

TITLE IX: GENERAL REGULATIONS

Chapter

- 90. ANIMAL CONTROL
- 91. PUBLIC NUISANCES
- 92. COMMERCIAL LANDSCAPING AND BUFFERS
- 93. STREETS AND SIDEWALKS
- 94. FALSE ALARMS
- 95. CANNABIS ESTABLISHMENTS

CHAPTER 90: ANIMAL CONTROL

Section

- 90.01 General rules
- 90.02 Definitions
- 90.03 Duties of Animal Control Officer
- 90.04 Reclaiming impounded animals of known ownership
- 90.05 Responsible animal care
- 90.06 Animals on school grounds or recreation areas
- 90.07 Livestock regulations
- 90.08 Wild or exotic animals
- 90.09 Complaints
- 90.10 Leash laws
- 90.11 Poisoning animals
- 90.12 Abandonment of animals
- 90.13 Electric fences for animal containment
- 90.14 Kennels
- 90.15 Animal nuisance
- 90.16 Dangerous animal
- 90.17 Rabies
- 90.18 Destroying sick or injured animals
- 90.19 License requirements

- 90.99 Penalties

§ 90.01 GENERAL RULES.

A copy of this chapter will be supplied to owner when license is purchased. It shall be unlawful for any person or persons within the town to keep, maintain or have in his or her custody or under his or her control any poultry, livestock, wild or exotic animals within the town limits unless according to exceptions so stated in this chapter. It shall be unlawful for any person or persons within the town to keep, maintain or have in his or her custody or under his or her control any dog or cat without first having obtained a license so to do from the Town Finance Officer, as hereafter provided, and without having paid the license fee therefor.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning:

ANIMAL CONTROL OFFICER. An individual, approved by the Town Board of Trustees, whose duty it is to apprehend animals within the jurisdiction of this chapter. Hermosa Law Enforcement officials and any active Board of Trustees member as appointed by the Town Board and approved by the Town Board to do so, shall also act as Animal Control Officers.

OWNER. Any person, organization, corporation, or entity owning, harboring or keeping an animal or the occupant of any premises on which an animal remains, or to which it customarily returns daily for a period of ten days, is presumed to be harboring or keeping an animal within the definition of this chapter.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.03 DUTIES OF ANIMAL CONTROL OFFICER.

The Animal Control Officer with permission from the property owner or legal paperwork, not requiring property owner permission may:

(A) Enter upon the private premises to investigate to apprehend a stray, dangerous or wild animal or an animal suspected of being infected with rabies;

(B) Enter upon private premises to investigate complaints of irresponsible or inhumane animal care; and

(C) Enter property to seize, impound, or dispose of any dangerous animal when necessary for the protection of any person or animal.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.04 RECLAIMING IMPOUNDED ANIMALS OF KNOWN OWNERSHIP.

When a law enforcement officer or Animal Control Officer shall find a cat or dog "running at large" this officer shall, if possible, contain the animal and identify ownership of the animal by any identification resources available to include collar or license tag or by having previously seen the animal and owner together, and shall attempt to contact the owner of the animal to inform them their animal is in the custody of the Animal Control Officer and they may reclaim their animal for a specified fee to the town and a specified fee to the current animal control entity.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.05 RESPONSIBLE ANIMAL CARE.

(A) Prompt removal and appropriate disposal of dead animal carcasses within 12 hours of death.

(B) It shall be unlawful for any owner or harbinger of a domestic animal to not provide for said animal. Such provisions shall include but are not limited to:

(1) Sufficient quantities of good and wholesome food and water;

(2) Proper protection from the weather;

(3) Veterinary care when needed to prevent suffering;

(4) Humane treatment;

(5) Prompt removal and sanitary disposal of all excrement deposited by owner's animal anywhere within the town corporate limits, including all excrement deposited while animal is not on owner's property; and

(6) Inhumane treatment of an animal is any act of mistreatment, torture, cruelty, neglect, abandonment, mutilation, or inhumane slaughter of an animal that is not consistent with generally accepted training, use and husbandry procedures for the species, breed, physical condition, and type of animal.

(C) **ANIMAL CARE.** The following, as per in SDCL § 40-1-2, shall be used to define **ANIMAL CARE**:

(1) **MISTREATMENT, TORTURE OR CRUELTY** of an animal is any act or omission whereby unnecessary, unjustifiable, or unreasonable physical pain or suffering is caused, permitted, or allowed to continue including acts of mutilation.

(2) **NEGLECT** of an animal is the failure to provide food, water protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for the animal's health and well-being consistent with the species, breed, physical condition, and type of animal.

(3) **INHUMANE TREATMENT** of an animal is any act of mistreatment, torture, cruelty, neglect, abandonment, mutilation, or inhumane slaughter of an animal that is not consistent with generally accepted training, use and husbandry procedures for the species, breed, physical condition, and type of animal.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.06 ANIMALS ON SCHOOL GROUNDS OR RECREATION AREAS.

Owners shall not permit their animals on any school ground when school is in session. Animals shall not be permitted in any public recreation area unless controlled by a leash.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.07 LIVESTOCK REGULATIONS.

(A) **LIVESTOCK.** For the purposes of this section, the term **LIVESTOCK** shall include poultry, cattle, buffalo, goats, sheep, pigs, horses, mules, donkeys or other livestock or equine (horses, mules, and donkeys).

(B) *Livestock regulations within all town zoning classifications, other than any RA (Residential Agriculture) Zoning.*

(1) Property owners who personally maintained livestock within the jurisdictional boundaries of the town on or before December 31, 1999, and are not zoned as any RA (Residential Agriculture) zoning classifications, shall be allowed to continue such practice under the following conditions:

(a) The livestock shall be completely contained to real property owned, leased, or controlled by the owners of such animals.

(b) The actual number of livestock shall be limited to two head or two mother/offspring combinations for the first city lot, and one head or one mother/offspring combination for each lot thereafter. Offspring qualify with the limitation only until such time as they are weaned.

(c) Manure piles must be removed from the real property at least once each week.

(d) The use of the property for the maintenance of the livestock is not interrupted for a period of more than six months.

(2) The maintenance of structures or enclosures and the keeping therein of livestock, with the exception of chickens for the purpose of egg production, may be kept in accordance with the provisions of this section, and/or grazing or staking of livestock within 200 feet of any building or structure occupied by, or intended to be occupied by, human beings as a residence within the corporate limits of the town is prohibited and considered to constitute a public nuisance.

(3) The above exceptions may not be assigned, transferred, or conveyed to subsequent property owners, users, or lessees.

(C) *Livestock control (within RA1 Zoning).* Property owners within the jurisdictional boundaries of the town, who are currently zoned as RA1 (Residential Agriculture 1), shall be allowed to maintain equine livestock only, and shall follow and maintain the following conditions:

(1) The livestock shall be completely contained to real property owned, leased, or controlled by the owners of such animals.

(2) The actual number of livestock shall be limited to three head or three mother/offspring combinations for each one acre of property, not to exceed a total of four head or four mother/offspring combinations. Offspring qualify with the limitation only until such time as they are weaned.

(3) Manure piles must be removed from the real property at least once each week between April 1 and October 1 of each year.

(D) Chickens may only be kept on premises licensed by the town for the keeping of domestic chickens and the following requirements to be followed.

(1) *Permit required.* No person or household may own or possess chickens within the town limits without obtaining an annual permit, which will need to be renewed each year by April 1. An application shall be submitted to the Finance Officer on the form provided by the town office.

(2) *Application.* A person applying for the permit pursuant to the provisions of this section shall provide all information requested on the permit form. An application fee shall be charged and due upon submission of the permit application to the Finance Officer. The amount of this fee shall be set by resolution of the town Board of Trustees.

(3) *Notification of neighbors.* In addition to the application requirements, the applicant shall give notice by ordinary mail to all property owners within 100 feet from the lot that is the subject of the permit application. The notice shall include at a minimum:

(a) The name and contact information of the applicant;

(b) The address of the lot that is the subject of the permit application;

(c) A description of the animals that are the subject of the permit application;

(d) A statement that the applicant wishes to own or possess those animals at the lot that is the subject of the permit application; and

(e) The date and time of the meeting at which the City Council will be making its decision regarding whether to issue the permit. Notices shall be postmarked not less than ten days prior to the date of the meeting at which the City Council will be making its decision. The applicant is responsible for meeting all of these requirements and shall provide documentation to the Finance Officer that these public notice requirements have been satisfied at least four days prior to the date of the meeting. If this is not done, the matter will be pulled from the agenda.

(4) *Permit decision.* The Board of Trustees may permit the possession of chickens if the applicant demonstrates the area the chickens are to be kept in is appropriate for such a purpose and the possession of the chickens will not annoy the health, safety, and comfort of neighboring properties. The town Board of Trustees may deny any such request if it determines that issuing such permit would not be in the best interest of the town.

(5) *Revocation.* Notwithstanding any other provision of this section, the license granted under this section may be revoked by a majority vote of the Board of Trustees if it determines that either the information supplied by the owner on the permit application was false or misleading, or the permittee has otherwise violated the terms of his or her permit. License is immediately null and void upon the licensee's conviction of any cruelty to animal charge. If licensee violates any of this section's criteria, the Board of Trustees has the right to revoke the license.

(6) Each licensee shall meet the following criteria:

(a) *Property.* Properties with land size of 0.25 acres (10,890 square feet) can hold up to eight chickens. For properties sized one acre or more, up to 15 chickens. Properties under 0.25 acres (10,890 square feet), livestock is prohibited. Only property owners are allowed to apply for livestock permit.

(b) *Prohibited.* Roosters are prohibited.

(c) *Enclosure.* Chickens shall be housed in a secure and well-ventilated roofed structure or any attached fenced yard enclosure at all times. The fence around the yard enclosure shall be securely constructed and shall have protective netting to keep the chickens separated from other animals. Chickens will be allowed to roam in the fenced in yard without the overhead netting if wings have been clipped to prevent flight and escaping the yard/enclosure.

(d) *Maintenance.* Droppings and body excretions must be collected on a weekly basis or more often if necessary and must be properly disposed of, or composted, to maintain the floors and walls of the structure in a sanitary and healthy condition. All chickens must be cared for, and enclosure must be kept neat and orderly.

(Ord. 9-1R, passed 2-17-2015; Ord. 90.07A, passed 10-3-2017; Ord. passed 12-15-2020; Ord. passed 6-6-2023)

§ 90.08 WILD OR EXOTIC ANIMALS.

No person shall be allowed to keep exotic or wild animals in their possession. **WILD ANIMAL** or **EXOTIC ANIMAL** means any animal, other than domestic dogs or cats, which in a wild state are carnivorous or which, because of their nature or physical makeup, are capable of inflicting serious physical harm or death to human beings and including, but are not limited to: animals which belong to the cat family; snakes which are poisonous or otherwise present a risk of serious physical harm or death to human beings as a result of their nature or physical makeup; raccoons, skunks, prairie dogs, foxes, bears, coyotes, wolverines, badgers, lions, tigers, and monkeys.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.09 COMPLAINTS.

(A) Should any member of the Town Board of Trustees, Law Enforcement Officer or Animal Control Officer receive a written, signed complaint, the Animal Control Officer shall, within two days, investigate such complaint and make immediate determination of required action and so notify both the plaintiff and owner of such determination.

(B) Should such complaint be declared valid, the Town Board of Trustees, upon majority vote, may give the violating owner a written warning of such violation on the first offense. If not corrected after a period of ten days, a fine for violation of this chapter shall be imposed.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.10 LEASH LAWS.

A dog or cat is under "restraint" within the definition of this chapter if it is controlled by a leash or chain, held by a competent person, with a retractable/lockable leash up to 12 feet, or enclosed within a vehicle being driven or parked on the streets or within the property limits of its owner or keeper.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.11 POISONING ANIMALS.

Unless recommended by the Animal Control Officer, it shall be unlawful for any person to administer willfully or maliciously, or cause to be administered, poison of any sort whatsoever to any animal, the property of another, with the intent to injure or destroy such animal or to willfully or maliciously place any poison or poisoned food where the same is accessible to any

animal.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.12 ABANDONMENT OF ANIMALS.

No person shall abandon an animal within the town corporate limits. Any person who violates this chapter will be subject to a fine according to the town's current fee schedule as well as being deemed charged with a misdemeanor and punishable under South Dakota State Laws.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.13 ELECTRIC FENCES FOR ANIMAL CONTAINMENT.

No owner or harbinger of any animal(s) shall use an electric fence as a means of confining said animal(s).

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.14 KENNELS.

(A) It shall be unlawful for any person to operate a commercial kennel in city limits. When necessary, the Animal Control Officer or the Town Board of Trustees shall cause a written notice to be served to correct such violation within 24 hours.

(B) **COMMERCIAL KENNEL.** Any premises or portion thereof where four or more dogs, cats, rabbits, or other household/domesticated animals, six months of age or older, are maintained, boarded, bred, or cared for in return for compensation, or are kept for the purpose of sale.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.15 ANIMAL NUISANCE.

(A) It shall be unlawful for any person owning or possessing any dog, cat, or livestock animal (as defined), to permit the same to run at large.

(B) **RUNNING AT LARGE.** The presence of a dog or cat at any place except upon the premises of the owner. A dog or cat shall not be considered running at large if it is on a leash or under the control of a person physically able to control it or controlled by a fenced in yard.

(C) Every animal which has the habit of vocalizing at night, or one that habitually chases or vocalizes at vehicles, disturbing and annoying any person or neighborhood, or one that shall injure or destroy any lawn, garden, shrubbery, flower, or vines, is hereby declared to be a public nuisance and no person shall keep or harbor any such animal.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.16 DANGEROUS ANIMAL.

(A) **DANGEROUS ANIMAL.** Any animal that, by itself or by environmental circumstances, at the determination of the board, any agent or officer of a humane society or any peace officer after investigation, is a threat to the physical well-being of other owned animals or humans.

(B) *Bite or attack procedure.*

(1) Regardless of animal age or license status, the owner or harbinger of an animal inflicting a bite or attacking a person shall report the incident to the Animal Control Officer and or Law Enforcement Officer immediately. The animal inflicting such an offense shall then be impounded within 24 hours with a licensed veterinarian or other licensed animal shelter for a period of ten days. If the animal does not have rabies or any other infectious disease, the owner or harbinger may reclaim the animal and pay any fee required for the services rendered.

(2) For the purposes of this section, the following definitions shall apply:

ATTACK. To make physical contact with any part of the body so that a person or animal has been wounded or pierced.

BITE. To be seized with the teeth or jaws so that a person or animal has been wounded or pierced and saliva of the biting animal has contacted the resulting break or abrasion of the skin.

(C) It shall be unlawful for any person to keep or otherwise maintain within the town corporate limits any animal which is known to be vicious or dangerous or which has evidenced a disposition to attack human beings without provocation.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.17 RABIES.

(A) *Rabies vaccination.* All susceptible animals five months of age and older must be vaccinated against rabies. All rabies vaccinations must be renewed every two years. A valid rabies certificate shall be issued listing the owner's name, address, telephone number, date of vaccination, type of rabies vaccine administered, rabies vaccination tag number, manufacturer's serial number of vaccines, tag number and description of dog or cat including its age, breed, sex, and name. The certificate must be signed by a licensed veterinarian. This certificate must be presented to the Town Office at the time of animal registration.

(B) *Rabies procedure.* It shall be unlawful for the owner or harbinger of any animal to refuse or fail to promptly surrender any animal suspected of being infected with rabies. Any animal suspected of being infected with rabies may be seized by the Animal Control Officer/Law Enforcement Officer and impounded with a licensed veterinarian or licensed animal shelter for such observation, examination and testing as necessary for positive diagnosis. Upon declaration by a licensed veterinarian, animal shelter or humane society that the animal is infected with rabies, the Animal Control Officer/Law Enforcement Officer shall cause the immediate destruction of the animal. Disposition of the animal's body shall be controlled by the veterinarian, animal shelter, or humane society. Owner or harbinger of said animal is responsible for all fees incurred by this procedure.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.18 DESTROYING SICK OR INJURED ANIMALS.

The Animal Control Officer/Law Enforcement Officer may destroy any sick or injured animal if its condition is such as to make destruction necessary or desirable. All animals destroyed shall be destroyed by a humane procedure.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.19 LICENSE REQUIREMENTS.

(A) It shall be unlawful for any person to own or harbor any dog, cat, or permitted livestock animal, within the town corporate limits without obtaining an animal license. The licensing period shall be between May 1 and April 30 for the term of one year. Licenses will be prorated for persons purchasing after June 1 for a portion of year, to become due again on April 30. The annual license fee shall be charged as set per the current fee schedule for the town.

(B) No license shall be issued until the applicant has provided satisfactory evidence that the animal for which the license is to be issued has been currently vaccinated for rabies and distemper. A copy will be kept in the licensing file.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

§ 90.99 PENALTIES.

(A) Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor and subject to the following violation penalties:

- (1) Unlicensed animal: \$25 fine plus cost of license.
- (2) First offense: Verbal warning and at Animal Control Officer's decision \$25 fine.
- (3) Second offense: \$50.
- (4) Third offense: \$100.
- (5) Fourth offense: \$150 If all violations are within 12-month period.

(B) And cost of removal of such animal permanently from the town corporate limits within 24 hours of such order and rescind your right, to another animal for one year.

(Ord. 9-1R, passed 2-17-2015; Ord. passed 12-15-2020)

CHAPTER 91: PUBLIC NUISANCES

Section

- 91.01 Definitions
- 91.02 Prohibited conditions
- 91.03 Enforcement authority
- 91.04 Notice to abate
- 91.05 Abatement by town authority

- 91.06 Abatement by town cost assessment
- 91.07 Notification guidelines
- 91.08 Exceptions
- 91.09 Application
- 91.10 Complaints
- 91.11 Conflicts with other laws

91.99 Penalty

§ 91.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NOXIOUS MATTER. Includes trash, garbage, refuse and all other material which has been strewn about, is otherwise apparently abandoned or of no apparent value, which is unsightly or malodorous, or which may be potentially hazardous as a breeding ground for insects and rodents and other undesirable animals, or which may prove hazardous to individuals using the area upon which these noxious matters exist.

NUISANCE. All substances which emit any foul, unhealthy, noxious or disagreeable smell or odor; any stable or shop which is kept in a condition so as to be offensive or annoying to the public; all green or salted hides and carcasses left or deposited in any open or public area; personal property of any kind if unlicensed, unprotected by a durable cover, or not maintained in a neat and safe manner for a period of 30 days or more. This includes, but is not limited to, automobiles, machinery, equipment, accessories, parts, structures, property accouterments such as fences, accessways.

WEEDS. Includes all weeds on the state and/or county weed lists, including, but not limited to, of the kind known as Russian Thistle, Canadian Thistle, Cocklebur, Rag Weed, Golden Rod, Burdock, Creeping Jennie and all other noxious or unhealthful vegetation, especially those whose pollen is known to cause hay fever. To allow to grow to maturity on any private property or vacant lot shall constitute a nuisance.

(Ord. 10.012, passed 4-3-2001; Ord. 91.1A, passed 5-30-2017)

§ 91.02 PROHIBITED CONDITIONS.

(A) All weeds, tall grass in excess of eight inches in height, noxious matter, open wells and nuisances are declared a violation of this chapter and no owner of any lot, place or area within the town, or the agent of the owner or the occupant of the lot, place or area, shall permit on the lot, place or area, or upon any public way abutting the same, any weeds, tall grass, noxious matter or other nuisance to grow, lie, or be located thereon.

(B) Notwithstanding the prohibitions set forth in division (A), for parcels of three acres or more in undeveloped commercial and residential properties, grass growing in excess of eight inches shall be permitted for haying purposes so long as the owner, agent of the owner, or the occupant of the parcel of land of three acres or more maintains a 20-foot wide cut of the growing grass within the perimeter of the parcel of land of eight inches or less. The eight-inch or less cut shall not be necessary for that portion of the parcel that constitutes the boundary line of the town.

(Ord. 10.012, passed 4-3-2001; Ord. passed 5-7-2019) Penalty, see § 10.99

§ 91.03 ENFORCEMENT AUTHORITY.

The Board of Trustees may appoint an authorized agent for the purpose of performing inspections, providing appropriate notifications of violations, conducting enforcement and abatement action as may be required to ascertain compliance with ordinances of the town, and obtaining legal counsel as required. Detailed reports of all action taken by the appointed enforcement authority will be provided at each regular meeting of the Board of Trustees.

(Ord. 10.012, passed 4-3-2001)

§ 91.04 NOTICE TO ABATE.

(A) The Board of Trustees or the duly authorized agent is authorized and empowered to notify, in writing, the owner of any lot, place or area within the town, or the agent of the owner, and the occupant of the premises, to cut, destroy or remove any weeds, tall grass, noxious matter or nuisance found growing, lying or located on the property or upon the public way abutting same.

(B) The notice shall notify the owner, agent and/or occupant to cut, destroy, remove or otherwise remedy any such weeds, tall grass, noxious matter or other nuisance within a prescribed amount of time and shall be delivered as set for below.

(Ord. 10.012, passed 4-3-2001; Ord. passed 8-4-2020)

§ 91.05 ABATEMENT BY TOWN AUTHORITY.

Upon failure, neglect or refusal of any owner, agent or occupant to comply with the notice provided for in §91.04, within the prescribed time after the mailing thereof, the Board of Trustees or the duly authorized agent is authorized and empowered to provide for the cutting, destroying, removal or any other remedy as may be required, of the weeds, tall grass, noxious matter or other nuisance and to defray the cost of the work, including administrative costs, by special assessment against the property as set out in § 91.06.

(Ord. 10.012, passed 4-3-2001; Ord. passed 8-4-2020)

§ 91.06 ABATEMENT BY TOWN COST ASSESSMENT.

The Board of Trustees or the duly authorized agent shall cause an account to be kept against each lot upon which work is done pursuant to § 91.05, and have same certified to the Finance Officer upon completion of the work. The Finance Officer shall thereupon certify the account, showing the amount, the description of the property and add the assessment to the general assessment against the property, and certify the special assessment, together with the regular assessment, to the County Auditor to be collected as municipal taxes for general purposes. The assessment shall be subject to review and equalization the same as assessment for taxes for general purposes.

(Ord. 10.012, passed 4-3-2001; Ord. passed 8-4-2020)

§ 91.07 NOTIFICATION GUIDELINES.

All notices will carry an original signature by at least one member of the Town Board of Trustees.

(A) *First notice - courtesy note.*

(1) The courtesy note shall be delivered by regular mail and/or hand delivered by Town Marshal/Deputy to the last known address of the property owner, agent and/or occupant. Hand deliveries are to be signed by the occupant if present. If occupant not present, notice will be hung on doorknob with date noted as to date and time of placement by law enforcement. The courtesy note shall contain the specific violation, the expected remedy, shall reference the ordinance violated, and shall state the date of the re-inspection. Re-inspection date shall be determined by the Board of Trustees or authorized agent and shall give sufficient time for the required remedy, usually seven calendar days from the postmarked date and noted on door hanger.

(2) Weeds, tall grass, malodorous, unhealthy, and dangerous violations require only one notice. Weeds and tall grass shall be removed within seven calendar days of the postmarked or hand delivered date of the notice. Malodorous, unhealthy, or dangerous violations shall be remedied within three calendar days of the date of the notice.

(B) *Second notice - notice of violation.* The notice of violation shall be delivered via door hangar (hand delivered by law enforcement) to the last known address of the property owner, agent and/or occupant. The notice of violation shall contain the specific violation, the expected remedy, shall reference the code section or ordinance violated, shall state the date of the re-inspection, and shall state consequential action which will be abatement. State the abatement action being taken, the cost of the abatement action to be assessed against the property, and the date the action shall be taken. Re-inspection date shall be determined by the Board of Trustees or authorized agent and shall give sufficient time for the required remedy, usually two weeks from date of the notice.

(C) *Third notice - notice of abatement.* The notice of abatement shall be delivered via registered mail, return receipt requested, with a copy delivered via regular mail, to the last known address of the property owner, agent, and/or occupant, and/or hand delivered by law enforcement. The notice of abatement shall contain the specific violation, shall reference the ordinance violated, shall state the abatement action taken, the date the action was taken, and the cost of the action to be assessed against the property.

(D) *Subsequent violations.* Upon subsequent violation of this chapter within a 24-month period after notice has been given as provided above, the town shall immediately send notice of pending abatement action and require the owner to remedy the nuisance within three days of delivery by regular mail and hand delivered by Marshal to the last known address.

(Ord. 10.012, passed 4-3-2001; Ord. 10.012A, passed 12-7-2004; Ord. passed 4-17-2018; Ord. passed 4-17- 2018; Ord. passed 8-4-2020)

§ 91.08 EXCEPTIONS.

The Board of Trustees shall act and perform all the duties and exercise the powers of the Board of Adjustments. The Board of Adjustments shall have the power to make special exceptions to provisions of this chapter, provided that the applicant for the special exception shall first file with the Board of Adjustment a consent, signed by not less than 75% of the owners of property within 500 feet of the lot or site of which the special exception is sought, provided further that the special exception be granted by not less than a majority vote of the full Board of Adjustments.

(Ord. 10.012, passed 4-3-2001; Ord. passed 8-4-2020)

§ 91.09 APPLICATION.

For the health, safety and welfare of the citizens of this community, all properties within the jurisdictional boundaries of the town will comply with all provisions of this chapter without regard to conditions existing at the time that it goes into effect.

(Ord. 10.012, passed 4-3-2001; Ord. passed 8-4-2020)

§ 91.10 COMPLAINTS.

(A) Should any member of the Town Board of Trustees receive a written or verbal, complaint, a Trustee on the Town Board shall, within two days, investigate the complaint and make immediate determination of required action and so notify both the plaintiff and owner of the determination. The complaint shall be required before any courtesy notice or abatement action shall be initiated and shall be anonymous.

(B) Should the complaint be declared valid, the Town Board of Trustees, upon majority vote, may give the violating owner a courtesy notice of the violation of the first offense.

(C) All notices will carry an original signature by at least one member of the Town Board of Trustees.

(Ord. 10.012A, passed 12-7-2004; Ord. passed 8-4-2020)

§ 91.11 CONFLICTS WITH OTHER LAWS.

(A) In the interpretation and application of the provisions of this chapter, these provisions shall be held to a minimum requirements adopted for the promotion of the public health, morals, safety and the general welfare.

(B) Whenever the requirements of this chapter are at variance with the requirements of other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

(Ord. 10.012, passed 4-3-2001)

§ 91.99 PENALTY.

Each day any violation of this chapter continues shall constitute a separate offense. In addition to the remedies provided in this chapter, any person violating any provision of this chapter shall be subject to the general penalty provision as set forth in § 10.99 of this code.

(Ord. 91.1A, passed 5-30-2017)

CHAPTER 92: COMMERCIAL LANDSCAPING AND BUFFERS

Section

- 92.01 Purpose
- 92.02 How to use this chapter
- 92.03 Application
- 92.04 Exceptions and alternative methods of compliance
- 92.05 Terms
- 92.06 Buffers; composition and when required
- 92.07 Parking lot landscaping requirements
- 92.08 Placement of landscaping throughout the parking area
- 92.09 General site landscaping requirements
- 92.10 Visibility
- 92.11 Maintenance of required landscaping
- 92.12 Submission of landscape plans
- 92.13 Unavoidable delays in the installation of landscaping

92.14 Approved plants

92.15 Standards for wooden fencing; compliance

§ 92.01 PURPOSE.

To improve, protect and preserve the appearance, character, value and safety of the town's urban area and nearby properties. In addition to improving and preserving landscaping during development, there are reasons for both the use of landscaping and buffers.

(A) *Screening between incompatible adjacent land uses.* Zoning was once built on a strict separation of land uses. Today, that is no longer the case. Greater freedom in the use of property and privacy for the landowner can be had through buffering between land uses with vegetation, land forms or distance.

(B) *Erosion control and water pollution.* Trees and plants reduce erosion by binding soil particles with their roots and holding the soil together against the effects of wind and water. When development occurs and impervious surfaces are created, for example, asphalt, concrete, the flow of water across exposed soils can greatly increase, causing serious water pollution problems. Vegetation can slow the runoff by acting as a sponge, gradually releasing snow or rain. This results in an improvement of water quality and reduces the need for engineered drainage solutions.

(C) *Modification of the climate in the immediate vicinity.* Landscaping as well as other forms of land form such as berms can improve air quality and moderate daily temperature by absorbing pollution, providing shade and offering protection from the wind. In addition, trees, grass, leaves, shrubs, even twigs and branches, can absorb and disperse sound energy, reducing overall noise levels.

(D) *Aesthetics.* Often without the softening effect of trees and shrubs, the modern day built environment appears harsh and uninviting.

(Ord. 10.10, passed 5-19-2009)

§ 92.02 HOW TO USE THIS CHAPTER.

This chapter has five basic parts:

(A) Part I: applicability of landscaping/buffer standards and terms (§§92.03 through 92.05): explains applicability of standards, sets forth exceptions and alternate forms of compliance process and defines terms;

(B) Part II: buffers; composition and when required (§92.06): the composition of each buffer is explained and information of buffering between land uses and/or zones that share common property lines is presented;

(C) Part III: landscaping requirements for nonresidential uses (§§92.07 through 92.11): explains parking lot requirements (both interior and perimeter) and general landscaping requirements;

(D) Part IV: landscape plans (§§ 92.12 and 92.13): explains the elements of a landscape plan and the alternatives when landscaping is not immediately practical; and

(E) Part V: plant suggestions and approved fencing standards (§§92.14 and 92.15).

(Ord. 10.10, passed 5-19-2009)

§ 92.03 APPLICATION.

(A) Landscaping requirements may apply to developing uses and are a condition of building permit approval. A buffer requirement may also apply to a developing project if it shares a common boundary line with a different zoning district or it has a significantly different use.

(B) In the event both buffer and landscaping requirements apply in the same physical location, the buffer requirement is the one requiring compliance.

(Ord. 10.10, passed 5-19-2009)

§ 92.04 EXCEPTIONS AND ALTERNATIVE METHODS OF COMPLIANCE.

(A) *Ongoing development projects.* Developments granted a building permit prior to the date of the adoption of this chapter are exempt from the requirements of this chapter.

(B) *Where physical features preclude strict compliance.* It is recognized that, on occasion, complete compliance with the terms of this chapter may be impractical.

(1) Accordingly, a developer may request approval for an alternate landscaping scheme when any one or combination of the below listed conditions exist:

(a) The site involves space limitations or unusually shaped parcels;

- (b) Topography, soil, vegetation or other site conditions are such that full compliance is impossible or impractical;
- (c) Natural vegetation on the site, if undisturbed during the development process, can meet or exceed the vegetation which is required; and/or
- (d) Safety considerations are involved.

(2) In order to have landscape requirements modified due to one or a combination of the above, the applicant should submit a written justification to the Planning and Zoning Board. Within the justification, the applicant must describe:

- (a) Which of the landscape requirements will be met with modifications;
- (b) Which of the conditions set forth above justify using alternatives; and
- (c) How the proposed alternative meets or exceeds what is required.

(Ord. 10.10, passed 5-19-2009)

§ 92.05 TERMS.

There are several important key concepts to understand. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BERM. An earthen mound designed to provide visual interest, screen undesirable views and/or decrease noise.

BUFFER. Thought of as a “transitional space”, a buffer can consist of horizontal space (land) and vertical elements (plants, berms, fences or walls). Its purpose is to physically separate and visually screen adjacent land uses that are not fully compatible.

CALIPER. A measurement of the diameter of a tree trunk.

DECIDUOUS. Plants/trees which lose their leaves in the fall.

DEVELOPING USE. This is the use being considered for development. The use may be straight permitted, or conditional. It is typically this use which will require the filing of a site plan (a plan for development) and it is usually this developer who will be responsible for buffering his or her use from an existing adjacent use.

EVERGREEN. Plants/trees which retain foliage throughout the year.

EXISTING ADJACENT USE. The use of land already in place prior to the development of an adjacent land use.

PLANTING STRIP OR AREA. A ground surface free of concrete, asphalt, stone, gravel, brick or other paving materials, aside from walkways, which is required or used for landscaping purposes.

SHRUB. A woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground. **SHRUB** may be deciduous or evergreen.

TREE, CANOPY OR LARGE MATURING TREE. Any tree the height of which exceeds 35 feet at maturity.

TREE, UNDERSTORY OR SMALL MATURING TREE. Any tree the height of which is less than 35 feet at maturity.

(Ord. 10.10, passed 5-19-2009)

§ 92.06 BUFFERS; COMPOSITION AND WHEN REQUIRED.

Certain land uses, because of their character and intensity, may create an adverse impact on less intensive and varied adjacent land uses. Accordingly, the following regulations are established to protect and preserve the appearance, character and value of property throughout the town.

(A) *When buffers are required.*

(1) *New uses.* Buffers are required when certain land uses develop and share a common property line with either a significantly different type of use in the same zone or, in some cases, a differing zone.

(2) *Expansion of an existing use falling into any of the categories listed above.* The expansion of an existing use can have an adverse impact on adjoining properties. When an expansion is less than 5% of the building floor area or 1,000 square feet, whichever is lesser, buffers are not required. Additionally, the entirety of the existing use need not be buffered. Buffers are required instead as follows.

(a) *Expansion of a structure or parking facility.*

1. Only the area undergoing expansion must comply with the buffer requirements. The buffer should encompass the area along the side and/or rear lot line where construction activity occurs, 90 degrees from the beginning and ending points of construction.

2. When parking or accessory buildings bar the development of a full buffer, they need not be removed to facilitate full compliance.

(b) *Addition of buildings to a lot.* Any new building or parking lot(s) added to an already developed lot are required to meet the buffer requirements; the prior development is not.

(B) *Responsibility for developing.* The developing land use is completely responsible for the creation of the buffer yard with the following modification.

(C) *Exceptions/modifications.*

(1) When an abutting parcel contains a natural vegetative strip comparable to a buffer yard, this area may count toward the requirement of the buffer yard.

(2) When a required buffer abuts a public alley, up to one-half of the alley width can be used to satisfy the buffer width requirement of these regulations.

(3) The width of a required buffer may be reduced by 25% if a wall, fence or berm is provided that meets the following standards.

(a) The fence or wall is constructed in a durable fashion of brick, stone, other masonry materials or wood posts and planks or any combination of the aforesaid materials. No more than 25% of a fence surface may be left open, open work being distributed equally over the entirety of the fence, and the finished side of the fence faces the abutting property.

(b) Walls and fences must be a minimum height of six feet.

(c) Berms must be a minimum height of four feet with a maximum slope of three to one and those exceeding six feet in height must have a maximum slope of four to one. Additionally, they must be stabilized to prevent erosion and landscaped.

(d) Shrubs may be waived if a fence or wall is built. If a berm is constructed, shrubs are still required but may be reduced by 25%.

(4) Buffer requirements may be waived when their requirement would result in buffering between fundamentally compatible land uses, for example, when a use has been allowed "permitted by standards". Accordingly, the Planning and Zoning Board is authorized to waive buffer levels if and only if their requirement would serve no purpose. The waiver must be written and dated on the face of the zoning compliance permit of the developing use.

(D) *Specific requirements for trees and shrubs placed in the buffer.* For trees and shrubs best suited for the area the books *South Dakota Trees* and *South Dakota Shrubs* are available in the town office.

(1) Trees: at least 40% of required trees within a buffer must be large maturing trees with a minimum caliper of two and one-half inches measured six inches above ground at the time of planting; small maturing trees must have a minimum caliper of one and one-half inches measured six inches. Twenty-five percent of the trees in the buffer must be evergreen.

(2) Shrubs must be evergreen and at least two and one-half feet tall when planted with an average height of five to six feet expected as normal growth over a four-year period. Twenty-five percent of shrubs may vary from the above as follows:

(a) May be deciduous;

(b) May be two feet tall when planted provided three to four feet growth is anticipated over a four-year period; and

(c) If planted on a berm may be of a lesser height provided that combined height of the berm and plantings is at least six feet after four years.

(E) *Miscellaneous provisions.*

(1) All trees and shrubs are to be planted in both a visually pleasing fashion and in a way so as to facilitate the creation of a visual screen. Generally, plantings should be spaced equidistant throughout the buffer with final design approval part of the overall site plan approval.

(2) A minimum of two types of trees and shrubs must be used to minimize the effects of disease and/or blight.

(Ord. 10.10, passed 5-19-2009)

§ 92.07 PARKING LOT LANDSCAPING REQUIREMENTS.

(A) *Applicability.* All parking areas in excess of 40 spaces for all uses except parking areas for single-family or two-family dwellings.

(B) *Types of landscaping required.* Two types are required within each parking area as follows:

(1) *Perimeter landscaping.* Parking area perimeters which are adjacent either to public rights-of-way or residentially used property must landscape perimeters with minimum eight-foot wide strips of landscaping. Both trees and shrubs are required via the following formula:

(a) Trees: required at the rate of one canopy tree for every 200 square feet of required planting area or one understory tree for every 150 square feet; and

(b) Shrubs: shrubs are required in addition to trees and at a rate of one per every 50 square feet of planting area.

(2) *Interior landscaping.* Landscaping within the interior of parking areas is important for aesthetics and also functional in that landscaping moderates heat, glare, wind and other climatic effects produced by paved areas. Accordingly, interior parking area space is to be landscaped as follows:

(a) Trees: required at a rate of one per 16 parking spaces. At least 40% of required trees must be large maturing trees with a minimum caliper of two and one-half inches measured six inches above ground at the time of planting; small maturing trees must have a minimum caliper of one and one-half inches measured six inches. Twenty-five percent of the trees throughout the parking lot must be evergreen.

(b) Shrubs: required at a rate of three per 16 spaces. Must be evergreen and at least two and one-half feet tall when planted with an average height of five to six feet expected as normal growth over a four-year period. Twenty-five percent of shrubs may vary from the above as follows:

1. May be deciduous or evergreen; and
2. May be two feet tall when planted provided three to four feet growth is anticipated over a four-year period.

(Ord. 10.10, passed 5-19-2009)

§ 92.08 PLACEMENT OF LANDSCAPING THROUGHOUT THE PARKING AREA.

(A) Trees and shrubs must be placed throughout the parking area to decrease the appearance of a single expanse of pavement and provide shade.

(B) Alternatives include:

(1) A continuous landscape strip between every four rows of parking. A minimum of nine feet in width should be adequate to accommodate both shrubbery and trees;

(2) Large planting islands (over 600 square feet) located throughout the lot and planted with shade trees, low shrubs and/or ground cover. They should preferably be located at the ends of parking rows; or

(3) Planting islands between every ten to 16 spaces to avoid long rows of parked cars.

(C) The size should be a minimum of nine feet wide to allow for an adequate planting area.

(D) Each planting island should provide at least one large, maturing/canopy tree.

(E) In general, all trees and shrubs are to be placed in a visually pleasing fashion.

(F) Additionally, it is also strongly recommended that a variety of both trees and shrubs be used when possible to preclude disease or blight from eliminating all of each.

(Ord. 10.10, passed 5-19-2009)

§ 92.09 GENERAL SITE LANDSCAPING REQUIREMENTS.

(A) *Applicability.* All commercial and industrial uses.

(B) *General requirements.*

(1) *Minimum landscaped area.* Each site must develop a planting strip with a minimum ten foot width along all areas which front public rights-of-way.

(2) *Ratio of trees and shrubs to square footage.*

(a) Trees: required at the rate of one canopy tree for every 200 square feet of required planting area or one understory tree for every 150 square feet.

(b) Shrubs: shrubs are required in addition to trees and at a rate of one per every 50 square feet of planting area.

(Ord. 10.10, passed 5-19-2009)

§ 92.10 VISIBILITY.

Nothing in this chapter shall be construed as permitting any obstruction to view which could constitute a traffic hazard and/or violate the sight triangle requirements of the town.

(Ord. 10.10, passed 5-19-2009)

§ 92.11 MAINTENANCE OF REQUIRED LANDSCAPING.

(A) *Responsibility.* Required landscaping must be maintained in a healthy, growing condition at all times. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning and other maintenance of all plantings as needed.

(B) *Replacement.* Plants damaged, diseased or dead must be replaced by the owner within 60 days of the occurrence of a condition and/or a maintenance warning notice will be issued by the office of the Town Board. If seasonal conditions are such that replacement cannot be accomplished immediately, this requirement can be waived by staff and temporarily delayed.

(C) *Nonliving materials.* Nonliving buffer materials, e.g., fencing, are to be kept maintained, cleaned and repaired by the owner of the property upon which they are located.

(D) *Enforcement of violations.* All provisions of this chapter are subject to the enforcement proceedings.

(E) *Violation.* Registered letter will be sent with notice of 60 days to correct violation. Noncompliance with the letter will result in a fine in an amount set by the Board of Trustees, as per the current fee schedule, per month until requirements are met.

(Ord. 10.10, passed 5-19-2009)

§ 92.12 SUBMISSION OF LANDSCAPE PLANS.

(A) Landscape plans must be submitted along with the building permit site plans and may be superimposed upon the site plan as space permits.

(B) Landscape plans are considered to be an integral part of any submitted site plan and will be subject to the same approval process.

(C) The plan shall include:

(1) Project information including the total square footage of the property, the square footage of the building areas, parking and other vehicular use areas;

(2) Each project's calculations, i.e., dimensional attributes and resulting amount of planted areas; and

(3) Location, size and type of planting material, both existing and proposed.

(Ord. 10.10, passed 5-19-2009)

§ 92.13 UNAVOIDABLE DELAYS IN THE INSTALLATION OF LANDSCAPING.

(A) Installation of landscaping must be completed in accordance with an approved landscape plan.

(B) Unusual environmental conditions such as drought or ice may occur or the appropriate planting season may not parallel that of the development's. In those cases, a temporary certificate of occupancy for a specified period may be issued.

(Ord. 10.10, passed 5-19-2009)

§ 92.14 APPROVED PLANTS.

See books *South Dakota Trees* and *South Dakota Shrubs*, which are available for review in the town office.

(Ord. 10.10, passed 5-19-2009)

§ 92.15 STANDARDS FOR WOODEN FENCING; COMPLIANCE.

(A) *Lumber type options.* Pressure treated lumber, redwood or cedar.

(B) *Nailing strips.* Three strips or rails are required.

(C) *Spacing.* The gap between the ground and the bottom of the fence boards is to be not more than six inches. Other designs may be used with prior approval of the Planning and Zoning as long as the general standards are met.

(Ord. 10.10, passed 5-19-2009)

CHAPTER 93: STREETS AND SIDEWALKS

Section

Uniform and Safe Construction of Sidewalks

93.01 Supervision of sidewalk construction

93.02 Specifications

- 93.03 Notice to owners
- 93.04 Failure to comply
- 93.05 Responsibility to maintain
- 93.06 Repairs by town

Cross-reference:

Animal control, see Chapter 90

Commercial landscaping and buffers, see Chapter 92

Public nuisances, see Chapter 91

UNIFORM AND SAFE CONSTRUCTION OF SIDEWALKS

§ 93.01 SUPERVISION OF SIDEWALK CONSTRUCTION.

The installation and maintenance of all sidewalks within the town limits shall be constructed using good and practical engineering and drainage standards and shall be approved by the Board of Trustees prior to commencement of construction.

(Ord. 8.003, passed 4-17-2011)

§ 93.02 SPECIFICATIONS.

(A) The construction of sidewalks, whether completed by the property owner(s), the town or a contractor, shall maintain the following minimum specifications: appropriate grade of concrete four inches thick and four feet wide over a two-inch sand base or clean rock.

(B) New sidewalk construction shall also be in accordance with applicable Americans with Disability Act requirements.

(Ord. 8.003, passed 4-17-2011)

§ 93.03 NOTICE TO OWNERS.

(A) Upon the decision of the Board of Trustees to construct, repair or replace a certain section of sidewalk, it shall notify all property owners in that section to construct, repair or replace sidewalks on their property in accordance with the above specifications at their own expense within a designated number of days.

(B) The notice shall be in writing and either delivered personally, with a signed receipt thereof, or via registered mail to the last known address.

(C) Public notice, if required, shall be in the designated newspaper of record not less than once each week for two consecutive weeks.

(1) The public notice shall set forth the nature of the required work and the required date of completion.

(2) The notice may be of a general nature in regards to property owners' names, but must include legal descriptions of all properties included.

(Ord. 8.003, passed 4-17-2011)

§ 93.04 FAILURE TO COMPLY.

(A) If after the appropriate notices have been given and the designated date of completion has expired a property owner has not complied with the requirements and specifications set forth in the notice, the town may cause the same to be accomplished and the costs thereof, along with any administrative costs, assessed to the property through a special assessment.

(B) In the event the abatement action includes more than one property, the cost of the abatement shall be proportioned to each property based on footage of work per lot.

(Ord. 8.003, passed 4-17-2011)

§ 93.05 RESPONSIBILITY TO MAINTAIN.

(A) Any property owner who shall fail to keep in good condition the sidewalk(s) fronting or abutting their property shall be liable for any damage(s) or injury caused by the lack of maintenance.

(B) This maintenance shall include, but is not limited to, repair and removal of snow, ice and debris.

(Ord. 8.003, passed 4-17-2011)

§ 93.06 REPAIRS BY TOWN.

Where the cost of construction, repair or replacement cost shall be deemed excessive the Board of Trustees may, upon application for assistance, and by resolution, fund the same from the General Fund.

(Ord. 8.003, passed 4-17-2011)

CHAPTER 94: FALSE ALARMS

Section

- 94.01 Definitions
- 94.02 Automatic dialing direct alarm prohibited
- 94.03 Violations and fees for compensation

§ 94.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT OF GOD. An unusual, extraordinary, sudden, and unexpected manifestation of the forces of nature, which cannot be prevented by reasonable human care, skill, or foresight.

AUTOMATIC DIALING DEVICE. Any device connected to a telephone line programmed to select a predetermined telephone number assigned to the emergency services communication center and thereby transmit a signal indicating the need for an emergency response of any duly authorized law enforcement personnel.

CENTRAL STATION SERVICE. Any operation in which a person, firm, corporation, or other entity accepts valuable consideration in return for monitoring fire alarms, fire alarm systems, or remote fire alarm signaling devices located within structures, other than residential structures, or any security alarm or security alarm system as defined in this chapter, located within the territorial jurisdiction of the town.

FALSE ALARM. Any security alarm signal or notification which elicits a response from any duly authorized law enforcement personnel when the response is deemed to have been made unnecessarily. A **FALSE ALARM** is one which results in a response of a duly authorized law enforcement personnel when such response determines that:

- (1) No criminal activity, attempted criminal activity, or any emergency exists or existed to justify any alarm or alarm signal;
- (2) The alarm or alarm signal was not caused by the act of a person over whom the user or alarm agent had no control; and
- (3) The alarm or alarm signal was not caused by an act of God.

SECURITY ALARM or **SECURITY ALARM SYSTEM.** Any device designed for the detection of an unauthorized entry on premises, or for alerting others of the commission of an unlawful act, or both, and when the system is actuated gives a signal, visual and/or audible, or transmits and/or causes to be transmitted any signal or alarm. As used herein, **SECURITY ALARM SYSTEM** shall refer to systems owned or leased by private persons or entities, and shall exclude the following:

- (1) Any alarm system intended for use with a motor vehicle; and
- (2) Any alarm system installed in the interior of any premises designed solely for the purpose of alerting the occupants within the premises.

SECURITY ALARM USER. Any owner, occupant, lessee, or lessor of any structure or dwelling on private property on whose premises there is installed or maintained within the corporate limits of the town, an alarm or alarm system.

(Ord. passed 2-5-2019)

§ 94.02 AUTOMATIC DIALING DIRECT ALARM PROHIBITED.

No security alarm business or security alarm user within the corporate limits of the town shall operate any automatic dialing direct security alarm, as defined herein. Any governmental entity within the corporate limits within the town shall be exempt from the provisions of this section.

(Ord. passed 2-5-2019)

§ 94.03 VIOLATIONS AND FEES FOR COMPENSATION.

(A) Whenever any duly authorized law enforcement personnel have responded to two false security alarms within any period of 12 calendar months to the same premises in response to any security alarm or security alarm system as provided for herein, the owner or occupant of the real property on which the alarm or alarm system is installed shall pay to the town for each false alarm thereafter the sum of \$50 as partial compensation for those costs incurred by the town's Law Enforcement Department in responding to the false alarm. Any invoice issued may be appealed first to the Town Marshal, then to the Board of Trustees.

(B) In the event an invoice for payment hereunder is unpaid more than 30 days after the due date, the Town Marshal may order that the central station service shall disconnect the security alarm system from its service upon 20 days' notice to the owner or occupant of the subject property.

(C) The Town Marshal may waive charges for any response made within 14 days after initial installation.

(Ord. passed 2-5-2019)

CHAPTER 95: CANNABIS ESTABLISHMENTS

Section

- 95.01 Definitions
- 95.02 License required
- 95.03 License application
- 95.04 Issuance of license
- 95.05 City neutrality as to applicants
- 95.06 Number of cannabis dispensaries
- 95.07 Expiration of license and renewal
- 95.08 Suspension
- 95.09 Revocation
- 95.10 Suspension and revocation process
- 95.11 Appeal
- 95.12 Licenses not transferable
- 95.13 Hours of operation for dispensaries
- 95.14 Liability for violations
- 95.15 General use
- 95.16 Business use

- 95.99 Penalty

§ 95.01 DEFINITIONS.

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 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.

DEPARTMENT. The South Dakota Department of Health.

INGEST. Any person who intentionally ingests, inhales, or otherwise takes into the body any substance.

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.* 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.

PUBLIC PLACE. Any place whether within or without a building, commonly and customarily open to or used by the general public and any street, highway, alley or sidewalk.

(Ord. passed 9-16-2021)

§ 95.02 LICENSE REQUIRED.

(A) No cannabis establishment may be located or operate in the town without the appropriate valid and current cannabis establishment license issued by the town pursuant to this chapter. A violation of this provision is subject to the general penalty provision in § 95.99(A). Each day of the violation constitutes a separate offense.

(B) No cannabis establishment may be located or operate in the town without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL Chapter 34-20G. A violation of this provision is subject to the general penalty provision in § 95.99(A). Each day of the violation constitutes a separate offense.

(Ord. passed 9-16-2021)

§ 95.03 LICENSE APPLICATION.

(A) An application for a cannabis establishment license must be made on a form provided by the town. No other application form will be considered.

(B) The applicant must submit the following:

(1) Application fee of \$5,000. The town will reimburse \$2,500 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.

(2) An application that will include, but is not limited to, the following:

(a) The legal name of the prospective cannabis establishment;

(b) The physical address of the prospective cannabis establishment that meets distance requirements from 1,000 feet from existing schools, 500 feet from existing churches, 500 feet from existing daycares, and 500 feet from existing libraries as well as any location requirements pursuant SDCL Chapter 34-20G and the administrative rules promulgated thereunder.

(c) The name, address, 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, or board member has been convicted of a violent felony offense in the previous ten years in any jurisdiction.

(e) Any additional information requested by the town.

(Ord. passed 9-16-2021)

§ 95.04 ISSUANCE OF LICENSE.

(A) The town will issue a license unless:

(1) The applicant has made a false statement on the application or submits false records or documentation;

(2) Any owners, principal officer, or board member of the applicant is under the age of 21 years;

(3) Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten years in any jurisdiction;

(4) The proposed location does not meet the applicable distance requirements from schools, churches, daycares, and libraries;

(5) The proposed location does not meet all location requirements under SDCL Chapter 34-20G and the administrative rules promulgated thereunder;

(6) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation;

(7) Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the town or a registration certificate revoked by the state;

(8) An applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or

(9) The applicant will not be operating the business for which the license would be issued.

(B) In the case of an application for a cannabis dispensary license, the town will reject the application if the limit on the number of cannabis dispensaries has been reached.

(C) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

(Ord. passed 9-16-2021)

§ 95.05 CITY NEUTRALITY AS TO APPLICANTS.

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

(Ord. passed 9-16-2021)

§ 95.06 NUMBER OF CANNABIS DISPENSARIES.

No more than two cannabis dispensaries shall be allowed to operate in the town at any time.

(Ord. passed 9-16-2021)

§ 95.07 EXPIRATION OF LICENSE AND RENEWAL.

(A) Each license expires one year from the date of issuance and may be renewed only by making application as provided in § 95.03. Application for renewal must be submitted at least 30 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 town will reimburse \$2,500 for applicants who fail to obtain a renewal of their registration certificate from the Department.

(C) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the town may order closure of the cannabis establishment.

(D) If a license holder has not operated an establishment for which it holds a license in the preceding 12 months, the license will not be renewed.

(Ord. passed 9-16-2021)

§ 95.08 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 chapter.

(2) Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.

(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 Department-issued registration certificate 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 at the cannabis establishment.

(Ord. passed 9-16-2021)

§ 95.09 REVOCATION.

(A) A license may be revoked if the license is suspended under §95.08 and the cause for the suspension is not remedied.

(B) A license may be revoked if the license is subject to suspension under §95.08 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 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 establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;
- (4) Repeated violations of this chapter;
- (5) Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility 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 town, county, or state for any taxes or fees related to the cannabis establishment;
- (7) A license holder, or an owner, principal officers, 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 Chapter 34-20G; or
- (8) The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
- (9) The license holder allows a public nuisance to continue after notice from the town.

(Ord. passed 9-16-2021)

§ 95.10 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 establishment.

(B) If the license holder disputes the suspension or revocation, the license holder has ten 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 Town Board of Trustees.

(C) A suspension will be for 30 days and begins ten 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 year and begins ten 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 any cannabis establishment license for one year from the date the revocation became effective.

(Ord. passed 9-16-2021)

§ 95.11 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 Town Board by submitting a written appeal within ten days of the postmark on the notice of denial, non-renewal, suspension, or revocation. The written appeal must be submitted to Town of Hermosa P.O. Box 298 Hermosa, South Dakota 57744. The appeal will be considered by the Town Board at a regularly scheduled meeting within one month of the receipt of the appeal.

(Ord. passed 9-16-2021)

§ 95.12 LICENSES NOT TRANSFERRABLE.

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

(Ord. passed 9-16-2021)

§ 95.13 HOURS OF OPERATION FOR DISPENSARIES.

No cannabis dispensary may operate between the hours of 7:00 p.m. and 7:00 a.m. any day of the week. Cannabis dispensaries are required to be open a minimum of 16 hours per week, every week of the year.

(Ord. passed 9-16-2021)

§ 95.14 LIABILITY FOR VIOLATIONS.

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

(Ord. passed 9-16-2021)

§ 95.15 GENERAL USE.

It shall be unlawful for any person to openly possess or ingest marijuana in any public place or public property within the Municipality of Hermosa.

(Ord. passed 9-16-2021)

§ 95.16 BUSINESS USE.

It is unlawful for any person or entity maintaining, owning or operating any public place to operate and knowingly or with reason to know, permit or allow any person possess or ingest marijuana in any public place or any place that is open to the public.

(Ord. passed 9-16-2021)

§ 95.99 PENALTY.

(A) Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this chapter is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of \$500. Each day a cannabis establishment so operates is a separate offense or violation.

(B) Any person violating any provision of this chapter for which there is no specific penalty is prescribed shall be subject to § 10.99.

(Ord. passed 9-16-2021)