



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## Community Planning & Development Services

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### MEMORANDUM

TO: Chairman and Members of Planning Commission

FROM: Brett Limbaugh, Director of Growth Management

DATE: December 1, 2011

RE: Issues for Sidewalk Vendor Permit Ordinance Amendment

The Vendor Cart Sub-Committee met on August 26<sup>th</sup> and September 30<sup>th</sup> to discuss the issues concerning the current sidewalk vendor ordinance. Staff has prepared a revised ordinance based on the sub-committee input and has scheduled the item for review by the Legal and Finance Committee at the December 14<sup>th</sup> meeting. The Legal and Finance Committee will review the ordinance and make a formal recommendation to the City Council. Since this ordinance is located within Chapter 12 of the Municipal Code (Streets, Sidewalks, and Public Places) rather than in the Chapter 16 (Subdivision) or Chapter 17 (Zoning) the Planning Commission does not need to make a recommendation. A copy of the revised ordinance is attached for your review and Staff is prepared to answer any questions you may have at the December 8, 2011 Planning Commission meeting. Listed below is the original summary of issues and a brief statement in *Italics* has been added to highlight the new ordinance provisions.

#### **Duration of Permit Approval**

The current ordinance does not have a time limitation for the Sidewalk Vendor Permit. The applicant must renew a vendor "license" with the city annually but the permit does not have an expiration date. It was suggested that the permit should be reviewed and approved annually along with the license. An annual renewal of the permit may open up unused locations and would provide the City with an opportunity to review the operational standards of each vendor to insure that they are operating in compliance with the Ordinance.

*An annual renewal in January will now be required.*

#### **Use of the Approved Site**

The current ordinance does not require the use of the site. Presently one vendor has approval for 10 of the 12 designated sites with another permit pending. To date the majority of the



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approved sites have not been used and there is a concern that the approved permit applications have been used to block competition from other vendors. The question of whether the ordinance should require a vendor to operate at the permitted location for a minimum number of days or hours can be considered however this would be difficult to enforce.

*The vendor will not be required to use the site however an applicant will not be allowed to have more than four approved sites in a calendar year. The revised ordinance also removes the limitation or cap on the total number of sites available. The existing ordinance and map identifies twelve specific sites while the revised ordinance allows additional sites to be approved by the City provided the criteria within the ordinance can be met.*

### **Limit the Number of Applications per Vendor**

There are presently no limits to the number of permits that can be approved for any individual. A limit on the permits per person or per business entity should be considered. There is also no limit on the number of permitted sites that can be assigned to a particular vending cart. A limit on permits to a particular person or business entity could open up the availability of sites for other operators. A limit on the number of sites assigned to a particular cart could be verified based on the cart identification number and the associated health department certification for the cart. Any locations that are not permitted based on a limitation would either remain open or could be permitted later in the year if there is a lack of interest from other vendors.

*As previously stated a single individual is limited to no more than 4 sites and additional sites can be approved. This should eliminate the opportunity for a single individual to control all sidewalk vending operations in the downtown area.*

### **Sub Leasing**

An ordinance revision should clarify that sub-leasing, transfer or assignment of the permit is not allowed. The City should have assurances that every vendor has the appropriate license including background check, liability insurance, and health department approvals. It should clearly state that the intent of the ordinance is to provide public sites for use of individual vendors rather than a property right that could be leased, assigned or transferred for monetary gain or other considerations by the permit holder.

*Sub-leasing is prohibited in the new ordinance and employees must be covered under the business license including insurance coverage and background checks.*

### **Application Fees**

The current ordinance requires filing of a \$250.00 fee for each site. If the permit is to be issued annually then the fee should be also be assessed annually. The amount of the fee at \$250 dollars should be reviewed in terms of the cost required to review and approve the permit.

*An initial application fee of \$250.00 and annual renewal fee of \$100.00 will be listed on a fee resolution to be approved by City Council rather than codified within the ordinance. The fee resolution would be reviewed and updated annually by City Council.*

## **Liability Insurance**

The current ordinance requires a \$2 million policy for liability insurance. A speaker at the Planning Commission meeting believed that the amount should be reduced. A review of the City policy should be revised and clarify that the amount is \$1 million per occurrence and \$2 million aggregate.

*The liability insurance coverage has been revised to the City policy of \$1 million per occurrence and \$2 million aggregate.*

## **Restriction on Adjacency to Restaurants**

There was voiced a concern that vending carts should not be allowed directly adjacent to a restaurant. This policy can be written into the ordinance along with provisions for allowing the location with the written consent of the restaurant owner. Provisions for the revocation of the permit and refund of the prorated filing fee can also be addressed should a restaurant become operational in a commercial space that was formally not a restaurant and is adjacent to an approved vendor cart.

*Sidewalk vendors will be required to obtain a letter from the restaurant owner and submit the letter with the initial application and annually for renewals. Should a restaurant become operational during the permit year the sidewalk vendor will be allowed to continue operating for the remainder of the year and a renewal the following year would require consent from the restaurant owner.*

## **Priority for Approvals**

Over time it will become obvious that certain vendor sites are more economically viable than others and there will be more than one interested applicant for these locations. The existing ordinance allows for the review and approval of applications on a first come first served basis. If two or more equally qualified applicants apply for the same location(s) at the same time, the City has no method in place for clearly determining the priority for approving one applicant in favor of the other(s). It may be necessary to create a system where preferred sites are awarded based on a lottery each year or are rotated to a different applicant each year.

*A vendor will be required to file the renewal application during the first week in January to retain a specific location otherwise the site will be open for other applicants.*