Mix. All in favor—Carried.

Chad Mohr's six month probation period is over on November 4, 2015. Motion was made by Johnson, seconded by Bunker to increase him from \$17.00 to \$18.00/Hr as was set at the time that Chad was hired. All in favor—Carried.

Jared Steffensen now present.

Motion was made by Lundquist, seconded by Wendland to authorize Marshal Mix, Steve Carlson, Chad Mohr and Lonnie Johnson to issue snow parking tickets during the winter of 2015-2016. All in favor—Carried.

The council reviewed the Revenue/Expense, Cash and Utility Reports. The water loss is staying about the same, however; the city will be changing the water meters to be calibrated to read every 10 gallons rather than 1000 gallons. The billing will be handled the same, but the city will be better able to catch water problems within houses or businesses before they get too large.

Jason Uphoff, ACDC, advised the council that Arlington will be featured in the final 2015 issue of the Dakotafire Magazine. He also stated that he has been having ongoing meetings with a couple of businesses that have shown interest in locating in Arlington.

Scott Mohror, Banner Associates, reviewed the soil boring report from Geotek for the Main Street Project. Scott is recommending that the City consider using Geogrid in this project rather than the Geotextile fabric that has been used in other projects. He believes that this project can be bid in February or March and the construction can begin soon after school is out for the summer and that the project can be completed in 2016 including asphalt prior to school starting in the fall.

There were several owners of rental properties who were in attendance at the council meeting to voice their opinions regarding having the landlords responsible for unpaid utility bills from their rental properties when the tenants leave town and the city is stuck with the delinquent account. There is no way that the city can shorten up the length of time that a meter can be pulled

for non-payment of a bill. The city cannot refuse to furnish customers with utilities if they come in and make the meter deposit whereas the landlords have the ability not to rent to individuals. No decision was made at this time—it will be carried forward for further discussion.

The City had received notification from Kingbrook Rural Water that the bulk water rates would be increasing effective January 1, 2016 from \$2.70 to \$3.00/1000 gallons due to increased operational expenses. Motion was made by Rowbotham, seconded by Steffensen to approve the first reading of the Water Utility Ordinance to pass through this rate increase of 30 cents to the City's customers. All in favor—Carried.

Motion was made by Lundquist, seconded by Bunker to approve the first reading of the 2015 Supplemental Appropriation Budget Ordinance which is currently at \$117,600.00. All in favor—Carried.

Todd Wilkinson reviewed the information that had been received from Tobin Morris, Dougherty & Company regarding the Revenue Bond for the Electrical Upgrade Project which would allow the bond counsel to issue Revenue Bonds up to an amount not to exceed \$3,000,000. However, if the City does not require that amount—it could be less.

Motion was made by Steffensen, seconded by Rowbotham to adopt Resolution # 2512 as follows:

#### **RESOLUTION NO. 2512**

**RESOLUTION GIVING APPROVAL TO CERTAIN ELECTRIC SYSTEM IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF REVENUE BONDS TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE ELECTRIC SYSTEM; APPROVING THE FORM OF THE REVENUE BONDS, DESIGNATION OF ELECTRIC REVENUE BONDS AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE BONDS; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BONDS AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.**

**WHEREAS**, one of the purposes of SDCL Chapter 9-40 (the “Act”) as found and determined by the South Dakota Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system which provides electricity for municipal, industrial and domestic purposes, together with extensions, additions, and necessary appurtenances; and

**WHEREAS**, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any system previously owned without pledging its credit and is authorized to pledge the net income or revenues from the improvements in accordance with Section 15 of the Act; and,

**WHEREAS**, the City of Arlington (the “City”) currently operates an electric utility system and has determined that improvements to the electric utility system (the “System”) are necessary for the conduct of its governmental programs; and,

**WHEREAS**, the City has determined to issue its revenue bonds to finance the improvements to its system;

**WHEREAS**, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the

payment of the Bonds.

**NOW THEREFORE BE IT RESOLVED** by the City as follows:

**SECTION 1. Definitions.**

The terms when used in this Resolution (“Resolution”) shall have the following meanings set forth in this section unless the context clearly requires otherwise.

“**Act**” means South Dakota Codified Laws Chapter 9-40.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Department of Treasury promulgated thereunder as in effect on the date of issuance of the Bonds.

“**Depository**” means any securities depository that is a clearing agency under federal laws operating and maintaining, with its participants or otherwise, a Book-Entry System, including, but not limited to DTC.

“**DTC Participant(s)**” means securities brokers and dealers, banks, trust companies and clearing corporations that have access to the DTC system.

“**DTC**” means the Depository Trust Company, a limited purpose company organized under the laws of the State of New York, and its successors and assigns.

“**Issuance Costs**” means costs but only to the extent incurred in connection with, and allocable to, the borrowing: Purchasers' spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification, and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than for qualified guarantees and similar costs.

“**Letter of Representation**” means the Issuer Letter of Representations or Blanket Issuer Letter of Representations to DTC of the City.

“**Mayor**” means the Mayor elected pursuant to the provisions of the SDCL 9-13 or his or her designee acting on his or her behalf pursuant to the Charter.

“**Official Statement**” and “**Preliminary Official Statement**” means that Official Statement and Preliminary Official Statement described in Section 15. hereof pertaining to the sale of the Bonds.

“**Outstanding,**” “**Bonds Outstanding,**” or “**Outstanding Bonds**” means, as of a particular date all Bonds issued and delivered under this Resolution except: (1) any Bond paid or redeemed or otherwise canceled by the City at or before such date; (2) any Bond for the payment of which cash, equal to the principal amount thereof with interest to date of maturity, shall have theretofore been deposited prior to maturity by the City for the benefit of the owner thereof; (3) any Bond for the redemption of which cash, equal to the redemption price thereof with interest to the redemption date, shall have theretofore been deposited with the registration agent and for which notice of redemption shall have been mailed in accordance with this Resolution; (4) any bond in lieu of or in substitution for

which another bond shall have been delivered pursuant to this Resolution, unless proof satisfactory to the City is presented that any bond, for which a bond in lieu of or in substitution therefor shall have been delivered, is held by a bona fide Purchaser, as that term is defined in Article 8 of the Uniform Commercial Code of South Dakota, as amended, in which case both the bond in lieu of or in substitution for which a new bond has been delivered and such new bond so delivered therefor shall be deemed Outstanding; and, (5) any bond deemed paid this Resolution, except that any such Bond shall be considered Outstanding until the maturity or redemption date thereof only for the purposes of being exchanged, transferred, or registered.

**“Paying Agent”** means the Paying Agent appointed by the City or its successor or successors hereafter appointed in the manner provided in Article VI hereof.

**“Person”** means an individual, partnership, corporation, trust, or unincorporated organization, or a governmental entity or agency or political subdivision thereof.

**“President”** means the President of the City Council who may act for the Mayor in the absence of the Mayor.

**“Project”** means the design, acquisition of materials, and construction of improvements to the electrical distribution and metering infrastructure of the City’s municipal electric utility.

**“Purchase Agreement”** means the Bond Purchase Agreement authorized pursuant to and described in Section 14.2 hereof by and between the City and the Purchaser.

**“Record Date”** means the close of business on the fifteenth day (whether or not a business day) of the calendar month next preceding such interest payment date.

**“Revenue Bonds,” or “Bond”** means the Electric Revenue Bonds, Series 2016A issued by the City.

**“System”** means the City’s electric utility system.

**“Underwriter/Placement Agent”** means Dougherty & Company LLC, Sioux Falls, South Dakota.

## **SECTION 2. Declaration of Necessity. Findings.**

### **2.1.1. Declaration of Necessity.**

The City hereby determines and declares it is necessary to construct and finance improvements to its System described as the Project.

**2.2. Findings.** The City does hereby find as follows:

**2.2.1.** The City hereby expressly finds that if the Project is not undertaken, the System will pose a hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law.

**2.2.2.** Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with state and federal laws, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

**2.2.3.** The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, only the net income from the Project financed by the Revenue Bond be pledged for its payment.

### **SECTION 3. Authorization of Bonds, Pledge of Revenue and Security.**

**3.1. Authorization of Bonds.** The City hereby determines and declares it necessary to issue Revenue Bonds in a principal amount of not to exceed \$3,000,000. The Bonds are issued for the purpose of financing the Project and Issuance Costs, including proper reimbursements, and will be payable from a segregated special charge or surcharge established for the services of the facilities financed by the Revenue Bonds. The City hereby determines that because the Revenue Bonds are payable from solely the segregated portion of the revenue or income of the System, no election is required to issue the Revenue Bonds.

**3.2. Approval of Revenue Bonds.** The issuance of Revenue Bonds in the principal amount not to exceed \$3,000,000 shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bonds and deliver the Revenue Bonds to the Purchaser, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth herein. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bonds and their execution and delivery thereof shall evidence that approval. The Revenue Bonds shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

**3.3. Pledge of Revenues.** The Revenue Bonds together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out



of the Project Debt Service Account, which payments, revenues and receipts are hereby pledged and assigned for the equal and ratable payments of the Revenue Bonds and shall be used for no other purpose than to pay the principal of and interest on the Revenue Bonds, except as may be otherwise expressly authorized (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bonds issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the rate resolution or ordinance shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bonds, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene any covenant of the City set forth in this Resolution.

#### **SECTION 4. Special Charge or Surcharge for Revenue Bonds.**

**4.1.** The City will establish the special charge or surcharge payable by every customer of its electric system who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level which, assuming a 1.10 coverage ratio, will produce income at the times and in amounts sufficient to pay when due the principal of and interest on the Revenue Bonds and all other payments as may be required under this Resolution and Revenue Bonds.

**4.2.** The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the principal and interest, when due on the Revenue Bonds. The special charge or surcharge shall create net income used first for paying debt service fund annual requirements and shall be maintained at not less than 100% of the debt service requirements on the Revenue Bonds.

**4.3. Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bonds is defeased or paid in full.

**4.4. Initial Surcharge.** The initial special charge or surcharge shall be set by resolution or ordinance and collected at the same time as other charges of the utility. All users within the area which benefit from the Project,

current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of and interest on the Revenue Bonds when due. The initial surcharge, until changed by resolution, be as follows:

<b>Rate Class</b>	<b>Max Surcharge Per kWh</b>	<b>Max Surcharge Per kW per mo.</b>
Residential	\$ 0.0230	n/a
Small Commercial	\$ 0.024	n/a
Large Commercial	n/a	\$ 4.95
Large Industrial	n/a	\$ 4.00
	\$ 0.019	n/a

**4.5. Segregation.** The Finance Officer shall setup bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

**4.6. Periodic review.** The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the rate covenant and to pay principal of, interest on the Revenue Bonds when due. The surcharge shall be applicable to all customers served whether in or out of the city. The surcharge shall remain in effect until such time as the Revenue Bonds are discharged or defeased. The initial surcharge shall be collected at the same time as other charges of the System. The surcharge is found to be equitable for the services provided by the improvement. The surcharge may be set by ordinance or resolution in accordance with this section. The rate ordinance or resolution shall be necessary for the support of government and shall be effective upon passage.

**4.7.** The charges shall be reviewed yearly by city personal and administratively adjusted, upwards or downwards, pursuant to SDCL § 9-40-15 to such amounts as may be necessary to pay principal, interest, maintain any coverage requirements and other charges as may become due and owing under the Revenue Bonds.

**SECTION 5. Additional Bonds.** As permitted by Section 8 and 9 of the Act, additional bonds payable from revenues and income of the System or Project may be issued, as permitted in the section, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from

the extensions, additions or improvements. The City may issue additional bonds (the “Parity Bonds”) payable from the Pledged Revenues and having a lien upon such revenues on a parity with the Bonds and the Outstanding Parity Bonds providing that:

**5.1.** the City is current in the payment of principal and interest on the Outstanding Bonds and is current in the collections required for the Principal and Interest Account and the Reserve Account.

**5.2.** the Pledged Revenues collected by the City in the last preceding fiscal year are sufficient to cover 1.25 times the maximum annual principal and interest requirements on the Outstanding Bonds and the proposed Parity Bonds. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bonds.

**SECTION 6. Project Fund Accounts.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal and interest on the Revenue Bonds, the following mandatory asset segregations shall be included in the electric utility system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bonds:

**6.1. Project Revenue Account.** There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the ordinances and resolutions of the City of Arlington, South Dakota (collectively the “Rate Ordinance”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

**6.2. Project Debt Service Account.** Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal and interest payment on the Revenue Bonds and any reserve determined by the City’s governing body to be necessary.

**6.3. Reserve Account.** There may be a reserve account established in the amount equal to the lesser of (i) 10% of the original principal amount, (ii) the maximum annual debt service on, or (iii) 125% of the average annual debt service on, all Outstanding Bonds having a parity lien on the Pledged Revenues if required.

**6.4. Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an

amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**6.5. Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:
- (c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- (d) To be used for any other authorized municipal purpose designated by the Common Council.
- (e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**SECTION 7. Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

**SECTION 8. Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).

**SECTION 9. Covenants.** The City hereby covenants and agrees with the owners of the Revenue Bond as follows:

**9.1.** The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this resolution.

**9.2.** The City agrees and covenants that it will promptly construct the improvements included in the Project and spend all available proceeds of the Revenue Bonds including interest earnings thereon within three years from the date of issuance. The City reasonably anticipates to enter into a binding agreement to spend not less than 5% of the proceeds of the Revenue Bonds within six months of the date of issuance.

**9.3.** The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal and interest on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

**9.4.** The City covenants and agrees with the owners of the Revenue Bonds that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject

to all provisions and limitations thereof pursuant to Series 19 of the Act.

**9.5.** The City reasonably anticipates that it will not issue more than \$10,000,000 in tax exempt bonds during calendar year 2016.

**9.6.** The City covenants and agrees that it will at all times comply with the Code and Regulation so that the interest on the Bonds not be includable in gross income for federal income tax purposes.

**SECTION 10. Depositories.** The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Ordinance; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**SECTION 11. Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Section 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

**SECTION 12. Severability.** If any section, paragraph, clause or provision of this Resolution, the Revenue Bonds, or any agreement pertaining hereto shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or Revenue Bonds, or any other documents pertaining hereto.

**SECTION 13. Authorization of City Officials.** The Mayor, Finance Officer and other City Officials shall be and they are

hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

## **SECTION 14. Sale of Bonds.**

**14.1. Bond Purchase Agreement.** The Bonds shall be sold to the Purchaser at a price set forth in the Bond Purchase Agreement. The Mayor and the Finance Officer, or either of them, in consultation with the Purchaser, is authorized to make such changes in the structuring of the terms and sale of the Bonds as they shall deem necessary. In this regard, they, or either of them, in consultation with the Purchaser, are authorized to cause to be sold an aggregate principal amount of the Bonds less than that authorized herein, to sell any or all of the Bonds as term Bonds with annual mandatory redemption requirements which will produce substantially the same annual principal reductions as authorized herein, to change the dated date of the Bonds, and to adjust principal and interest payment dates and redemption dates of the Bonds. The Mayor and the Finance Officer, or either of them, are hereby authorized to execute and the Finance Officer is authorized to attest the Bond Purchase Agreement with the Purchaser providing for the purchase and sale of the Bonds. The Bond Purchase Agreement shall be in form and content acceptable to the Mayor and Finance Officer, the execution thereof by either of them to constitute conclusive evidence thereof; provided the Bonds Purchase Agreement effects the sale of the Bonds in accordance with the provisions of this Resolution, and is not inconsistent with the terms hereof. The Mayor and Finance Officer are authorized to cause the Bonds to be authenticated and delivered by the Registration Agent to the Purchaser and to execute, publish, and deliver all certificates and documents, including the Official Statement, and closing certificates and documents, as they shall deem necessary in connection with the sale and delivery of the Bonds.

14.2. The Bonds are issuable only as fully registered Bonds, without coupons, in the denomination of Five Thousand Dollars (\$5,000) or any integral multiple thereof. All Bonds issued under the Resolution shall be substantially in the form set forth in Exhibit A attached hereto, and by this reference incorporated herein as fully as though copied.

14.3. The Bonds shall be executed in such manner as may be prescribed by applicable law in the name and on behalf of the City with the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the Finance Officer, and approved as to form and countersigned by a Resident Attorney by his manual or facsimile signature.

14.4. In the event any officer whose manual or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such manual or such facsimile signature shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. Any Bond may bear the facsimile signature of, or may be manually signed by, such individuals who, at the actual time of the execution of such Bond, were the proper officers of the City to sign such Bond, although on the date of the adoption by the City of this Resolution, such individuals may not have been such officers.

14.5. The Bonds are transferable only by presentation to the Registration Agent by the registered owner, or his legal representative duly authorized in writing, of the registered Bond(s) to be transferred with the form of assignment on the reverse side thereof completed in full and signed with the name of the registered owner as it appears upon the face of the Bond(s) accompanied by appropriate documentation necessary to prove the legal capacity of any legal representative of the registered owner. Upon receipt of the Bond(s) in such form and with such documentation, if any, the Registration Agent shall issue a new Bond or Bonds to the assignee(s) in \$5,000 denominations, or integral multiples thereof, as requested by the registered owner requesting transfer. The Registration Agent shall not be required to transfer or exchange any Bond during the period commencing on a Regular or Special Record Date and ending on the corresponding interest payment date of such Bond, nor to transfer or exchange any Bond after the publication of notice calling such Bond for redemption has been made, nor to transfer or exchange any Bond during the period following the receipt of instructions from the City to call such Bond for redemption; provided, the Registration Agent, at its option, may make transfers after any of said dates. No charge shall be made to any registered owner for the privilege of transferring any Bond, provided that any transfer tax relating to such transaction shall be paid by the registered owner requesting transfer. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and neither the City nor the Registration Agent shall be affected by any notice to the contrary whether or not any payments due on the Bonds shall be overdue. Bonds, upon surrender to the Registration Agent, may, at the option of the registered owner, be exchanged for an equal aggregate principal amount of Bonds of the same maturity in any authorized denomination or denominations.

14.6. Except as otherwise provided in this subsection, the Bonds shall be registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Bonds. References in this Section to a Bond or the Bonds shall be construed to mean the Bond or the Bonds that are held under the Book-Entry System. One Bond for each maturity shall be issued to DTC and immobilized in its custody. Unless otherwise provided herein, a Book-Entry System shall be employed, evidencing ownership of the Bonds in authorized denominations, with transfers of beneficial ownership affected on the records of DTC and the DTC Participants pursuant to rules and procedures established by DTC.



Each DTC Participant shall be credited in the records of DTC with the amount of such DTC Participant's interest in the Bonds. Beneficial ownership interests in the Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are herein referred to as the "Beneficial Owners." The Beneficial Owners shall not receive the Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner shall be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its Bonds. Transfers of ownership interests in the Bonds shall be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. SO LONG AS CEDE & CO., AS NOMINEE FOR DTC, IS THE REGISTERED OWNER OF THE BONDS, THE REGISTRATION AGENT SHALL TREAT CEDE & CO., AS THE ONLY HOLDER OF THE BONDS FOR ALL PURPOSES UNDER THIS RESOLUTION, INCLUDING RECEIPT OF ALL PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE REGISTRATION AGENT TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THIS BOND RESOLUTION.

Payments of principal, interest, and redemption premium, if any, with respect to the Bonds, so long as DTC is the only owner of the Bonds, shall be paid by the Registration Agent directly to DTC or its nominee, Cede & Co., as provided in the Letter of Representation. DTC shall remit such payments to DTC Participants, and such payments thereafter shall be paid by DTC Participants to the Beneficial Owners. Neither the City nor the Registration Agent shall be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

In the event that (1) DTC determines not to continue to act as securities depository for the Bonds or (2) the City determines that the continuation of the Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect their interests or the interests of the Beneficial Owners of the Bonds, the City may discontinue the Book-Entry System with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City shall cause the Registration Agent to authenticate and deliver replacement Bonds in the form of fully registered Bonds to each Beneficial Owner.

NEITHER THE CITY NOR THE REGISTRATION AGENT SHALL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO ANY DTC PARTICIPANT OR ANY BENEFICIAL OWNER WITH RESPECT TO (i) THE BONDS; (ii) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; (iii) THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; (iv) THE DELIVERY OR TIMELINESS OF DELIVERY BY DTC OR ANY DTC PARTICIPANT OF ANY NOTICE DUE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS BOND RESOLUTION TO BE GIVEN TO

BENEFICIAL OWNERS, (v) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENTS IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS; OR (vi) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC, OR ITS NOMINEE, CEDE & CO., AS OWNER.

SO LONG AS A BOOK-ENTRY SYSTEM OF EVIDENCE OF TRANSFER OF OWNERSHIP OF ALL THE BONDS IS MAINTAINED IN ACCORDANCE HEREWITH, THE PROVISIONS OF THIS RESOLUTION RELATING TO THE DELIVERY OF PHYSICAL BOND CERTIFICATES SHALL BE DEEMED INAPPLICABLE OR BE OTHERWISE SO CONSTRUED AS TO GIVE FULL EFFECT TO SUCH BOOK-ENTRY SYSTEM. IF THE PROVISIONS OF THE LETTER OF REPRESENTATION SHALL BE IN CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION AS SAID PROVISIONS RELATE TO DTC, THE PROVISIONS OF THE LETTER OF REPRESENTATION SHALL CONTROL.

14.7. In the event any Bond is mutilated, lost, stolen, or destroyed, the City may execute, and upon the request of an Authorized Officer of the City the Registration Agent shall authenticate and deliver, a new Bond of like maturity, interest rate, and principal amount, and bearing the same number (but with appropriate designation indicating that such new Bond is a replacement Bond) as the mutilated, destroyed, lost, or stolen Bond, in exchange for the mutilated Bond or in substitution for the Bond so destroyed, lost, or stolen. In every case of exchange or substitution, the Bondholder shall furnish to the City and the Registration Agent: (1) such security or indemnity as may be required by them to save each of them harmless from all risks, however remote; and, (2) evidence to their satisfaction of the mutilation, destruction, loss, or theft of the subject Bond and the ownership thereof. Upon the issuance of any Bond upon such exchange or substitution, the City and the Registration Agent may require the Owner thereof to pay a sum sufficient to defray any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including printing costs and counsel fees, of the City and the Registration Agent. In the event any Bond which has matured or is about to mature shall become mutilated or be destroyed, lost, or stolen, the City may, instead of issuing a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the Owner thereof shall pay all costs and expenses, including attorney's fees, incurred by the City and the Registration Agent in connection herewith, as well as a sum sufficient to defray any tax or other governmental charge that may be imposed in relation thereto and shall furnish to the City and the Registration Agent such security or indemnity as they may require to save them harmless and evidence to the satisfaction of the City and the Registration Agent the mutilation, destruction, loss, or theft of such Bond and of the ownership thereof.

14.8. Every Bond issued pursuant to the provisions of this section shall constitute an additional contractual obligation of the City (whether or not the destroyed, lost, or stolen Bond shall be found at any time to be enforceable) and shall be entitled to all the benefits of this Bond Resolution equally and proportionately with any and all other Bonds duly issued under this Bond Resolution.

14.9. All Bonds shall be held and owned upon the express condition that the provisions of this Section are exclusive, with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Bonds, and, to the maximum extent legally permissible, shall preclude all other rights or remedies, notwithstanding any law or statute now existing or hereafter enacted to the contrary.

14.10. The Registration Agent is hereby authorized to authenticate and deliver the Bonds to the Purchaser or as it may designate upon receipt by the City of the proceeds of the sale thereof, to authenticate and deliver Bonds in exchange for Bonds of the same principal amount delivered for transfer upon receipt of the Bond(s) to be transferred in proper form with proper documentation as hereinabove described. The Bonds shall not be valid for any purpose unless authenticated by the Registration Agent by the manual signature of an officer thereof on the certificate set forth herein on the Bond form.

14.11. The Registration Agent is hereby authorized to take such actions as may be necessary from time to time to qualify and maintain the Bonds for deposit with DTC, including but not limited to, wire transfers of interest and principal payments with respect to the Bonds, utilization of electronic book entry data received from DTC in place of actual delivery of Bonds and provision of notices with respect to Bonds registered by the DTC (or any of its designees identified to the Registration Agent) by overnight delivery, courier service, telegram, telecopy or other similar means of communication. No such arrangements with DTC may adversely affect the interest of any of the Owners of the Bonds, provided, however, that the Registration Agent shall not be liable with respect to any such arrangements it may make pursuant to this section.

## **SECTION 15. Preliminary Official Statement and Official Statement.**

The Mayor, Finance Officer, and the Purchaser are hereby authorized and directed to provide for the preparation and distribution of a Preliminary Official Statement describing the Bonds (the "Preliminary Official Statement"). After the Bonds have been sold, the Mayor and Finance Officer shall make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement for purposes of Rule 15c2-12(e)(3) of the Securities and Exchange Commission.

To comply with paragraph (b) (3) of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule") and with Rule G-32 City agrees to deliver to the Purchaser, the Official Statement (which shall be a final official statement, as such term is defined in the Rule, as of its date) in an electronic format as prescribed by the MSRB.

The City hereby covenants and agrees that it will provide financial information and material event notices as required by Rule 15c2-12 of the Securities Exchange Commission for the Revenue Bonds. The Mayor is authorized to execute at the closing of the sale of the Revenue Bonds, an agreement for the benefit of and enforceable by the owners of the Revenue Bonds specifying the details of the financial information and material event notices to be provided and its obligations relating thereto. Failure of the City to comply with the undertaking herein described and to be detailed in said closing agreement, shall not be a default hereunder, but any such failure shall entitle the owner or owners of any of the Revenue Bonds to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the City to comply with its undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

**SECTION 16. Record Retention and Post Issuance Compliance.** The City does hereby adopt Meierhenry Sargent LLP Post-Issuance Compliance Policy and Tax-Advantaged Obligations and Continuing Disclosure manual as its written post issuance compliance procedures with regard to the current financing. The Finance Officer is directed to retain records with regard to this financing for the entire term of the financing plus three years and to keep record of all payments for six years after the payment has been made.

## **SECTION 17.**

**SECTION 17. Effective Date.** This Resolution shall take effect on the 20<sup>th</sup> day following its publication, unless suspended by a referendum.

Adopted at City of Arlington, South Dakota, this 2<sup>nd</sup> day of November 2015.

APPROVED:

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Finance Officer

In order to cover the cost of increased electric expenses including the repayment of the Revenue Bonds it has been found through a rate study that the City will need to increase the electric rates by approximately 3%. Motion was made by Bunker, seconded by Rowbotham to approve the first reading of the Electric Utility Rate Ordinance. All in favor—Carried.

The Finance Office received notice from Heartland Consumer Power District that they have rescheduled their Budget Meeting to Friday, November 20<sup>th</sup>. They are also asking the City to adopt an Ordinance which would give authority to Heartland to purchase excess power from one of the City's electric customers in the event that they would implement a renewable energy source if they were a qualifying facility.

Motion was made by Lundquist, seconded by Wendland to approve the first reading of The Ordinance amending Chapter 7—Electricity and Electricians. All in favor—Carried.

The Fireworks Ordinance #541 received the second reading and on Motion by Johnson, seconded by Lundquist, same was adopted with all voting Aye—Carried.

## FIREWORKS ORDINANCE

#541

### AN ORDINANCE AMENDING AN ORDINANCE PROHIBITING FIREWORKS AND SALE THEREOF IN THE CITY OF ARLINGTON, SOUTH DAKOTA.

#### Section One: Definition.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in the section, except where the context clearly indicates a different meaning:

Fireworks mean any combustible or explosive composition, or any substance or combination of substances, or articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, model rockets, Roman candles, sparklers or other devices of like construction and any devices containing any explosive or flammable compound;, or any tablets or other devices containing any explosive substances; except that the term "fireworks" shall not include auto flares, paper caps containing not in excess of an average of 0.25 of a grain of explosive content per cap manufactured in accordance with the state department of transportation regulations for packing and shipping as provided therein, and toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall comply with the applicable provisions of the International Fire Code.

#### Section Two: Selling, possessing or discharging fireworks.

- (a) No individual shall use, discharge or cause to be discharged any fireworks (as defined in the International Fire Code, as adopted in this article) of any description whatsoever, within the corporate limits of the city or in any public ground or park belonging to the city, or outside the corporate limits or within one mile of the corporate limits or of any public ground or park belonging to the city outside of the corporate limits.
- (b) No individual, firm, partnership or corporation shall sell at retail or possess for sale at retail any fireworks (as defined in the International Fire Code, as adopted by this article) of any description whatsoever within the corporate limits, in any public ground, in any park belonging to the city, or within any area not annexed into the corporate limits but surrounded, on at least three or more sides, by corporate limits.
- (c) No individual, firm, partnership, or corporation shall sell at retail any fireworks without first having obtained:
  - (1) A special exception from the zoning board of adjustment; and (2) A retail fireworks license issued by the state fire marshal.

Section Three: Seizure of fireworks.

The fire chief shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale or held in violation of this article.

Section Four: Council may permit public display.

Nothing in this article shall prohibit the use of a public display of fireworks, provided that any individual, firm, partnership or corporation, prior to making such public display of fireworks, shall first secure a written pyrotechnic display permit from the city fire department and paying the permit fee provided in the city fee schedule on file in the office of the finance director. Additionally, the permittee shall comply with the relevant provisions of the International Fire Code, as adopted.

First Reading: October 5, 2015

Second Reading: November 2, 2015

Passed: November 2, 2015

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Sue Falconer, Finance Officer

Amiel Redfish, Mayor

The Peddlers and Solicitors Ordinance #542 received the second reading and on Motion by Johnson, seconded by Steffensen, same was adopted with all voting Aye—Carried.

## PEDDLERS AND SOLICITORS ORDINANCE

#542

### AN ORDINANCE AMENDING AN ORDINANCE REGARDING PEDDLERS AND SOLICITORS IN THE CITY OF ARLINGTON, SOUTH DAKOTA.

#### Section One: Definition.

The term “door-to-door sales” as used in this chapter means any person, whether a resident of this city or not, traveling from house to house (including apartment to apartment) who has not been invited by the resident thereof and for the purpose of selling or soliciting for sale of goods, wares, merchandise, or services, including food and beverages.

#### Section Two: Exceptions to chapter.

The provisions of this chapter shall not apply to the following:

- (1) Solicitations, sales or distributions made by nonprofit civic, charitable, educational, or religious organizations which have registered with the city finance department.
- (2) Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.

#### Section Three: Permit required.

- (A) It is unlawful for any person to engage in door-to-door sales within this city without first obtaining a permit to do so from the city finance department.
- (B) The maximum number of days for a permit is five consecutive days unless otherwise authorized by the city council.

- (C) No door-to-door sales permit shall be issued to a corporation, partnership or other impersonal legal entity. Each individual person engaging in the business of door-to-door sales within the city shall be required to have a separate permit, whether acting for himself or herself or as an agent or representative of another.
- (D) Every door-to-door salesperson having a permit issued under the provisions of this chapter and doing business within the city shall display his or her permit upon the request of any person. Failure to display his or her permit when requested to do so shall be an offense subject to the fine of not more than \$200 and/or 30 days in jail.

#### Section Four: Application for permit.

The application for a permit required by the provision of this chapter shall:

- (1) The name, social security number, date of birth, local and permanent address, cell phone number, vehicle license number and photo identification of the applicant;
- (2) Contain a statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code other than traffic offenses; the nature of the offense, the punishment or penalty assessed therefor, if previously convicted; and the place of conviction;
- (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) The kind of goods, wares, merchandise, or services the applicant wishes to peddle within the city;
- (6) The last three cities or towns wherein the applicant has worked before coming to this city;
- (7) The name of the entity, permanent address, entity's telephone number, entity's federal EIN and South Dakota sales tax license numbers that the applicant represents.

No person shall give any false or misleading information in connection with his or her application for a permit and giving such false or misleading information shall be an offense subject to a fine of not more than \$200 and/or 30 days in jail.



#### Section Five: Bond required.

Every door-to-door salesperson, before receiving a license, shall file with the city finance department a copy of a bond in the penal sum of one thousand dollars conditioned for the faithful performance and payment of obligations of the peddler arising in connection with the business, and for payment of all claims or damages for which the peddler may become liable through fraud, deceit or otherwise in the course of business as a peddler/transient merchant.

#### Section Six: Fee.

Before any permit shall be issued under the provisions of this chapter, the applicant shall pay a fee of fifty dollars. Any permit authorized by the city council beyond the five-day permit shall be assessed a fee of ten dollars per day during which time the permit is valid.

#### Section Seven: Hours of operation.

Door-to-door sales shall be permitted only between the hours of ten a.m. and nine p.m. Monday through Saturday and between one p.m. and five p.m. Sunday, except by specific appointment with or invitation from the prospective customer.

#### Section Eight: Prohibited conduct.

- (A) No door-to-door salesperson shall make false or fraudulent statements concerning the quality or nature of their goods, wares, merchandise, or services for the purpose of inducing another to purchase the goods, wares, merchandise, or services.
- (B) No door-to-door salesperson selling or soliciting for sale goods, wares, merchandise or services by traveling from place to place, house to house, or street to street shall not remain in any one place for a period longer than necessary to make a sale after having been approached or stopped for that purpose.
- (C) It is unlawful for any door-to-door salesperson who enters upon premises owned or leased by another to fail to promptly leave the premises after having been notified by the owner or possessor of the premises, or his agent, to leave the premises.
- (D) It is unlawful for any door-to-door salesperson to enter upon any private premises when the premises is posted with a sign stating "No Peddlers Allowed," "No Soliciting," or words to that effect.

Section Nine: Revocation of permit.

In addition to the penalties authorized pursuant to Chapter 1.04, Section 1.04.030 of this code, any permit issued under the provisions of this chapter may be revoked for the violation by the permittee of any provision of this code, state law, or city ordinance by the finance director. Upon such revocation, such permit shall immediately be surrendered, and failure to do so shall be an offense and subject to a fine of not more than \$200 and/or 30 days in jail.

Should a permit be revoked, the person and the business for which the person is an agent, representative or employee shall be prohibited from applying for a permit pursuant to this chapter unless such permit is authorized by the city council.

Section Ten: Penalty for violation.

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and shall be guilty of a separate offense for each and every day that the violation continues, and shall be subject to a penalty pursuant to the general fine of not more than \$200 and/or 30 days in jail.

First Reading: October 5, 2015

Second Reading: November 2, 2015

Passed: November 2, 2015

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Sue Falconer, Finance Officer

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Amiel Redfish, Mayor

The finance office received proposals from Ben Elliott to prepare the 2015 Annual Report and Audit Report. The cost for the audit would be \$4900 and the annual report preparation at \$650. These are the same prices as last year.

Motion was made by Lundquist, seconded by Johnson to approve these proposals as received. All in favor—Carried.

The finance office had reviewed the accounts that were on the books as outstanding and made the following recommendations to the council to write off for 2015. Utility bills in the amount of \$1,411.23 and ambulance bills which include the amounts that are not allowed by Medicare and Medicaid and others that are not collectable--2012-\$1,745.08/ 2013-\$390.30/ 2014-\$10,374.27/ and 2015 \$6,626.92—for a total of \$19,136.57 from ambulance billings.

Motion was made by Rowbotham, seconded by Bunker to approve the amounts as listed above to be written off from the 2015 books. All in favor—Carried.

Motion was made by Wendland, seconded by Lundquist to enter into executive session at 10:25 P.M. for personnel matters and possible litigation. All in favor—Carried.

Motion was made by Steffensen, seconded by Lundquist to come out of executive session at 10:40 P.M. All in favor—Carried. No other action taken.

Motion to adjourn was made by Wendland, seconded by Johnson. All in favor—Carried.

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Sue Falconer, Finance Officer

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Amiel Redfish, Mayor

The City of Arlington is an equal opportunity provider and employer.