

ORDINANCE 2020-05

AN ORDINANCE AMENDING CHAPTER 3.03 TO TITLE 3 OF THE MUNICIPAL ORDINANCES OF THE CITY OF HARRISBURG SOUTH DAKOTA ADDRESSING NUISANCES IN A DECLARED EMERGENCY

BE IT ORDAINED BY THE CITY OF HARRISBURG THERE IS HEREBY ADOPTED THE FOLLOWING CHAPTER 3.03 TO TITLE 3 TO ADD THE FOLLOWING LANGUAGE:

Chapter 3.03: NUISANCES IN A DECLARED EMERGENCY

3.0301 DECLARATION OF EMERGENCY

Notwithstanding any other provisions in the Municipal Ordinances relating to the declaration, identification, and abatement of nuisances, in the event that the City, the State of South Dakota or federal government declares an emergency to exist that endangers or presents a hazard to public health, welfare, or safety, and either the City, State of South Dakota or a federal government implements rules or recommendations restricting or limiting the actions of individuals or businesses in order to limit or slow the impact of such emergency event, the City may declare any business or individual who violates those rules or recommendations to be a public nuisance.

In declaring the emergency, the City may by resolution set forth rules or recommendations restricting or limiting actions of individuals or businesses that the City has determined necessary to protect the immediate health, welfare, or safety of the public and within the resolution may adopt by reference actions, declarations, or standards currently in place or being put in place by the State of South Dakota or the federal government.

3.0302 IMMEDIATE ABATEMENT

Upon a determination by the Code Official, as defined in Chapter 3.01, law enforcement, or the sheriff, that a business or individual is operating in violation of those rules and recommendations set forth in this Chapter 3.03 which the City has declared to be a nuisance, the Code Official, law enforcement, or the sheriff may determine that such violation is an immediate threat to public health, and safety and may have the nuisance abated immediately at the owner's expense.

In a situation where the City has to perform an immediate abatement that includes the closing or limiting of business or personal actions of an individual, that business or individual shall have the right to submit to the City in writing the actions the business or individual will take to bring activity within the rules and/or recommended standards contained in the City resolution declaring an emergency. Upon receipt of the written proposal, the City will review the proposal within 48 hours exclusive of weekends or legal holidays, and advise the business or individual

whether the abatement will no longer be necessary if the business or individual fulfills and follows the existing regulations and properly adjusts activities to fit within those regulations.

Any business or individual aggrieved by any immediate abatement or requirements being placed on the person's activities to be brought in compliance with the City's resolution declaring an emergency may appeal the action to the next City Council Meeting that is at least 48 hours after the filing of the notice of the request for hearing, exclusive of weekends and legal holidays, wherein such filing is in writing and sets forth the reasons why the business or individual believes their actions are within the restrictions contained in the City's resolution declaring an emergency.

3.0303 REMEDIES AGAINST NUISANCE GENERALLY

In the enforcement of the City's resolution declaring an emergency, the City shall also have any additional rights and remedies against nuisance as exists under common law and under state statute including, but not limited to, SDCL §9-29-13 and SDCL chap. 21-10.

3.0304 PENALTIES

Any violation of the Provisions of this Ordinance is a Class 2 misdemeanor punishable by the maximum punishment set forth by the laws of the state of South Dakota pursuant to SDCL §22-6-2 and a daily fine of \$500.00 for each day the nuisance continues. Said punishment may also include payment of any costs and/or restitution authorized by this ordinance and/or State Law. In addition to the penalties provided herein, any person and/or business entity violating the provision of this ordinance may be enjoined from continuing the violation. Notwithstanding the previous sentence, any violation of this ordinance by any business licensed under SDCL Title 35 and Chapter 4.03 of the Municipal Ordinances, City of Harrisburg, South Dakota, following a hearing as required by SDCL 35-2-11.1, may result in a recommendation to the South Dakota Secretary of Revenue that such business's license be suspended or revoked for such violation. In the event that the hearing requirement of SDCL 35-2-11.1 is waived or otherwise suspended pursuant to gubernatorial action pursuant to SDCL 34-48-5, then such recommendation may be made without a hearing.

BE IT FURTHER ORDAINED Pursuant to SDCL §9-19-13, this ordinance is necessary for immediate preservation of the health, peace, safety and welfare of the City and its citizens and, therefore, shall become effective immediately upon passage and publication.

Dated this 5th day of May, 2020.

CITY OF HARRISBURG, SOUTH DAKOTA

Ryan Olson, City Council President

ATTEST:

Mary McClung, Finance Officer

(SEAL)

First Reading: April 21, 2020

Second Reading & Adoption: May 5, 2020

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