

# TOWN OF HERMOSA, SOUTH DAKOTA

## CODE OF ORDINANCES

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# TOWN OFFICIALS OF HERMOSA, SOUTH DAKOTA

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### TOWN BOARD

LINDA KRAMER  
KELBURN KOONTZ  
SHANNA HARRIS  
DONNA FERGUSON

TOWN BOARD PRESIDENT  
TOWN BOARD VICE PRESIDENT  
TOWN BOARD TRUSTEE  
TOWN BOARD TRUSTEE

### TOWN OFFICIALS

KENT HAGG  
ELMER CLAYCOMB  
CHUCK FERGUSON

TOWN ATTORNEY  
FLOODPLAIN ADMINISTRATOR  
PUBLIC WORKS

## TITLE I: GENERAL PROVISIONS

Chapter

### 10. GENERAL CODE CONSTRUCTION; GENERAL PENALTY

## CHAPTER 10: GENERAL CODE CONSTRUCTION; GENERAL PENALTY

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## § 10.01 TITLE OF CODE.

All ordinances of a permanent and general nature, as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections, shall be known and designated as the “town code”, for which designation “code of ordinances” or “codified ordinances” may be substituted. Code title, chapter and section headings do not constitute any part of the law as contained in the code.

## § 10.02 RULES OF INTERPRETATION.

(A) *Generally.* Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

(B) *Specific rules of interpretation.* The construction of all ordinances shall be by the following rules, unless that construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance.

(1) *Acts by assistants.* When a statute, code provisions or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(2) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(3) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited. General terms descriptive of an officer, act, proceeding or thing shall have reference to the municipality concerned or affected.

### **Statutory reference:**

*General terms descriptive of an officer, act, proceeding and the like, see SDCL § 9-1-1*

## § 10.03 CAPTIONS.

Headings and captions used in this code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

## § 10.04 DEFINITIONS.

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

**COMPUTATION OF TIME.** The time in which any act provided by this code or other ordinance is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and then it also is excluded. Fractions of a day are to be disregarded in computations which include more than one day, and involve no questions of priority.

**COUNTY.** Custer County, South Dakota.

**ELECTOR(S)** or **QUALIFIED ELECTOR(S).** Voter(s).

(SDCL § 9-1-1)

**GOVERNING BODY.** The Board of Trustees of the Town of Hermosa, South Dakota.

**LOT.** Includes **PARCEL** or **TRACT OF LAND**.

(SDCL § 9-1-1)

**MONTH.** A calendar month.

**MUNICIPALITY** or **MUNICIPAL CORPORATION.** The Town of Hermosa, South Dakota.

**ORDINANCE.** A permanent legislative act within the limits of its powers of the governing body of the town.

**OWNER.** As used in this code relating to local improvements, the grantee in the last deed of conveyance of any lot or parcel of land recorded in the office of the Register of Deeds of Custer County, or his or her heirs or successors.

(SDCL § 9-1-1)

**PUBLICATION.** Any requirement for publication shall mean publication in the official newspaper of the town concerned or affected, if any; but if none, then, in a legal newspaper published in the town, if any; but if none, then in any legal newspaper which serves the town, except as provided by SDCL § 9-13-13. Personal service either within or without the state upon the person affected thereby by delivery of a copy of a notice required to be published shall be equivalent to the required **PUBLICATION**.

(SDCL § 9-1-1)

**RESOLUTION.** Any determination that, decision or direction of the governing body of the town of a temporary or special character for the purpose of initiating effecting, or carrying out its administrative duties and functions.

(SDCL § 9-19-1)

**SDCL.** South Dakota Codified Laws.

**STREET.** Includes **AVENUE**.

(SDCL § 9-1-1)

**YEAR.** A calendar year.

#### **§ 10.05 SEVERABILITY.**

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

#### **§ 10.06 REFERENCE TO OTHER SECTIONS.**

Whenever in one section reference is made to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered, unless the subject matter is changed or materially altered by the amendment or revision.

#### **§ 10.07 REFERENCES TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of this local government exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

#### **§ 10.08 ERRORS AND OMISSIONS.**

(A) If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published.

(B) No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

#### **§ 10.09 POWERS TO ENACT, AMEND OR REPEAL ORDINANCES AND RESOLUTIONS; GENERALLY.**

The town may enact, make, amend, revise or repeal all the ordinances, resolutions and regulations as may be proper and necessary to carry into effect the powers granted thereto.

#### **§ 10.10 ORDINANCES REPEALED.**

(A) This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the

subjects herein enumerated and embraced.

(B) All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

#### **§ 10.11 ORDINANCES UNAFFECTED.**

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

#### **§ 10.12 REPEAL OR MODIFICATION OF AN ORDINANCE.**

(A) No suit, proceedings, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(B) When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision, unless it is expressly provided.

#### **§ 10.13 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.**

(A) If the legislative body shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section. In addition to this indication as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

#### **§ 10.14 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.**

(A) All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws.

(B) This code does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this code.

(C) (1) The liabilities, proceedings and rights are continued; punishments, penalties or forfeitures shall be enforced and imposed as if this code had not been enacted.

(2) In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

#### **§ 10.99 GENERAL PENALTY.**

The town is authorized to provide for the punishment of each violation of an ordinance, resolution or regulation with a fine not to exceed \$500, or by imprisonment not exceeding 30 days, or by both the fine and imprisonment.

#### **Statutory reference:**

*Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)*

## **TITLE III: ADMINISTRATION**

Chapter

**30. OFFICIALS AND EMPLOYEES**

**31. TAX AND FINANCE**

**32. TOWN ORGANIZATIONS**

# **CHAPTER 30: OFFICIALS AND EMPLOYEES**

Section

30.01 Definitions

- 30.02 Residency required
- 30.03 Circumstances
- 30.04 Waiver
- 30.05 Planning and Zoning Board; waiver
- 30.06 Board of Trustees; waiver
- 30.07 Board member attendance and compensation
- 30.08 Term limits

## § 30.01 DEFINITIONS.

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

### **DOMICILE.**

(1) A person's true, fixed and permanent living place. **DOMICILE** is the place to which a person intends to return after temporary absences.

(2) For purposes of this section, a person may have only one primary **DOMICILE**.

**LEGAL VOTER.** To qualify as a **LEGAL VOTER** in the Town of Hermosa elections as a candidate for public office to become a member of the Hermosa Board of Trustees, the candidate must:

- (1) Be a citizen of the United States;
- (2) Actually live at and have no present intention of leaving the address described as their residency;
- (3) Be at least 18 years of age on the date of the next election;
- (4) Has not been adjudged mentally incompetent;
- (5) Is not currently serving a sentence for a felony conviction;
- (6) Has canceled any previous voter registration; and

(7) Further, pursuant to SDCL § 9-14-2, the candidate must have resided in the municipality at least three months prior to the election. Specifically, SDCL § 9-14-2 provides that except as otherwise provided, no person may hold any elected municipal office who is not a qualified voter of the municipality and who has not resided therein at least three months next preceding his election or appointment. If the person has resided in an area annexed, pursuant to SDCL Chapter 9-4, for at least three months, he or she may hold any municipal office. No person may hold any municipal office who is a defaulter to the municipality. This definition does not apply to appointive officers.

**RESIDENCE.** In determining the place of **RESIDENCE**, the following rules are to be observed:

- (1) There can only be one **RESIDENCE**;
- (2) A **RESIDENCE** is the place where one remains when not called elsewhere for labor (work, job) or other special or temporary purpose, and to which one regularly returns for primary shelter; and
- (3) The **RESIDENCE** can be changed only by the union of act and intent. The actual ongoing, regular physical presence, in a new domicile, constitutes a new **RESIDENCE**.

(Ord. 1.005A, passed 11-18-2008; Ord. passed 3-1-2022)

## § 30.02 RESIDENCY REQUIRED.

(A) All members of the Planning and Zoning Board and the Town Board, appointed or voted into office before or after the effective date of this chapter, shall be a resident of the town, and maintain their domicile and principal place of residence within the town limits during the period of their term of office.

(B) All members must also be registered to vote in the town, county and state. The residence must not be merely for the purpose of getting mail and registering to vote.

(Ord. 1.005A, passed 11-18-2008)

## § 30.03 CIRCUMSTANCES.

The following circumstances, standing alone, shall not constitute sufficient evidence of domicile; but may be considered as part of the demonstration of the facts and circumstances listed above:

- (A) Registration to vote within a precinct of the town;

(B) The lease or ownership of living quarters in the town; and

(C) Other public records, e.g., federal taxation filings, automobile registration and the like.

(Ord. 1.005A, passed 11-18-2008)

#### **§ 30.04 WAIVER.**

The Board of Trustees may, in its discretion, elect to waive the residency requirements upon four-fifths majority vote of the Board for any Trustee who, during the Trustee's tenure, no longer maintains his or her status as a resident of the town as required by this chapter.

(Ord. 1.005A, passed 11-18-2008)

#### **§ 30.05 PLANNING AND ZONING BOARD; WAIVER.**

All members of the Planning and Zoning Board appointed into office before or after the effective date of this chapter, are hereby required to attend at a minimum of four of the Planning And Zoning Board's regularly scheduled meetings per quarter year; with the fiscal year being from June 1 of the current year to June 1 the following calendar year. In the event the member fails to attend meetings as required or should violate any provisions of this chapter, the "at-fault" member may be removed by the Board of Trustees governing board, at which time the governing board, with a quorum vote, may either allow the at-fault member to retain his or her appointed or elected seat, or request a notice of resignation from the at-fault member. Reasons for accepting or denying the appeal must be solely based on what is in the best interest of the town, and the at-fault member's current and future ability to serve their community and board.

(Ord. 1.005A, passed 11-18-2008; Ord. passed 11-18-2008; Ord. passed 3-1-2022)

#### **§ 30.06 BOARD OF TRUSTEES; WAIVER.**

(A) All members of the Board of Trustees appointed or voted into office before or after the effective date of this chapter are hereby required to attend four of the Board's regularly scheduled meetings per quarter; with the fiscal year being from June 1 of the current year to June 1 of the following calendar year.

(B) The Board of Trustees may expel and remove any member of the Board of Trustees upon the following grounds: misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, gross partiality, any violation of the Town of Hermosa's Code of Conduct or failure to physically attend at least four of the six regularly scheduled Board of Trustee scheduled meeting per quarter as described in division (A).

(C) All members of the Board of Trustees appointed or voted into office before or after the effective date of this chapter shall execute the Town of Hermosa's Code of Conduct at the time they are sworn into office and shall comply with the same.

(D) If it appears to the Board of Trustees that a member has violated any provisions of this chapter or grounds exist to expel and remove the violating member, the Board of Trustees shall conduct a fair and public hearing on whether the violating member should retain his or her appointed or elected position as a member of the Hermosa Board of Trustees.

(E) Any expulsion and removal of a member of the Board of Trustees shall require a vote for expulsion and removal by four members of the Board of Trustees.

(Ord. 1.005A, passed 11-18-2008; Ord. passed 3-1-2022)

#### **§ 30.07 BOARD MEMBER ATTENDANCE AND COMPENSATION.**

(A) In order to receive payment for meeting attendance, members must be physically present or via electronic means, teleconference, telephone or the like, within 15 minutes after the opening of the meeting, and remain physically present or via electronic means, teleconference, telephone or the like, until adjournment of the meeting. Any variance of this regulation requires a 60% (i.e. three-fifths) vote from the present or through electronic means, teleconference, telephone or the like governing body to approve the payment.

(B) All members of the Board of Trustees shall be physically present or through electronic means, teleconference, telephone or the like (two per quarter for each trustee) for the regular meetings. Special meetings and medical disability of a Trustee or Trustee's immediate family member via electronic means, teleconference, telephone or the like, are allowed with no limits.

(C) Board of Trustees members attending the meeting through electronic means, teleconference, telephone or the like have all the rights and privileges as those physically present at the meeting with the exception of executive sessions. If the Board of Trustees President attends the meeting through electronic means, teleconference, telephone or the like the meeting will be chaired by the Vice President or by a Trustee named by the President in the absence of the Vice President. Executive sessions cannot be attended via electronic means, teleconference, telephone or the like; however, motions resulting from executive sessions can be voted on via electronic means, teleconference, telephone or the like.

(Ord. 1.005A, passed 11-18-2008; Ord. passed 11-18-2008; Ord. passed 3-15-2022; Ord. passed 10-17-2023)

## **§ 30.08 TERM LIMITS.**

No person may be elected to, or appointed to, the Board of Trustees that would cause the person to serve more than four consecutive three year terms. No person who, at the time of election or appointment, or at the expiration of his or her current term if he or she is so serving, will have served 12 or more consecutive years is eligible for election or appointment. Any person who is not eligible for election or appointment under the terms of this section shall not be eligible for election or appointment until at least six years have passed since the expiration of the person's most recent term.

(Ord. passed 6-6-2023)

# **CHAPTER 31: TAX AND FINANCE**

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## Section

### ***Municipal Sales and Service Tax***

- 31.01 Purpose
- 31.02 Effective date and enactment of tax
- 31.03 Use tax
- 31.04 Collection
- 31.05 Interpretation

### ***Municipal Gross Receipts Tax***

- 31.10 Purpose
- 31.11 Effective date and enactment of tax
- 31.12 Collection
- 31.13 Interpretation
- 31.14 Use of revenue

- 31.99 Penalty

## **MUNICIPAL SALES AND SERVICE TAX**

### **§ 31.01 PURPOSE.**

The purpose of this subchapter is to provide needed revenue for the town by imposing a municipal retail sales and use tax, pursuant to the powers granted to the municipality by the state, by SDCL § 10-52, entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

(Ord. 7.3, passed 10-3-2006)

### **§ 31.02 EFFECTIVE DATE AND ENACTMENT OF TAX.**

From and after January 1, 2007, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 2% on the gross receipts of all persons engaged in business within the jurisdiction of the municipality of the town, who are subject to the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(Ord. 7.3, passed 10-3-2006)

### **§ 31.03 USE TAX.**

In addition there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchases from and after January 1, 2007, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the State Use Tax Act, SDCL § 10-46, and acts amendatory thereto.

(Ord. 7.3, passed 10-3-2006)

#### **§ 31.04 COLLECTION.**

The tax is levied pursuant to authorization granted by SDCL § 10-52 and acts amendatory thereto, and shall be collected by the State Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the state sales tax and under additional rules and regulations as the Secretary of Revenue and regulation of the state shall lawfully prescribe.

(Ord. 7.3, passed 10-3-2006)

#### **§ 31.05 INTERPRETATION.**

It is declared to be the intention of this subchapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the State Retail Occupational Sales and Service Act, SDCL § 10-45, and acts amendatory thereto and the State Use Tax, SDCL § 10-46 and acts amendatory hereto, and that this shall be considered a similar, tax except for the rate thereof to that tax.

(Ord. 7.3, passed 10-3-2006)

## **MUNICIPAL GROSS RECEIPTS TAX**

#### **§ 31.10 PURPOSE.**

The purpose of this subchapter is to provide additional needed revenue for the Municipality of Hermosa, Custer County, South Dakota, by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the State of South Dakota by SDCL § 10-52A, and acts amendatory thereto.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.11 EFFECTIVE DATE AND ENACTMENT OF TAX.**

From and after July 1, 2018, there is hereby imposed a municipal gross receipts tax of 1% upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites, or other lodging accommodations within the municipality for periods of less than 28 consecutive days, the sale of alcoholic beverages as defined in SDCL § 35-1-1, establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic, and cultural events. The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Hermosa, Custer County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.12 COLLECTION.**

Such tax is levied pursuant to authorization granted by SDCL § 10-52A and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue in accordance with the same rules and regulations applicable to the State Sales Tax and such additional rules and regulations as the Secretary of Revenue of the State of South Dakota shall lawfully prescribe.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.13 INTERPRETATION.**

It is declared to be the intention of this subchapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate of that tax.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.14 USE OF REVENUE.**

Any revenues received under this subchapter may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic centers, auditoriums, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions, and activities.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.99 PENALTY.**

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

(B) In addition to the penalty in division (A) above, for §§31.01 through 31.05, all the collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

(C) In addition to the penalty in division (A) above, for §§31.10 through 31.14, any person failing or refusing to make reports or payments prescribed by the subchapter and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$2,000 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL § 10-45, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.

(Ord. 7.3, passed 10-3-2006; Ord. 31.06, passed 3-6-2018)

## CHAPTER 32: TOWN ORGANIZATIONS

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Section

### *Town Planning and Zoning Commission*

- 32.01 Board of Trustees as the Planning and Zoning Commission
- 32.02 Organization
- 32.03 Preparation of comprehensive plan
- 32.04 Zoning regulations
- 32.05 Subdivision plats and regulations
- 32.06 Powers and duties

### TOWN PLANNING AND ZONING COMMISSION

#### § 32.01 BOARD OF TRUSTEES AS THE PLANNING AND ZONING COMMISSION.

The Hermosa Planning and Zoning Commission as a separate commission is terminated; and pursuant to SDCL § 11-4-11.1, the Hermosa Board of Trustees shall act and perform all of the duties and exercise all of the powers of a Planning and Zoning Commission.

(Ord. passed 11-21-2023)

#### § 32.02 ORGANIZATION.

(A) The Hermosa Board of Trustees, in its capacity as the Planning and Zoning Commission, shall elect a Chairperson from among its members for a term of one year (with eligibility for re-election) and shall also elect a Vice Chairperson and Secretary in a manner prescribed by the rules of the members and shall hold meetings as needed and shall adopt rules for transaction of its business and keep a record of its resolutions, transactions, findings and determinations which shall be a public record.

(B) The Hermosa Board of Trustees, in its capacity as the Planning and Zoning Commission may appoint employees as it may deem necessary for its work and may also contract with planners, engineers, architects and other consultants for those services as it may require.

(Ord. passed 11-21-2023)

#### § 32.03 PREPARATION OF COMPREHENSIVE PLAN.

(A) The comprehensive plan for the development of the town has previously been adopted and approved by the prior Hermosa Planning and Zoning Commission and by the Hermosa Board of Trustees which includes the mandatory comprehensive studies of conditions and future growth of the town. The comprehensive plan was made with the general purpose of guiding and accomplishing a coordinated and harmonious development of the town.

(B) Since the comprehensive plan has been adopted according to law, no substantial amendment or modification thereof shall be made, unless approved by the Hermosa Board of Trustees.

(Ord. passed 11-21-2023)

## § 32.04 ZONING REGULATIONS.

(A) It shall be a duty of the Hermosa Board of Trustees in its capacity as the Planning and Zoning Commission to recommend the boundaries of zoning districts and appropriate regulations to be enforced therein, in accordance with the comprehensive plan. All applications and proposals for changes in or amendments to the zoning regulations shall first be submitted to the Hermosa Board of Trustees in its capacity as the Planning and Zoning Commission.

(B) The Hermosa Board of Trustees, in its capacity as the Planning and Zoning Commission act as a Board of Adjustment to make special exceptions or grant variances to the terms of the zoning regulations.

(Ord. passed 11-21-2023)

## § 32.05 SUBDIVISION PLATS AND REGULATIONS.

(A) All plans, plats or re-plats of subdivisions or re-subdivisions of land within the jurisdiction of this subchapter shall be submitted to the Hermosa Board of Trustees in its capacity as the Planning and Zoning Commission.

(B) The Hermosa Board of Trustees, in its capacity as the Planning and Zoning Commission shall prepare regulations governing the subdivision of land within its jurisdiction. No amendments or changes thereto shall be made without the proposed changes being referred to the Hermosa Board of Trustees in its capacity as the Planning and Zoning Commission.

(Ord. passed 11-21-2023)

## § 32.06 POWERS AND DUTIES.

(A) The Hermosa Board of Trustees, in its capacity as the Planning and Zoning Commission, its members and employees, shall have all powers as may be necessary to enable it to fulfill and perform its functions and to carry out all the purposes and powers provided in SDCL §§ 11-4 and 11-6, and acts amendatory thereof.

(B) The Hermosa Board of Trustees, in its capacity as the Planning and Zoning Commission, its members and employees, shall have all powers as may be necessary to enable it to fulfill and perform its functions and to carry out all the purposes and powers provided in the Town of Hermosa Ordinances Chapter 151 (Flood Damage Prevention); Chapter 152 (House Numbering); Chapter 153 (Mobile Homes and Parks); Chapter 154 (Subdivision Regulations); and Chapter 155 (Zoning Code); and acts amendatory thereof.

(C) To the extent the term or phrase "Planning and Zoning Commission" appears in any other Town of Hermosa ordinances or chapters, such term shall be deemed to mean the Hermosa Board of Trustees in its capacity as the Planning and Zoning Commission as allowed under SDCL § 11-4-11.1.

(Ord. passed 11-21-2023)

# TITLE V: PUBLIC WORKS

Chapter

**50. WATER PROVISIONS**

**51. SEWER REGULATIONS**

**52. GARBAGE AND REFUSE**

## CHAPTER 50: WATER PROVISIONS

Section

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#### ***Water Piping Systems***

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- 50.42 Construction requirements
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- 50.45 Acceptance by town
- 50.46 Initial charging and flushing of water mains
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## **GENERAL PROVISIONS**

### **§ 50.01 APPLICATION FOR WATER CONNECTION PERMIT.**

(A) As per SDCL § 9-47-28, the owner of every residence, business, structure, or building wherein water is used, abutting upon any street or alley in which municipal water mains are maintained shall, at his or her own expense, connect the residence, business, structure, or building to the municipal water system within 30 days after notice to do so, provided the municipal water main is within 200 feet of his or her property line. Application must be made to the Board of Trustees for permits to connect/tap any water pipe or pipes to the town water supply main. Application must be made by the owner or agent of the property served. Application shall designate the legal description of property, what kind and size of tap to be made, the nature and number of the water users, and be accompanied by the appropriate fee as described below. This fee is to be retained by the town.

(B) The cost of such tap shall be based on the size of the meter:

	<i>Residential</i>	<i>Commercial</i>
1"	\$1,000.00	\$2,000.00
1 ½"	\$1,000.00	\$2,000.00
2"	\$1,250.00	\$2,500.00

(C) If larger taps are required than depicted in the above table, the rates will increase \$250 per one-inch increments for residential and will increase \$500 per one-inch increments for commercial.

(D) If the permit is granted, applicant assumes all expenses covering material, labor, etc. for installation and connection of such pipes. This shall include, but is not limited to, curb stops, valves and boxes, and dual check back flow prevention valves and water meters. Applicant shall assume all responsibility, cost, and expense of maintenance and repairs of such components including, but not limited to, such pipes, curb stops, valves and boxes, and dual check back flow prevention valves and water meters, from the property owner's property line to the structure.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015; Ord. passed 1-8-2019; Ord. passed 5-18-2021; Ord. passed 4-18-2023)

**§ 50.02 METERS.**

All connections shall be metered. The town will provide the meter. Only persons designated by the town shall read the meter on or about the twentieth of each month for all service meters. A person, designated by the town, shall read and verify meter and remote once each year to verify accuracy.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015; Ord. 52.02A, passed 11-21-2017)

**§ 50.03 PLUMBERS.**

Only a duly licensed plumber/contractor, per the *Town's Standard Construction Specification and Standard Details*, approved by the Town Board, or an employee of the Water Department shall be permitted to do any work on any pipes or connections in any way connected with the town water supply. All such plumbers/contractors shall be governed by state and town regulations that are in force or that may be hereafter adopted.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.04 PERMISSION REQUIRED.**

Written permission shall be obtained from the supervisor or other officer in charge of the Water Department before plumbing work of any kind shall be done by any plumber in or upon any water pipes, fixtures, or apparatus connected with the town water system.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.05 INSTALLATION OF CURB STOPS, VALVES AND BOXES, AND DUAL CHECK BACKFLOW PREVENTION VALVES.**

All connections with the municipal water mains must be in accordance with the *Town Standard Construction Specifications and Standard Details*.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.06 STANDARD SERVICE PIPE INSTALLATION.**

Service line installation shall be done by a licensed water and sewer contractor as required by the *Town Standard Construction Specifications and Standard Details* and inspected and approved by the town. Service lines are to be installed according to South Dakota State Plumbing Codes with regard to water and sewer line spacing and interior plumbing. Under no circumstances will any contractor without water and sewer licenses be allowed to dig, trench, or install any piping.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.07 INSPECTION AND TESTING.**

All water service lines shall be tested in accordance with the *Town of Hermosa Standard Construction Specification and Standard Details*.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.08 RIGHT-OF-WAY REPAIR.**

All back fill and surface repair shall be done to the satisfaction of public works per the *Town's Standard Construction Specifications*.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.09 APPLICATION FOR WATER SERVICE/SECURITY DEPOSIT.**

(A) Written application for water service shall be made to the Town Finance Officer by the owner/occupant of the property or his agent, together with a security deposit. Such deposit shall be recorded by the Town Finance Officer and receipts issued to the applicant. Upon discontinuance of service, the applicant shall be entitled to a refund of such deposit, less such part thereof applied toward payment of current or delinquent water bills. Such deposit shall be as follows:

<b>Homeowner</b>	As per current fee schedule
<b>Rental property owner</b>	As per current fee schedule
<b>Renter</b>	As per current fee schedule
<b>Contractor/ home builder</b>	As per current fee schedule

(B) The town shall retain a floating deposit until such time that the property ownership changes.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.10 RENTAL PROPERTIES.**

Property owners must give notice of change of tenants or parties responsible for utility bills. Renters shall be responsible for balance owed. The property owner will be contacted if payment is not made by due date of the current month. After a five-day grace period, water will be disconnected and not resumed until said balance is paid in full. A reconnection fee, per the current fee schedule, will be assessed and collected prior to resuming service. If a new tenant applies for water service, they will be denied service if there is a balance due for the metered property which they intend to rent. The property owner will not be able to restart service until the balance is paid in full.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.11 COMMERCIAL AND RESIDENTIAL WATER RATES.**

Fees, charges, and rates for water services, connections, and tap fees may be changed per resolution by the Board of Trustees whose authority to do so is granted by the State of South Dakota SDCL § 9-47-19. The Board of Trustees shall establish just and equitable rates by policy. Refer to the current water rate resolution, as outlined within the current fee schedule.

(Ord. 10, passed 6-20-2006; Ord. 10.1, passed 8-18-2009; Res. 2009-5, passed 9-1-2009; Ord. 10R-2015, passed 2-2-2015)

**§ 50.12 BILLING AND PAYMENT.**

Bills are due and payable upon receipt and shall become delinquent on the fifteenth of same month. If the Town Office does not receive payment by the fifteenth a late fee will be charged to the account on the twentieth of same month as per current fee schedule. If payment is not received by the fifteenth of the following month, or the balance of the current month is more than \$100, collection action shall commence including but not limited to disconnecting service. There will be an additional late fee, as per current fee schedule, charged to the account for each subsequent month if account is not paid in full.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.13 DISCONNECTION FOR NON-PAYMENT.**

(A) In the event a customer is disconnected due to non-payment that customer will be charged a reconnect fee, per current fee schedule, and may be required to pay an additional and/or increased security deposit, per current fee schedule, and initial deposit may be applied to the past due amount.

(B) Water service will be reconnected after all past due amounts have been paid or a payment agreement has been signed by the customer. Only an authorized agent of the town shall be allowed to turn water service back on. A fine will be assessed, as per current fee schedule, if water is turned back on without authority of the town.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

**§ 50.14 NOTICE OF DISCONTINUANCE REQUIRED.**

Property owners or consumers desiring to discontinue the use of water shall be required to give notice to the town office. Regular water rates and charges to be billed accordingly until proper notice has been received, and a final meter reading has been taken.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.15 METERS FAILING TO REGISTER.**

In cases where meters shall fail to register the amount of water used, charges shall be based on the average use.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.16 INTERFERING WITH FIRE HYDRANTS.**

Only persons designated by the town shall open, take any water from, or in any way interfere with any public fire hydrant within the town. The Fire Department, or other emergency services may take water from a fire hydrant in the case of an emergency without prior approval.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015) Penalty, see § 50.99

#### **§ 50.17 EXTENSION OF WATER PIPES.**

Water pipes cannot be extended from one premise to another without permission of the Board of Trustees or its duly authorized agent.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015) Penalty, see § 50.99

#### **§ 50.18 WATER LIMITATIONS.**

All water used for air-cooling systems, street, lawn or garden sprinkling is subordinate to domestic use or fire protection and may be restricted at any time should a scarcity of water or an emergency of any kind so require.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.19 AUTHORITY OF WATER DEPARTMENT.**

Only persons designated by the town shall be permitted at all reasonable hours to enter the premises or buildings of consumers for the purpose of reading meters, examining water pipes, to set or remove a meter, or change its location whenever necessary.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.20 DUTY AND RESPONSIBILITY OF OCCUPANT OR OWNER.**

A suitable place for meters, safe from frost or other damage and accessible for examination, must be provided by and at the expense of the owner or occupant. In any case where the meter is injured by freezing or otherwise damaged by act or neglect of the owner or occupant, it shall be repaired and the expense thereof shall be paid by the owner or occupant of said premises. In case of neglect, refusal to repair, or refusal to pay expenses thereof, the water supply may be turned off and not turned on until such costs and a reconnect fee have been paid.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.21 MALICIOUS OR WILLFUL DAMAGE TO WATER SYSTEM.**

No person shall maliciously or willfully break, damage or tamper with any water main, meter, structure, device, or equipment that is a part of the municipal water system. Any violator, upon conviction, shall be guilty of a misdemeanor and shall be subject to a penalty of up to 30 days in jail, and/or a fine, as per current fee schedule, and the total cost of the repairs.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015) Penalty, see § 50.99

#### **§ 50.22 WATER USERS OUTSIDE OF TOWN LIMITS.**

(A) All users of water supplied by the town waterworks, outside the town limits, shall be responsible for repairs and maintenance of water lines that are not in the town limits. Users outside town limits shall be governed by all rules, regulations and ordinances in effect with the town concerning the same, and shall be charged rates, as per the current fee schedule.

(B) The town has the right to require annexation to any new or current serviced area. All new services may be required to agree, in writing, to annex into the town limits when, and if, the property is within the legal proximity.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.23 RESPONSIBILITY FOR BREAKAGE OF LINES.**

The town shall have authority to close the curb stop at any time a break in the service line appears to have occurred, and will reopen the curb stop when satisfied that no break exists or the break has been repaired.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.24 RATES AND CHARGES FOR SERVICES.**

The Board of Trustees shall establish just and equitable rates by policy. Refer to the current water rate resolution, as outlined within the current fee schedule.

(Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.25 FEES; WATER FUND.**

Any fees, regular charges, connection collections, etc., shall be deposited in the Water Fund.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.26 CONSTRUCTION STANDARDS.**

All construction covered under this chapter shall comply with state codes, and laws, and shall comply with the *Town of Hermosa Standard Construction Specifications and Details*.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015)

#### **§ 50.27 REPAIRS OF CITY WATER MAINS AND SERVICE LINES.**

(A) Any repairs performed to the city's water mains are the sole responsibility of the municipality with the exception of any damage incurred during the installation of any private service. In this situation the licensed contractor will be responsible to complete repairs to the line, per the current adopted Building Codes, and the supervision of the Public Works Department.

(B) Any repairs required to private service lines, starting from the property line to the home will be the responsibility of the property owner and from the property line to the main is the responsibility of the town. If during the repairs, it is discovered that the damaged section is not up to current adopted codes the service will not be continued until the line from the main is replaced.

(Ord. 10R-2015, passed 2-2-2015)

## **WATER PIPING SYSTEMS**

#### **§ 50.40 DESCRIPTION.**

(A) *General.* This work consists of furnishing and installing water mains, service lines, and appurtenances. This includes all equipment, tools, materials, labor, and other incidentals to provide water mains and service lines complete and ready for immediate and continuous use. The work includes, but is not limited to, all necessary excavation, backfilling, compaction, testing, clean up, and restoration required for a complete installation of water mains, service lines, and appurtenances.

(B) *Definitions.* For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ASTM.** The American Society for Testing and Materials.

**AWWA.** The American Water Works Association.

**DISTRIBUTION MAIN.** A water main that supplies one or more branch mains.

**FIRE HYDRANT LEAD.** That portion of the fire hydrant branch line from the main to the fire hydrant auxiliary valve.

**FIRE SERVICE LINE.** Pipe and appurtenances delivering water from the town water distribution system to a building fire extinguishing system. Fire service lines may be located on private property or in public right-of-way and are owned, operated, and maintained by the property being served.

**L LENGTH FOR JOINT RESTRAINING DEVICES.** The length of pipe from a fitting, valve, or feature that needs to have each pipe joint within that length restrained.

**PRIVATE FIRE PROTECTION SYSTEM.** Hydrants, valves, water pipes, and appurtenances, sprinkler systems, hose connections, and other equipment constructed for the purpose of providing fire protection for a building or group of buildings and supplied with water from a public water supply system. Private fire protection systems are located on private property,

although some components may be located in public right-of-way, and are owned, operated, and maintained by the property being served.

**PROPERTY WATER DISTRIBUTING SYSTEM.** Those pipes within the building or the premises which convey water from the water service pipe to the point of use. For purposes of this definition, the property water distributing system begins five feet outside of the building and will usually be the same pipe material as the water service line up to where it actually enters the building.

**PSI.** Pounds per square inch.

**TRANSMISSION MAIN.** A water main that supplies many tributary branches, serves a large area, and has few taps.

**WATER MAINS.** Those pipes of at least six inches in diameter, which will be installed in public right-of-way or easements and will become a part of the town water distribution system and which will be owned, operated, and maintained by the town.

**WATER SERVICE LINE.** The line from the main to within five feet of the building and is owned and maintained by the owner of the property being served. The service line then connects to the property water distributing system. For purposes of this definition, it is understood that the building or premises property water distributing system begins five feet outside of the building and will usually be the same pipe material as the water service line up to where it actually enters the building.

(C) *License and permit requirements.* For any construction, altering, repairing, or improving of water mains, appurtenances, and/or service lines, contractors will be licensed as state water contractors. All contractors will carry a minimum of the following insurance:

General liability aggregate	\$1 million
Per occurrence	\$500,000

(D) *Submittals.* Submittals may be required as deemed necessary by the Town Board and/or Town Engineer. The term **SUBMITTALS** includes, but is not necessarily limited to, manufacturer's product data, sheets of pipe, appurtenances, and fittings. Submittals may be required for the following items: fire hydrants, pipe, pipe fittings and their appurtenances including T-bolts, joint restraints, polyethylene encasement, and any other pertinent information concerning construction materials that the engineer deems necessary for the review of the materials used on the project in accordance with the specifications and drawings.

(E) All work under this subchapter shall comply with the current edition of Ten State Standards, Recommended Standards for Water Works.

(Ord. passed 3- -2006)

## § 50.41 MATERIALS.

(A) *Pipe.*

(1) *General.* Pipe for water mains shall be polyvinyl chloride (PVC) with push-on joints.

(2) PVC pressure pipe, four inches through 12 inches, shall conform to the requirements of AWWA specification C900 (CIOD). PVC pipe shall have bell ends with elastometric gaskets. Pipe joints shall use the Rieber joining system, which has the gasket formed into the pipe during the pipe manufacturing process. Installation procedures shall conform to AWWA C605 standards.

(3) Water service pipe one inch minimum through one-and-one-half inches diameter shall be Type K soft copper tubing or 200 psi coil with compression fitting. Two inches and larger service pipe shall be PVC or 200 psi coil with compression fittings minimum.

(4) Type K soft copper tubing shall be US government Type K soft tubing in 60 foot single or double pancake coils for one inch and one-and-one-half inch diameter material. The minimum center coil diameter shall not be less than 16 inches.

(5) Tubing material for two inches material shall be supplied in 20 foot lengths with ends of tubing to be cut off evenly. Two inch coiled material will not be accepted.

(B) *Fittings.*

(1) *Water main fittings.*

(a) *General.* Fittings used with ductile iron pipe shall be ductile iron. Fittings 12 inches and smaller, used with PVC pipe shall be ductile iron or PVC.

(b) All bolts and nuts shall conform to AWWA C111 and ASTM A325 Type 3. The bolts and nuts shall be cor-blue, fusion bonded epoxy, series 300 stainless steel, or approved equal. Coated bolts and nuts shall be near white or white metal with eight to ten millimeters minimum coating thickness. Fitting types applicable to this specification consist of bends, crosses, tees, reducers/increasers, plugs, caps, couplings, and sleeves.

(2) *Ductile iron water main fillings.* Fittings shall be ductile iron with 350 psi pressure rating and rubber gasket joints meeting all applicable requirements of the latest edition of AWWA C110, C111, and/or C153 specifications. All internal and external ferrous surfaces shall be coated with a minimum six millimeter thick fusion bonded epoxy coating applied electrostatically and at a minimum shall meet the requirements of AWWA C116.

(3) Unless specified otherwise on the plans or detailed specifications, fittings 12 inches and smaller shall be push-on joint. Push-on joint fittings shall be furnished with restraining lugs. The lug pattern for all sizes shall accommodate gripper-type restrainers.

(4) *PVC water main fittings.* PVC fittings may be used in-lieu of ductile iron fittings for PVC pipe installations 12 inches and smaller. PVC fittings shall meet all applicable requirements of the latest edition of AWWA C900. The PVC fitting bell ends shall have elastomeric gaskets. Installation procedures shall conform to AWWA C605 standards.

(5) *Couplings.* Straight couplings shall be Romac style 501, or equal, and shall have ductile iron center rings and end rings meeting ASTM A536-80, Grade 65-45-12. Center rings shall be epoxy coated. Gaskets shall be SBR compounded for water service.

(6) *Tapping sleeves.* Shall be two strap/bolt red brass configuration or stainless steel, flanged branch ends, with test plugs for pressure testing. The sleeve shall be approved for use at pressures equaling or exceeding those of the pipe classification being installed. Stainless steel tapping sleeves shall have a 304 stainless steel shell with SBR gaskets compounded for water service, a stainless steel flange, and shall have 304 stainless steel nuts, bolts, and washers.

(C) *Valves.*

(1) *General.* Valves 16 inches and smaller shall be gate valves, and valves 18 inches and larger shall be butterfly type or gate valves as specified on the plans or detailed specifications.

(2) Gate valves shall conform to the requirements of AWWA standards C509 and C515 with a 250 psi pressure rating and shall have a ductile iron body and bonnet, be resilient seated, utilize mechanical joints including gaskets and bolts, and include all accessories. Bolts shall be cor-blue, fusion bonded epoxy, series 300 stainless steel or approved equal. All internal and external ferrous surfaces shall be coated prior to assembly with a fusion bonded epoxy coating applied electrostatically prior to assembly meeting the requirements of AWWA C550. Gate valves shall have ductile iron wedge fully encapsulated with a SBR rubber or nitrile elastomeric coating. Stems shall be non-rising, one piece cast, forged, or rolled bronze. Valves shall have two inch ductile iron operating nuts and shall open left, counter clockwise. Bonnet bolts and nuts shall be Series 300 stainless steel and shall be rust proofed after threading and final tightening.

(D) *Valve boxes.*

(1) *Gate valves and butterfly valves.* Valve boxes shall be Mueller 666-S or equal and shall be a two piece screw-type construction with five-and-one-fourth inch riser and shall be adjustable from four-and-one-half feet to six feet, with the top section to be at least 24 inches in length. Drop lids shall be marked "water" and are to be of all metal construction.

(2) *Valve box adaptor.* A valve box adaptor shall be installed on the valve bonnet prior to installing the valve box. The valve box adaptor eliminates shifting of the valve box, protects the coatings, centers the valve box, and seals the valve box with a resilient material. The adaptor shall be installed in lieu of hardwood blocking and shall be incidental to the valve box. The valve box adaptor shall be installed per the manufacturer's recommendations. The valve box adaptor shall be an Adaptor Inc. Valve Box Adaptor II, an American Flow Control Valve Box Self-Centering Alignment Ring, or an approved equal.

(E) *Fire hydrants.*

(1) Fire hydrants shall meet AWWA standard C502 and shall be Mueller A423, American AVK Series 27, or Waterous WB-67 pacer, traffic model with six feet bury and six inch mechanical joint inlets. Hydrants shall have five-and-one-fourth inch minimum valve openings, having o-ring packing and oil chamber to hold soft oil for stem thread lubrication, and shall have all operating parts, including valve seat, removable through the barrel. Barrel and upper standpipe shall be ductile iron with breaker flange and operating stem at ground level. A steel breakaway coupling shall be installed on the operating stem so that in case of breakage, no damage will result to the fire hydrant other than safety breakers.

(2) All external surface areas on fire hydrant riser (barrel) sections and adjoining 90 degree ells shall be coated with HB Fuller IF1947T red oxide powder, Tnemec Series 140 Pota-Pox epoxy, or equal. All exposed nuts and bolts below the breakaway (direct bury) shall be series 300 stainless steel.

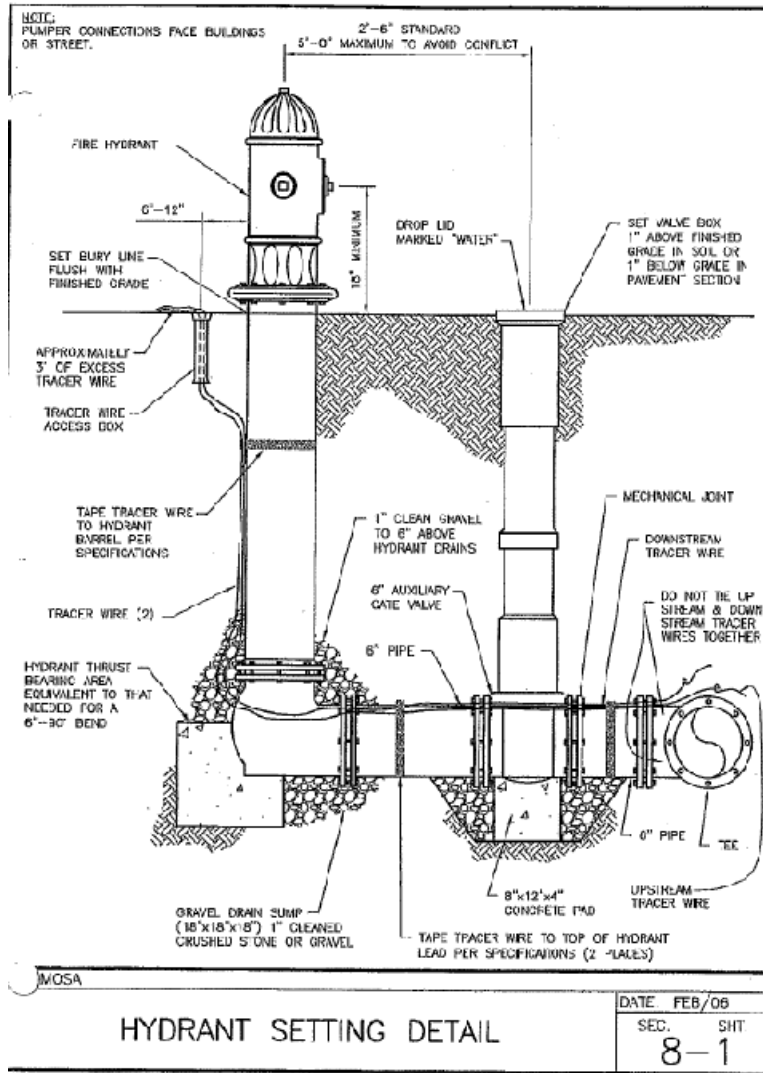
(3) All hydrants shall be capable of being extended in six inch increments. However, the minimum hydrant adjustment shall be 12 inches.

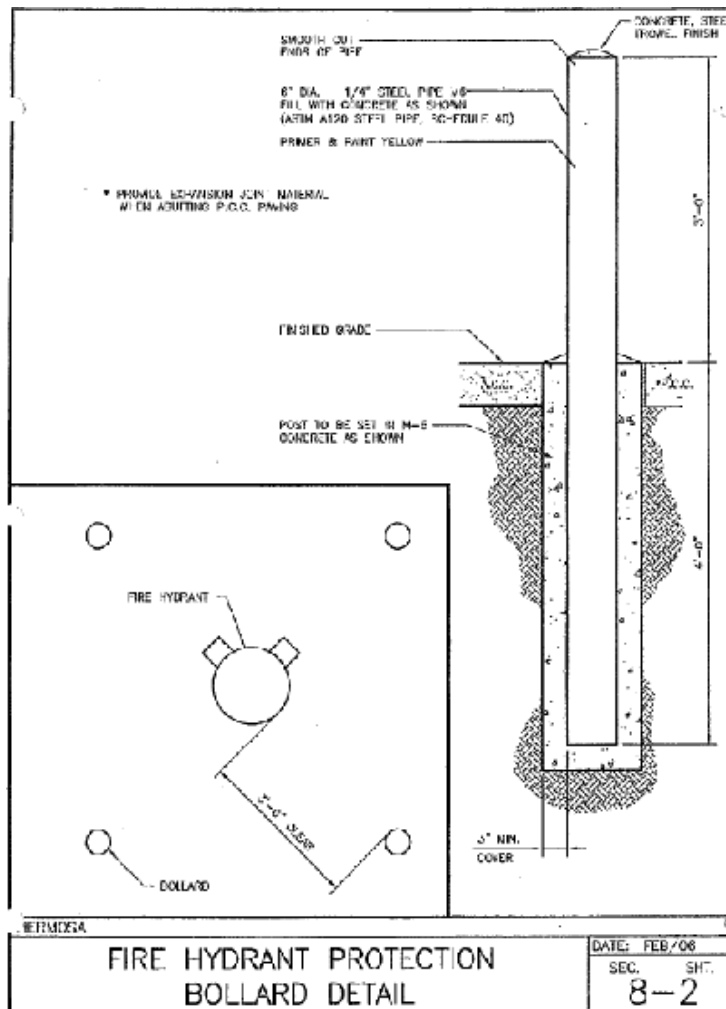
(4) Hydrants shall be constructed so that they will close with the existing water pressure acting on the hydrant. Drain valves shall be bronze and shall be positively operated by the main operating rod. All threads shall be National Standard threads. Operating nuts shall be one-and-one-half inches point-to-flat, pentagon (National Standard). Hydrants shall open left, counter clockwise. Fire hydrants shall have an internal travel stop nut.

(5) Hydrants are to have 2 two-and-one-half inch nozzles and 1 four-and-one-half inch steamer nozzle, all with National Standard threads. The minimum distance from the hydrant breaker flange to the centerline of the lower nozzle shall be 16 inches. Caps shall be nut type and shall be provided with chains. Hydrants shall be painted fire hydrant red.

(6) All fire hydrants are to be ordered with barrel lengths of six to eight feet to facilitate their installation per the grades

and lines shown on the drawings. Adjustments greater than eight feet shall be accomplished using vertical bends (45, 22.5, or 11.25) along the hydrant lead. The use of a fire hydrant extension will not be an acceptable method of adjustment for a new fire hydrant.





(F) Service line valves and fittings.

(1) General. Service line valves and fittings shall meet AWWA standard C800 and ASTM B26. All castings shall be 85/5/5/5 copper alloy.

(2) Service line copper splicing couplings shall be flared or compression type such as Mueller 110 conductive compression, Hayes-tite, or equal. Soldered joints shall not be used for service lines installed underground.

(3) Curb stop valves shall be a ball valve type with a 300 psi working pressure rating. A double o-ring port seal shall be provided in the stem and the o-rings shall be supported in precision machined grooves. The end pieces shall be o-ring sealed to provide additional protection against leaking. Ninety degree valve operation, with internal movement restraint, is required. Drains are not permitted on valves. Minneapolis type valve and box are required (not allowing Buffalo type).

(4) Copper pipe connections shall be Mueller 110 conductive compression, A.Y. McDonald McQuick Compression Q Series, Hayes-tite, or equal.

(5) Curb stop valves shall be:

- (a) Mueller 300 Ball Curb Valve with Mueller 110 Conductive Compression Connection, model B-25155;
- (b) A.Y. McDonald Minneapolis Pattern Ball Valves, 300 psig Water, model 6104Q or 6100Q;
- (c) Ford B44 Series; or
- (d) Equal.

(6) Corporation stops.

(a) Shall be a ball valve type with a 300 psig working pressure rating. The inlet shall have a taper thread (AWWA standard) and the outlet shall be a conductive compression connection for Type K copper. Copper pipe connections shall be Mueller 110 Conductive Compression, A.Y. McDonald McQuick Compression Q Series, Hayes-tite, or equal.

(b) Corporation stops shall be:

- 1. Mueller 300 ball with Mueller 110 Conductive Compression Connection, model B-25008;
- 2. A.Y. McDonald Ball Valves, 300 psig Water, model 4701BQ;

3. Ford FB1000 Series; or

4. Equal.

(7) *Service saddles.* Service saddles for one inch through two inch copper service pipe shall utilize a wide band/strap with a minimum of two bolts and nuts, per width of the band/strap, for securing the band/strap to the main. The saddle shall provide full support around the circumference of the pipe. Nuts and bolts shall be rolled thread stainless steel or silicon bronze. Gaskets shall be neoprene or NBR compounded for water service.

(8) It shall be the contractor's responsibility to ensure that saddles and corporation stops are compatible with the pipe on which they are to be installed. If a compatibility question arises, the contractor shall inform the engineer and provide him or her with a recommended substitution.

(9) *Saddles for six to 12 inch mains.*

(a) Saddles for six to 12 inch mains shall utilize a stainless steel, cast brass per ASTM B62, bronze, or a high strength ductile iron body with a minimum 12 millimeters of fusion applied epoxy or Nylon 11 coating and a stainless steel band.

(b) Saddles shall be pre-sized if required or recommended by the saddle or pipe manufacturer. Pre-sized saddles will conform to the pipe without placing undue stress on the PVC pipe. Not all of the following indicated saddles are pre-sized and it is the responsibility of the contractor and supplier to ensure that the saddle is pre-sized if required or recommended by the saddle or pipe supplier.

(c) Saddles for six to 12 inch mains shall:

1. *One inch service taps.* Provide a minimum total band/strap width of two inches along the axis of the pipe. Saddles for one inch taps on six to 12 inch pipe shall be Ford style FS303 or FC202, Romac styles 306, 202N and 202BS with SS straps, A.Y. McDonald Model 3845, Mueller DR2S series with double studs, or approved equal.

2. *One-and-one-half and two inch service taps.* Provide a minimum total band/strap width of three-and-one-fourth inches along the axis of the pipe. Saddles for one-and-one-half and two inch taps on six to 12 inch pipe shall be Ford style FS303 or FC202, Romac styles 306, 202N and 202BS with SS straps, A.Y. McDonald Model 3845, Mueller DR2S series with double studs, or approved equal.

(10) Curb boxes shall be Tyler series, Mueller, Minneapolis type, or equal. The box shall be capable of telescoping, at a minimum, from five feet to a length of six feet. Lid shall be marked "water" and have a 13/16 inch (point to flat) pentagon brass nut. Risers shall be a minimum of two-and-one-half inches in diameter.

(11) Tapping sleeves and valves shall be used for service lines larger than two inches.

(G) *Concrete thrust blocks.* Thrust blocks shall be M-6 (4,000 psi) concrete.

(H) *Joint restraining devices.* Joint restraint devices at fittings shall meet the following requirements.

(1) In general, solid ring restraints shall be used whenever possible. Split restraints may be used when connecting to existing systems, for special cases, and when a solid ring restraint is not available for the application. All joint restraint devices shall be epoxy coated (minimum six millimeters), utilize the E Coat coating system as specified by the Ford Meter Box Company, or utilize the Mega-Bond coating system as specified by EBAA Iron, Inc. All bolts, rods, etc. shall be cor-blue, epoxy coated, stainless steel, or fluoropolymer coated per EBAA Iron, Inc. and the Ford Meter Box Company specifications.

(2) *For PVC pipe to DI push-on fittings.* Fitting joint restraints shall be EBAA Series 15PF00, or equal.

(3) *For PVC pipe to DI MJ fittings.* Fitting joint restraints shall be EBAA Series 2000PV, Series 2000SV, Series 15PF00, or equal.

(4) *For PVC pipe to PVC push-on fittings.* Fitting joint restraints shall be EBAA Series 2500, or equal.

(5) Joint restraint devices at pipe bells shall meet the following requirements.

(a) In general, solid ring restraints shall be used whenever possible. Split restraints may be used when connecting to existing systems, for special cases, and when a solid ring restraint is not available for the application. All joint restraint devices shall be epoxy coated (minimum six millimeters), utilize the E Coat coating system as specified by the Ford Meter Box Company, or utilize the Mega-Bond coating system as specified by EBAA Iron, Inc. All bolts, rods, etc. shall be cor-blue, epoxy coated, stainless steel, or fluoropolymer coated per EBAA Iron, Inc. and the Ford Meter Box Company specifications.

(b) *For PVC C-900 pipe.* The bell restraint shall be EBAA Series 1600, or equal.

(c) *For PVC C-905 pipe.* The bell restraint shall be EBAA Series 2800, or equal.

(I) Polyethylene encasement (poly-wrap) shall meet AWWA C105. For fittings and joint restraining devices, which are not epoxy coated, the encasement shall be eight millimeters thickness sheet polyethylene meeting AWWA C105. Joint tape for encasement shall be 3M Scotchwrap 50, or equal.

(J) *Pipeline insulation.*

(1) Pipeline insulation shall be Type IV Styrofoam brand Square Edge or Score Edge as manufactured by Dow

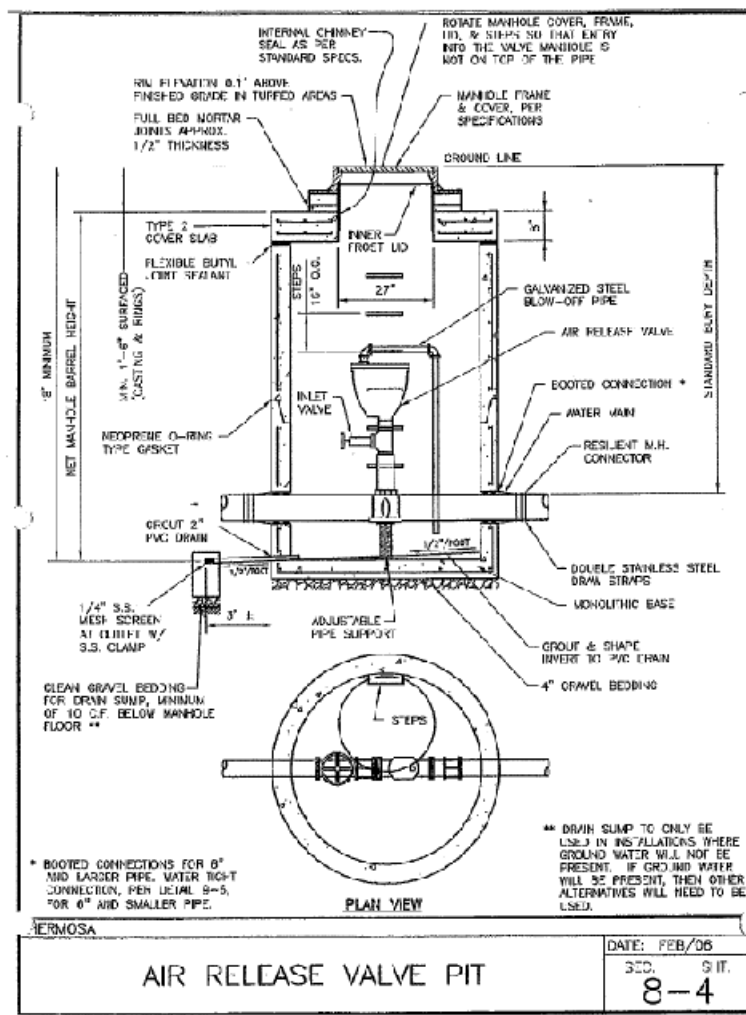
Chemical Company, or approved equal shall be used for insulating water pipes where required. The total thickness and dimensions shall be specified on the drawings or in the specifications. The minimum insulation thickness, however, shall be two inches.

(2) Approved equal products from other manufacturer's shall be extruded-polystyrene board insulation formed from polystyrene base resin by an extrusion process using hydrochlorofluorocarbons as blowing agent to comply with ASTM C578, Type IV, with 1.60 pounds per cubic feet minimum density and a compressive strength of 25 pounds per square feet in as specified in ASTM D1622 and ASTM D1621 respectively. The maximum thermal conductivity of the insulation shall conform to ASTM C518, C177, and C578. The maximum water absorption percentage by volume shall be 1% in accordance with ASTM D2842. The range of water vapor permeance shall be 0.4 to 1.0 perm in accordance with ASTM E96.

(K) *Meter, air release, and valve pits.*

(1) Meter, air release, and valve pits shall be constructed in accordance with the detailed drawings and unless specified otherwise on the drawings or detailed specifications, the pits shall be constructed in accordance with precast concrete manholes as modified as follows.

(2) Meter, air release, and valve pits shall be provided with steps. Flat cover slabs, when required, shall be designed for HS-20 loading and shall have an offset 24 inches diameter hole in line with the manhole steps. Cones shall have an offset 27 inches diameter hole in line with the manhole steps. Standard frames and covers shall be Neenah 1758, E Frost Retardant Frame and Lid with Inner Lid, or equal unless otherwise indicated on the drawings or specifications. The lid shall be a diamond top design Neenah Type C unmarked.



(L) *Tracer wire system.* Tracer wire shall be a direct bury wire that meets or exceeds the following requirements.

(1) *Conductor.* Twelve AWG solid strand softdrawn copper per ASTM B-3 , or B-8 . The breaking pounds of the wire shall be a minimum of 124 with an OD of 0.154. All wire shall be spark tested at 7,500 VAC.

(2) *Insulation.* Conductor shall be insulated with low density high molecular weight polyethylene insulation suitable for direct bury applications per ASTM D-1248. The minimum insulation thickness shall be 0.045. The color of the insulation shall be blue with a print line saying "water."

(3) *Splices and/or connectors.* Splices and/or connectors should be capable of handling two to four wires per connector and designated as water-proof. PVC adhesives or sealing compounds are not acceptable.

## § 50.42 CONSTRUCTION REQUIREMENTS.

### (A) *Materials handling and storage.*

(1) The contractor shall be responsible for the safe handling and storage of all materials furnished by them and shall replace, at their expense, all such materials found defective in manufacture or damaged in transportation, handling, or storage.

(2) Pipe, fittings, and accessories shall be loaded and unloaded by lifting with hoists or skidding to avoid shock or damage. Under no circumstance shall such materials be dropped. All material shall be stored in a neat and orderly manner. Pipe shall be stored, to the greatest extent possible, in unit packages or bundles, and shall be handled to prevent stress to bell joints and prevent damage to bevel ends. In addition, materials shall be handled and stored in accordance with manufacturer's recommendations.

(3) If, in the opinion of the engineer, damage or defects in the factory-applied external coatings on steel or ductile iron pipe and fittings (including fire hydrants) can be repaired, then the contractor shall make said repairs as follows.

(a) If approved by the engineer, the contractor may make repairs when damage or defects occur in the factory-applied external epoxy or MegaBond coatings supplied on steel or ductile iron pipe and fittings (including fire hydrant risers and joint restraint devices). Coating repairs shall be made using a high build, low temperature applicable, fast cure, liquid epoxy coating. This epoxy coating material shall be DENSO Protal 7125 Repair Cartridge in packaged two component tubes with dispensing gun.

(b) When high ambient temperatures (greater than 85 degrees Fahrenheit) occur or when metal surface skin temperatures are high (greater than 100 degrees Fahrenheit) such that use of the DENSO Protal 7125 Repair Cartridge may be difficult due to the very short handling time of the material, an alternate modified amine cured epoxy coating may be used. This alternate coating shall be Tapecoat TC 7010 FS-Gray Fast Setting epoxy coating.

(B) *Alignment and grade.* Pipe shall be laid true to the line and grade established on the drawings. Where the drawings indicate that the finished ground surface elevations are to be modified from the existing elevations by this or future construction, the contractor shall exercise care to ensure that pipe, fittings, hydrants, valves and valve boxes are placed to the elevations indicated on the plans.

(C) *Underground obstructions.* The contractor shall expose existing underground obstructions shown on the plans or located in the field and shall determine their elevations far enough in advance of pipe laying that the proposed water main can be installed without the use of fittings at or near the points of crossing. Wherever obstructions not shown on the plans are encountered during the progress of the work and interfere with the proposed horizontal or vertical alignment of the pipeline, the engineer will change the plans and order a deviation in the line and/or grade, or may arrange for the removal or relocation of the obstructions. The contractor shall not deviate from plan line or grade without the engineer's approval.

### (D) *Water main and sewer main/storm sewer separation.*

#### (1) *Vertical separation at crossings.*

(a) Water mains may cross above sanitary and storm sewers with a minimum vertical distance of 18 inches between the invert of the water main and the top of the sewer. In these cases where the water main is above the sewer and there is at least 18 inches of separation, then at the crossings one full 20 foot length of water pipe shall be centered on the crossing.

(b) A water main may cross above a sewer main with a vertical separation of less than 18 inches, or below the sewer main if either the water or sewer main is encased in PVC, ductile iron, or six inches of concrete for at least ten feet each side of the crossing. If PVC or ductile iron is utilized as encasement material, the ends shall be sealed with six inches of concrete.

(c) Water mains crossing under vitrified clay sewer pipes or concrete sewer pipes shall be encased in six inches of concrete extending ten feet either side of the crossing.

(d) The ten feet either side shall be measured from the outside wall of the sewer to the end of the encasement and is not measured from the centerline of the sewer main.

#### (2) *Water main and sewer main/storm sewer horizontal separation.*

(a) Water mains shall be constructed with ten feet of horizontal separation from any existing sanitary or storm sewer or proposed sanitary or storm sewer. The ten feet horizontal separation shall be the clear distance (water pipe sidewall to sewer pipe sidewall) and not the centerline distance between the utilities.

(b) The following installation requires engineer approval and is appropriate for installations where the ten feet separation physically is not possible.

1. A water main may be constructed closer than ten feet to a sanitary or storm sewer if it is laid in a separate trench or it is laid in the same trench and the water main is located on the opposite side on a bench of undisturbed earth. In both cases, the elevation of the crown of the sewer has to be at least 18 inches below the invert of the water main. The sewer main shall be constructed of water main pipe (pressure class pipe) meeting the requirements of § 50.41, and pressure tested for water tightness in accordance with AWWA standards for leakage testing.

2. As an alternative to constructing the sewer with water main pipe (pressure class pipe) and pressure testing the

sewer, it would also be acceptable to either encase the water or sewer main with six inches of concrete or to encase either the water or sewer within a PVC or cast iron casing.

(3) *Sanitary sewer manholes and storm sewers.*

(a) Sanitary sewer manholes and storm sewer pipes and inlets are considered to be sewers in regards to the above separation requirements.

(b) A water main can be constructed within the ten foot horizontal separation from a storm sewer pipe or storm sewer inlet provided that the storm sewer pipe is constructed with sealed joints. The pressure test shall be maintained for a minimum of 30 minutes.

(E) *Installation.*

(1) (a) Minimum cover depth from top of pipe to finished grade shall be as follows.

<b>Size of pipe (inches)</b>	<b>Minimum cover (feet)</b>
12 or less	6
14 to 18	5 1/2
20 or larger	5

(b) In the event adequate cover cannot be achieved, then, if approved by the engineer, the water pipe may be insulated. Insulation may also be required if adequate separation between a storm sewer or culvert and the water pipe cannot be achieved.

(2) Cleaning shall be done as necessary so that the interior of all water pipe and fittings is free from all dirt, cement, or other foreign material before installation. Contact surfaces shall be wire brushed immediately prior to jointing.

(3) Pipe cutting shall be done without damage to the pipe with saw or abrasive wheel and shall be smooth, straight, and at right angles to the pipe axis. Ends of pipe shall be dressed and beveled to remove roughness and sharp corners.

(4) (a) Laying and joining of PVC pipe shall be in accordance with AWWA C900, AWWA C905, and AWWA C605, and with the pipe manufacturer's instructions.

(b) Pipe shall be laid with bell ends facing in the direction of laying. Each pipe length shall be inspected for defects prior to being lowered into the trench. All pipe and fittings shall be carefully lowered into the trench piece by piece by means of pipe slings to prevent damage to the pipe and/or coating. Full lengths of pipe shall be installed except where connecting to appurtenances and fittings. The contractor shall leave an appurtenance or fitting with a full length of pipe whenever possible.

(c) Water main pipe shall not be installed in frozen ground or in water, and no water shall be allowed to run into or through the pipe.

(d) During the course of construction, a suitable stopper shall be kept in the end of the pipe so as to prevent any dirt and/or water from entering during the progress of the work at all times. Any dirt, loose material, or cement mortar which may accumulate in the pipe shall be removed as the work progresses.

(e) *Push-on joints.* The spigot end of field cut piping shall be cut square and then beveled. Joint surfaces shall be cleaned and lubricated immediately before completing the joint.

(f) *Mechanical joints.* Joints shall not be over-tightened. If an effective seal is not obtained the joint shall be disassembled, cleaned thoroughly, and reassembled. Where joint restraint devices are used with a mechanical joint, the holes shall be carefully aligned to permit installation of harness bolts. At mechanical joints, a beveled PVC spigot may not be used. Rather, a non-beveled spigot shall be used for insertion into mechanical joint.

(5) *Protection of the work.* Once in place, the pipe shall have its open end plugged to prevent soil, water, or other matter from entering the pipe.

(6) *Pipe deflection.* Deflection of the pipe or pipe joint shall not be permitted except as approved by the engineer. Changes in horizontal and vertical direction shall be achieved using standard fittings, fabricated fittings, and/or high deflection pipe couplings specifically designed and approved for use in joint deflection. The engineer may approve deflection of the pipe or pipe joint if the engineer of record specifically designed for the deflection and the deflection is approved by the pipe manufacturer.

(7) *Fittings.* Bends and tees shall be placed on a stable foundation, which may require the use of concrete pads of equal size or larger than specified for valves. Fittings shall be provided with thrust blocks, joint restraining devices, and polyethylene encasement (where fittings which are not epoxy coated) as specified herein.

(8) *Couplings.* Couplings shall be placed on a stable foundation and shall be wrapped in polyethylene encasement as specified herein. Couplings shall be approved by the pipe manufacturer for the use with the pipe and shall be installed according to the coupling manufacturer's recommendations.

(9) *Thrust restraint.*

(a) Thrust restraints in the form of concrete thrust blocks shall be provided at tees, crosses, horizontal bends, plugs, caps, valves, fire hydrants, and similar locations whether specifically indicated on the drawings or not. Refer to subdivision (10) below regarding joint restraining device installations for situations and fittings that require the use of joint restraints in lieu of thrust blocks.

(b) Concrete thrust blocks shall have a thickness at the fitting equal to at least half the diameter of the pipe being installed, but shall not be less than six inches thick under any circumstances. They shall extend from the fitting to the undisturbed wall of the excavation. The contractor shall ensure that the concrete does not cover or render inoperable nuts or bolts on the fittings. All metal fittings, valves, or appurtenances shall be wrapped in polyethylene prior to pouring thrust blocks.

(c) Concrete thrust blocks shall be allowed to cure for 48 hours prior to activating the water main. If the water main needs to be activated prior to the concrete curing, then the water main shall be restrained using joint restraining devices. Prior to backfilling, thrust blocks shall cure for a minimum of four hours.

(d) Thrust blocks shall be installed as shown on the drawings and shall meet or exceed the minimum volume or bearing area requirements as specified on the drawings or specifications for the water pressures and soil conditions.

(e) In muck, peat, or similar weak soils, thrust loads shall be resisted by using joint restraining devices or by removal of the soil and replacement with a material of sufficient stability to resist thrust loads as determined by the engineer.

(f) Where prior approval of the engineer is obtained, the contractor may substitute acceptable joint restraining devices for concrete thrust blocking.

(10) *Joint restraining device installations.* Joint restraining devices are required for the following installations.

(a) All valves 12 inches and larger, and pipe joints within their corresponding L lengths shall be restrained;

(b) All high pressure valves (working pressures greater than 110 psi) and pipe joints within their corresponding L lengths shall be restrained;

(c) Valves ten inches and smaller placed on dead end mains with less than 71 feet of pipe downstream of the valve shall be restrained using the appropriate joint restraining devices for a dead end. Both the upstream and downstream pipe joints within their corresponding L lengths shall be restrained;

(d) All reducers/increasers and their corresponding L lengths shall be restrained;

(e) All vertical bends and pipe joints within their corresponding L lengths shall be restrained;

(f) All water main lowering and pipe joints shall be restrained. Water main lowering restraint shall include restraining all joints within the fitting's corresponding L length, plus restraining all pipe joints which lie between the start of the lowering and the end of the lowering, regardless whether or not the pipe joint is located within the fitting's L length;

(g) All joint restraint devices shall be double poly wrapped and taped per city specifications for polyethylene encasement. If cathodic protection anodes are used, double poly wrap shall not be required. The polyethylene encasement ends shall be taped around the entire pipe diameter;

(h) Joint restraining devices shall be installed per the manufacturer's recommendations and for the appropriate water pressures and soil conditions as shown on the drawings or specifications.

(11) *Tracer wire.* Tracer wire shall be installed along with all water pipes as described below.

(a) The tracer wire shall be extended along with the water main. The wire shall be installed along the top of the pipe and shall be securely anchored to the pipe every four feet horizontally with an adhesive tape. The tracer wire shall be extended along all water main branches and hydrant leads as well. At fire hydrant leads, two tracer wires (the upstream tracer wire and the downstream tracer wire) shall be brought along the lead and brought to the surface at the fire hydrant. The upstream and downstream tracer wire at fire hydrants shall not be tied together, as this is intended to allow independent tracing of the downstream and upstream main.

(b) Tracer wire shall not be installed with copper water service lines.

(c) Tracer wire shall be installed with PVC water services. Tracer wire installed with PVC service lines shall be installed in accordance with water main requirements except that the tracer wire shall be brought to the surface at a service line valve location. Do not connect the water service tracer wire to the tracer wire on the main. Tracer wire installed along service lines shall be independent of the tracer wire installed along the main. This allows for only tracing the service line.

(d) At locations where the PVC water service is not being replaced entirely, the contractor shall splice the new tracer wire to the existing tracer wire at the point of re-connection. In instances where a PVC water service is not being replaced entirely and an existing tracer wire is not encountered, the contractor shall coil approximately five feet of wire at the re-connection location(s) to facilitate a future splice.

(e) All tracer wire connections shall be accomplished through the use of pig-tails. All splices and pig-tails shall be accomplished by stripping the wires to be connected, twisting the wires together, securing the connection by using an appropriately sized wire nut, and then preserving the splice or pig-tail wire nut with silicone.

(f) The main line tracer wire shall run continuous along the main(s) from fire hydrant auxiliary valves to fire hydrant auxiliary valve but shall not be continuous at fire hydrant auxiliary valves. At fire hydrant auxiliary valves, two tracer wires shall be installed. One wire is the main line wire from downstream of the fire hydrant, and the second wire is the main line wire going upstream of the fire hydrant. The tracer wire shall be extended at least three feet above the auxiliary valve, the wires folded, connected with wire nuts, wire nuts made waterproof with silicone and inserted into the auxiliary valve box for storage. The wire shall be easily retrievable for connection to and subsequent testing. The main line tracer wire shall not be interconnected at the fire hydrant auxiliary valve or at the main. This is intended to allow independent tracing of the downstream main from the upstream main and vice versa. Service line tracer wire shall not be connected to the main line tracer wire.

(g) The Public Works Department shall be able to successfully electronically trace all newly installed tracer wire/water mains. Personnel should be able to connect to tracing wires at every fire hydrant auxiliary valve location and energize all water mains between that fire hydrant auxiliary valve and the surrounding fire hydrants auxiliary valve. The contractor is responsible for coordinating conductivity testing with public works personnel prior to finish surfacing activities. If the tracer wire does not function as intended, the contractor shall repair the system to the satisfaction of the engineer.

(h) The Public Works Department shall inspect all underground splices and pig tails prior to backfilling.

(12) *Insulation.* Insulation shall be placed where noted on the plans. Insulation board shall be placed on a smooth and level cushion, minimum of two inches, of fine concrete aggregate (sand) and shall be covered with a minimum of two inches of the same material before placing bedding or backfill material on the insulation. The build-up of insulation sheeting shall be done by staggering the joints. An acceptable adhesive may be used to retain the individual sheets in the final specified dimensions.

(13) *Fire hydrants and auxiliary valves.*

(a) Fire hydrants shall stand plumb and shall have their nozzles parallel with or at right angles to the street, with the pumper nozzle facing the street. At intersections, the pumper nozzle shall face the higher classification street. Hydrants shall be set with the bottom of the breaker flange two inches above the finished ground elevation as shown on the standard details, resulting in the centerline of the lowest nozzle being at least 18 inches above finished grade. In no case shall hydrants be set closer than four feet from curb or edge of pavement, measured from outside of hydrant barrel to back of curb or edge of pavement.

(b) The contractor shall set each fire hydrant on an eight inch by 12 inch precast concrete pad with a four inch thickness and shall place a minimum of one-third cubic yards of Type 2 Foundation Material around the lower part of the hydrant to at least six inches above the drain port to provide a drainage area for the hydrant barrel. The contractor shall ensure that the drain port at the base of the hydrant is open to allow for the hydrant to drain properly when closed. Cast in place concrete may be used in lieu of the pre-cast pad if the hydrant lead is not charged for at least 48 hours and the drainage ports are maintained.

(c) The hydrant barrel shall be poly wrapped to the ground surface and the poly wrap shall not cover up the weep holes.

(d) An appropriately sized thrust block shall be installed between the hydrant valve chamber and the undisturbed trench wall. The thrust block shall meet the thrust block specifications herein.

(e) An auxiliary valve matching the size of the fire hydrant lead and a valve box shall be installed on the fire hydrant lead. Auxiliary valves shall be installed as detailed on the standard plate and shall be placed on a precast concrete block, or shall be fitted with a joint restraining device as approved by the engineer. Cast in place concrete may be used in lieu of the pre-cast pad if the hydrant and hydrant lead are not charged for 48 hours, and four hours cure time is allowed before backfilling. If the auxiliary valve needs to be moved away from the fire hydrant to avoid a conflict, it may be moved up to five feet away from the hydrant.

(f) Tracer wire conduit shall be attached to the fire hydrant auxiliary valve prior to backfill. Refer to subdivision (11) above for tracer wire installation requirements.

(g) Fire hydrant lead shall mean that portion of the hydrant branch line from the main to the auxiliary valve.

(14) *Valves.*

(a) Valve interiors and adjacent piping shall be cleaned of foreign material prior to making valve to pipe connection. Pipe/valve joints shall be straight and without deflection. All valves shall be encased in polyethylene per AWWA standard C105 and as specified herein, and shall be placed on a precast concrete anchor block and centered on the valve. Valves shall be backfilled with Type 1 bedding material to one foot above the valve. The contractor shall check all operating mechanisms for proper functioning. Valves which do not operate easily or are otherwise defective shall be replaced at the contractor's expense.

(b) Valves placed on dead-ends of mains with less than the required L length of pipe extending beyond the valve shall be restrained using the appropriate joint restraining devices.

(c) All valves which are not epoxy coated shall be poly wrapped.

(15) *Valve boxes.*

(a) Valve boxes shall be installed straight and plumb directly over the valve stem and shall not be placed in direct

contact with the valve. The top of the valve box shall be placed flush to one-fourth inches below flush with the surfacing in paved or graveled areas and one to two inches above finished grade in grass surfaced areas. Where the drawings indicate that the future grade at the valve location will be higher or lower than the existing grade at the time of valve installation, the contractor shall provide the correct combination of extension pieces so that the valve box can be adjusted to the future finished grade without replacing the valve box.

(b) A valve box adaptor shall be installed on the valve bonnet prior to installing the valve box.

(c) Tracer wire shall be secured to the valve box section prior to backfill.

(16) *Tapping tees for taps four inches and larger.*

(a) Where new four inch or larger service lines or mains are to be connected to a main, the contractor shall furnish all material necessary for connection to the water main, as specified herein. The tapping tee shall be assembled in accordance with the manufacturer's instructions. Tapping sleeves shall be supported independently from the pipe prior to tapping and shall be provided with thrust restraint as specified for other fittings. All tapping tees which are not epoxy coated or non-corrosive material shall be poly wrapped.

(b) The Public Works Department will coordinate all taps, and the contractor shall schedule all taps between 7:30 a.m. and 12:30 p.m. Monday through Friday, or as alternately scheduled by the Public Works Department.

(c) The contractor shall obtain and pay for all applicable permits and tapping fees.

(17) *Polyethylene fitting encasement.* All fittings and accessories, which are not epoxy coated or made of non-corrosive material, shall be encased in eight millimeter thickness sheet polyethylene per AWWA standard C105. The polyethylene sheet shall be installed per AWWA C105 and taped. The polyethylene shall fully encase the fitting and appurtenances. Excess material shall be neatly trimmed away and all seams shall be taped. The transition between the polyethylene sheet and PVC pipe or the DI poly tube shall be accomplished by sealing the ends of the sheet and taping the material fully around the circumference of the pipe. Cost of the encasement shall be incidental to the bid price of the fitting.

(F) *Disinfection.*

(1) *General.* Disinfection shall comply with the requirements of AWWA standards C651, C605, and C600. All new water mains and appurtenances shall be disinfected before they are placed in service. All water mains taken out of service for inspecting, repairing, or other activity that might lead to contamination shall be disinfected before they are returned to service.

(2) *Preventative methods.*

(a) The tablet method specified below may be used only if the pipes and appurtenances are kept clean and dry during construction. Therefore, the contractor shall take precautions to protect the interiors of pipes, fittings, and valves against contamination. Pipe delivered for construction shall be strung so as to minimize the entrance of foreign material.

(b) If dirt enters the pipe, it shall be removed and the interior of the pipe surface swabbed with a 1-5% hypochlorite disinfecting solution. If, in the opinion of the engineer, the dirt remaining in the pipe will not be removed by flushing, the contractor shall clean the interior of the pipe by mechanical means, such as a hydraulically propelled foam pig. Following mechanical cleaning the contractor shall flush the line achieving minimum flushing velocities of at least 30 feet per second, and shall then disinfect the pipe using either the continuous feed or the slug method. Flushing a completed main will not be allowed as a method of cleaning sediment allowed to enter the pipe during construction.

(c) All openings in the pipeline shall be closed with watertight plugs when pipe laying is stopped at the close of the day's work or for other reasons, such as rest breaks or meal periods. If water accumulates in the trench, the plugs shall remain in place until the trench is dry. If, for any reason, the water main is flooded during construction, it shall be cleared of the floodwater by draining and flushing with potable water until the main is clean. The section exposed to floodwater shall then be filled with a chlorinated potable water that, at the end of a 24 hour holding period, will have a free chlorine residual of not less than 25 milligrams per liter. The chlorinated water shall then be flushed from the main and after construction is completed, the main shall be disinfected using the continuous feed or slug method.

(3) *Disinfectant.*

(a) Unless specified otherwise in the detailed specifications or on the drawings, or required by other provisions of this specification, disinfection shall be accomplished by the tablet method. The contractor shall obtain the engineer's approval prior to using a method other than the tablet method.

(b) This method requires that the pipes and appurtenances be kept clean and dry. This method may not be used if the pipes and appurtenances are not kept clean and dry. In the event this happens, the engineer must be contacted.

(c) Tablets shall be five gram calcium hypochlorite tablets conforming to AWWA standard B300 and shall contain between 65-70% available chlorine. Tablets shall be fresh and shall be stored in a cool, dry, and dark environment to prevent loss of strength, which occurs upon exposure to the atmosphere.

(d) Do not use calcium hypochlorite intended for swimming pool disinfection, as this material has been sequestered and is extremely difficult to eliminate from the pipe after the desired contact time has been achieved.

(4) *Dosage.* Unless otherwise specified, the contractor shall place hypochlorite tablets in each section of water pipe

installed, including the hydrant branch, according to the table below.

<b>Number of five gram calcium hypochlorite tablets required</b>							
<b>Length of pipe section (feet)</b>	<b>Diameter of pipe (inches)</b>						
	<b>4</b>	<b>6</b>	<b>8</b>	<b>10</b>	<b>12</b>	<b>14</b>	<b>16</b>
13 or less	1	2	2	3	5	6	8
13-18	1	2	3	5	6	8	11
18-20	1	2	3	5	7	9	12
20-30	2	3	5	7	10	14	18
30-40	2	4	6	9	14	18	24

<sup>1</sup> For pipes 18 inches and larger, refer to drawings or detailed specifications for disinfection requirements.

(5) *Placing tablets.* Tablets shall be adhered to the inside top section of each pipe length using a food-grade adhesive, such as Permatex Form-a-Gasket No. 2 or Loctite Corporation Permatex Clear RTV Silicone Adhesive Sealant. There shall be no adhesive on the tablet except on the broad side attached to the surface of the pipe. If the tablets are attached before the pipe section is placed in the trench, their position shall be marked on the pipe section to indicate the pipe has been installed with the tablets at the top.

(6) *Filling and contact.* The water main shall be filled slowly so that the water velocity is no greater than one foot per second. Precautions shall be taken to assure that air pockets are eliminated. The water shall be allowed to stand in the pipe for at least 24 hours. Valves shall be positioned so that the strong chlorine solution in the treated main will not flow into water mains in active service. The chlorinated water shall remain in the pipe for at least 24 hours. The contractor shall notify the engineer at the end of the 24 hour retention period prior to flushing to allow the engineer to check the chlorine residual in the pipe. If the chlorine residual is less than 25 milligrams per liter, the contractor shall, at his or her expense, disinfect the water main again by the continuous feed method or the slug method, as approved by the engineer.

(7) *Flushing.*

(a) Within 48 hours of the end of the 24 hour retention period, the contractor shall flush the heavily-chlorinated water from the main until the chlorine concentration in the water leaving the main is no higher than that prevailing in the system or is less than one ppm as determined by the engineer. In addition to the above requirements, a minimum flushing velocity of three feet per second and flushing duration of one minute per 100 feet of pipe being flushed shall be achieved per the table below.

(b) Flushing shall be done in accordance with AWWA C651. Flushing shall be accomplished through use of hydrants or temporary fittings installed for the purpose. Flushing through corporations and/or water service lines is prohibited. The contractor shall obtain the engineer's approval prior to installing special fittings for flushing.

(c) Flushing shall be conducted in such a way as to prevent contamination of existing water mains and/or water service lines and to minimize traffic and pedestrian hazards and nuisance conditions. When possible, flushing shall be to the nearest storm sewer or drainage way. Flushing to the sanitary sewer is prohibited.

(d) The contractor will be responsible for any damage to fish and/or aquatic life caused by the chlorine residual. If chlorine reaches or is detected in a stream, river, or other waterway the contractor will be in violation for that discharge.

(e) A velocity in the main of at least three feet per second shall be attained during flushing. The flushing shall proceed until the chlorine concentration in the water leaving the main is no higher than that prevailing in the system, or is less than one ppm as determined by the engineer. The table below shows the rates of flow required to produce a velocity of three feet per second in pipes of various sizes, and the minimum flushing duration per 100 feet of pipe length. In no case shall the flushing duration be less than that indicated in the table below.

<b>Required flow and minimum flow duration to flush pipelines</b>				
<b>Pipe diameter (inches)</b>	<b>Flow required to produce 3 feet per second velocity in main<sup>2</sup> (gpm)</b>	<b>Fire hydrants</b>		<b>Minimum flushing duration (minutes per 100 feet of pipe)</b>
		<b>Number of fire hydrants</b>	<b>Outlet size (inches)</b>	
<b>Required flow and minimum flow duration to flush pipelines</b>				

Pipe diameter (inches)	Flow required to produce 3 feet per second velocity in main <sup>2</sup> (gpm)	Fire hydrants		Minimum flushing duration (minutes per 100 feet of pipe)
		Number of fire hydrants	Outlet size (inches)	
4	120	1	2.5	1
6	280	1	2.5	1
8	480	1	2.5	1
10	740	1	2.5	1
12	1,100	2	2.5	1 <sup>3</sup>
14	1,450	2	2.5	1 <sup>3</sup>
16	1,950	3	2.5	1 <sup>3</sup>

1 For pipes 18 inches and larger, refer to drawings or detailed specifications for flushing requirements  
2 Requires a minimum 40 psi pressure in the main and the hydrant flowing to atmosphere  
3 Assumes that the corresponding flow rate is being met

(f) Per AWWA C651, the contractor shall sample for coliform bacteria contamination. After the water lines have been flushed, the contractor shall sample the lines. Two consecutive samples of water from the end of the disinfected/flushed line must be collected at least 24 hours apart. These samples must be submitted to the state health laboratory, or other laboratory acceptable to the state Department of Environment and Natural Resources and the engineer. The samples must show the absence of coliform bacteria contamination before any taps may be made to the main or the main is activated and placed into service. Copies of all sample results shall be submitted to the engineer within 48 hours of receipt thereof.

(g) Because of the high risk of contamination during sampling, the contractor shall use certified lab personnel or a trained sampler to collect all samples submitted for testing.

(8) *Disposal of chlorinated water.* When, in the opinion of the engineer or contractor, the potential exists for chlorinated water to reach a stream, river, or waterway, the contractor shall apply a neutralizing chemical to the water to be wasted to neutralize thoroughly the chlorine residual remaining in the water as listed in appendix B of AWWA standard C651. The contractor will be responsible for any damage to fish and/or aquatic life caused by the chlorine residual. If chlorine reaches or is detected in a stream, river, or other waterway the contractor will be in violation for that discharge.

(G) *Pressure and leakage test for mains and service lines four inches or larger.*

(1) *General.* Pressure and leakage tests shall be performed on all newly installed water mains. The simultaneous pressure and leakage tests will be used unless otherwise specified. The testing methods specified in this division are specific for water pressure testing only. Air pressure testing is prohibited due to the catastrophic nature of failure should failure occur.

(2) *Test restrictions.*

(a) The pressure shall be 150% of the working pressure at the point of test, but not less than 125% of normal working pressure at the highest elevation, whichever is greater. Test pressure shall not exceed pipe, valve, or thrust restraint design pressures, and shall not vary by more than five psi (plus or minus) for the duration of the test. The duration of the hydrostatic test shall be a minimum of two hours.

(b) The contractor shall anticipate the need to conduct multiple tests in areas of varying topography and shall conduct testing in such a manner and sequence that the pressure requirements indicated above are achieved.

(3) *Pressurization.* Before applying the specified test pressure, each valved section of pipe to be tested shall be slowly filled with potable water and all air expelled from the pipe, valves, fittings, and hydrants. Where town water is not available, the contractor shall furnish sufficient potable water to fill and test the pipe. The specified test pressure, based on the elevation of the lowest point of the section under test and corrected to the elevation of the test gauge, shall then be applied by means of a suitable pump connected to the pipe in a manner satisfactory to the engineer and shall be sustained for the specified time. The test pump shall be equipped with two accurate pressure gauges, between the pump shut-off valve and water main being tested, both to show the line pressure reading during testing. When hydrants are in the test section, the test shall be made against closed hydrant valves.

(4) Leakage shall be defined as the quantity of water that must be supplied into the newly laid pipe or any valved section thereof to maintain pressure within five psi of the specified test pressure after the pipe has been filled with water and the air has been expelled. Leakage shall not be measured by the drop in pressure for a test section over a period of time.

(5) *Allowable leakage for PVC pipe.* The PVC pipe shall be pressure and leakage tested in accordance with AWWA C605. No pipe installation will be accepted if the leakage is greater than that indicated in the table below.

Allowable leakage in gallons per hour per 1,000 feet of pipe (gph)
Average test pressure (psi)

<i>Pipe diameter (inches)</i>	<i>50 psi (gph)</i>	<i>100 psi (gph)</i>	<i>150 psi (gph)</i>	<i>200 psi (gph)</i>	<i>250 psi (gph)</i>	<i>300 psi (gph)</i>
<i>Allowable leakage in gallons per hour per 1,000 feet of pipe (gph)</i>						
<i>Average test pressure (psi)</i>						
<i>Pipe diameter (inches)</i>	<i>50 psi (gph)</i>	<i>100 psi (gph)</i>	<i>150 psi (gph)</i>	<i>200 psi (gph)</i>	<i>250 psi (gph)</i>	<i>300 psi (gph)</i>
4	0.19	0.27	0.33	0.38	0.43	0.47
6	0.29	0.41	0.50	0.57	0.64	0.70
8	0.38	0.54	0.66	0.76	0.85	0.94
10	0.48	0.68	0.83	0.96	1.07	1.17
12	0.57	0.81	0.99	1.15	1.28	1.40
14	0.67	0.95	1.16	1.34	1.50	1.64
16	0.76	1.08	1.32	1.53	1.71	1.87
18	0.86	1.22	1.49	1.72	1.92	2.11
20	0.96	1.35	1.66	1.91	2.14	2.34
24	1.15	1.62	1.99	2.29	2.56	2.81
30	1.43	2.03	2.48	2.87	3.21	3.51
36	1.72	2.43	2.98	3.44	3.85	4.21

(6) (a) Acceptance shall be determined on the basis of allowable leakage. If any test of installed pipe discloses leakage greater than that specified in the table above, the contractor shall, at his or her own expense, locate and make approved repairs as necessary until the leakage is within the specified allowance. All visible leaks shall be repaired, regardless of the amount of leakage.

(b) Any damaged or defective pipe, fittings, valves, hydrants, or joints discovered following the pressure test shall be repaired or replaced with approved material at the contractor's expense, and the test shall be repeated until it is within the specified allowance.

(H) *Pressure and leakage test for service lines less than four inches.* Pressure and leakage tests shall be performed on all newly installed copper water service lines if the service line has one or more couplings installed between the corporation and the curb stop, and/or one or more couplings installed between the curb stop and the property water distributing system. The testing method shall be as specified in the National Standard Plumbing Code with the exception that air pressure testing is prohibited.

(I) *Water main closures and temporary service.*

(1) Water main closures shall be scheduled to minimize the inconvenience to the public. Consequently, water main closures shall be scheduled between 8:00 a.m. and 4:00 p.m. Monday through Friday, when possible. Water main closures scheduled to begin prior to or continue beyond those times listed above will require approval from the engineer. In any case, water main closures will not be allowed until the engineer gives his or her approval.

(2) The contractor shall notify the Public Works Department of all proposed closures at least 48 hours prior to closure of any water main, unless a shorter time of notice is approved by the engineer. The Public Works Department will issue closure notification to affected landowners.

(3) *Operation of valves.* Only public works personnel shall operate valves on existing water mains. The contractor may operate valves on newly installed water mains that are under his or her control, until such time as they are accepted by the city for operation and maintenance.

(4) Temporary water service for private residences affected shall be provided by the contractor when the water main closure will exceed eight hours. The contractor shall provide temporary water service for businesses upon request, regardless of the length of closure. When temporary service is to be provided to businesses, the contractor shall obtain the name and phone number of a responsible contact person at each affected business and submit the information to the engineer at least 48 hours prior to closure.

(J) *Abandonment and/or salvage of water main and appurtenances.*

(1) *Water mains.* The contractor shall seal all open ends of water mains to be abandoned with a concrete plug having a length equal to the diameter of the pipe being plugged.

(2) *Fire hydrants.* Fire hydrants and auxiliary valves are to be removed and salvaged, unless indicated otherwise on the drawings or detailed specifications, and shall be delivered by the contractor to the Public Works Department in good working condition. Any damage to the hydrant and/or appurtenances as a result of removing, salvaging, and delivering, shall be repaired by the contractor at no cost to the city.

(3) *Valves.* Unless indicated otherwise on the drawings or detailed specifications, valves are to be removed, salvaged,

and delivered by the contractor to the Public Works Department in good working condition. Any damage to the valve as a result of removing, salvaging, and delivering, shall be repaired by the contractor at no cost to the town.

(4) *Valve boxes.* The contractor shall close the valve, remove and salvage the top sections of those water main valve boxes marked on the plans to be abandoned and shall deliver them to the Public Works Department. The resulting holes shall be backfilled and compacted to meet the requirements of these specifications and shall be resurfaced with the appropriate material: i.e. seed, sod, asphalt, concrete, etc.

(5) *Others.* When the drawings indicate items are to be removed or salvaged, the contractor shall deliver the items to the Public Works Department in good working condition. Any damage to the items as a result of removing, salvaging, and delivering, shall be repaired by the contractor at no cost to the town. Unless an item is indicated as salvaged, the item will be considered a contractor obligation to remove and dispose of.

(K) *Service lines and fittings.*

(1) Permits, obtainable from the Public Works Department, will be required for all connections to the town water system.

(2) *Service pipe.* Copper pipe shall be laid with sufficient waving as to prevent rupture in settlement. A goose-neck shape shall be constructed in the copper pipe leading from the corporation stop. Copper splicing couplings shall be as described in this specification. PVC or Class 200 psi black poly service pipe shall be laid as specified herein for water mains. Minimum cover depth for water service lines shall be six feet. A ten foot horizontal separation shall be maintained between water service and sewer service lines. Tracer wire shall be installed along with all PVC service lines, as described in the specification section relating to tracer wire. Tracer wire shall not be installed with copper service lines.

(3) Service saddles shall be installed for all connections to water mains. Unless specified otherwise on the drawings or detailed specifications, the contractor shall furnish and install all service saddles.

(4) Corporation stops shall be provided by the contractor, and inspected by the Public Works Department.

(5) Service lines larger than two inches diameter shall be connected to the main with either an appropriately sized tapping sleeve and valve or an epoxy coated ductile iron tee as specified for water main fittings elsewhere in these specifications.

(6) Curb stops and boxes shall be installed on all service lines and shall be located entirely within the public right-of-way. The curb stop and box shall be located between one and seven feet from the property line, unless otherwise approved by the engineer. If any curb box is closer to the property line than 0.9 feet or farther from the property line than 7.1 feet, measured to the center of the box, then the box shall be reset to within the allowable tolerance.

(7) *Water service new connections.*

(a) Where new service lines are to be installed for undeveloped property or future buildings or additional services added to an existing building, the contractor shall furnish all materials necessary for connection of new service lines to the water main as specified herein, and shall obtain and pay permits and tapping fees as established by ordinance.

(b) Where the new service line is terminated, the service line shall be capped and plugged water tight to prevent leakage if the curb stop is inadvertently opened. New service connections shall have curb stops left turned off at the time of installation and the termination point shall be marked with a minimum three foot long steel fence post. The steel post shall be buried below the surface at least eight inches. The post needs to be steel to facilitate location by magnetic locators.

(c) The contractor shall schedule all service taps between 7:30 a.m. to 4:00 p.m. Monday through Friday, and the Public Works Department shall inspect.

(d) Water service new connections for service lines four inches or larger shall be made as described in division (E) (16) of this section.

(8) *Water service reconnections.*

(a) The contractor shall furnish all materials necessary for reconnecting service lines existing prior to reconstruction of a water main. On town projects, all permits and tapping fees will be waived. However, the contractor shall obtain a no charge permit to work in the right-of-way from the Public Works Department.

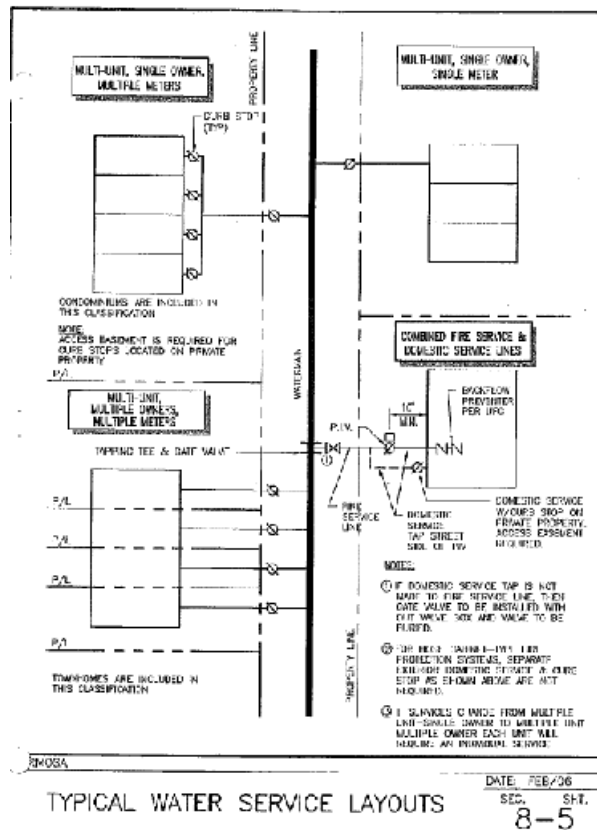
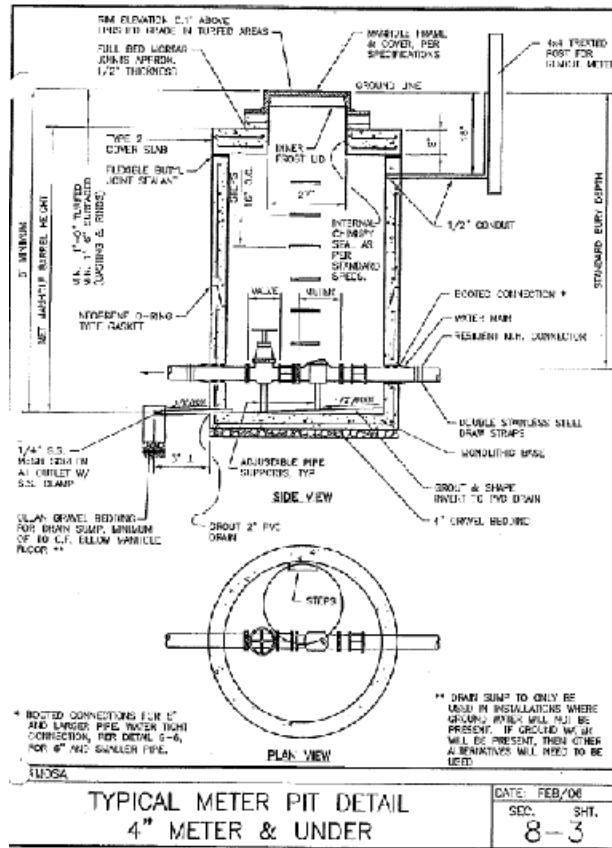
(b) On non-town projects, the new account set-up/inspection permit (tap permit), the right-to-work permit, and tapping fees are applicable and will be secured prior to beginning work.

(c) The contractor shall schedule all service taps between 7:30 a.m. to 4:00 p.m. Monday through Friday, with the Public Works Department to inspect.

(9) *Inspection.* All water service installations, regardless of whether or not the service is located on private property or in public right-of-way, shall be inspected by the Public Works Department prior to the contractor backfilling the trench. The contractor shall notify the Public Works Department Supervisor a minimum of four hours prior to the time he or she needs the inspection. Any trench backfilled without being inspected and approved by authorized town personnel shall be re-excavated by the contractor to expose the work for the required inspection. Discrepancies shall be corrected by the contractor and re-inspected by town personnel. Any re-inspection fees will be charged to the contractor.

(L) *Acceptance of curb stops and main valves.* As a condition for project acceptance, all curb stops and water main

valves within the project boundaries shall be in proper operating condition. Town personnel will inspect and operate each curb stop and water main valve as part of the final inspection. The contractor shall correct any deficiencies discovered during the inspection.



(Ord. passed 3- -2006)

**§ 50.43 FINAL INSPECTION.**

(A) Upon substantial completion of the improvements, the contractor will request a final inspection of the project to be

attended by public works personnel, the Town Engineer, contractor, and owner.

(B) During the final inspection, a punch list of discrepancies will be identified. Once these discrepancies have been corrected and corrective action verified, an acceptance letter will be issued by the town per § 50.44.

(Ord. passed 3- -2006)

#### **§ 50.44 PROJECT ACCEPTANCE AND WARRANTY PERIOD.**

Final acceptance of the project by the owner will be documented by the issuance of an acceptance letter, which is issued according to the following criteria.

(A) Construction has been substantially completed and the facilities can be put to their intended use.

(B) All testing has been completed, and the required results have been met.

(C) The date of the acceptance letter documents the start of the two year warranty period, during which the contractor shall be notified in writing of any defects in the project and shall correct the defects at his or her expense within ten days of receipt of the notice. Failure to correct or undertake with due diligence, to correct the deficiencies within the specified time, will cause to have the owner make the necessary repairs and bill the contractor one-and-one-half times the costs incurred. Providing, however, that in case of an emergency, where, in the judgment of the owner, delay would cause serious loss or damage, repairs may be made without notice being sent to the contractor, and the contractor shall pay the cost thereof.

(D) The owner reserves the right to extend the warranty period if excessive problems are apparent during the initial two year period.

(E) During a period of two years after the completion of the work covered by this contract and the final acceptance in writing thereof by the owner, the contractor shall make all needed repairs arising out of defective workmanship or materials furnished by the contractor, or both, which in the judgment of the owner shall become necessary during said period. The owner is hereby authorized to make such repairs at the contractor's expense, if within ten days after the receipt of a written notice to the contractor, or his or her agent, the said contractor shall neglect to make, or undertake with due diligence to make, the aforesaid repairs. Providing, however, that in case of an emergency where, in the judgment of the owner, delay would cause serious loss or damage, repairs may be made without notice being sent to the contractor and the contractor shall pay the cost thereof.

(F) The contractor shall be required to provide a warranty bond in the amount of 10% of the construction cost of the improvement or as agreed upon by the Town Engineer and the Town Board. The town will hold the warranty bond for the two year warranty period.

(G) Acceptance letter shall remain on file at the Town Hall for the duration of the warranty period.

(Ord. passed 3- -2006)

#### **§ 50.45 ACCEPTANCE BY TOWN.**

(A) Following expiration of the warranty period, unless extended per §50.44, the town will accept maintenance responsibility for the improvements.

(B) The acceptance letters will remain on file at the town office for documentation of improvements accepted by the town.

(Ord. passed 3- -2006)

#### **§ 50.46 INITIAL CHARGING AND FLUSHING OF WATER MAINS.**

(A) The contractor will be charged for municipal water used for charging, testing and flushing of water mains.

(B) *Initial charge.* The charge will be based upon the calculated quantity of water to fill the line based on size of line and lineal feet of line.

(C) If pressure testing fails and the line requires recharging, the quantity of water for the initial charge will be billed for each additional charge whether the line is completely drained or not.

(D) The following rates apply.

6 inch line	1.47 gallons per lineal feet
8 inch line	2.62 gallons per lineal feet
10 inch line	4.08 gallons per lineal feet

(E) *Flushing.* The amount of water for flushing will be on set usage of two times the initial charge. Each flushing will be charged this usage if multiple flushings are required. If excess water is used, public works personnel can recommend a higher usage amount be billed.

(Ord. passed 3- -2006)

#### § 50.47 INSPECTION FEES.

(A) Inspection fees for inspection required by this specification shall be billed to the contractor at the hourly rate of the public works personnel or the hourly rate of the Town Engineer, depending on who performs the inspection.

(B) It shall be the responsibility of the contractor to pay inspection fees in full prior to the town issuing a final acceptance letter.

(C) The cost of initial inspection required to verify pressure testing of the water main and for inspection of taps will be included as part of the tap fees. However, if the testing fails, all subsequent inspections will be billed to the contractor at the applicable hourly rate.

(D) The public works personnel will validate pressure testing and perform taps, unless other arrangements are coordinated through the Public Works Department, and any additional fees paid prior to beginning work.

(E) The contractor is responsible for conducting the pressure testing and taps under the supervision of public works personnel, but the Public Works Department is not responsible for performing the testing or making the taps unless approved by public works personnel.

(Ord. passed 3- -2006)

#### § 50.99 PENALTY.

Any person, firm, association or corporation who violates, disobeys, omits, neglects, refuses to comply with, or resists the enforcement of, any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 in addition to the cost of the enforcement action, including but not limited to, reasonable attorney fees, expert fees and inspector fees. Each day of violation shall constitute a separate offense. Compliance therewith may also be enforced by injunctive order at the suit of the petitioner or the owner of real estate within the district affected by the regulations of this chapter.

(Ord. passed 6-12-2017)

## CHAPTER 51: SEWER REGULATIONS

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### Section

- 51.01 Definitions
- 51.02 Use of municipal sewers required
- 51.03 Private sewage disposal
- 51.04 Building sewers and connections
- 51.05 Use of the municipal sewers
- 51.06 Malicious or willful damage to sewer system
- 51.07 Powers and authority of inspectors
- 51.08 Rates and charges for services
- 51.09 Fees
- 51.10 Construction standards
- 51.11 Repairs of city sewer mains and service lines
  
- 51.99 Penalty

#### § 51.01 DEFINITIONS.

Unless the context specifically indicated otherwise, the meaning of terms used in this chapter shall be as follows:

**BUILDING DRAIN.** That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, as defined by the Uniform Plumbing Code (typically within five feet of building or structure).

**BUILDING SEWER.** The extension from the building drain to the municipal sewer or other place of disposal, as defined by the Uniform Plumbing Code (normally within five feet of the building or structure).

**COMMERCIAL.** All other premises which are not classed residential.

**GARBAGE.** Shall mean solid wastes from the preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.

**INDUSTRIAL WASTES.** The liquid wastes from industrial processes as distinct from sanitary sewage. Industrial waste includes, but is not limited to, restaurants, rendering plants, slaughter floors and service stations.

**MAY.** Is permissive.

**MUNICIPAL SEWER.** A sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

**NATURAL OUTLET.** Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

**PERSON.** Any individual, firm, company, association, society, corporation or group.

**PRE-TREATMENT.** Any treatment facility or process required to bring sewage strength to acceptable levels comparable to domestic sewage levels, as determined by the Board of Trustees, so as not to damage the municipal treatment facilities or process.

**PROPERLY SHREDDED GARBAGE.** The wastes from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles will be carried freely, under the flow conditions normally prevailing in municipal sewers, with no particle greater than one-half inch in any dimension.

**RESIDENTIAL.** All premises occupied and used exclusively as a home by not more than two families.

**SANITARY SEWER.** A sewer, which carries sewage, and to which storm, surface, and ground waters are not intentionally admitted.

**SD DENR.** South Dakota Department of Environment and Natural Resources.

**SEWAGE TREATMENT PLANT.** Any arrangement of devices and structures used for treating sewage.

**SEWAGE SYSTEM.** All facilities for collecting, pumping, treating, and disposing of sewage.

**SEWAGE.** A combination of the water carried wastes from residences, business buildings, institutions, and industrial establishments.

**SEWER.** A pipe or conduit for carrying sewage.

**SHALL.** Is mandatory.

**SUPERINTENDENT OF PUBLIC WORKS.** The superintendent of the sewer system of the municipality, or the authorized deputy, agent, or representative of the municipality.

**SUSPENDED SOLIDS.** Solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

**WATERCOURSE.** A channel in which a flow of water occurs, either continuously or intermittently.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015)

## **§ 51.02 USE OF MUNICIPAL SEWERS REQUIRED.**

(A) It shall be unlawful to discharge to any natural outlet within the municipality, or in any area under the jurisdiction of said municipality, any sanitary sewage, industrial wastes, or other polluted water, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.

(B) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cess pool, or other facility intended or used for the disposal of sewage.

(C) As per SDCL § 9-48-53, the owner of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes situated within the municipality is hereby required, at his expense, to install suitable toilet facilities therein, and to connect such facilities directly with the proper municipal sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so, provided:

(1) The structure or wastewater system is located within the jurisdictional boundaries of a municipality or sanitary district;

(2) The sewer collection system of the public entity exists within 200 feet of the home, trailer court, commercial establishment, business, park, institution, or property line; and

(3) The municipality or sanitary district requests to provide service to the premises (ref: Individual & Small On-site Wastewater Systems 74:03:01:44), except as provided in the following section.

(D) The town has the right to require annexation to any new or current serviced area. All new services may be required to agree, in writing, to annex into the town limits when, and if, the property is within the legal proximity.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015; Ord. passed 1-8-2019) Penalty, see § 10.99

### **§ 51.03 PRIVATE SEWAGE DISPOSAL.**

(A) Where a municipal sanitary sewer is not available under the provision of §51.02(C), the building sewer may be connected to a private sewage disposal system complying with the provision of this chapter.

(B) Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit approved by the Board of Trustees. The application for such permit shall be made on a form furnished by the municipality, which the applicant shall supplement with any plans, specifications, and other information as are deemed necessary by Public Works. Charges as per the current fee schedule shall be paid to the municipal Finance Officer at the time the application is filed.

(C) A permit for any sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. He/she shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Superintendent, when the work is ready for final inspection, and before any underground portions are covered. The Superintendent shall make the inspection within 12 hours of the receipt of notice.

(D) The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the SD DENR. No permit shall be issued for any private sewage disposal system employing sub-surface soil absorption facilities unless it meets the minimum lot size as required by current SD DENR regulations for individual and on-site wastewater systems. No septic tank shall be permitted to discharge to any municipal sewer or natural outlet.

(E) At such time as your private sewage disposal system fails and/or a municipal sewer becomes available to a property served by a private sewage disposal system, as provided in § 51.02(C), a direct connection shall be made to the municipal sewer in compliance with this chapter, and any septic tanks, and similar private sewage disposal facilities shall be abandoned and filled with suitable material as required by current SD DENR regulations, at no expense to the municipality.

(F) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the municipality.

(G) No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by SD DENR.

(H) Any individual or corporation desiring connection of the sewage disposal system to any property within the limits of the municipality where the system is not available may, at no cost to the municipality construct any such necessary extension to the specifications of this chapter and SD DENR requirements applicable at the date of construction and approval of the Board of Trustees. Any individual or corporation desiring connection to the sewage disposal system outside the limits of the municipality may be required to annex into the city limits.

(I) A copy of all plans and specifications shall be filed with the Town Finance Officer 30 days prior to the start of such construction.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015) Penalty, see § 10.99

### **§ 51.04 BUILDING SEWERS AND CONNECTIONS.**

(A) Only a duly licensed plumber/contractor, per the *Town's Standard Construction Specifications and Standard Details* approved by the Town Board, or an employee of the Public Works Department shall be permitted to do any work on or uncover, make any connections with, make an opening into, use, alter, or disturb any municipal sewer or appurtenances. All such plumbers/ contractors shall be governed by state and town regulations that are in force or that may be hereafter adopted.

(B) Any person desiring sewer service from the municipal sewer system for premises not currently connected with the system shall apply to the Town Finance Officer for a permit. The owner or his agent shall make application on a form furnished by the municipality. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. The time the application is filed, the applicant shall pay to the municipal Finance Officer a connection/tap fee to be determined by the following schedule:

(1) Owners of commercial premises shall pay an assessment fee, per current fee schedule, for connection to the municipal sewage system; and

(2) Owners of residential premises shall pay an assessment fee, per current fee schedule, per dwelling for connection to the municipal sewage system.

(C) All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the municipality from any loss or damage that may directly or indirectly be caused by the installation of the building sewer.

(D) A separate and independent building sewer connection shall be provided for every dwelling as required by State

Plumbing Code. Under exceptional circumstances the Town Board may waive the provisions of this section.

(E) Existing building sewers, in working condition, may be used in connection with new buildings only when they are found, on examination and tested by the Public Works Department, or individual appointed by the Superintendent, to meet all requirements of this chapter and are approved by the Town Board.

(F) The size and slope of the building sewer shall be subject to the approval of the Superintendent, but in no event shall the diameter be less than four inches. Slope shall comply with State Plumbing Code requirements.

(G) Wherever possible the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any bearing wall, which might thereby be weakened.

(H) In all buildings in which any building drain is too low to permit gravity flow to the municipal sewer, sanitary sewage carried by such drain shall be lifted by approved artificial means and discharge to the building sewer, at no cost to the municipality.

(I) The connection for the building sewer into the municipal sewer shall be made at the owner's expense with an approved saddle in the municipal sewer at the location specified by the "Superintendent".

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015) Penalty, see § 10.99

#### **§ 51.05 USE OF THE MUNICIPAL SEWERS.**

(A) No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.

(B) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged, upon approval of the Superintendent, to a storm sewer or natural outlet.

(C) Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any municipal sewer:

(1) Any liquid or vapor having a temperature higher than 150° F;

(2) Any water or waste which may contain more than 100 parts per million, by weight, of fat, oil, or grease;

(3) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas;

(4) Any garbage that has not been property shredded;

(5) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, leathers, tar, plastics, wood, paunch, manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage system;

(6) Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process constitute a hazard to humans or animals or create any hazard in the receiving waters of the sewage treatment plant;

(7) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant; or

(8) Any noxious or malodorous gas or substance capable of creating a public nuisance.

(D) Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of the liquid wastes containing grease in excessive amounts, or any inflammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning, and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction; water tight and equipped with easily removable covers which when bolted in place shall be gas tight and watertight.

(E) Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

(F) Pre-treatment of waste may be required if deemed necessary by the Superintendent. If required, pre-treatment must comply with SD DENR requirements, be approved by the Board of Trustees and installed at no expense to the town. Pre-treatment shall occur prior to municipal treatment facilities and processes.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015) Penalty, see § 10.99

#### **§ 51.06 MALICIOUS OR WILLFUL DAMAGE TO SEWER SYSTEM.**

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the municipal sewage system. Any person violating this

provision shall be subject to immediate arrest under charge of disorderly conduct. Any violator, upon conviction, shall be guilty of misdemeanor and shall be subject to a penalty of up to 30 days in jail, and/or a fine, as per current fee schedule, and the total cost of the repairs.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015)

#### **§ 51.07 POWERS AND AUTHORITY OF INSPECTORS.**

Public Works and other duly authorized employees of the municipality bearing proper credentials and identification shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling, and testing, in accordance with the provisions of this chapter.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015)

#### **§ 51.08 RATES AND CHARGES FOR SERVICES.**

Fees, charges, and rates for sewer services, connections, and tap fees may be changed per resolution by the Board of Trustees whose authority to do so is granted by the State of South Dakota SDCL § 9-48-26. The Board of Trustees shall establish just and equitable rates by policy. Refer to the current sewer rate resolution, as outlined within the current fee schedule.

(Ord. 15, passed 6-20-2006; Ord. 15.1, passed 8-18-2009; Ord. 15R-2015, passed 2-2-2015)

#### **§ 51.09 FEES.**

Any fees, regular charges, connection collections, etc., shall be deposited in the Sewer Fund.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015)

#### **§ 51.10 CONSTRUCTION STANDARDS.**

All construction covered under this chapter shall comply with state codes, laws and shall comply with the *Town of Hermosa Standard Construction Specifications and Details*.

(Ord. 15, passed 6-20-2006; Ord. 15R-2015, passed 2-2-2015)

#### **§ 51.11 REPAIRS OF CITY SEWER MAINS AND SERVICE LINES.**

(A) Any repairs performed to the city's sewer mains are the sole responsibility of the municipality with the exception that any damage incurred during the installation of any private service. In this situation the licensed contractor will be responsible to complete repairs to the line per the current adopted Building Codes and the Public Works Department.

(B) Any repairs required to private service lines, starting from the property line to the structure will be the responsibility of the property owner, and from the property line to the main is the responsibility of the town. If during the repairs it is discovered that the damaged section is not up to current adopted codes the service will not be continued until the line from the main is replaced.

(Ord. 15R-2015, passed 2-2-2015)

#### **§ 51.99 PENALTY.**

Any person, firm, association, or corporation who violates, disobeys, omits, neglects, refuses to comply with, or resists the enforcement of, any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 in addition to the cost of the enforcement action, including, but not limited to, reasonable attorney fees, expert fees, and inspector fees. Each day of violation shall constitute a separate offense. Compliance therewith may also be enforced by injunctive order at the suit of the petitioner or the owner of real estate within the district affected by the regulations of this chapter.

(Ord. passed 6-12-2017)

## **CHAPTER 52: GARBAGE AND REFUSE**

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### Section

52.01 Definitions

52.02 Family domestic units collection and containers

- 52.03 Yard waste collection
- 52.04 Collection charges
- 52.05 Unlawful deposits
- 52.06 Scavenging
- 52.07 Burning
  
- 52.99 Penalty

## § 52.01 DEFINITIONS.

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

**FAMILY DOMESTIC UNIT.** Any single independent family unit, irrespective of the number of persons constituting the family, but shall not include a situation where more than one family lives together in any single residence or abode, but in such situation, each of the independent families shall be deemed and regarded as a separate and distinct family domestic unit. Each independent family unit living in a multiple dwelling residence, apartment house, or any type of residence (including mobile homes other than mobile homes in a licensed mobile home court) shall each be deemed a **FAMILY DOMESTIC UNIT** for the purposes of this chapter. A rooming house that supplies lodging only for hire and which does not serve meals to any lodgers and does not permit cooking and eating on the premises shall be deemed a **FAMILY DOMESTIC UNIT** for the purposes of this chapter.

**GARBAGE.** Solid and semisolid putrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing, serving or consuming of food, or of material intended for use as food, and all offal, excluding useful industrial byproducts, from all public and private establishments and from all residences.

**MULTI-FAMILY UNIT.** A residential duplex to four-plex unit for the purpose of town garbage collection.

**REFUSE.** Putrescible and non-putrescible wastes, including, but not limited to, garbage, rubbish, ashes, incinerator ash, incinerator residues, street cleanings, market and industrial solid wastes, and sewage treatment wastes in dry or semisolid form.

**RUBBISH.** Non-putrescible solid waste consisting of combustible and noncombustible wastes, such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, trees or portions of trees, or other litter with similar properties.

**SCAVENGING.** The unauthorized removal of an item(s) from a town-owned garbage can, recycling can, roll-off container, or solid waste property, including the landfill and material recovery facility.

**YARD WASTE.** Natural, non-putrescible solid vegetation waste produced by commercial or private residential landscaping activities. The waste shall include lawn cuttings, lawn rakings, branches, trees, garden waste, and other similar waste vegetative material, all free of other debris or rubbish.

(Ord. passed 6-19-2018)

## § 52.02 FAMILY DOMESTIC UNITS COLLECTION AND CONTAINERS.

The town shall contract for all residential garbage and trash collection within the town including single-family or multi-family, up to and including 4-plex units; residents receiving garbage service are required to utilize the contracted service provider through the municipality. All residents of single family residences and multi-family units within the town receiving town garbage service shall pay the charges and fees specified in resolution and shall comply with the following rules and regulations pertaining to the collection of trash and garbage.

(A) Residents of the town, subject to this chapter, shall comply with collection approved by the town in the manner which follows:

- (1) All residents of the town and each family unit (single through 4-plex) who are subject to this chapter shall be issued one collection container by the contracted service provider.
- (2) Each family unit (single through 4-plex) shall have one collection container for garbage unless a request is submitted at town hall.
- (3) Only garbage service provided collection containers shall be allowed for use.
- (4) All requirements of the garbage service provider shall be followed.
- (5) If the container is stored outside, it shall be kept so as to protect the container and its content from animals. Garbage placed in the containers shall be bagged and tied to prevent blowing during collection. Loose garbage placed in the container is prohibited.

(6) Residents should place the collection containers in a location suitable and readily accessible for collection by the collection truck no later than 6:00 a.m. on the scheduled collection day. Containers shall be removed from the curb within 24 hours of being emptied.

(B) Residents of the town are responsible for picking up trash and garbage from tipped containers.

(C) If a collection container becomes unusable due to damages resulting from causes other than the collection truck, the resident shall be responsible for purchasing a new container from the service provider.

(Ord. passed 6-19-2018)

### **§ 52.03 YARD WASTE COLLECTION.**

Yard waste collection is limited to residents who live within municipal town limits. Yard waste will not be collected for disposal, it must be delivered without any container to the yard waste disposal containers located on 1st Street. No yard waste shall be commingled with any trash, rubbish, infectious or hazardous waste, or other non-yard waste materials.

(Ord. passed 6-19-2018; Ord. passed 12-20-2022)

### **§ 52.04 COLLECTION CHARGES.**

(A) The town shall make a charge for each month for the collection of refuse from each family domestic unit. The charge shall be billed on the monthly water bill to each family domestic unit and shall be immediately due and payable upon the billing date. It shall be payable with, and in addition to, the water bill.

(B) In the event refuse collection is provided by the town under the provisions of this chapter to a family domestic unit within the garbage service district not independently served by the town water service and billed therefor, the owner and occupant of the dwelling unit occupied by the family domestic unit shall be billed for each month at the same rate that the water users are billed. The refuse collection charge shall be forthwith payable to the town by either the owner or occupant of the dwelling unit.

(C) Bills shall be payable at the Town Finance Office or at the authorized bank depository by automatic withdrawal upon enrollment.

(D) The rates for any and all charges the town shall make under this provision shall be prescribed by resolution of the Common Council.

(E) In addition to the foregoing methods of billing and collecting the charges for refuse collection, the Finance Officer, with the approval of the Board of Trustees, may from time to time adopt, use, and enforce such other methods of billing and collection of the charges as may be reasonably efficient, feasible, and appropriate, to the end that in every case all collection charges provided by this section shall be paid.

(Ord. passed 6-19-2018)

### **§ 52.05 UNLAWFUL DEPOSITS.**

No person shall deposit, place, or throw any refuse in or upon any street, alley, or other public place. No person shall place any refuse upon any private property, whether owned by the person or not, unless the garbage shall be enclosed in a collection container meeting the requirements of this chapter.

(Ord. passed 6-19-2018)

### **§ 52.06 SCAVENGING.**

It is unlawful for any person to scavenge or salvage any trash or recyclables at the curb, alley, or right-of-way from containers. Materials so placed shall be removed only by the service provider.

(Ord. passed 6-19-2018)

### **§ 52.07 BURNING.**

No garbage, tires, creosote, or other matter from which dense smoke or offensive odors emanate during combustion shall be burned outside of any building, or inside any building in a fireplace, wood stove, or other wood-fired appliance.

(Ord. passed 6-19-2018)

### **§ 52.99 PENALTY.**

(A) Any person violating this chapter shall be subject to the general penalty provision of §10.99.

(B) Further, any person violating this chapter shall be subject to a civil action for the recovery of any damages occurring as a result of the violation(s).

## TITLE VII: TRAFFIC CODE

### Chapter

- 70. GENERAL PROVISIONS
- 71. RECREATION VEHICLES
- 72. TRUCK REGULATIONS
- 73. TRAFFIC SCHEDULES

# CHAPTER 70: GENERAL PROVISIONS

### Section

- 70.01 General driving
- 70.02 Tampering with motor vehicle
- 70.03 Miscellaneous regulations
- 70.04 Stop signs
- 70.05 Speed limit in town
- 70.06 Dynamic engine brakes
- 70.07 Reckless/careless driving
- 70.08 State law enforceable
  
- 70.99 Penalty

#### § 70.01 GENERAL DRIVING.

The driver of any vehicle shall keep the vehicle under his or her control while the same is in motion and shall drive the same in a prudent and careful manner and with due regard for the safety and convenience of all other vehicles and pedestrians using the street.

(Ord. 29, passed 8-7-1972) Penalty, see § 70.99

#### § 70.02 TAMPERING WITH MOTOR VEHICLE.

No person shall tamper with the motor vehicle of another, nor shall he or she, without authority of the person in charge, climb upon or into any vehicle, nor sound the horn, manipulate any levers, brakes or machinery thereof, nor shall he or she set in any vehicle or motor in motion or drive the same, provided that the provisions of this section shall not apply to any police officer in discharge of his or her duties.

(Ord. 29, passed 8-7-1972) Penalty, see § 70.99

#### § 70.03 MISCELLANEOUS REGULATIONS.

(A) *Private driveway.* No person shall stop or park a vehicle so as to block any private driveway.

(B) *Vehicles prohibited on closed streets.* No vehicle shall be driven upon any street which has been closed to traffic by the Street Commissioner, Police Department or Board of Trustees.

(C) *Use of streets for sale or storage of vehicles.* No person shall use the streets for the storage, display or sale of any vehicle.

(Ord. 29, passed 8-7-1972) Penalty, see § 70.99

#### § 70.04 STOP SIGNS.

Except when directed by a police officer, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall come to a full stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

(Ord. 34, passed 3-2-1981) Penalty, see § 70.99

#### **§ 70.05 SPEED LIMIT IN TOWN.**

The speed limit of all streets within the town limits shall be 15 mph at all times, unless otherwise designated. The Town Board of Trustees does hereby adopt the fine and bond schedule currently used and adopted by the state.

(Ord. 9.019A, passed 8-20-2002; Ord. 9.03, passed 5-17-2005) Penalty, see § 70.99

#### **§ 70.06 DYNAMIC ENGINE BRAKES.**

(A) In order to maintain and preserve the public peace, health and welfare of its citizens, the use of dynamic engine braking shall be prohibited within the town limits.

(B) The use of dynamic engine braking shall be prohibited within the one-mile law enforcement jurisdiction of the town.

(C) Any individual violating this section shall be subject to a fine as currently used and adopted by the state for a petty offense.

(Ord. 9.04A, passed 8-15-2006)

#### **§ 70.07 RECKLESS/CARELESS DRIVING.**

(A) *Reckless driving.* Any person who drives any vehicle upon any street, alley or public place in the town carelessly and heedlessly in disregard of the rights and safety of others, or without due caution and circumspection, and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

(B) *Careless driving.* Any person who drives any motor vehicle upon any street, alley or public place in the town carelessly in disregard to the width, grade, curve, corners, signals, markings, condition or customary usage of the streets and alleys, or whose temporary inadvertence to the operation of the vehicle causes or is likely to cause damage to any person or property shall be guilty of careless driving.

(C) *Exhibition driving.* Any person who drives a motor vehicle within the limits of the town in a manner that creates or causes unnecessary engine noise, or tire squeal, skid or slide upon acceleration or stopping; or that simulates a temporary race; or that causes the vehicle to unnecessarily turn abruptly or sway shall be guilty of exhibition driving.

(Ord. 22, passed 4-5-1971; Ord. 23, passed 6-5-1972) Penalty, see § 70.99

#### **§ 70.08 STATE LAW ENFORCEABLE.**

All South Dakota traffic laws are enforceable in the town unless specifically stated otherwise by town ordinance.

#### **§ 70.99 PENALTY.**

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

(B) (1) Any person upon conviction of the public offence of reckless driving or careless driving in §70.07(A) or (B) shall be fined not more than \$100, or 30 days in jail, or by both fine and imprisonment.

(2) Upon conviction of violation of §70.07(C), the person shall be punished by a fine of not less than \$5 or more than \$100.

(Ord. 22, passed 4-5-1971; Ord. 23, passed 6-5-1972; Ord. 34, passed 3-2-1981)

## **CHAPTER 71: RECREATION VEHICLES**

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### Section

71.01 Definitions

71.02 Unlawful areas for operation

71.03 Requirements for operation

71.04 Equipment requirements

71.05 Unlawful to operate in manner detrimental to animals

71.06 Enforcement

## § 71.01 DEFINITIONS.

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

**MOPED.** A motor-driven cycle equipped with two or three wheels with a combustion engine, piston or rotor displacement with no more than 50 cubic centimeters regardless of chambers in the power source, not requiring clutching or shifting by the operator after the drive system.

**MOTOR SCOOTER.** A self-propelled vehicle with an electric engine designed for travel on roadways or sidewalks.

**OPERATOR.** Every person who operates or is in actual physical control of a moped, motor scooter, three wheel or all terrain vehicle or lawn mower.

**PERSON.** Includes an individual, partnership, corporation, the state and its agencies and subdivisions, and any body of persons, whether incorporated or not.

**RIDING LAWN MOWER.** A self-propelled vehicle designed for the mowing of grasses and weeds steered by wheels.

**ROADWAY.** The portion of a highway or town street improved, designed or ordinarily used for vehicular traffic.

**THREE WHEEL OR ALL TERRAIN VEHICLE.** A self-propelled vehicle designed for travel on snow, ice or natural terrain steered by wheels.

(Ord. 9.05, passed 6-6-2006)

## § 71.02 UNLAWFUL AREAS FOR OPERATION.

(A) It shall be unlawful to operate any moped, motor scooter, three wheel or all terrain vehicle on the streets or alleys or other public ways if it is not duly licensed by the state.

(B) It shall be unlawful for the licensed vehicles to operate as follows:

(1) On the portion of any right-of-way or any highway, street road, trail or alley used for motor vehicle travel. Travel and operation of the moped, motor scooter, three wheel or all terrain vehicle, hereunder shall, in any case, be limited to from the owner's residence to the town limits, and this shall be on the most direct route permissible when operated by a person with a state issued motor vehicle driver's license. Travel and operation of riding lawn mowers, hereunder shall, in any case, be limited to from one property to another property when the intention is to mow the property, and this shall be on the most direct route permissible when operated by a person with a state issued motor vehicle driver's license;

(2) On a public sidewalk provided for pedestrian travel;

(3) On boulevards within any public right-of-way except for the purpose of mowing;

(4) On private property of another without specific permission of the owner or person in control of the property, and this permission shall be in writing and in the possession of the person who is operating a moped, motor scooter, three wheel or all terrain vehicle;

(5) On any other public place except for the purpose of mowing;

(6) Two or more mopeds, motor scooters, three wheel or all terrain vehicles, traveling in the same direction shall be operated one behind the other with an interval of at least 15 feet between and, in no case, shall three wheel or all terrain vehicle ever be operated side by side;

(7) No moped, motor scooter, three wheel or all terrain vehicle, or riding mower shall be parked on any street or public right-of-way at any time; and/or

(8) Operation of mopeds, motor scooters, three wheel or all terrain vehicles, or riding mowers for special occasions, not in accordance with this chapter, shall be under the jurisdiction and control of the town law enforcement.

(Ord. 9.05, passed 6-6-2006) Penalty, see § 10.99

## § 71.03 REQUIREMENTS FOR OPERATION.

(A) No person under 12 years of age shall operate on streets or roadway surface of highways, or designated town property, and no person under 16 years of age shall operate on any roadway within the boundaries of the town, as the operator of moped, motor scooter, three wheel or all terrain vehicle, riding mower, unless accompanied by parent or a guardian or by an individual 18 years of age or older.

(B) No person under 18 years of age may operate or ride upon a moped, motor scooter, three-wheel or all terrain vehicle within the boundaries of the town, unless the person wears a protective helmet of a type meeting Department of Federal Transportation *Motor Vehicle Safety Standard 218* as in effect on January 1, 1984. No person may operate a moped, motor scooter, three wheel or all terrain vehicle with any person under the age of 18 as a passenger if the passenger is not wearing a protective helmet.

(C) No person may operate a moped, motor scooter, three wheel or all terrain vehicle unless he or she is wearing an eye protective device or unless the moped, motor scooter, three wheel or all terrain vehicle is equipped with a windscreen of sufficient height and design so as to provide adequate eye protection to the operator when seated on the vehicle in the normal operating position; however, no person may operate a moped, motor scooter, three wheel or all terrain vehicle during the period of time when headlights must be lighted while wearing an eye protective device that is tinted or shaded to reduce the light transmittance of the device to a level below 35%.

(D) It is unlawful for the owner of a moped, motor scooter, three wheel or all terrain vehicle, riding mower or tractor to permit the moped, motor scooter, three wheel or all terrain vehicle, or riding mower to be operated contrary to the provisions of this chapter.

(E) It is unlawful for any person to operate a moped, motor scooter, three wheel or all terrain vehicle, riding mower within the limits of the town:

(1) At any place, while under the influence of alcohol or drugs as defined in SDCL § 32-23-7, which is hereby incorporated herein by reference;

(2) At a rate of speed greater than reasonable or proper under all surrounding circumstances, and when operated on public roadways, in no case greater than posted speed limits;

(3) At any place in a careless, reckless or negligent manner or heedlessly in disregard of the rights or safety of others, or in a manner so as to endanger or likely to endanger or cause injury or damage to any person or property; or

(4) On any public or private school, cemeteries, public or private golf courses or town parks.

(Ord. 9.05, passed 6-6-2006) Penalty, see § 10.99

#### **§ 71.04 EQUIPMENT REQUIREMENTS.**

(A) It is unlawful for any person to operate a moped or motor scooter on any roadway within the limits of the town, unless it meets federal highway safety standards under 49 C.F.R. § 567.4 and equipped with the following. The moped or motor scooter must have a manufacturing label written in the English language, lettered block in capitals and numerical not less than 30-seconds of an inch high that states: "This vehicle conforms to all applicable federal motor vehicles safety standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal".

(B) It is unlawful for any person to operate a three wheel or all terrain vehicle any place within the limits of the town, unless it is equipped with the following:

(1) Standard mufflers which are properly attached and which reduce the noise of the operation of the motor to the minimum necessary for operation. No person shall use a muffler cutout, by-pass, straight pipe or similar device on a three wheel or all terrain vehicle motor; and

(2) Brakes adequate to control the movement of and to stop and hold the three wheel or all terrain vehicle under any condition of operation.

(Ord. 9.05, passed 6-6-2006) Penalty, see § 10.99

#### **§ 71.05 UNLAWFUL TO OPERATE IN MANNER DETRIMENTAL TO ANIMALS.**

It is unlawful to intentionally drive, chase, run over or kill any animal with a moped, motor scooter, three wheel or all terrain vehicle or lawn mower.

(Ord. 9.05, passed 6-6-2006) Penalty, see § 10.99

#### **§ 71.06 ENFORCEMENT.**

Any person in violation of any provision of this chapter is committing a Class 2 misdemeanor and is punishable by law.

(Ord. 9.05, passed 6-6-2006)

## **CHAPTER 72: TRUCK REGULATIONS**

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Section

- 72.01 Purpose
- 72.02 Jurisdiction
- 72.03 Definitions
- 72.04 Truck routes
- 72.05 Street use permit
- 72.06 Truck parking
  
- 72.99 Penalty

**§ 72.01 PURPOSE.**

The Town Board of Trustees has deemed these regulations and controls to be reasonable and reasonably related to the health, safety and welfare of the residents of the town and to protect town streets from unnecessary damage.

(Ord. 9.07, passed 4-6-2010)

**§ 72.02 JURISDICTION.**

This chapter shall govern all territory within the statutory jurisdiction of the town.

(Ord. 9.07, passed 4-6-2010)

**§ 72.03 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the present tense shall include the future tense; words in the singular number include the plural; words in the plural number include the singular; the word **PERSON** includes a firm, partnership or corporation as well as an individual; the term **SHALL** is always mandatory and not discretionary; and the word **MAY** is permissive.

**BOARD OF TRUSTEES.** Hermosa Town Board members, elected by the citizens of Hermosa, Custer County, South Dakota.

**MOTOR VEHICLE.** A vehicle, as herein defined, which is self-propelled.

**OWNER.** A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor is the owner for the purpose of this chapter.

**PARKED/PARKING.** A stopped vehicle, whether occupied or not, otherwise than temporarily stopped for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers.

**SEMI-TRAILER.** Any commercially-licensed vehicle of the trailer type equipped with a kingpin assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

**TOWN.** The Town of Hermosa, Custer County, South Dakota.

**TOWN BOARD.** The Board of Trustees of the Town of Hermosa.

**TRAILER.** A commercially licensed vehicle without motive power designed for carrying property or passengers on its own structure and, for the purposes of this chapter, for being drawn by a truck and more than 28 feet in length.

**TRUCK.** Includes a truck tractor and trailer(s) and/or semi-trailer(s) with a gross vehicle weight of more than 26,000 pounds.

**TRUCK TRACTOR.** A motor vehicle designed and used primarily for drawing semi-trailers or similar vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

**VEHICLE.** A device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks; including bicycles and ridden animals.

(Ord. 9.07, passed 4-6-2010)

**§ 72.04 TRUCK ROUTES.**

(A) *Designation of truck routes.*

(1) The Board of Trustees shall designate which streets, or portions thereof, within and within one mile of the municipal limits of the town shall be through truck routes, local delivery truck routes, no truck routes or construction truck routes.

(2) All designated truck routes shall be identified by signs or markings erected and maintained under the direction of the Board of Trustees.

(B) *Use of truck routes.*

(1) All trucks within the town's jurisdiction shall be operated only over and along designated truck routes, unless so exempted in divisions (B)(4) through (6) below.

(2) All trucks using designated truck routes shall comply with state and county regulations concerning weight per axle, width, height and length.

(3) The Board of Trustees may designate weight limits for town streets, bridges and truck routes. Weight limits shall be identified by signs or markings erected and maintained under the direction of the Board of Trustees.

(4) A truck may deviate from an established truck route upon any officially established detour.

(5) A truck may deviate from an established truck route when so directed by an authorized municipal employee.

(6) A truck may deviate from an established truck route when so authorized by an approved street use permit.

(Ord. 9.07, passed 4-6-2010) Penalty, see § 72.99

**§ 72.05 STREET USE PERMIT.**

(A) *Issuance of permits.* The Board of Trustees is hereby granted the authority to issue street use permits for trucks to operate over routes within municipal limits not established as truck routes or to otherwise deviate from the provisions of this chapter. The Board of Trustees shall write regulations to govern the issuance and operation of street use permits.

(B) *Street use permit fees.*

(1) The Town Board shall establish by the fee for street use permits, to be included in the town fee schedule list, on file in the town office.

(2) In addition to the street use permit fee, the applicant shall deposit a refundable cash surety, in an amount to be determined by the Board of Trustees, with the Town Finance Department.

(a) The Board of Trustees shall assess the street(s) to be impacted by the proposed street use permit before the permit is issued and again at the expiration of the permit to determine the extent of damage caused to the street(s) by the applicant's activity.

(b) The applicant may request that the amount of the refundable surety be applied to the assessed amount of the damage.

(c) Any damage that may exceed the amount of deposited surety shall be the financial responsibility of the applicant. The Town Board shall approve any surety refund, or portion thereof.

(d) The applicant may appeal the Board of Trustee's assessment of damage to the Town Board.

(Ord. 9.07, passed 4-6-2010) Penalty, see § 72.99

**§ 72.06 TRUCK PARKING.**

No truck, tractor, trailer or other motorized cargo vehicle shall be parked in a public right-of-way within municipal limits except where the parking is temporarily required for the loading or unloading of cargo or freight and delivery of the same. The parking shall be limited to the period of time, usually no more than 12 hours, reasonably required to accomplish the purpose thereof.

(Ord. 9.07, passed 4-6-2010) Penalty, see § 72.99

**§ 72.99 PENALTY.**

(A) A violation of any provision of this chapter or any amendment thereto, or failure to perform any act required hereunder, is a Class 2 misdemeanor.

(B) In addition to any fine or penalty assessed by the court, any violator found guilty shall pay all court costs and expenses involved in the case and any restitution necessary to repair the damaged street.

(C) Any violation of this chapter is hereby declared to be a public nuisance per se.

(Ord. 9.07, passed 4-6-2010)

# CHAPTER 73: TRAFFIC SCHEDULES

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## Schedule

### I. Speed limits

#### **SCHEDULE I. SPEED LIMITS.**

(A) It shall be unlawful for any person or persons, except law enforcement officers, ambulances and fire equipment drivers to drive or operate any automobile, truck, motorcycle or other vehicle at a speed exceeding 25 mph on South Dakota State Highway #79 through the corporate limits of the town within a zone marked by highway speed signs.

(B) Upon conviction of a violation of division (A) above, the person shall be punished by a fine in an amount set by the Board of Trustees, as per the current fee schedule, or by imprisonment for a period not exceeding 30 days or by both a fine and imprisonment.

(Ord. 7, passed 6-6-1949; Ord. passed 8-5-1974)

## 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

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## 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
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- 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

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### 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 hanger (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**

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## 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**

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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**

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### 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**

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### 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.

## TITLE XI: BUSINESS REGULATIONS

### Chapter

- 110. GENERAL REGULATIONS
- 111. ADULT SERVICE BUSINESSES
- 112. CONTRACTOR LICENSING
- 113. PEDDLERS, SOLICITORS AND VENDORS
- 114. TELECOMMUNICATIONS FACILITIES
- 115. WIND ENERGY SYSTEMS (WES)
- 116. ALCOHOLIC BEVERAGES
- 117. CABLE COMMUNICATIONS

## CHAPTER 110: GENERAL REGULATIONS

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### Section

110.01 Car washes

#### § 110.01 CAR WASHES.

The construction and operation of car washes in the town limits is deemed allowable.

(Ord. 10.021, passed 6-18-2002)

## CHAPTER 111: ADULT SERVICE BUSINESSES

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### Section

- 111.01 Intent
- 111.02 Definitions
- 111.03 Permitted with approval uses
- 111.04 License required
- 111.05 Procedure
- 111.06 Appeal
- 111.07 Violation
- 111.08 Enactment

#### § 111.01 INTENT.

In the development and enactment of this chapter, it is recognized that there are some uses which, by their very nature, are recognized as having serious objectionable operational characteristics when established with certain areas of the community. Those establishments may cause annoyance or disturbance to the residents who live, work in or pass through the neighborhood, attract an undesirable quantity of transients, adversely affect property values, cause an increase in crime and encourage residents and other businesses to relocate elsewhere. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood(s).

(Ord. 10.018, passed 3-20-2001)

#### § 111.02 DEFINITIONS.

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

**ADULT BOOKSTORE.** An establishment having a substantial portion of its stock in trade for sale, barter or rental, books, magazines, other periodicals, films, posters, video tapes or other material or means for the recording or reproduction of a visual display on a video screen or other display device that exhibit obscene material or other material harmful to minors.

**ADULT MINI MOTION PICTURE THEATER.** An enclosed building with a capacity of less than 50 persons used for presenting on-premises viewing, by use of motion picture devices or any coin-operated means, obscene material or other material harmful to minors.

**ADULT MOTION PICTURE THEATER.** An enclosed building with a capacity of more than 50 persons used for presenting on-premises viewing, by use of motion picture devices or any coin-operated means, obscene material or other material harmful to minors.

**ADULT PERSONAL SERVICE BUSINESS.** A business whose activities include a person, while nude or partially nude, providing personal services for another person on an individual basis. It includes but is not limited to, the following activities and services: modeling studios, photographic studios, individual theatrical performances, and massage studios or parlors.

**CABARET.** An establishment which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers participating in obscene live conduct or conduct harmful to minors.

**CASINO.** An establishment which features gambling, gaming or gaming devices.

(Ord. 10.018, passed 3-20-2001)

### **§ 111.03 PERMITTED WITH APPROVAL USES.**

(A) Uses subject to the controls contained herein shall be referred to as “permitted with approval uses”.

(B) These shall include the following establishments which cater exclusively to an adult clientele:

- (1) Adult bookstore;
- (2) Adult mini motion picture theater;
- (3) Adult motion picture theater;
- (4) Adult personal service business;
- (5) Adult exotic dancing business;
- (6) Cabaret; and
- (7) Casino.

(Ord. 10.018, passed 3-20-2001)

### **§ 111.04 LICENSE REQUIRED.**

(A) It shall be unlawful to operate any permitted with approval use establishment without approval of the Town Board of Trustees.

(B) The approval will be granted by the issuance of a business license from the Finance Officer or his or her designated representative.

(Ord. 10.018, passed 3-20-2001) Penalty, see § 10.99

### **§ 111.05 PROCEDURE.**

It shall be unlawful to establish any permitted with approval use, except as hereinafter provided.

(A) *Board of Trustees approval.*

(1) Any person owning or having an interest in the subject property may file an application for a business license to use the property for any permitted with approval use provided for in this section of the zoning district in which the property is situated. The application shall be filed with the Finance Officer for submission to the Planning and Zoning Commission.

(2) Any applicant for a permitted with approval use must comply fully with all applicable provisions of this chapter.

(3) Upon receiving an application for a permitted with approval use, the Planning and Zoning Commission shall conduct field inspections, surveys and investigations; prepare maps, charts or other pictorial materials; hold necessary hearings; and otherwise process the application in order to arrive at a proper recommendation. The Planning and Zoning Commission shall then transmit the application for use subject to regulation, together with the Commission’s recommendation, to the Board of Trustees.

(4) The Board of Trustees shall give due notice of receipt of the application for the permitted with approval use and the Planning and Zoning Commission's recommendation in a manner as is prescribed by law.

(5) At a public meeting a decision shall be made by the Board of Trustees to either approve, approve with conditions or deny the application in accordance with the provisions of this chapter.

(6) Upon approval or approval with conditions of the application by the Board of Trustees a business license shall be granted for the permitted with approval use. The license shall be a nontransferable license for the life of the use, and shall be issued upon approval or approval with conditions after payment of the license fee has been received in full.

(B) *Approval standards.*

(1) No permitted with approval use shall be established in any residential zoning district.

(2) No permitted with approval use shall be established within 1,300 feet of a pre-existing school or place of worship. Measurements shall be made from a point on the exterior wall of each structure located closest to the structure to or from which the measurement is to be established.

(3) No permitted with approval use shall be established within 1,300 feet of any residentially zoned district. Measurement shall be made from a point on the exterior wall which is closest to the boundary line of the residentially zoned district.

(4) No permitted with approval use shall be approved unless all of the following findings are made:

(a) That the establishment, maintenance, location and operation of the permitted with approval use will not be detrimental to or endanger the public health, safety, comfort or general welfare;

(b) That the permitted with approval use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose permitted nor substantially diminish or impair property values within the neighborhood;

(c) That the establishment of the permitted with approval use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in that district;

(d) That the permitted with approval use will not be operated in any manner that permits the observation of any material depicting or describing "specified sexual activities" or "specified anatomical areas" from any public way or from any other property. This provision shall apply to any display, decoration, sign, show window or other opening;

(e) That adequate utilities, access roads, drainage and other necessary facilities have been or will be provided;

(f) That adequate measures have been or will be taken to provide ingress and egress designed so as to minimize traffic congestion in the public streets; and

(g) That the permitted with approval use will in all other respects conform to the applicable requirements of the zoning district in which it is located.

(5) Prior to granting approval of any permitted with approval use, the Board of Trustees may modify any existing requirements or may impose any additional conditions or limitations upon the establishment, location, construction, maintenance or operation of permitted with approval use as may in its judgment be necessary for the protection of the public interest and to secure compliance with the standards specified above. The Board of Trustees may require evidence and guarantees as it deems necessary as proof that the conditions stipulated in connection therewith are being, and will be, fulfilled.

(6) In any case where a permitted with approval use which has not been established within three months after the granting of a license therefore, then without further action by the Board of Trustees, the permitted with approval use license shall be null and void.

(Ord. 10.018, passed 3-20-2001) Penalty, see § 10.99

#### **§ 111.06 APPEAL.**

(A) An appeal may be taken before the Board of Trustees on any application for a permitted with approval use.

(B) No application for a permitted with approval use which has been denied wholly or in part by the Board of Trustees shall be resubmitted for a period of one year from the date of the order or denial, except on the grounds of new evidence or proof of changed conditions found to be valid by the Board of Trustees.

(Ord. 10.018, passed 3-20-2001)

#### **§ 111.07 VIOLATION.**

The failure of a licensee under this section to comply with the requirements of this chapter shall constitute a violation of this chapter and shall result in the revocation of the license by the Board of Trustees. Any permitted with approval use operated in violation of this chapter shall be deemed a public nuisance as defined in Chapter 91. An appeal may be taken before the Board of Trustees if the appeal is presented to the Board of Trustees in writing within 14 days of the revocation.

(Ord. 10.018, passed 3-20-2001)

### § 111.08 ENACTMENT.

(A) This chapter, upon passage, shall be retroactive to the date of the first reading and shall apply to all covered businesses as specified in § 111.03.

(B) This chapter is necessary for the immediate preservation of established neighborhoods, public peace, health, welfare and safety of the general population and shall become effective immediately upon passage and publication thereof.

(Ord. 10.018, passed 3-20-2001)

## CHAPTER 112: CONTRACTOR LICENSING

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### Section

- 112.01 Applicability
- 112.02 Definition
- 112.03 Requirements and obligations
- 112.04 Fees
- 112.05 Conflict

### § 112.01 APPLICABILITY.

This chapter shall apply to and be enforced in all incorporated areas of the town.

(Ord. 10.11, passed 5-15-2012)

### § 112.02 DEFINITION.

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

**BUILDING CONTRACTORS.** Includes anyone engaged in the business landscaping, cement or concrete contracting, either vault, form or wall work or as a masonry contract, of a carpenter contractor, or as an excavation contractor, or as a general building contractor, or other structures, sidewalk or street pavements.

(Ord. 10.11, passed 5-15-2012)

### § 112.03 REQUIREMENTS AND OBLIGATIONS.

(A) Any person engaging in the construction, repair or alteration of any building, structure, street or sidewalk pavement in the town for which a permit is required under the ordinances of the town, shall be construed as doing business as a contractor in the town, and must obtain a contractor's license from the Town Hall, prior to starting work on the permitted project.

(B) No person shall make or cause to be made any excavation in or under any street, parking, sidewalk, alley or public ground or remove any earth, soil, paving, gravel or material therefrom without first having obtained a contractor's license from the Town Hall. This permit will not be required to start emergency work, as may be necessary to protect existing structures; however, the permit shall be obtained the morning of the first working day after the work has commenced.

(C) Any contractor working on municipal water or sewer lines must hold a valid state water and/or state sewer contractor's license, which must be verified and on file with the town.

(D) No connection, hookups or tapping shall be conducted without public works inspection and supervision. Any violations of this requirement will be considered a permit violation, and will be subject to violation fines as outlined within the town's current fee schedule.

(E) A current copy of the applicant's certificate of liability insurance must be on file with the town before a contractor's license will be issued. Should a contractor's insurance renewal become due within the dates of a permitted project within the town, it is the contractor's responsibility to forward an updated copy of their renewed liability insurance prior to its expiration date.

(F) A contractor licensing application must be filled out and completed in its entirety, and signed by the applicant, to be considered for approval of the license by the Town Hall. For renewal purposes, a new contractor licensing application will be

required to be submitted for each renewal request.

(G) Any person obtaining a general contractor's license under this section shall not be required to secure an additional license for other building trade with the exception of electricians and plumbers.

(Ord. 10.11, passed 5-15-2012) Penalty, see § 10.99

#### **§ 112.04 FEES.**

(A) All fees for all licenses, permits or actions referenced within this chapter shall follow the current fee schedule on file with the town office.

(B) The licensing period shall be between January 1 and December 31 for the term of one year. Licenses will be prorated at half the current price for persons purchasing a contractor's license after September 1 until December 31 of that current year, to become due again on January 1 of the following year.

(Ord. 10.11, passed 5-15-2012)

#### **§ 112.05 CONFLICT.**

(A) In the interpretation and application of the provisions of this chapter, these provisions shall be held to a minimum requirement 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. 10.11, passed 5-15-2012)

## **CHAPTER 113: PEDDLERS, SOLICITORS AND VENDORS**

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### Section

113.01	Purpose
113.02	Definitions
113.03	License
113.04	Fees
113.05	Duration
113.06	Exemptions
113.07	Hours
113.08	Special provisions
113.09	Zoning and other regulations
113.10	Enforcement
113.99	Penalty

#### **§ 113.01 PURPOSE.**

(A) For the protection of the citizens of the town, and to prevent undesired, unhealthful and/or criminal activity.

(B) The town shall require all transient vendors and peddlers to register with, and obtain a vendor's permit from the town office prior to commencing business within the jurisdictional boundaries of the town.

(Ord. 1.004R, passed 9-6-2011)

#### **§ 113.02 DEFINITIONS.**

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

**EMERGENCY SITUATION.** An unforeseen occurrence that requires immediate attention, the absence of which would

endanger the health or safety of others, cause the loss of perishable goods, or create an economic hardship due to the unavoidable imminent nature of the circumstance.

**FOOD VENDOR.** Any person, partnership, corporation or similar business entity (whether a town resident or not) who is the vendor of produce, prepared or prepackaged foods.

**NON-PROFIT ORGANIZATION.** An incorporated organization which exists for educational, religious or charitable reasons, and from which its shareholders or trustees do not benefit financially. Any money earned must be retained by the organization, and used for its own expenses, operations and programs.

**SPECIAL EVENT.** Any public gathering, approved by the governing body of the town.

**STAND.** A table, bench, booth, rack, handcart, pushcart or any other fixture or device used for the purpose of displaying, distributing, storing or transporting merchandise.

**STREET FAIR.** A community event in the town that uses and occupies a portion of a public way, designated by the town, for the sale of merchandise by commercial retailers or for other promotions by nonprofit organizations.

**TEMPORARY USE AND STRUCTURE.** Any use or structure that is not located in a permanent structure and is not the primary use of property.

**TRANSIENT VENDOR.** Any person who opens a temporary place of business for the sale of goods or whom, on the streets or while traveling about the town, sells, offers for sale or solicits orders for the future delivery of goods where payment is required prior to the delivery of the goods. **TRANSIENT VENDOR** also includes any person who represents a business or organization, including, but not limited to, any entity that notifies the Town Board of Trustees that its representatives are present in the township for the purpose of selling, offering for sale, or soliciting orders for future delivery of goods, or an auction or an auctioneer company.

**VENDOR.** Any person who has been issued a valid vendor permit.

**VENDOR PERMIT.** The approved application of a person under the conditions as set forth in this chapter. A **VENDOR PERMIT** provides a person with a license to sell, distribute or display merchandise at a designated temporary outlet within the town.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.03 LICENSE.**

Applicants applying for a special event vendor license shall present to any entity sponsoring the event the following:

- (A) Name, address and phone number of the person, partnership, partner, corporation or similar business entity;
- (B) A description of the nature of the sales to be conducted and type of business that will conduct sales;
- (C) Description of the location where the sales will be conducted within the town;
- (D) The times when the sales will be conducted within the town;
- (E) License or permits with the county and/or the state;
- (F) If electrical access, open fires or use of propane: certificate from Fire Marshal's office showing that all codes are met;
- (G) All food vendors must be registered with the County and/or State Board of Health and present proof of that registration with their submission; and
- (H) All current governmental registrations and licenses must be displayed at the sale.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.04 FEES.**

Upon presentation of a completed copy of the town vendor/peddler's permit application and a state sales tax license, picture identification card, and payment of the registration fee (as set per current fee schedule), made payable to the town, the Finance Officer shall issue a receipt of authorization.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.05 DURATION.**

The registration and fee authorize the transient vendor or peddler to market their wares within the jurisdictional boundaries of the town for a period not to exceed the seven calendar days, one month or one year, time limit depending upon the permit purchased.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.06 EXEMPTIONS.**

- (A) Any non-profit that is the entity applying for the vendors licensing is exempt from any fees but must still complete the application process and comply with all other requirements as set forth in this chapter.
- (B) Residential yard sale activities that do not run more than four days within any three-month period are exempt from this chapter.
- (C) Any persons, firms or organizations distributing goods or services for which there is no charge shall not be required to obtain a vendors permit, nor pay any fee.
- (D) Any emergency situation shall be exempt.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.07 HOURS.**

No vendor or peddler shall peddle door to door between the hours of 8:00 p.m. and 9:00 a.m., except by specific appointment with, or invitation from, the prospective customer.

(Ord. 1.004R, passed 9-6-2011) Penalty, see § 113.99

### **§ 113.08 SPECIAL PROVISIONS.**

The following vendors may have the following specific regulations.

- (A) Fireworks sales: fees as per fee schedule, insurance requirements
- (B) Carnivals: fees as per fee schedule, insurance requirements and show that the rides are certified.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.09 ZONING AND OTHER REGULATIONS.**

(A) An applicant shall comply with all zoning requirements and other regulations and ordinances of the town.

(B) Where there is a conflict of these provisions with the zoning regulations, the zoning regulations shall control or supersede this chapter.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.10 ENFORCEMENT.**

(A) Any transient vendor or peddler not in compliance with this chapter shall pay a fine in accordance with §10.99.

(B) It shall be the duty of any police officer or code enforcement official of the town to enforce the provisions of this chapter.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.99 PENALTY.**

(A) Any person, who violates any of the provisions of this chapter shall upon conviction, be subject to a fine as per the town's current fee schedule.

(B) Each day the violation shall exist shall be construed as a separate offense.

(Ord. 1.004R, passed 9-6-2011)

## **CHAPTER 114: TELECOMMUNICATIONS FACILITIES**

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### Section

- 114.01 Purpose
- 114.02 Definitions
- 114.03 Approvals required for facilities and support structures
- 114.04 Facilities and support structures permitted by administrative approval

- 114.05 Facilities and support structures permitted by special permit
- 114.06 General standards and design requirements
- 114.07 Miscellaneous provisions
- 114.08 Existing facilities and support structures
- 114.09 Fees
- 114.10 Violation
- 114.11 Conflicts with other laws
  
- 114.99 Penalty

#### § 114.01 PURPOSE.

The purpose of this chapter is to ensure that the placement, construction and modification of wireless telecommunication facilities is consistent with the town's land use policies, to minimize the impact of wireless telecommunication facilities, to encourage the collocation of wireless telecommunications facilities on existing structures, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of the facilities, and to protect the health, safety and welfare of the town's citizens while attempting to ensure access to reliable wireless communications services throughout the county.

(Ord. 10.040, passed 2-3-2008)

#### § 114.02 DEFINITIONS.

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

**ACCESSORY EQUIPMENT.** Any equipment serving or being used in conjunction with a telecommunications facility or support structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

**ADMINISTRATOR.** The Planning and Zoning Board, Administrator or individual designated by the Board to conduct the administrative review referred to in this chapter

**ADMINISTRATIVE APPROVAL.** Zoning approval that the Administrator is authorized to grant after administrative review.

**ADMINISTRATIVE REVIEW.** The procedures established in § 114.04(E).

**ANTENNA.** Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. These structures and devices include, but are not limited to, the following: directional antennas, such as panels, microwave dishes and satellite dishes; and omnidirectional antennas, such as whips.

**BOARD.** The County Commission, Town Board of Trustees or other governmental body governing the district this chapter refers to.

**COLLOCATION.** The act of siting telecommunications facilities in the same location on the same support structure as other telecommunications facilities. **COLLOCATION** also means locating telecommunications facilities on an existing structure (for example: buildings, water tanks, towers, utility poles and the like) without the need to construct a new support structure.

**CARRIER ON WHEELS** or **CELL ON WHEELS** or **COW.** A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A **COW** is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

**MAJOR MODIFICATIONS.** Improvements to existing telecommunications facilities or support structures that result in a substantial change to the facility or structure. Collocation of new telecommunications facilities to an existing support structure without replacement of the structure shall not constitute a **MAJOR MODIFICATION**. **MAJOR MODIFICATIONS** include, but are not limited to, extending the height of the support structure by more than 20 feet or 10% of its current height whichever is greater, and the replacement of the structure.

**MINOR MODIFICATIONS.** Improvements to existing telecommunications facilities and support structures that result in some material change to the facility or support structure but of a level, quality or intensity that is less than a "substantial" change. These **MINOR MODIFICATIONS** include, but are not limited to, extending the height of the support structure by less than 20 feet or 10% of its current height, whichever is greater, and the expansion of the compound area for additional accessory equipment.

**MONOPOLE.** A single, freestanding pole-type structure supporting one or more antenna. For purposes of this chapter, a

**MONOPOLE** is not a tower.

**ORDINARY MAINTENANCE.** Ensuring that telecommunications facilities and support structures are kept in good operating condition. **ORDINARY MAINTENANCE** includes inspections, testing and modifications that maintain functional capacity and aesthetic and structural integrity; for example the strengthening of a support structure's foundation or of the support structure itself. **ORDINARY MAINTENANCE** includes replacing antennas and accessory equipment on a like-for-like basis within an existing telecommunications facility and relocating the antennas of approved telecommunications facilities to different height levels on an existing monopole or tower upon which they are currently located. **ORDINARY MAINTENANCE** does not include minor and major modifications.

**REPLACEMENT.** Constructing a new support structure of proportions and of equal height or other height as would be allowed under the definition of "minor modification" to a pre-existing support structure in order to support a telecommunications facility or to accommodate collocation and removing the pre-existing support structure.

**STEALTH TELECOMMUNICATIONS FACILITY.** Any telecommunications facility that is integrated as an architectural feature of a structure so that the purpose of the facility for providing wireless services is not readily apparent to a casual observer.

**SUPPORT STRUCTURE(S).** A structure designed to support telecommunications facilities including, but not limited to, monopoles, towers, utility poles and other freestanding self-supporting structures.

**TELECOMMUNICATIONS FACILITY.** Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A **TELECOMMUNICATION FACILITY** can consist of one or more antennas and accessory equipment or one base station.

**TOWER.** A lattice-type structure, guyed or freestanding, that supports one or more antennas.

(Ord. 10.040, passed 2-3-2008)

#### **§ 114.03 APPROVALS REQUIRED FOR FACILITIES AND SUPPORT STRUCTURES.**

(A) *Administrative review.* Telecommunications facilities located on any existing support structure shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter. New support structures that are less than 60 feet in height shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter. New support structures up to 199 feet in height shall be permitted in any Industrial District after administrative review and administrative approval in accordance with the standards set forth in this chapter. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter. Stealth telecommunications facilities shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter.

(B) *Special permit.* Telecommunications facilities and support structures not permitted by administrative approval shall be permitted in any district upon the granting of a special permit from the Board in accordance with the standards set forth in this chapter.

(C) *Exempt.*

(1) Ordinary maintenance of existing telecommunications facilities and support structures, as defined herein, shall be exempt from zoning and permitting requirements.

(2) In addition, the following facilities are not subject to the provisions of this chapter:

- (a) Antennas used by residential households solely for broadcast radio and television reception;
- (b) Satellite antennas used solely for residential or household purposes;
- (c) COWs placed for a period of not more than 120 days at any location within the district after a declaration of an emergency or a disaster by the Governor or by the responsible official of the district; and
- (d) Television and AM/FM radio broadcast towers and associated facilities.

(Ord. 10.040, passed 2-3-2008)

#### **§ 114.04 FACILITIES AND SUPPORT STRUCTURES PERMITTED BY ADMINISTRATIVE APPROVAL.**

(A) *Telecommunications facilities located on existing structures.*

(1) Antennas and accessory equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing support structure in accordance with the requirements of this chapter.

(2) Antennas and accessory equipment may exceed the maximum building height limitations, provided the antenna and accessory equipment are in compliance with the requirements and standards of this chapter.

(3) Each antenna mounted on existing structures and any accessory equipment shall meet the following standards.

(a) Omnidirectional or whip antennas shall not exceed 20 feet in length and not exceed seven inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.

(b) Directional or panel antennas shall not exceed ten feet in length and two feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.

(c) Cylinder-type antennas shall not exceed ten feet in length and not exceed 12 inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.

(d) Satellite and microwave dishes shall not exceed ten feet in diameter. Dish antennas greater than three feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon towers or monopoles.

(e) Other antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the antennas listed above. This provision is specifically included in this chapter to allow for future technological advancements in the development of antennas.

(f) Accessory equipment must comply with § 114.06(E).

(B) *New support structures.*

(1) New support structure less than 60 feet in height shall be permitted in all zoning districts in accordance with the requirements of this chapter.

(2) New support structures up to 199 feet in height shall be permitted in all General Industrial Districts in accordance with the requirements of this chapter. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.

(3) In the case of a monopoles or replacement poles that will support utility lines as well as a telecommunications facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this chapter.

(a) The utility easement or right-of-way shall be a minimum of 100 feet in width.

(b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are 80 feet or greater in height.

(c) The height of the monopole or replacement pole may not exceed by more than 30 feet the height of existing utility support structures.

(d) Monopoles and the accessory equipment associated there with shall be set back a minimum of 15 feet from all boundaries of the easement or right-of-way.

(e) Single carrier monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by division (B)(3)(c) above.

(f) Poles that use the structure of a utility tower for support are permitted under this section. The poles may extend up to 20 feet above the height of the utility tower.

(g) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to telecommunications facilities shall be permitted in accordance with requirements of this chapter. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights and other types of utility poles in the public right-of-way.

(C) *Stealth telecommunications facilities.*

(1) Stealth telecommunications facilities shall be permitted in all zoning districts after administrative review and administrative approval in accordance with the requirements below.

(a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

(b) The structure utilized to support the antennas must be allowed within the underlying zone district. The structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets and steeples.

(c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

(D) *General standards, design requirements and miscellaneous provisions.* Unless otherwise specified herein, all telecommunications facilities and support structures permitted by administrative approval are subject to the applicable

general standards and design requirements of § 114.06 and the provisions of § 114.07.

(E) *Administrative review process.*

(1) All administrative review applications must contain the following:

- (a) Administrative review application form signed by applicant;
- (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application;
- (c) Zoning drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this chapter, including property boundaries, setbacks, topography, elevation sketch and dimensions of improvements;
- (d) In the case of a new support structure:
  1. Statement documenting why collocation cannot meet the applicant's requirements. The statement may include technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
  2. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical or financial reasons. If an existing tower or monopole is listed among the alternatives, the applicant must specifically address why the modification of the structure is not a viable option.
- (e) Administrative review application fee. Applications for new support structures with proposed telecommunications facilities shall be considered together as one application requiring only a single application fee.

(2) *Procedure.*

- (a) Within ten business days of the receipt of an application for administrative review, the Administrator shall either: inform the applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or schedule an administrative review meeting with the applicant within 30 days of the receipt of a complete application. This meeting is not a public hearing.
- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within 60 business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The administrative review meeting will be conducted to confirm that the proposed application is consistent with this chapter. The Administrator must issue a written decision granting or denying the request within 15 days of the meeting unless an extension of time is agreed to by the applicant. Failure to issue a written decision within 15 days shall constitute a denial of the application. The applicant may appeal the denial as provided in this chapter or applicable state or federal law.
- (d) Should the Administrator deny the application, the Administrator shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this chapter.
- (e) The applicant may appeal any decision of the Administrator approving, approving with conditions or denying an application or deeming an application incomplete, within 30 days to the Board in accordance with this chapter.

(Ord. 10.040, passed 2-3-2008)

**§ 114.05 FACILITIES AND SUPPORT STRUCTURES PERMITTED BY SPECIAL PERMIT.**

(A) Any telecommunications facility or support structures not meeting the requirements of §114.04 shall be permitted by special permit in all zoning districts subject to:

- (1) The submission requirements of division (B) below;
- (2) The applicable standards of divisions (G) and (H) below; and
- (3) The requirements of the special permit general conditions within Chapter 155 (zoning regulations).

(B) *Submission requirements for special permit applications.*

- (1) *Special permit applications.* All special permit applications for telecommunications facility and support structures must contain the following:
  - (a) Special permit application form signed by applicant;
  - (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application;
  - (c) Written description and scaled drawings of the proposed support structure, including structure height, ground and structure design, and proposed materials;

(d) Number and type of proposed antennas and their height above ground level, including the proposed placement of antennas on the support structure;

(e) When locating within a residential area, a written technical and operational analysis of why a monopole or similar structure at a height of less than 100 feet cannot be used;

(f) Line-of-sight diagram or photo simulation, showing the proposed support structure set against the skyline and viewed from at least four directions within the surrounding areas;

(g) A statement justifying why collocation is not feasible. The statement shall include:

1. Technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and

2. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical or financial reasons. If an existing tower was listed among the alternatives, the applicant must specifically address why the modification of the tower is not a viable option.

(h) A statement that the proposed support structure will be made available for collocation to other service providers at commercially reasonable rates;

(i) If required of other special permit applications, a property owner list that includes the name, address and tax parcel information for each parcel entitled to notification of the application; and

(j) Special permit application fee. Applications for new support structures with proposed telecommunications facilities shall be considered as one application requiring only a single application fee.

(2) *Procedure.*

(a) Within ten business days of the receipt of an application for a special permit, the Administrator shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.

(b) If an application is deemed incomplete, an applicant may submit additional materials to complete the application. An applicant's failure to complete the application within 60 business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

(c) Once an application is deemed complete, a review meeting shall be held within ten days.

(d) A complete application for a special permit shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this chapter.

(e) The posting of the property and public notification of the application shall be accomplished in the same manner required for any special permit application under this chapter.

(Ord. 10.040, passed 2-3-2008)

## **§ 114.06 GENERAL STANDARDS AND DESIGN REQUIREMENTS.**

(A) *Design.*

(1) Monopoles shall be subject to the following.

(a) Monopoles shall be designed to accommodate at least three telecommunications providers.

(b) The compound area surrounding the monopole must be of sufficient size to accommodate accessory equipment for at least three telecommunications providers.

(c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration or the Board, monopoles shall have a galvanized silver or gray finish.

(2) Towers shall be subject to the following.

(a) Towers shall be designed to accommodate at least four telecommunications providers.

(b) A compound area surrounding the tower must be of sufficient size to accommodate accessory equipment for at least four telecommunications providers.

(c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration or the Board, towers shall have a galvanized silver or gray finish.

(3) Stealth telecommunications facilities shall be designed to accommodate the collocation of other antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the Board or Administrator.

(4) Upon request of the applicant, the Board or Administrator may waive the requirement that new support structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer antennas will promote community compatibility.

(B) *Setbacks.*

(1) Unless otherwise stated herein, monopoles and towers shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other support structures shall be governed by the setbacks required by the underlying zoning district.

(2) Unless otherwise stated herein, monopoles, towers and other support structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or replacement utility poles shall not be subject to a setback requirement.

(3) Unless otherwise stated herein, all accessory equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory equipment associated with an existing or replacement utility pole shall not be subject to a setback requirement.

(4) The Board or Administrator shall have the authority to reduce or waive any required setback upon the request of the applicant if the telecommunications facility or support structure will be less visible as a result of the diminished setback. The Board or Administrator must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this chapter. The structure must still meet the underlying setback requirements of the zone.

(C) *Height.*

(1) In nonresidential districts, support structures shall not exceed a height of 199 feet from the base of the structure to the top of the highest point. Any proposed support structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(2) In residential districts, support structures shall not exceed a height equal to 150 feet from the base of the structure to the top of the highest point. Any proposed support structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(3) In all districts, the Board shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request, the applicant shall submit the technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the Board.

(D) *Aesthetics.*

(1) *Lighting and marking.* Telecommunications facilities or support structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).

(2) *Signage.* Signs located at the telecommunications facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(3) *Landscaping.*

(a) In all districts, the Board or Administrator shall have the authority to impose reasonable landscaping requirements surrounding the accessory equipment.

(b) Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner.

(c) The Board or Administrator may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the Board or Administrator, landscaping is not appropriate or necessary.

(E) *Accessory equipment.* Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the telecommunication facility or support structure. Any equipment not used in direct support of the operation shall not be stored on the site.

(1) An equipment building, shelter or cabinet must not exceed 560 square feet and 12 feet in height, including the support structure for the equipment building.

(a) *Exception to size restriction.* A single equipment building or shelter may exceed 560 square feet if it is located at ground level, is used by more than one telecommunication provider and does not exceed 1,500 square feet.

(b) *Exception to height restriction.* Upon the applicant's request, the Board or Administrator may waive the height restriction to allow for the stacking of equipment on top of each other. The Board or Administrator must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. The Board or Administrator may also waive the height restriction where a higher support structure is needed to raise the equipment above a slope or flood plain.

(2) If the accessory equipment is at ground level in a residential zone, the Board or Administrator may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three feet in height at installation.

(a) The accessory equipment must conform to the setback standards of the applicable zone.

(b) In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Board or Administrator.

(Ord. 10.040, passed 2-3-2008)

#### **§ 114.07 MISCELLANEOUS PROVISIONS.**

(A) *Safety.*

(1) Ground-mounted accessory equipment and support structures shall be secured and enclosed with fence not less than six feet in height, or as deemed appropriate by the Board or Administrator.

(2) The Board or Administrator may waive the requirement of division (A)(1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

(B) *Abandonment and removal.*

(1) *Abandonment.* Any telecommunications facility or support structure that is not operated for a period of 12 consecutive months shall be considered abandoned.

(2) *Removal.*

(a) The owner of the telecommunications facility or support structure shall remove the facility within six months of its abandonment.

(b) The district authority shall ensure and enforce removal by means of its existing regulatory authority.

(3) *Multiple uses on a single parcel or lot.* Telecommunications facilities and support structures may be located on a parcel containing another principal use on the same site.

(Ord. 10.040, passed 2-3-2008)

#### **§ 114.08 EXISTING FACILITIES AND SUPPORT STRUCTURES.**

Telecommunications facilities and support structures that were legally permitted on or before the date this chapter was enacted shall be considered a permitted and lawful use.

(A) *Nonconforming telecommunications facility.*

(1) Nonconforming antennas or accessory equipment. Ordinary maintenance may be performed on nonconforming antennas and accessory equipment.

(2) Minor modifications to nonconforming telecommunications facilities may be permitted upon the granting of administrative approval by the Administrator.

(3) Major modifications to nonconforming telecommunications facilities may be permitted only upon the granting of special permit approval by the Board.

(B) *Nonconforming support structures.*

(1) Ordinary maintenance may be performed on a nonconforming support structure.

(2) Collocation of telecommunications facilities on an existing nonconforming support structure is permitted upon the granting of administrative approval by the Administrator.

(3) Minor modifications may be made to nonconforming support structures to allow for collocation of telecommunications facilities. Those minor modifications shall be permitted by administrative approval granted by the Administrator.

(4) Major modifications may be made to nonconforming support structures only upon the granting of special permit approval by the Board.

(Ord. 10.040, passed 2-3-2008)

#### **§ 114.09 FEES.**

Fees for all permits required herein, and fees required for filing of appeals, and fees for application for amendments to this chapter shall be established by the Town Board as listed per the current fee schedule on file at the town office.

(Ord. 10.040, passed 2-3-2008)

## **§ 114.10 VIOLATION.**

It shall be unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure, or to use any land in violation of any regulation in this chapter.

(Ord. 10.040, passed 2-3-2008) Penalty, see § 114.99

## **§ 114.11 CONFLICTS WITH OTHER LAWS.**

(A) In the interpretation and application of the provisions of this chapter, these provisions shall be held to 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. 10.040, passed 2-3-2008)

## **§ 114.99 PENALTY.**

(A) Any person, firm, association, or corporation who violates, disobeys, omits, neglects or refuses to comply with, or resists, the enforcement of any of the provisions of this chapter shall upon conviction thereof, be subject to a fine of \$100 together with the cost of action; every day of violation shall constitute a separate offense.

(B) Fine shall not exceed one quarter of the assessed value of the property.

(C) Compliance therewith may also be enforced by an injunction order at the suit of the petitioner or the owner or owners of real estate within the district affected by the regulation of this chapter.

(D) Any noncompliance will stop construction, placement or erection until corrected.

(E) All ordinances not covered specifically by the town ordinances must meet state specifications or uniform building codes, whichever is more stringent.

(Ord. 10.040, passed 2-3-2008)

# **CHAPTER 115: WIND ENERGY SYSTEMS (WES)**

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## Section

115.01 Purpose

115.02 Federal and state requirements

115.03 Definitions

115.04 Requirements for siting small wind energy systems

115.05 Requirements for siting large wind energy systems

115.06 Fees

115.07 Violation

115.99 Penalty

## **§ 115.01 PURPOSE.**

The purpose of this chapter is to ensure that the placement, construction and modification of a wind energy system (WES) facility is consistent with the town's land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of the facilities, and to protect the health, safety and welfare of the town's citizens.

(Ord. 10.050, passed 2-3-2008)

## **§ 115.02 FEDERAL AND STATE REQUIREMENTS.**

All WES facilities shall meet or exceed standards and regulations of the Federal Aviation Administration and state statutes and any other agency of federal or state government with the authority to regulate WES facilities.

(Ord. 10.050, passed 2-3-2008)

### § 115.03 DEFINITIONS.

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

**BOARD.** The County Commission, Town Board of Trustees or other governmental body governing the district this chapter refers to.

**CONSTRUCTION.** Any clearing of land, excavation or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

**HIGH VOLTAGE TRANSMISSION LINE.** A conductor of electric energy and associated facilities.

**LARGE WIND ENERGY SYSTEM** or **LWES.** All WES facilities, excluding small wind energy systems.

**PERSON.** An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, consumers power district or any other entity, public or private, however organized.

**ROUTE.** The location of a high voltage transmission line between two end points. The **ROUTE** may have a variable width of up to 1.25 miles.

**SMALL WIND ENERGY SYSTEM** or **SWES.** A WES facility with a single tower height of less than 75 feet used primarily for on-site consumption of power.

**TOWER HEIGHT.** The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

**SYSTEM HEIGHT.** The height above grade of the tallest point of the WES, including the rotor radius.

**TURBINE.** The parts of the WES including the blades, generator and tail.

**UTILITY.** Any person engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to, a private investor owned utility, a cooperatively owned utility, a consumers power district and a public or municipal utility.

**WIND ENERGY SYSTEM** or **WES.** A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

- (1) Tower or multiple towers, including foundations;
- (2) Generator(s);
- (3) Blades;
- (4) Power collection systems, including padmount transformers;
- (5) Access roads, meteorological towers, on-site electric substation, control building and other ancillary equipment and facilities; and
- (6) Electric interconnection systems or portion thereof dedicated to the WES.

(Ord. 10.050, passed 2-3-2008)

### § 115.04 REQUIREMENTS FOR SITING SMALL WIND ENERGY SYSTEMS.

(A) *Standards.* A small wind energy system shall be a permitted use in all zoning districts subject to the following requirements.

(1) *Setbacks.* The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and dwellings shall be equal to no less than 1.1 times the system height, unless written permission is granted by each affected person.

(2) *Access.* All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight feet above the ground.

(3) *Lighting.* A SWES shall not be artificially lighted unless the lighting is required by the Federal Aviation Administration.

(4) *Noise.* SWES facilities shall not exceed 55 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.

(5) *Appearance, color, finish.* The SWES shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.

(6) *Signs.* All signs, other than the manufacturer's or installer's identification, appropriate warning signs or owner identification on a wind generator, tower, building or other structure associated with a SWES visible from any public road shall be prohibited.

(7) *Code compliance.* A SWES shall comply with all applicable state construction and electrical codes, and the National Electrical Code.

(8) *Utility notification.* No SWES shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(B) *Permit requirements.*

(1) A building permit shall be required for the installation of a SWES.

(2) The building permit shall be accompanied by a plot plan which includes the following:

(a) Property lines and physical dimensions of the property;

(b) Location, dimensions and types of existing major structures on the property;

(c) Location of the proposed SWES;

(d) The right-of-way of any public road that is contiguous with the property;

(e) Any overhead utility lines;

(f) Wind system specifications, including manufacturer and model, rotor diameter, tower height and tower type (monopole, lattice, guyed);

(g) Tower foundation blueprints or drawings;

(h) Tower blueprint or drawing;

(i) Proof of notification to the utility in the service territory in which the SWES is to be erected, consistent with the provisions of division (A)(8) above; and

(j) The status of all necessary interconnection agreements or studies.

(3) A permit issued pursuant to this chapter shall expire if:

(a) The SWES is not completely installed and functioning within 24 months from the date the permit is issued; or

(b) Installation has not commenced, the SWES is out of service, or otherwise unused for a continuous 12-month period.

(C) *Abandonment.*

(1) A SWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Board may issue a notice of abandonment to the owner of a SWES that is deemed to have been abandoned. The owner shall have the right to respond to the notice of abandonment within 30 days from notice receipt date. The Board shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides information that demonstrates the SWES has not been abandoned.

(2) If the SWES is determined to be abandoned, the owner of the SWES shall remove the wind generator from the tower at the owner's sole expense within three months of receipt of notice of abandonment. If the owner fails to remove the wind generator from the tower, the Board may pursue legal action to have the wind generator removed at the owner's expense.

(D) *Building permit procedure.*

(1) An owner shall submit an application to the Board for a building permit for a SWES. The application must be on a form approved by the Board accompanied by two copies of the plot plan identified, and must be submitted two weeks prior to the next regular scheduled Board meeting.

(2) The Board shall issue a permit or deny the application within 60 days from the date on which the application is received.

(3) The Board shall issue a building permit for a SWES if the application materials show that the proposed SWES meets the requirements of this chapter.

(4) If the application is approved, the Board will return one signed copy of the application with the permit and retain the other copy.

(5) If the application is rejected, the Board will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may reapply if the deficiencies specified by the Board are resolved.

(6) The owner shall conspicuously post the building permit on the premises so as to be visible to the public at all times until construction or installation of the SWES is complete.

(E) *Violations.* It is unlawful for any person to construct, install, or operate a SWES that is not in compliance with this chapter or with any condition contained in a building permit issued pursuant to this chapter. SWES facilities installed prior to the adoption of this chapter are exempt.

(Ord. 10.050, passed 2-3-2008) Penalty, see § 115.99

## § 115.05 REQUIREMENTS FOR SITING LARGE WIND ENERGY SYSTEMS.

### (A) *Mitigation measures.*

(1) *Site clearance.* The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWES.

(2) *Topsoil protection.* The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.

(3) *Compaction.* The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

(4) *Livestock protection.* The permittees shall take precautions to protect livestock on the LWES site from project operations during all phases of the project's life.

(5) *Fences.* The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.

### (6) *Roads.*

#### (a) *Public roads.*

1. Prior to commencement of construction, the permittees shall obtain a moving permit that must identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to the approval of the moving permit allowing use of these haul roads. Where practicable, existing roadways shall be used for all activities associated with the WES. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

2. The permittees shall, prior to the use of approved moving permit and haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved the haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the town's and county's zoning offices of the arrangements.

(b) *Turbine access roads.* Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

(c) *Private roads.* The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

(d) *Control of dust.* The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.

### (7) *Soil erosion and sediment control plan.*

(a) The permittees shall develop a soil erosion and sediment control plan prior to construction and submit the plan to the town zoning office.

(b) The soil erosion and sediment control plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan that uses native plant species to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance.

(c) Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

### (B) *Setbacks.* LWES shall meet the following minimum spacing requirements.

(1) Distance from currently occupied off-site residences, business and public buildings shall be not less than 1,000 feet. Distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than 500 feet or 1.1 times the system height, whichever is greater. For the purposes of this section only, the term **BUSINESS** does not

include agricultural uses.

(2) Distance from right-of-way (ROW) of public roads shall be not less than 500 feet or 1.1 times the system height, whichever is greater.

(3) Distance from any property line shall be not less than 500 feet or 1.1 times the system height, whichever is greater, unless appropriate easement has been obtained from adjoining property owner.

(C) *Electromagnetic interference.* The permittees shall not operate the LWES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event the interference is caused by the LWES or its operation, the permittees shall take the measures necessary to correct the problem.

(D) *Lighting.* Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

(E) *Turbine spacing.* The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.

(F) *Footprint minimization.* The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the extent practicable be mounted on the foundations used for turbine towers or inside the towers unless otherwise allowed by the landowner on whose property the LWES is constructed.

(G) *Electrical cables.* The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. This division does not apply to feeder lines.

(H) *Feeder lines.*

(1) The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property.

(2) Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way.

(3) If no public right-of-way exists, the permittees may place feeders on private property.

(4) When placing feeders on private property, the permittees shall place the feeder in accordance with the easement(s) negotiated.

(5) The permittees shall submit the site plan and engineering drawings for the feeder lines to the Board before commencing construction.

(I) *Height from ground surface.* The minimum height of blade tips at their lowest possible point shall be 25 feet above grade.

(J) *Towers.*

(1) Color and finish: the finish of the exterior surface shall be non-reflective or matte.

(2) All towers shall be singular tubular design, unless approved by the Board.

(K) *Noise.* Noise level produced by the LWES shall not exceed 55 dBA, average A-weighted sound pressure at the perimeter of occupied residences existing at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner of the residence.

(L) *Permit expiration.* The permit shall become void if no substantial construction has been completed within three years of issuance.

(M) *Required information for permit application.*

(1) Boundaries of the site proposed for LWES and associated facilities on United States Geological Survey Map or other map as appropriate;

(2) Map of easements for LWES;

(3) Map of occupied residential structures, business and public buildings within one-half mile of the proposed LWES site boundaries;

(4) Preliminary map of sites for LWES, access roads and utility lines. Location of other LWES within five miles of the proposed LWES site;

(5) Project-specific environmental and cultural concerns (e.g., native habitat, rare species and migratory routes). This information shall be obtained by consulting with the following agencies (evidence of the consultation shall be included in the application):

- (a) State Department of Game, Fish and Parks;
  - (b) U.S. Fish and Wildlife Service; and
  - (c) State Historical Society.
- (6) Project schedule;
  - (7) Mitigation measures; and
  - (8) Status of interconnection studies/agreements.

(N) *Decommissioning.*

(1) *Cost responsibility.* The owner or operator of a LWES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.

(2) *Useful life.* A LWES is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of 12 months. The presumption may be rebutted by submitting to the Board for approval of a plan outlining the steps and schedule for returning the LWES to service within 12 months of the submission.

(3) *Decommissioning period.* The facility owner or operator shall begin decommissioning a LWES facility within eight months after the time the facility or turbine reaches the end of its useful life, as determined in division (N)(2) above. Decommissioning must be completed with 18 months after the facility or turbine reaches the end of its useful life.

(4) *Decommissioning requirements.*

(a) Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of 42 inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWES.

(b) To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine.

(c) Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

(5) *Decommissioning plan.* Prior to commencement of operation of a LWES facility, the facility owner or operator shall file with the Board the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board shall review a plan filed under this section and shall approve or disapprove the plan within six months after the decommissioning plan was filed. The Board may at any time require the owner or operator of a LWES to file a report describing how the LWES owner or operator is fulfilling this obligation.

(6) *Financial assurance.* After the tenth year of operation of a LWES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the LWES facility.

(7) *Failure to decommission.* If the LWES facility owner or operator does not complete decommissioning, the Board may take action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns, that the Board may take action as may be necessary to decommission a LWES facility and seek additional expenditures necessary to do so from the facility owner.

(O) *Pre-construction filing.*

(1) At least 45 days prior to commencement of construction, the applicant/permittee shall submit final maps depicting the approximate location of the proposed wind turbines, access roads and collector and feeder lines.

(2) Upon completion, the applicant shall also supply an "as-built" ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.

(Ord. 10.050, passed 2-3-2008)

## **§ 115.06 FEES.**

Fees for all permits required herein, and fees required for filing of appeals, and fees for application for amendments to this chapter shall be established by the Town Board as listed per the current fee schedule on file at the town office.

(Ord. 10.050, passed 2-3-2008)

## **§ 115.07 VIOLATION.**

It shall be unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure, or to use any land in violation of any regulation in this chapter.

(Ord. 10.050, passed 2-3-2008) Penalty, see § 115.99

### § 115.99 PENALTY.

The town is authorized to provide for the punishment of each violation of this chapter with a fine not to exceed \$500, or by imprisonment not exceeding 30 days, or by both the fine and imprisonment.

#### **Statutory reference:**

*Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)*

## CHAPTER 116: ALCOHOLIC BEVERAGES

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### Section

- 116.01 Definitions
- 116.02 License and operating agreement required
- 116.03 License reissuance
- 116.04 Alcoholic beverages, malt beverages and wine license requirements and fees
- 116.05 Special event alcoholic beverage licenses
- 116.06 Requirements for on-sale full-service restaurant licenses
- 116.07 Hours of operation
- 116.08 Consuming, mixing or possession of alcoholic beverages in public places
- 116.09 Operating agreement requirements
  
- 116.99 Penalty

### § 116.01 DEFINITIONS.

Terms used in this chapter, unless the context otherwise plainly requires, shall mean:

**ALCOHOLIC BEVERAGE.** Any distilled spirits, wine and malt beverages as defined in this chapter.

**BAR.** Any permanently installed counter within the restaurant area, or establishment, from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages.

**DISTILLED SPIRITS.** Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, containing not less than 0.5% of alcohol by weight.

**FULL-SERVICE RESTAURANT.** Any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths, or the bar. Any restaurant that only serves fry orders or food and victuals such as sandwiches, hamburgers, or salads is not a full-service restaurant.

**MALT BEVERAGE.** A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption, containing not less than 0.5% of alcohol by weight.

**NON-PROFIT ORGANIZATION.** An incorporated organization which exists for educational, religious or charitable reasons, and from which its shareholders or trustees do not benefit financially. Any money earned must be retained by the organization, and used for its own expenses, operations, and programs.

**OFF-SALE.** The sale of any alcoholic beverage, for consumption off the premises where sold.

**ON-SALE.** The sale of any alcoholic beverage for consumption only upon the premises where sold.

**ON-SALE DEALER.** Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

**OPERATING AGREEMENT.** An agreement made and entered into by the town with the owner/operator of a restaurant, bar, store, or establishment, for the purpose of allowing and regulating said business to operate with an on-sale and/or off-sale liquor or malt beverage license within the town.

**PACKAGE.** The bottle or immediate container of any alcoholic beverage.

**PACKAGE DEALER.** Any person, other than a distiller, manufacturer or wholesaler who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

**PUBLIC PLACE.** Any place, whether in or out of a public building, commonly and customarily open to or used by the general public and any street or highway.

**RETAIL LICENSE.** Any on-sale or off-sale license issued under the provisions of this chapter.

**RETAILER OR RETAIL DEALER.** Any person who sells alcoholic beverages for other than resale.

**SALE.** The transfer, for a consideration, of title to any alcoholic beverage.

**TO SELL AND SERVE ALCOHOLIC BEVERAGES.** To take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages.

**WINE.** Any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not more than 24% of alcohol by weight.

(Ord. 4.0, passed 9-15-2015)

**§ 116.02 LICENSE AND OPERATING AGREEMENT REQUIRED.**

It is a violation of this chapter to transact any business involving the sale of alcohol, wine, or malt beverages without first obtaining a license required by this chapter and SDCL Title 35, and entering into an annual operating agreement with the town. Any violation is subject to the general penalty of § 10.99.

(Ord. 4.0, passed 9-15-2015)

**§ 116.03 LICENSE REISSUANCE.**

Any application for the reissuance of a liquor, liquor restaurant, wine, or malt beverage license may be approved by the Hermosa Town Board without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation for the alcoholic beverage control law or the licenses has been suspended.

(Ord. 4.0, passed 9-15-2015)

**§ 116.04 ALCOHOLIC BEVERAGES, MALT BEVERAGES AND WINE LICENSE REQUIREMENTS AND FEES.**

(A) With the exception of any considerations referenced within the sections of this chapter, the following classifications and fees are established for on-sale, off-sale, on/off-sale, and/or package dealers in distilled spirits, liquors, wines, and malt beverages, as outlined below:

<i>Class of License</i>	<i>Annual Licensing Fee</i>	<i>Monthly Operating Agreement Fee</i>
<i>Class of License</i>	<i>Annual Licensing Fee</i>	<i>Monthly Operating Agreement Fee</i>
(1) On-sale dealer: Any person who sells or keeps for sale any alcoholic beverage, other than pursuant to another license under this chapter, for consumption on the premises where sold	\$0	\$350 per month + 5% of all alcoholic beverage purchases
(2) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases do not exceed over \$600	Initial one time as provided for in § 116.06(E).	\$125 per month + 5% of all alcoholic beverage purchases
(3) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases do not exceed over \$1,200	Initial one time as provided for in § 116.06(E).	\$250 per month + 5% of all alcoholic beverage purchases
(4) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases exceed over \$1,200	Initial one time as provided for in § 116.06(E).	\$350 per month + 5% of all alcoholic beverage purchases

(5) Off-sale dealer: Any person who sells or keeps for sale any alcoholic beverage for consumption off the premises where sold	\$250	\$350 per month + 5% of all alcoholic beverage purchases
(6) Special (temporary) alcoholic beverage license in conjunction with a special event within the municipality to any civic, charitable, educational, fraternal, or veterans' organization.	N/A	\$50 per day, not to exceed 15 consecutive days.
(7) Malt beverage retailer: Any person who sells or keeps for sale, other than resale, malt beverages as both package dealers and on-sale dealers (RB)	\$300	\$25 per month + 5% of all alcoholic beverage purchases
(8) Off-sale malt beverage package dealer: Any person who keeps for sale or sells malt beverages for consumption off the premises where sold (PB)	\$200	\$25 per month
(9) Off-sale malt beverage and off-sale South Dakota wine package dealer: an off- sale malt beverage package dealer who also keeps for sale or sells wines produced pursuant to SDCL Chapter 35-12 for consumption off the premises where sold (PF)	\$225	\$25 per month
(10) Wine retailers, being both package dealers and on-sale dealers	\$500	\$25 per month + 5% of all alcoholic beverage purchases
(11) Malt beverage retailer and South Dakota wine retailers: Any person who sells or keeps for sale malt beverages and wines produced pursuant to SDCL Chapter 35-12 as both package dealers and on-sale dealers (BW)	\$325	\$25 per month + 5% of all alcoholic beverage purchases

(B) The monthly operating agreement fee for a non-profit organization or association applicant, or holder, shall be reviewed and set annually by the Hermosa Town Board upon the issuance, or renewal, of any liquor, liquor restaurant, wine, malt beverage, or temporary, license, and shall not exceed the monthly amount listed for the equal classification of license listed within division (A) of this section.

(C) Non-profit organizations and associations shall be required to provide a copy of the following items; Federal EIN letter, letter of incorporation, bi-laws, tax exempt status. Additionally, an annual report, along with any changes made to addresses, directors, officers, or registered agents, shall be submitted annually to effectively maintain non-profit status with the town.

(D) In lieu of the monthly operating agreement fee, as listed within division A of this section, each licensee who currently owns an off-sale malt beverage license, with or without a South Dakota Wine license, prior to the effective date of this chapter, shall be allowed to pay a one-time, flat fee of \$150, due at the time of signing the operating agreement, for the remaining 2015-16 licensing year which shall expire at 11:59 p.m. on June 30, 2016. After this date, said licensee shall be required to follow the monthly operating agreement fee schedule, as outlined within division (A) of this section.

(Ord. 4.0, passed 9-15-2015)

#### **§ 116.05 SPECIAL EVENT ALCOHOLIC BEVERAGE LICENSES.**

(A) Special event alcoholic beverage licenses may be issued by the Town Board in conjunction with special events held within the town. Any license issued pursuant to this section may be issued for a period of time established by the Town Board, not to exceed 15 consecutive days. The license shall be issued to a person at a specific place in the same manner as licenses issued pursuant to § 116.03.

(B) The special alcoholic beverage licenses available are as follows:

(1) *Special event malt beverage retailer.* Special event malt beverage retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03

(2) *Special event on-sale wine retailer.* Special on-sale wine retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03, or to a person licensed by the Department of Revenue under SDCL Chapter 35-12.

(3) *Special event on-sale dealer.* Special on-sale dealer licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03.

(4) *Special event off-sale package wine dealer.* Special off-sale package wine dealers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03, or licensed pursuant to SDCL Chapter 35-4-2(19) or SDCL Chapter 35-12. A special off-sale package wine dealer licensee may only sell wine manufactured by a farm winery that is licensed pursuant to SDCL Chapter 35-12.

(C) Persons requesting a special event alcoholic beverage license shall make application on forms available from the Finance Office, and shall be subject to the same background check, notice and public hearing requirements as an applicant for a license under § 116.03. No public hearing is required for the issuance of a special event license pursuant to this section if the person applying for the special event license holds an eligible permanent license and the special event license is to be used on publicly-owned property.

(D) The hours of operation of each special event alcoholic beverage license shall be as set by the Town Board, but in no event shall the special event license hours exceed those for an on-sale dealer provided by § 116.07.

(E) No person may be issued more than 20 special event alcoholic beverage licenses within any calendar year. Notwithstanding the foregoing, any combination of licenses issued to the same person, at the same place, for the same time, and for the same special event, shall be counted only as one license for purposes of the 20-license limit.

(Ord. 4.0, passed 9-15-2015)

### **§ 116.06 REQUIREMENTS FOR ON-SALE FULL-SERVICE RESTAURANT LICENSES.**

(A) An applicant for an on-sale full-service restaurant license shall provide documentation to the Finance Officer that the applicant meets all requirements of state law for an on-sale full-service restaurant license, including but not limited to: SDCL § 35-4-112. Documentation in support of initial application for full-service restaurant on-sale license. In the initial application, an applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality or county to prove that the primary source of revenue from the operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

(B) The renewal of an on-sale full-service restaurant license is conditioned upon the applicant satisfying all state requirements for renewal, including but not limited to: SDCL § 35-4-113. Renewal of full-service restaurant on-sale license-- Annual report. If the municipality or county is renewing a full-service restaurant on-sale license, the municipality or county shall condition the license renewal upon receiving documentation that at least 60% of gross revenue from the preceding 12 months operation of the full-service restaurant was derived from the sale of food and nonalcoholic beverages. The full-service restaurant on-sale licensee shall submit an annual report to the municipality or county on the revenues from the full-service restaurant that includes an oath verifying the validity of the information provided in the report. The report and the supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross revenues of the licensee for the following two categories: (1) food and nonalcoholic beverage gross revenues; and (2) total gross revenues.

(C) *Certain licensees to report amount paid for other licenses; objection to report; hearing; appeal.* Any person who purchased an on-sale license issued pursuant to SDCL §§ 35-4-2(4) or 35-4-2(6) within the last five years shall report to the town the amount paid for the license. If the town requests from any other licensee the amount originally paid for any other on-sale license pursuant to SDCL § 35-4-117, the licensee shall report that amount to the town. The declared purchase price shall be made under oath and shall include the documents establishing the amount paid for the on-sale license. If the transaction included other personal property or real property, the full market value of the other property on the date of the transaction shall be deducted from the total purchase price to establish the amount paid for the license. The person who owned the license as of the date of the adoption of this section has the burden of establishing the amount paid for the license. If the amount reported is used to determine current fair market value pursuant to SDCL § 35-4-117, any licensee who contends that the amount does not accurately reflect the fair market value of the license on the date of purchase may file an objection to the report. The objection shall be filed with the town within 30 days of the date the license fee is set pursuant to SDCL § 35-4-116. If an objection is filed, the Board of Trustees for the town shall conduct a hearing to determine the fair market value of the license. The determination of the Board of Trustees for the town may be appealed to circuit court.

(D) The city will maintain a registry of each on- sale license that is being offered and will provide a copy of the registry to anyone who requests a new on-sale full-service restaurant license.

(E) All full-service restaurant licensees shall be required to pay a one-time initial licensing fee equal to the market value of the license established by the board under SDCL § 35-4-117, which will be at least \$1 for each person residing within the municipality as measured by the last preceding decennial federal census. (Source SDCL §§ 35-4-19.1, 35-4-111, 35-4-116, and 35-4-117. *Nine, Inc. v. City of Brookings*, 797 N.W.2d 73 (SD 2011)).

(Ord. 4.0, passed 9-15-2015; Ord. passed 9-4-2018)

### **§ 116.07 HOURS OF OPERATION.**

The following table establishes the hours during which alcoholic beverages may be sold and the holidays when alcoholic

beverages may not be sold for each class of license:

<i>Type of License</i>	<i>Hours</i>	<i>Days</i>	<i>Holidays</i>
<i>Type of License</i>	<i>Hours</i>	<i>Days</i>	<i>Holidays</i>
(A) On-sale dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(B) On-sale dealer (Full-service restaurant licensee)	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(C) Special (Temporary) alcoholic beverage dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(D) Off-sale dealer	7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(E) Malt beverage retailer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(F) Off-sale malt beverage package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(G) Off-sale malt beverage and off-sale South Dakota wine package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(H) Wine retailers, being both package dealers and on-sale dealers	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(I) Malt beverage retailer and South Dakota wine retailers	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A

(Ord. 4.0, passed 9-15-2015)

**§ 116.08 CONSUMING, MIXING, OR POSSESSION OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.**

(A) It is unlawful for any person to consume any intoxicating liquor or malt beverage or to mix or blend any alcoholic beverage with any other beverage, regardless of whether the beverage is an alcoholic beverage, in any public place, other than upon the premises of a licensed on-sale retailer where the alcoholic beverage was purchased from the dealer for on-sale purposes.

(B) It is unlawful for any person to possess an alcoholic beverage, in an unsealed container or in an open receptacle, in any public place other than upon the premises of a licensed on-sale retailer where the alcoholic beverage was purchased from the retailer for on-sale purposes.

(C) Nothing in this section shall be construed to prohibit the sale or consumption of malt beverages on the licensed premises of a park concessionaire as long as the malt beverages are purchased from the concessionaire.

(D) Notwithstanding divisions (A), (B), and (C), the Board of Trustees may authorize consumption of blending of alcoholic beverages in a public place, but not the sale of the same, in or upon property described by the Town Board, which property is publicly-owned, or owned by a non-profit corporation. The authorization shall not exceed 72 hours and hours of consumption shall not exceed those permitted for on-sale licensees.

(E) A licensee that is licensed to sell wine on-sale may permit a customer to carry out the unconsumed portion of a bottle of wine if the customer purchased the bottle of wine from the licensee and consumed a portion of it with a meal that was prepared and served by the licensee at a table on the licensed premises. The licensee shall securely reseal the bottle of wine with a cork or other similar cap and place the bottle in a sealed bag or other container. The licensee shall also attach a receipt for the meal and the wine to the bag or container. A bottle of wine that is recorked and sealed as provided in this division is not a violation of the provisions of division (B) if the cork and the seal have not been disturbed.

(F) A licensee that is licensed to sell wine on-sale may permit a customer to bring a sealed and unopened bottle of wine onto the licensed premises for consumption by the customer while eating a meal that was prepared by the licensee and that was served at a table on the licensed premises. The licensee may charge a corkage fee for serving wine supplied by a customer. Consumption of wine pursuant to this division is not a violation of division (A). The customer may carry out the unconsumed portion of the bottle of wine if it is securely resealed by the licensee as provided in division (E). Such resealed bottle is not a violation of division (B) if the cork and seal have not been disturbed.

(Ord. 4.0, passed 9-15-2015)

#### § 116.09 OPERATING AGREEMENT REQUIREMENTS.

(A) It shall be unlawful for any establishment, bar, store, operator, manager, or person to engage in the operation, distribution, or sale of any malt beverage, alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and/or any other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, without having entered into an annual operating agreement with the town.

(B) Operating agreements shall not be assigned, transferred, sold or in any manner conveyed without the express written and prior approval of the Town Board and such approval shall not be unreasonably withheld.

(C) Licensees shall comply with all laws of the State of South Dakota, and all ordinances of the Town of Hermosa. Failure to comply may result in termination or suspension of all licenses and operating agreements.

(D) No operating agreement may be modified or changed, unless such request has been submitted in writing to the Town Board, and said request has been approved by the Board of Trustees, with all approved changes to be recorded and signed by the operator(s) and the Board of Trustees.

(Ord. 4.0, passed 9-15-2015)

#### § 116.99 PENALTY.

Any person violating any portion of this chapter is subject to the general penalty as set out in §10.99 of this Code, or by current fee schedule.

(Ord. 4.0, passed 9-15-2015)

## CHAPTER 117: CABLE COMMUNICATIONS

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### Section

- 117.01 Short title and definitions
- 117.02 Grant of authority and general provisions
- 117.03 Application for new franchise
- 117.04 Construction and operations standards
- 117.05 System provisions and public services
- 117.06 Operation and administration provisions
- 117.07 Revocation, abandonment and sale or transfer
- 117.08 Miscellaneous provisions

#### § 117.01 SHORT TITLE AND DEFINITIONS.

(A) *Short title.* This chapter shall be known and cited as the Cable Communications Regulatory Ordinance.

(B) *Definitions.* For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

**BASIC CABLE SERVICE.** Any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. **BASIC CABLE SERVICE** as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

#### **CABLE PROGRAMMING SERVICE.**

- (a) Any video programming provided over a cable system, regardless of service tier other than:
1. Video programming carried on the basic service tier;
  2. Video programming offered on a pay per channel or pay per program basis; or
  3. A combination of multiple channels of pay per channel or pay per program video programming offered on a multiplexed or time shifted basis so long as the combined service:

- a. Consists of commonly identified video programming; and
- b. Is not bundled with any regulated tier of service.

(b) **CABLE PROGRAMMING SERVICE** as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(l)(2) and 47 C.F.R. 76.901(b) (1993).

**CABLE SERVICE.** The one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

**CABLE SYSTEM** or **SYSTEM.** Shall have the meaning ascribed to it in federal law.

**COUNCIL.** The Hermosa, South Dakota City Council.

**FRANCHISE.** An initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system or other MVPD facility.

**FRANCHISE AREA.** The area within the legal boundaries of the grantor.

**GRANTEE.** The person which is granted a franchise in city pursuant to this chapter, its agents and employees, lawful successors, transferees or assignees.

**GRANTOR.** Is the City of Hermosa.

**GROSS REVENUE.** Only that monthly revenue net of bad debt received from basic cable service and premium pay services such as HBO. The term **GROSS REVENUES** shall not include any other revenue billed or received by the grantee including, franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements, cable ad sales, or any taxes or fees on services furnished by grantee imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by grantee for such governmental unit.

**MULTICHANNEL VIDEO PROGRAM DISTRIBUTOR** or **MVPD.** A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

**OPEN VIDEO SERVICES** or **OVS.** Any video programming services provided to any person by a franchisee certified by the FCC to operate an open video system pursuant to 47 U.S.C. § 573, as may be amended, regardless of the facilities used.

**PAY TELEVISION.** The delivery over the system of pay per channel or pay per program audio visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.

**PERSON.** Any person, firm, partnership, association, corporation, company, or other legal entity.

**STANDARD INSTALLATION.** Any residential installation which can be completed using a drop of 150 feet or less.

**STREET.** The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by grantor.

**SUBSCRIBER.** Any person who lawfully receives cable service.

**VIDEO PROGRAMMING.** Programming provided by, or generally considered comparable to programming provided by a television broadcast station.

(Ord. passed 9-16-2021)

## **§ 117.02 GRANT OF AUTHORITY AND GENERAL PROVISIONS.**

(A) *Franchise required.* It shall be unlawful for any person to construct, operate or maintain a cable system or MVPD facility or to provide cable service, video programming or other MVPD services, including OVS, in the grantor without a franchise authorizing the same, unless applicable federal or state law prohibits the grantor's enforcement of such a requirement.

(B) *Grant of franchise.* Any franchise that is granted in city shall be subject to the terms and conditions contained herein.

(C) *Grant of nonexclusive authority.*

(1) A grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in franchise area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in franchise area of a cable system.

(2) A franchise shall be nonexclusive, and grantor reserves the right to grant a similar use of said streets to any MVPD at any time, provided, however, that all franchises shall contain the same terms and conditions as this franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a franchise or is granted a franchise to operate by the grantor, the terms and conditions of which do not comply with this

chapter, other grantees shall have the right either (i) to opt in to the competitor's franchise by providing ten days prior written notice to the grantor; or (ii) to petition the grantor for modifications to its franchise, in which case the grantor shall work in good faith with the affected grantee(s) to review and adopt modifications which the grantee(s) deem necessary, review and approval by grantor shall not be unreasonably denied.

(3) Before granting an additional franchise, the grantor shall give written notice to all grantees of any new application, identifying the applicant for such additional franchise and providing at least 30 days prior notice of the date, time, and place at which the grantor shall consider and/or determine whether such additional franchise should be granted.

(4) Every franchise shall apply to the entire service area of the grantor, as it exists now or may later be configured.

(5) In the event grantor grants one or more additional franchises or one or more non-franchised MVPD's commence providing cable service in the grantor, a grantee shall have the right to terminate or reduce the term of this franchise in its sole discretion.

(6) Neither city nor grantee(s) may unilaterally alter the material rights and obligations set forth in this franchise. In the event of a conflict between any other ordinance and this franchise, the franchise shall control.

(D) *Franchise term.* A franchise shall be in effect for a period of 15 years from the effective date of the agreement, unless renewed, revoked, or terminated sooner as herein provided.

(E) *Territorial area involved.* A franchise shall be granted for the corporate boundaries of grantor, as it exists from time to time. In the event of annexation by grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, that grantee(s) shall not be required to extend service beyond its present system boundaries unless there is a minimum of 25 homes per cable mile as measured from the last fiber node or terminating amplifier.

(F) *Written notice.* All notices, reports, or demands required to be given in writing under this chapter shall be deemed to be given when delivered personally to any officer of grantee or grantor's administrator of this chapter as specified in a franchise.

(Ord. passed 9-16-2021)

#### **§ 117.03 APPLICATION FOR NEW FRANCHISE.**

(A) An application for an initial franchise to provide video programming shall be in writing on a form provided by the city which shall contain where applicable:

(1) Applicant name and business address of applicant.

(2) A statement as to the proposed franchise area, and whether applicant holds an existing authorization to access the rights-of-way in the city and a map of the areas where such authorization exists if for an area other than the entire city.

(3) Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable service field.

(4) List of officers, directors, and managing employees of applicant and resumes of each.

(5) A proposed construction and schedule to provide cable service or video programming to subscribers.

(6) A certificate of insurance consistent with the requirements of this chapter.

(7) A description of the cable system the applicant intends to build, including its capacity, the types of equipment proposed for use and the cable services or video programming which will be offered.

(8) A description of the financial qualifications of the applicant to construct and operate the system including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three years of operation subsequent to system completion.

(9) A proposed plan for public, educational, and government access channels, including funding, facilities, and equipment and capacity on the system to be dedicated for educational and governmental use.

(B) The initial franchise application may be evaluated according to the following criteria, and approved within 180 days after city deems the application is complete. In the event applicant is already authorized to occupy the rights-of-way, the time for review and approval will be 90 days.

(1) The evidence of legal, technical and financial ability required in the applicant's proposal will be such as to assure the ability to complete the entire system within a reasonable time from the date the franchise is granted. The city will also consider the applicant's ability to operate the system and provide the necessary cable services or video programming in compliance with the terms of this chapter.

(2) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council.

(3) A public hearing shall be set prior to any grant of a franchise, at a time and date approved by the City Council. Within 30 days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted subject to what conditions.

(4) The city may consider any additional information that it deems applicable.

(Ord. passed 9-16-2021)

#### **§ 117.04 CONSTRUCTION AND OPERATIONS STANDARDS.**

Conditions on street use.

(A) A grantee shall obtain all required permits from grantor before commencing any construction upgrade or extension of the system.

(B) The grantor shall impose no permit fees upon a grantee.

(C) If at any time during the period of this franchise grantor shall elect to alter, or change the grade or location of any street, alley or other public way, a grantee shall, at its own expense, upon reasonable notice by grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system. If grantor reimburses other occupants of the street, a grantee shall be likewise reimbursed.

(D) A grantee shall, on request of any person holding a moving permit issued by grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and a grantee shall be given not less than ten days advance notice to arrange for such temporary changes.

(E) A grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.

(F) Nothing contained in this chapter shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities.

(G) In areas where all other utility lines are placed underground, grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(H) A grantee shall at all times construct and operate its system in accordance with applicable FCC technical specifications.

(I) In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this chapter, or the rights granted hereunder have been terminated, cancelled or have expired, grantee shall, subject to the rights of the city to acquire the system as specified in division (J) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.

(J) Any property of grantee to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of grantee in place, it shall submit to the city an instrument to be approved by the city, transferring to the city the ownership of such property.

(K) All cable and passive equipment for cable television reception service installed by grantee at a subscriber's location shall remain the property of grantee and grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

(L) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

(M) Where poles or other wire-holding structures already existing in use in serving the city are available for use by grantee, but it does not make arrangements for such use, the City Council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(N) Where the city or a public utility serving the city desires to make use of poles or other wire-holding structures of the grantee but agreement therefore with the grantee cannot be reached, the City Council may require the grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(O) Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

(P) During the term hereof, the city may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

(Ord. passed 9-16-2021)

#### **§ 117.05 SYSTEM PROVISIONS AND PUBLIC SERVICES.**

(A) *Operation and maintenance of system.* A grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

(B) *Service to schools and city.* A grantee shall, subject to the line extension requirements in §117.02(E), provide one drop and one outlet of basic cable service at no cost to one city building to be mutually agreed upon by city and a grantee.

(C) *PEG channel.* The grantee shall allocate one channel to the city as a public, educational or governmental access channel. Until such time as the city files a written request with grantee for full-time use of the channel, grantee shall have the right to use that portion of the channel capacity that is not being used by the city. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the city in obtaining the necessary licenses and frequency clearance to enable the city to use said channel.

(D) *Emergency use.* In the case of any emergency or disaster, a grantee shall, upon request of the city council, make available its facilities to the city for emergency use. A grantee shall comply with the emergency alert requirements of federal law.

(E) *Lockout device.* Upon the request of a subscriber, grantee shall provide by sale or lease a lockout device.

(Ord. passed 9-16-2021)

#### **§ 117.06 OPERATION AND ADMINISTRATION PROVISIONS.**

(A) *Indemnification of grantor.*

(1) A grantee shall indemnify, defend, and hold harmless grantor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a franchise granted pursuant to this chapter, except claims covered by worker's compensation insurance or any claims arising from or related to grantor's negligence. Nothing in this chapter relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regarding, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(2) In order for grantor to assert its rights to be indemnified, defended, and held harmless, grantor must with respect to each claim:

(a) Promptly notify a grantee in writing of any claim or legal proceeding which gives rise to such right;

(b) Afford grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(c) Fully cooperate with reasonable requests of grantee, at grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to division (A)(2)(b) above.

(B) *Insurance.* A grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of grantor in its capacity as such. The policies of insurance shall be in the sum of not less than \$300,000 for personal injury or death of any one person, and \$1,000,000 for personal injury or death of two or more persons in any one occurrence, \$300,000 for property damage to any one person and \$1,000,000 for property damage resulting from any one act or occurrence.

(C) *Franchise fee.*

(1) A grantor is authorized to charge grantee a monthly franchise fee up to 5% of the grantee's monthly gross revenue. Grantor may institute this fee by resolution and 90 days' notice to the grantor.

(2) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.

(3) The period of limitation for recovery of any franchise fee payable hereunder shall be three years from the date on which payment by grantee is due.

(Ord. passed 9-16-2021)

#### **§ 117.07 REVOCATION, ABANDONMENT, AND SALE OR TRANSFER.**

(A) *Grantor's right to revoke.* Grantor reserves the right to revoke, terminate or cancel a franchise, if after strictly following the procedures required by division (B) herein, it is determined that a grantee has violated any material provision of its franchise or this chapter and has failed to substantially cure said violation.

(B) *Procedures for revocation.*

(1) Grantor shall provide a grantee with written notice of a cause for revocation and the intent to revoke and shall allow

grantee 60 days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, grantor shall provide grantee with written findings of fact which are the basis of the revocation.

(2) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the 60-day notice provided in division (B)(1) above. Grantor shall provide grantee with written notice of its decision together with written findings of fact supplementing said decision.

(3) After the public hearing and upon written determination by grantor to revoke the franchise, grantee may appeal said decision with an appropriate state or federal court or agency.

(4) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.

(5) Upon satisfactory correction by grantee of the violation upon which said notice was given, the initial notice shall become void.

(C) *Sale or transfer of franchise.* No sale or transfer of a franchise shall take place without the written approval of the grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this franchise shall pass to and be binding upon the successor or assign of a grantee. Said approval shall not be required where a grantee grants a security interest in its franchise and assets to secure indebtedness.

(Ord. passed 9-16-2021)

### § 117.08 MISCELLANEOUS PROVISIONS.

(A) *Franchise renewal.* Any renewal of a franchise shall be done in accordance with applicable federal law.

(B) *Amendment of franchise.* A grantee and grantor may agree, from time to time, to amend a franchise. Such written amendments may be made at any time.

(C) *Marketing.* A grantee shall have the right to conduct direct selling in the franchise area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

(Ord. passed 9-16-2021)

## TITLE XIII: GENERAL OFFENSES

Chapter

- 130. GENERAL OFFENSES
- 131. OPEN BURNING AND FIREWORKS
- 132. LOITERING OF MINORS

## CHAPTER 130: GENERAL OFFENSES

Section

- 130.01 Disorder and disturbances
- 130.02 Littering
  
- 130.99 Penalty

### § 130.01 DISORDER AND DISTURBANCES.

The municipality shall have power to provide for keeping and preserving the peace and quietness of the municipality, to prevent disorderly conduct, to prohibit public intoxication, and to prevent and suppress riots, affrays, noises, disturbances and disorderly assemblies in any place.

**Statutory reference:**

*General authority, see SDCL § 9-29-3*

### § 130.02 LITTERING.

It shall be unlawful for any person or persons to deposit or leave any refuse, paper, cans, bottles, or containers or garbage of any nature whatsoever on any public street, alley, sidewalk, public place, way or building, or upon any privately owned real property, except in covered or enclosed garbage cans and containers.

(Ord. 31, passed 9-4-1973) Penalty, see § 130.99

### § 130.99 PENALTY.

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

## CHAPTER 131: OPEN BURNING AND FIREWORKS

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### Section

- 131.01 Definitions
- 131.02 Open fires unlawful
- 131.03 Burn barrel fires unlawful
- 131.04 Certain fires lawful
- 131.05 Firework regulations
  
- 131.99 Penalty

### § 131.01 DEFINITIONS.

**BURN BARREL.** A metal container used to hold combustible or flammable waste materials so they can be ignited outdoors for the purpose of disposal.

**CAMPGROUND.** Any permitted commercial campground operated by private individuals or corporations, the state, or the United States Forest Service.

**CHARCOAL GRILL.** A metal or stone device not resting on the ground with a metal grate designed to cook food using charcoal briquettes, char wood, hard wood, or similar fuel.

**LIQUID FUEL GRILL.** A metal or stone device designed to cook food using liquified or gaseous combustible fuel.

**OPEN FIRE.** Any outdoor fire, including campfires and burn barrels, which has been banned or, if legal, is not contained within a fully enclosed fire box or structure from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct, chimney, and/or spark arrester. **OPEN FIRE** shall not include charcoal grills and liquid fuel grills, as defined herein.

**OUTDOOR FIREPLACE.** A manufactured appliance constructed of non-combustible materials, with a maximum fuel area of three feet, fueled by cut or split wood, located not closer than 15 feet to any combustible surface and continually attended and must pass through a stack, duct, chimney and/or a spark arrester.

(Ord. passed 4-18-2023)

### § 131.02 OPEN FIRES UNLAWFUL.

It is unlawful for any person to ignite any open fires or outdoor fires, including campfires and burn barrels, within the town limits, which have been banned or, if legal, are not contained within a fully enclosed fire box or structure from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct, chimney, and/or spark arrester.

(Ord. passed 4-18-2023)

### § 131.03 BURN BARREL FIRES UNLAWFUL.

It is unlawful for any person to ignite a fire in a burn barrel within the town limits, nor burn toxic materials of any kind including, but not limited to, creosote wood, tires, or asbestos.

(Ord. passed 4-18-2023)

### § 131.04 CERTAIN FIRES LAWFUL.

The use of charcoal grills, liquid fuel grill, outdoor fireplaces, and campground fires are lawful so long as the flame exhausts through a stack, duct, chimney, and/or spark arrester.

(Ord. passed 4-18-2023)

### § 131.05 FIREWORK REGULATIONS.

(A) *Reasonable hours.* It shall be unlawful for a person to discharge fireworks within the town limits, except during the period beginning July 2 and extending through July 5, and during the period beginning December 28, and extending through January 1, as permitted within SDCL § 34-37-16.1.

(B) It shall be further unlawful for a person to discharge fireworks within the town limits during the times outside of July 2, 3, and 5 between 9:00 a.m. to 12:00 a.m. (midnight), July 4 between the hours of 9:00 a.m. and 2:00 a.m., on New Year's Eve between the hours of 9:00 p.m. and 2:00 a.m., and New Year's Day between the hours of 9:00 a.m. to 12:00 a.m. (midnight).

(C) The Board of Trustees may declare non-use of fireworks if fire conditions are unfavorable.

(D) All liability from the discharge of fireworks remains with the person and/or property owner involved, including but not limited to injuries, death, or property damage that may occur from discharging fireworks inside the town limits.

(Ord. passed 4-18-2023)

### § 131.99 PENALTY.

Any person violating any provision of this chapter is subject to the penalty set forth in §10.99.

(Ord. passed 4-18-2023)

## CHAPTER 132: LOITERING OF MINORS

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### Section

- 132.01 Purpose
- 132.02 Definitions
- 132.03 Curfew for juveniles
- 132.04 Responsibilities of owners of public places
- 132.05 Parents/guardians; responsibility
- 132.06 Procedures
- 132.07 Application
  
- 132.99 Penalty

### § 132.01 PURPOSE.

The purpose of this chapter is to regulate the presence of juveniles on streets and other public places in the town during late-night hours. The town has a compelling interest in the regulation due to the increase of juvenile delinquency and vandalism in the town. It is a compelling interest and goal of the town to protect the public from the illegal acts of juveniles committed after the curfew hour and also to protect the juveniles from improper influences and criminal activity that occurs after the curfew hour. It is also the intent of this chapter to help parents control their children.

(Ord. 9.06, passed 1-16-2007)

### § 132.02 DEFINITIONS.

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

**CUSTODIAN.** Any person over the age of 18 who is in loco parentis to a juvenile.

**GUARDIAN.** Any person other than a parent who has legal guardianship of a juvenile.

**JUVENILE.** Any person under the age of 18.

**PARENT.** The natural or adoptive parent of a juvenile.

**PUBLIC PLACE.** Any street, alley, highway, sidewalk, park, playground or place to which the general public has access and a right to resort for business, entertainment or other lawful purpose. The **PUBLIC PLACE** shall include, but not be limited to, any school, store, shop, restaurant, tavern, bowling alley, café, theater, drugstore, pool room, shopping center, fairgrounds, ball fields and any other similar place, including the area immediately adjacent to the place.

**TOWN.** All area within one mile beyond the town limits.

(Ord. 9.06, passed 1-16-2007)

### **§ 132.03 CURFEW FOR JUVENILES.**

(A) It is unlawful for any person under the age of 18 years to idle, wander about with no specific destination, stroll, play, congregate or otherwise be present in any public place, either on foot or in a motor vehicle after the hour of 10:00 p.m. or before the hour of 5:30 a.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, or after the hour of 11:00 p.m. or before 5:30 a.m. on any Friday or Saturday, unless accompanied by a parent, guardian or custodian. During the school summer break, it is unlawful for any person under the age of 18 years to idle, wander about with no specific destination, stroll, play, congregate or otherwise be present in any public place, either on foot or in a motor vehicle after the hour of 11:00 p.m. or before the hour of 5:30 a.m. on any Sunday, Monday, Tuesday, Wednesday, Thursday, Friday or Saturday.

(B) The foregoing aside, it shall not be a violation of this chapter for a juvenile to be present in a public place if the juvenile can establish that the presence is necessary to perform an errand or other specific activity at the direction of the juvenile's parent, guardian or custodian or to travel in the most practical and expeditious route from one non-public place to another non-public place at the specific direction of the juvenile's parent, guardian or custodian.

(C) Further, it shall not be a violation of this chapter for any juvenile to attend a scheduled job, volunteer work, a special function, or entertainment sponsored by any church, school, club or other organization if the juvenile can establish that the attendance is with the specific permission of the juvenile's parent, guardian or custodian.

(D) This section does not apply to a minor who is:

- (1) Accompanied by the minor's parent or guardian;
- (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency;
- (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence; and
- (7) Attending an official school, religious or other recreational activity supervised by adults and sponsored by the town, a civic organization or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the town, a civic organization or another similar entity that takes responsibility for the minor.

(Ord. 9.06, passed 1-16-2007) Penalty, see § 132.99

### **§ 132.04 RESPONSIBILITIES OF OWNERS OF PUBLIC PLACES.**

It is unlawful for any person, firm or corporation operating or having charge of any privately owned public place to permit or suffer the presence of a juvenile upon the premises with the knowledge that the juvenile is in violation of § 132.03.

(Ord. 9.06, passed 1-16-2007) Penalty, see § 132.99

### **§ 132.05 PARENTS/GUARDIANS; RESPONSIBILITY.**

It is unlawful for the parent, guardian or custodian of any juvenile to permit or suffer by negligent or inefficient control of the juvenile to violate any provision of this chapter. It shall not be a violation of this chapter for the parent, guardian or custodian of a juvenile to direct and permit the juvenile to be present in a public place for the purpose of carrying out a specific errand or other specific business activity or to participate in a specific activity of any church, school, club or organization, or to direct and permit a juvenile to travel from one nonpublic place to another nonpublic place by the most practical and direct route and means.

(Ord. 9.06, passed 1-16-2007) Penalty, see § 132.99

### **§ 132.06 PROCEDURES.**

Law enforcement officers are directed to follow the following procedures in enforcing the ordinance codified in this chapter.

(A) A law enforcement officer, upon finding a juvenile in a public place during the prohibited hours, shall ascertain the name and address of the juvenile, shall warn the juvenile that he or she is in violation of this chapter, and shall direct the juvenile to proceed directly and at once to his or her home or usual place of abode. The law enforcement officer shall make a written record of the contact and warning and shall report the contact to the juvenile investigation section of the Police Department, which shall notify the parent, guardian or custodian of the juvenile by telephone or by letter.

(B) If a juvenile refuses to comply with the direction of the law enforcement officer, or refuses to give the law enforcement officer his or her correct name and address, or if the juvenile has been warned on a previous occasion, the juvenile shall be taken into custody. The parent, guardian or custodian of the juvenile shall be notified to come and take custody of the juvenile. If the parent, guardian or custodian cannot be located or fails or refuses to take custody of the juvenile, the juvenile shall be remanded to the juvenile authorities.

(Ord. 9.06, passed 1-16-2007)

### **§ 132.07 APPLICATION.**

(A) The town does not intend a result that is absurd, impossible to execute or unreasonable.

(B) It is intended that the curfew ordinance codified in this chapter be held inapplicable in cases, if any, where its application would be unconstitutional. Constitutional construction is intended and shall be given.

(C) The town does not intend to violate the Constitution of the state or the Constitution of the United States of America.

(Ord. 9.06, passed 1-16-2007)

### **§ 132.99 PENALTY.**

The town is authorized to provide for the punishment of each violation of this chapter with a fine not to exceed \$500, or by imprisonment not exceeding 30 days, or by both the fine and imprisonment.

#### **Statutory reference:**

*Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)*

## **TITLE XV: LAND USAGE**

### Chapter

- 150. BUILDING CODE**
- 151. FLOOD DAMAGE PREVENTION**
- 152. HOUSE NUMBERING**
- 153. MOBILE HOMES; PARKS**
- 154. SUBDIVISION REGULATIONS**
- 155. ZONING CODE**

## **CHAPTER 150: BUILDING CODE**

### Section

- 150.01 Codes adopted
- 150.02 Building permits
- 150.03 Emergency warning system
- 150.04 Commercial remodeling
  
- 150.99 Penalty

### **§ 150.01 CODES ADOPTED.**

The town hereby adopts, either in full or partially, the 2009 International Residential Building Code, the 2009 International Property Maintenance Code and the 2009 International Existing Building Code. These Codes are incorporated herein as if set out in full.

(Ord. 15.13(R-2012), passed - -2012; Ord. 15.14(R-2012), passed - -2012; Ord. 15.15(R-2012), passed - -2012) Penalty, see § 150.99

## **§ 150.02 BUILDING PERMITS.**

(A) Any person desiring to build or to add on to an existing building in the town limits will obtain a building permit application from the Clerk.

(B) The application will then be presented to the Board of Trustees for approval or disapproval.

(C) If the application is approved, the applicant may then purchase the building permit from the Treasurer at a price set by the Board of Trustees. The price shall be in an amount set by the Board of Trustees, as per the current fee schedule.

(Ord. 33, passed 4-9-1979; Ord. passed 4-6-1987)

## **§ 150.03 EMERGENCY WARNING SYSTEM.**

(A) *Emergency warning systems required.* Emergency warning systems are required for all new subdivisions that are out of reach of the existing emergency warning systems.

(B) *Emergency warning systems fees to be set by resolution.* Fees for emergency warning systems will be split equally between the developer and the town.

(Ord. 10.07, passed - -2009) Penalty, see § 150.99

## **§ 150.04 COMMERCIAL REMODELING.**

(A) *Purpose.*

(1) The purpose of this section is to establish the requirement that a permit be issued by the town prior to the commencement of any remodel project on any commercial structure in excess of 160 square feet. Said permit application may be made by a general contractor or other person or entity intending to perform the remodel. Said application must also be signed by the owner of the property if not the same.

(2) The Town Board deems this section to be necessary for the protection of the health, safety and welfare of its citizens and the general public by requiring that the remodeling, renovation and construction activity contemplated herein be subject to the review of qualified inspectors.

(B) *Permit required.* A permit for the remodel of any commercial structure shall be required if said remodel includes any of the following:

(1) Removal, construction or replacement of any interior or exterior wall, structural support or change to the ingress/egress to the structure;

(2) Removal, relocation or addition of all or part of any heating or ventilation system;

(3) Removal, relocation or addition of any electrical wiring or electrical system components;

(4) Removal, addition or relocation of any plumbing;

(5) Removal, addition, relocation or installation of any sewer or water service lines; and

(6) Change in the footprint of existing structure.

(C) *Permit not required.* No permit shall be required for any remodeling which is solely aesthetic in nature, such as, but not limited to, painting, carpeting, roofing, siding, window replacement or any other improvement considered general maintenance.

(D) *Inspection required.* Any remodel or renovation for which a state permit is required, shall be inspected by a town-appointed Building Inspector or State Plumbing, Electrical, Mechanical Inspector or Structural Inspector as appointed by the town. The State Fire Marshal shall also inspect any commercial renovation or remodel requiring a permit under this section.

(E) *Contractor licensing.* In addition to the particular trade license which may be required by the state, any contractor performing services for which a permit is required under this section must first apply for and receive a contractor's license from the town. The annual fee for said contractor's license shall be \$50 per year, renewable every 12 months after date of issuance, or as may be amended from time to time by the Town Board. Contractor shall provide to and maintain with the town proof of current liability insurance coverage.

(F) *Severability clause.* Should any division, sentence, clause or phrase of this section, for any reason, be held invalid by a court of competent jurisdiction, such decision shall not offset the validity of the remaining portions of this section. The town hereby declares that it would have passed this section and each division, sentence, clause and phrase hereof irrespective of

the possibility that any one or more division, sentence, clause or phrase be declared unconstitutional or invalid.

(G) *Certificate of occupancy.*

(1) A certificate of occupancy may be required, based on the level of remodel, only after review of any applicable inspectors.

(2) The Town Board may require re-certification if warranted under the Building Code requirements.

(Ord. 10.8, passed 12-4-2012) Penalty, see § 150.99

**§ 150.99 PENALTY.**

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

(B) The town is authorized to provide for the punishment of §150.01 of this chapter with a fine not to exceed \$500, or by imprisonment not exceeding 30 days, or by both the fine and imprisonment.

(C) Upon conviction of § 150.02, the person shall be punished by a fine of not less than \$5 or more than \$100, or by imprisonment in the county jail for a period of not exceeding 30 days, or by both the fine and imprisonment.

(D) A violation of any of the provisions of §150.03 or of the emergency warning systems rules as established by town is an infraction and shall be punished by a fine as set by the Finance Committee, and fees increasing weekly.

(E) A violation of § 150.04 is punishable by up to \$100 and/or up to 30 days in jail. Each day that contractor services are provided in violation of § 150.04 shall constitute a separate violation.

(Ord. 8, passed 12-8-1959; Ord. passed 4-6-1987; Ord. 10.07, passed - -2009; Ord. 10.8, passed 12-4-2012)

**Statutory reference:**

*Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)*

## CHAPTER 151: FLOOD DAMAGE PREVENTION

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Section

***General Provisions***

151.01 Findings, purpose, methods

151.02 Definitions

151.03 General provisions

151.04 Administration

***Provisions for Flood Hazard Reduction***

151.15 General standards

151.16 Specific standards

151.17 Standards for subdivision proposals

151.18 Areas of shallow flooding (AO/AH Zones)

151.19 Floodways

151.99 Penalty

### GENERAL PROVISIONS

**§ 151.01 FINDINGS, PURPOSE, METHODS.**

(A) *Statutory authorization.* The legislature of the state has in SDCL §§ 9-36 and 11-4 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of Trustees does ordain as follows.

(B) *Findings of fact.*

(1) The flood hazard areas of the town are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed or otherwise protected from flood damage.

(C) *Statement of purpose.* It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in a manner so as to minimize future flood blight areas; and
- (7) Ensure that potential buyers are notified that property is in a flood area.

(D) *Methods of reducing flood losses.* In order to accomplish its purposes, this chapter uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve those uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. 10.03R, passed 11-15-2011)

## **§ 151.02 DEFINITIONS.**

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

**AREA OF SHALLOW FLOODING.** A designated AO, AH or VO zone on a community's flood insurance rate map (FIRM) with a 1% chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. The flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD.** The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year designated as Zones A, AE, AH, AO, AR, A1-99, VO, V1-30, VE or V on the flood insurance rate map.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE).** The water surface elevation of the 1% annual chance flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

**BASEMENT.** Any area of the building having its floor sub-grade (below ground level) on all sides.

**BUILDING.** See **STRUCTURE**.

**CRITICAL FEATURE.** An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT.** Any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, fences, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

## **ELEVATED BUILDING.**

(1) A non-basement building: built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water; and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, **ELEVATED BUILDING** also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

(2) In the case of Zones V1-30, VE or V, **ELEVATED BUILDING** also includes a building otherwise meeting the definition of **ELEVATED BUILDING**, even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of § 60.3(e)(5) of the National Flood Insurance Program regulations.

**EXISTING CONSTRUCTION.** For the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. **EXISTING CONSTRUCTION** may also be referred to as **EXISTING STRUCTURES**.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

**FLOOD or FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY.** The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the flood insurance rate map.

**FLOODPLAIN or FLOOD-PRONE AREA.** Any land area susceptible to being inundated by water from any source (see definition of **FLOODING**).

**FLOODPLAIN MANAGEMENT.** The operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS.** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes the state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROOFING.** Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOOD PROTECTION SYSTEM.** Those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. This system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOOD WAY (REGULATORY FLOOD WAY).** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FREEBOARD.** A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. **FREEBOARD** tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings and the hydrological effect of urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE.** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE.** Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
  - (a) By an approved state program as determined by the Secretary of the Interior; or
  - (b) Directly by the Secretary of the Interior in states without approved programs.

**LEVEE.** A human-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM.** A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's **LOWEST FLOOR**; provided that the enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of § 60.3 of the National Flood Insurance Program regulations.

**MANUFACTURED HOME.** A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term **MANUFACTURED HOME** does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL.** For purposes of the National Flood Insurance Program, the North American Vertical Datum of 1988 (NAVD 88) or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

**NEW CONSTRUCTION.** For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to the structures. For floodplain management purposes, **NEW CONSTRUCTION** means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to the structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use

**START OF CONSTRUCTION.** For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. No. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual **START** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the

first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**VARIANCE.** A grant of relief to a person from the requirement of this chapter when specific enforcement would result in unnecessary hardship. A **VARIANCE**, therefore, permits construction or development in a manner otherwise prohibited by this chapter. (For full requirements, see § 60.6 of the National Flood Insurance Program regulations.)

**VIOLATION.** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) of the National Flood Insurance Program Regulations is presumed to be in violation until a time as that documentation is provided.

**WATER SURFACE ELEVATION.** The height, in relation to North American Vertical Datum of 1988 (NAVD 88) (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. 10.03R, passed 11-15-2011; Ord. 10.03R(A1), passed 10-7-2014)

### § 151.03 GENERAL PROVISIONS.

(A) *Lands to which this chapter applies.* This chapter shall apply to all areas of special flood hazard within the jurisdiction of the town.

(B) *Basis for establishing the areas of special flood hazard.* The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled *Flood Insurance Study for Custer County and Incorporated Areas*, dated January 6, 2012, with accompanying flood insurance rate maps (FIRM) dated January 6, 2012 and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.

(C) *Establishment of development permit.* A development permit shall be required to ensure conformance with the provisions of this chapter.

(D) *Compliance.* No structure or land shall hereafter be located, altered or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

(E) *Abrogation and greater restrictions.* This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions; however, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(F) *Interpretation.* In the interpretation and application of this chapter, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(G) *Warning and disclaimer or liability.* The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by human-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within the areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. 10.03R, passed 11-15-2011)

### § 151.04 ADMINISTRATION.

(A) *Designation of the Floodplain Administrator.* The Floodplain Administrator shall be appointed by the Board of

Trustees to administer and implement the provisions of this chapter and other appropriate sections of C.F.R. Title 44 (National Flood Insurance Program Regulations) pertaining to floodplain management.

(B) *Duties and responsibilities of the Floodplain Administrator.* Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter;
- (2) Review permit applications to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;
- (3) Review, approve or deny all applications for development permits required by adoption of this chapter;
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334) from which prior approval is required;
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;
- (6) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the State Division of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency;
- (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;
- (8) When base flood elevation data has not been provided in accordance with this division (B), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of this chapter;
- (9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
- (10) Under the provisions of 44 C.F.R. Chapter 1, § 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (conditional letter of map revision).

(C) *Permit procedures.*

(1) Application for a development permit shall be presented to the Floodplain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard.

- (2) Additionally, the following information is required:
  - (a) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
  - (b) Elevation (in relation to mean sea level) to which any nonresidential structure shall be floodproofed;
  - (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of § 151.16; and
  - (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- (3) The Floodplain Administrator shall maintain a record of all the information in accordance with division (B)(1) above.
- (4) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:
  - (a) The danger to life and property due to flooding or erosion damage;
  - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;
  - (c) The danger that materials may be swept onto other lands to the injury of others;
  - (d) The compatibility of the proposed use with existing and anticipated development;
  - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(g) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

(h) The necessity to the facility of a waterfront location, where applicable;

(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and

(j) The relationship of the proposed use to the comprehensive plan for that area.

(D) *Variance procedures.* The Appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this chapter.

(1) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(2) Any person or persons aggrieved by the decision of the Appeal Board may appeal the decision in the courts of competent jurisdiction.

(3) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(4) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in division (C) above have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(5) Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach those conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.

(6) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(7) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(8) Prerequisites for granting variances:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(b) Variances shall only be issued upon:

1. Showing a good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(c) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(9) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

(a) The criteria outlined in divisions (D)(1) through (9) of this section are met; and

(b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. 10.03R, passed 11-15-2011)

## PROVISIONS FOR FLOOD HAZARD REDUCTION

### § 151.15 GENERAL STANDARDS.

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements.

(A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent

flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(C) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.

(D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.

(G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(H) The lowest floor of all construction shall be constructed in a manner to elevate it at least one foot above the BFE.

(Ord. 10.03R, passed 11-15-2011)

### **§ 151.16 SPECIFIC STANDARDS.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in: §151.03(B); § 151.04(B)(8); or § 151.17(C), the following provisions are required.

(A) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated at least one foot above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this division as proposed in § 151.04(C) is satisfied.

(B) *Below-grade residential crawlspace construction.* New construction and substantial improvement of any below-grade crawlspace shall:

(1) Have the interior grade elevation that is below base flood elevation no lower than two feet below the lowest adjacent grade;

(2) Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not exceed four feet at any point;

(3) Have an adequate drainage system that allows flood waters to drain from the interior area of the crawlspace following a flood;

(4) Be anchored to prevent flotation, collapse or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads:

(5) Be constructed with materials and utility equipment resistant to flood damage;

(6) Be constructed using methods and practices that minimize flood damage;

(7) Be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and

(8) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(b) The bottom of all openings shall be no higher than one foot above grade; and

(c) Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(C) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and

methods of construction are in accordance with accepted standards of practice as outlined in this division. A record of the certification which includes the specific elevation (in relation to mean sea level) to which the structures are floodproofed shall be maintained by the Floodplain Administrator.

(D) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria.

(1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(E) *Manufactured homes.*

(1) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the community's FIRM on sites: outside of a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation so that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(3) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of division (D) above be elevated so that either:

(a) The lowest floor of the manufactured home is at least one foot above the base flood elevation; or

(b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(F) *Recreational vehicles.*

(1) Require that recreational vehicles placed on sites within Zones A1-30, AH and AE on the community's FIRM either:

(a) Be on the site for fewer than 180 consecutive days;

(b) Be fully licensed and ready for highway use; or

(c) Meet the permit requirements of §151.04(C), and the elevation and anchoring requirements for "manufactured homes" of this section.

(2) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Ord. 10.03R, passed 11-15-2011)

## **§ 151.17 STANDARDS FOR SUBDIVISION PROPOSALS.**

(A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with this chapter.

(B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet development permit requirements of this chapter.

(C) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or five acres, whichever is lesser.

(D) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(E) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood

damage.

(Ord. 10.03R, passed 11-15-2011)

### **§ 151.18 AREAS OF SHALLOW FLOODING (AO/AH ZONES).**

Located within the areas of special flood hazard established in §151.03(B) are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. The flooding is characterized by ponding or sheet flow; therefore, the following provisions apply.

(A) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot higher than the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified).

(B) All new construction and substantial improvements of non-residential structures:

(1) Have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot higher than the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or

(2) Together with attendant utility and sanitary facilities be designed so that below one foot above the base flood level the structure is water-tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in §§ 151.15 and 151.16 are satisfied.

(C) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(Ord. 10.03R, passed 11-15-2011)

### **§ 151.19 FLOODWAYS.**

Floodways located within areas of special flood hazard established in §151.03, are extremely hazardous areas due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply.

(A) Designate a regulatory floodway which will not increase the base flood level more than one foot.

(B) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(C) All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 151.15 through 151.19.

(D) Under the provisions of 44 C.F.R. Chapter 1, § 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

(Ord. 10.03R, passed 11-15-2011)

### **§ 151.99 PENALTY.**

(A) No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations.

(B) Violation of the provisions of this chapter by failure to comply with any or its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor.

(C) Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$250 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case.

(D) Nothing herein contained shall prevent the town from taking other lawful action as is necessary to prevent or remedy any violation.

(Ord. 10.03R, passed 11-15-2011)

## **CHAPTER 152: HOUSE NUMBERING**

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Section

- 152.01 General description
- 152.02 General requirements

152.99 Penalty

**§ 152.01 GENERAL DESCRIPTION.**

All previously existing and newly assigned house numbers shall be clearly visible from the road from which the address is taken.

(Ord. 9-2, passed 5-2-2000) Penalty, see § 152.99

**§ 152.02 GENERAL REQUIREMENTS.**

(A) If the length of the driveway/access way or a physical obstruction prevents the number from being visible from the road of which the address is taken, then the house number shall be posted adjacent to the area in which the driveway/access way intersects the road.

(B) If a group of homes, serviced by one driveway/access way, are unable to individually display their numbers in a manner that would be visible from the road due to distance or physical obstruction, all house numbers from that group of homes may be placed on one sign at the point where the primary access to those homes intersects with the main road.

(C) The above homes shall, in addition to placing their house number on a group sign where the driveway/access way intersects with the main road, also display their house number on the primary addressed structure. The number shall be visible from the driveway/access way.

(D) Mobile homes located in an organized mobile home park must display their proper lot number on the mobile home lot. The number shall be visible from the driveway/access way.

(E) The posted house number must be placed in a way as to ensure its visibility year round and not be obstructed by such things as, but not limited to, snow or vegetation, to provide for emergency identification at all times.

(F) Each character of the posted house number shall be a minimum of four inches in height by three inches in width and must be of a contrasting color to the background on which it is attached.

(Ord. 9-2, passed 5-2-2000) Penalty, see § 152.99

**§ 152.99 PENALTY.**

The town is authorized to provide for the punishment of this chapter with a fine not to exceed \$500, or by imprisonment not exceeding 30 days, or by both the fine and imprisonment.

**Statutory reference:**

*Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)*

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## **CHAPTER 153: MOBILE HOMES; PARKS**

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Section

- 153.01 Mobile homes on residential building lots
- 153.02 New mobile home parks and additions

153.99 Penalty

**§ 153.01 MOBILE HOMES ON RESIDENTIAL BUILDING LOTS.**

(A) *Definition of mobile homes.* A movable living unit designed for year-round occupancy which: is capable of being towed on its own chassis; is completely finished prior to delivery; and has a manufacturer's serial number which may be reported to the County Director of Equalization for tangible personal property taxation differentiating it from other types of

dwelling structures, as may be required by SDCL § 10-4-2.4. A detachable hitch assembly and/or a perimeter frame or the placement of the unit upon a permanent foundation shall not be construed as creating a dwelling unit as described in the Uniform Building Code.

(B) *Single-wide mobile homes.* Single-wide mobile homes shall be located on R-2 lots.

(C) *Requirements.* The following property standards shall apply for all mobile homes whether or not located in mobile home parks:

(1) All mobile homes shall be set back from street right-of-way lines and lot lines to comply with the following requirements:

(a) Minimum depth of front yard shall be 20 feet and backyard shall be 15 feet. In no case shall an accessory building be located to extend into the front yard;

(b) Each side yard shall not be less than ten feet in width; and

(c) Unattached buildings of accessory use shall not be located closer than five feet to any rear lot line and there shall be a side yard of not less than ten feet.

(2) No mobile home shall be placed within the town limits that was manufactured more than 20 years before the date of application.

(3) For each mobile home there shall be a lot area of not less than 6,500 square feet for single wide mobile homes, and 7,500 square feet for double wide mobile homes and 8,500 square feet for triple wide mobile homes.

(4) Mobile homes shall be properly blocked and skirted with a durable, secure material that conforms with Fire Code in a pleasing and attractive manner within 60 days of placement on the lot.

(5) Mobile homes shall be anchored in accordance with state law or insurance industry standards, whichever provides the more stringent controls, within 60 days of placement on the lot.

(6) All yard areas and open spaces shall be landscaped and maintained in a neat condition.

(7) Lots having frontage on more than one street shall provide the required front yard/setbacks along each street.

(8) All mobile homes shall be connected to public water and sewer systems and comply with the Uniform Plumbing Code. Each individual water connection shall be metered in accordance with standards adopted by the town.

(9) Mobile homes shall be electrically grounded in conformance to code requirements.

(D) *Permit required.* No mobile home may be placed or replaced on a lot without a moving/building permit, approved by both the Planning and Zoning Commission and Board of Trustees and issued by the Finance Officer, and shall comply with the following.

(1) Any property having been previously occupied by a mobile home within the last one year next preceding the application can be used by the owner thereof for the parking of a mobile home without obtaining written permission from the adjoining landowners.

(2) Size and dimension of the mobile home shall be so stated and shall be accompanied by a site plan to include accessory structure(s) and off-street parking plans.

(3) All provisions of this section shall be met within 120 days of placement unless sooner required by a specific provision.

(E) *Violation.* It shall be unlawful to use any land in violation of any regulation in this chapter.

(Ord. 10.019B, passed 5-4-2004; Ord. 10.019C, passed 8-16-2011; Ord. passed 12-20-2022) Penalty, see § 153.99

## **§ 153.02 NEW MOBILE HOME PARKS AND ADDITIONS.**

(A) *Property development standards.* The following property development standards shall apply to all new mobile home parks or any additions to existing mobile home parks unless otherwise stated.

(1) For all new mobile home parks, no parcel of land containing less than two mobile home spaces on one lot, available at the time of first occupancy, may be used as a mobile home park.

(2) The mobile home park or additions to existing parks shall be located on a well-drained site, properly graded to ensure rapid drainage free from stagnant pools of water. Mobile homes shall be situated above the regulatory flood protection elevation in accordance with accepted floodplain construction practices and standards. The developer shall provide an engineered drainage study or plan to be approved by the Town Engineer.

(3) Yards:

(a) Each mobile home lot shall have a rear yard of not less than 15 feet and a side yard on both sides of the parcel devoted to the use of not less than eight feet; and

(b) Where a side or rear yard abuts a street, the yard shall not be less than 20 feet and all yards shall be landscaped and maintained. All dirt surfaces shall be covered with grass or other landscape material so as to limit airborne dust.

(4) Each mobile home park shall be permitted to display on each street frontage, one identifying sign of a maximum size of nine square feet. The sign shall contain thereon only the name and address of the mobile home park and may be lighted by indirect lighting only.

(5) The Town Board may issue a permit applied for under this subchapter upon compliance by the applicant with the provisions of this chapter and regulations adopted pursuant to this chapter.

(B) *Sufficient size.* Each mobile home park shall be of sufficient size that in addition to the mobile home spaces, the following areas shall be provided:

(1) Greenway or recreation areas of no less than 500 square feet for each unit lot or one acre for the entire park, whichever is less. The area shall be contiguous and may be located anywhere within the park;

(2) There shall be a front yard setback of 20 feet from all access roads within the mobile home park; and

(3) There shall be at least two paved or graveled street parking spaces for each mobile home space, which shall be on the same site as the mobile home served, and may be located in the front, rear or side yard of the mobile home space.

(C) *General provisions.* The following provisions shall apply to all new mobile home parks or mobile home park additions.

(1) There shall be established and maintained within each park an automobile parking area for the use of guests. The number of spaces within this area shall be equal to one for every four trailer sites.

(2) Access roads within a mobile home park, shall be paved or graveled to a width of not less than 24 feet. Where access roads are paved to a width of 41 feet or more, the required guest parking area shall be waived.

(3) Mobile home spaces may abut upon a driveway of not less than 20 feet in width, which shall have unobstructed access to the access road within the mobile home park. Vehicular access shall be provided from a public street and all dead-end driveways shall include adequate emergency vehicle turning space.

(4) Each mobile home space shall be provided with a metered water service and a connection to the public sanitary sewer system.

(5) Each mobile home park shall have an on-site manager and each park shall provide the service buildings as are necessary to provide facilities for storage space for supplies, maintenance materials and equipment.

(6) Cabanas, decks, porches and other similar structures shall be subject to building permit regulations.

(7) Mobile homes shall not be used for commercial, industrial or other nonresidential uses within mobile home parks.

(8) Mobile homes shall be electrically grounded, blocked, anchored and skirted in accordance with all applicable codes and ordinances.

(9) Each mobile home shall be placed on a pad. A minimum depth of six inches of 95 compacted ratio gravel or other suitable pavement material or concrete shall be installed for each space. The size shall be suitable for the size of mobile home, allowing for appropriate setbacks.

(10) Fire protection within the mobile home park shall be as follows.

(a) Mobile home parks shall be kept free of litter, rubbish and any flammable materials. The same must be stored in a safe and reasonable manner consistent with all town ordinance and fire codes.

(b) Portable fire extinguishers of a type approved by the State Fire Marshal shall be kept in the service buildings and in all other park locations as named by the Chief of the Fire Department, and shall be maintained in good operating condition.

(c) Fire hydrants shall be located within 400 feet of each mobile home.

(d) All trash burners or other open fires are prohibited.

(e) Trash service shall be provided by each mobile home park.

(D) *Application for permit.* An application for a new mobile home park annual permit shall be regulated hereunder and as in the town-adopted Building Code.

(1) Three copies of the plot plan, drawn to scale shall accompany each application. The copies shall be reviewed and approved by the Planning and Zoning Commission and the Board of Trustees.

(2) The application for annual permit shall be in an amount set by the Board of Trustees, as per the current fee schedule for the first lot and an amount set by the Board of Trustees, as per the current fee schedule for each additional lot thereafter and shall be filed with and issued by the Finance Officer.

(3) The following information shall be shown:

(a) The location and legal description of the proposed mobile home park;

- (b) Plans and specifications of all buildings, improvements and facilities constructed or to be constructed within the mobile home park;
- (c) The proposed use of buildings shown on site;
- (d) The location and size of all mobile home spaces;
- (e) The location of all points of entry and exit for motor vehicles and internal circulation;
- (f) The location of all lighting standards to be provided;
- (g) The location of all walls and fences and the indication of their height and the materials of their construction;
- (h) The name, address and phone number of the applicant;
- (i) Other architectural and engineering data as may be required to permit the Planning and Zoning Commission and Board of Trustees to determine if the provisions of this chapter are being complied with; and
- (j) A time schedule for development shall be prepared, which shall demonstrate the applicant's readiness and ability to provide the proposed services and all required improvements, completed within one year.

(E) *Annual permit.*

- (1) A non-transferable annual mobile home permit shall be required for each mobile home park within the town limits.
- (2) The annual cost of the permit shall be as follows:
  - (a) First mobile home lot: \$100;
  - (b) Each additional mobile home lot: \$20 occupied or unoccupied; and
  - (c) Any mobile home park adding spaces during the permit year shall pay the sum of \$20 per additional lot within 30 days of final construction of each lot.
- (3) Annual fees shall be due and payable by January 31 for the year of the permit.
- (4) Penalty for late payment or non-payment shall accrue at the rate of \$50 per day for each day in arrears.
- (5) Failure to pay fees as set forth herein or any other violation of town ordinance may result in the revocation of the mobile home operating permit. The revocation shall not occur without 30-day notice for the owner to meet compliance.

(Ord. 10.019B, passed 5-4-2004)

**§ 153.99 PENALTY.**

Any person, firm, association or corporation who violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of, any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 together in addition to the cost of the enforcement action, including, but not limited to, reasonable attorney fees, expert fees and inspector fees. Each day of violation shall constitute a separate offense. Compliance therewith may also be enforced by injunctive order at the suit of the petitioner or the owner of real estate within the district affected by the regulation of this chapter.

(Ord. 10.019B, passed 5-4-2004)

## **CHAPTER 154: SUBDIVISION REGULATIONS**

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Section

***General Provisions***

- 154.01 Authority and jurisdiction
- 154.02 Definitions
- 154.03 Section line highways
- 154.04 Mobile home courts
- 154.05 Building and grading permits
- 154.06 Variances
- 154.07 Commercial remodeling

## **Procedure for the Subdivision of Land**

- 154.20 General requirements
- 154.21 Platting procedure
- 154.22 Information required for preliminary plats
- 154.23 Content of preliminary plats
- 154.24 Content of final plats

### **Subdivision Design Standards**

- 154.35 Conformity to this chapter
  - 154.36 Street requirements
  - 154.37 Names
  - 154.38 Utility and drainage easements
  - 154.39 Drainage plans
- 
- 154.99 Penalty

#### **Cross-reference:**

*Building Code, see Chapter 150*

*Commercial landscaping and buffers, see Chapter 92*

*House numbering, see Chapter 152*

*Mobile homes and parks, see Chapter 153*

## **GENERAL PROVISIONS**

### **§ 154.01 AUTHORITY AND JURISDICTION.**

(A) *Statutory authorization.* Whereas SDCL § 11-4 has delegated the responsibility to adopt and enforce regulations designed for the purpose of promoting health, safety and the general welfare of the town, the Board of Trustees of the town hereby ordain the following.

(B) *Jurisdiction.* This chapter shall govern all lands within the jurisdiction of the Board of Trustees of the town.

(C) *Amendments.* The regulations, restrictions, area and boundaries set forth in this chapter may from time to time be amended, supplemented, revised or repealed as provided by law. The Planning Coordinator for the town is to review this chapter annually and make recommendations for revisions to the Board of Trustees as provided by law.

(D) *Statements of policy.* If at any time during the course of completion of subdivisions, construction or any other development authorized under the provisions of this chapter, the governing body becomes aware of impracticable procedures, unforeseen circumstances or other cogent situations not compatible with the intent of this chapter, a statement of policy will govern the continuance of the problem area and/or any other projects requiring the application of the same. A statement of policy will govern any given situation or peculiar problem area for a period of time not to exceed 12 months.

(Ord. 10.9, passed - -2005)

### **§ 154.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning (except as they may be defined in general by SDCL § 2-14).

**ACCESSORY.** Incidental to a primary use or structure on the same lot or tract of land.

**ALLEY.** A narrow, minor public right-of-way providing a secondary means of access to abutting properties.

**BOARD.** The Board of Trustees of the town.

**BUILDING PERMIT.** The instrument used by the Finance Officer to permit the construction, fabrication, alteration, improvement, destruction or moving of any structure within the procedures and restrictions contained in this chapter. This instrument may also serve as a **CERTIFICATE OF OCCUPANCY** following completion and approval of all required inspections by the town's designated Building Inspection Official.

**CLEARING.** Removing vegetative cover.

**COMMUNITY WATER SYSTEM.** A public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 24 year-round residents.

**DEDICATED PUBLIC RIGHT-OF-WAY.** A parcel of land that is conveyed to the public by the notation **DEDICATED PUBLIC RIGHT-OF-WAY** on a recorded plat for use as a public right-of-way.

**DENR.** The South Dakota Department of Environment and Natural Resources.

**EASEMENT.** A grant of one or more property rights by the property owner to and/or for use by the public, a corporation or another person(s) or entity. An **EASEMENT** is self-perpetuating and runs with the land unless otherwise stipulated.

**FEMA.** The Federal Emergency Management Agency.

**GOVERNING BODY.** The duly elected officials of a corporate political entity to whom authority is given to make, adopt, revise and amend ordinances and regulations; specifically in this chapter the Board of Trustees of the town.

**GRADING.** Excavating, filling or stockpiling soil.

**IMPROVEMENTS.** Changes or additions to land necessary to prepare it for building sites. These include, but are not limited to, street paving and curbing, grading, survey monuments, drainage ways, sewers, fire hydrants, water mains, sidewalks, pedestrian ways and other public works and appurtenances.

**LOT.** A tract or parcel of land within a subdivision. All **LOTS** shall have recorded legal access.

**MOBILE OR MANUFACTURED HOME.** Manufactured structures built on a steel undercarriage with the necessary wheel assembly to be transported to a permanent or semi-permanent site. The wheel assembly can be removed when placed on a permanent foundation, and the steel undercarriage may remain intact if it is a structural component. **MANUFACTURED HOMES** must meet Federal Manufactured Home Construction and Safety Standards as outlined in Title VI, Housing and Community Development Act of 1974.

**MOBILE HOME COURT.** Any parcel of land whereon two or more mobile or manufactured homes as defined herein are placed, located or maintained, or intended to be placed, located or maintained, including all accessory buildings. All land within the court shall be held in common ownership, with individual home spaces rented to residents.

**MOBILE HOME SPACE.** A plot of ground within a mobile home court that is designed as the location for one mobile home and any customary accessory use thereof.

**MODULAR HOME.** A type of manufactured home that will meet most building codes and is subject to standard regional or state building codes for modular construction. A **MODULAR HOME** can be transported on a steel undercarriage although the undercarriage is not usually a permanent and necessary or integral structural component and can be removed when the home is placed on a foundation.

**NONCONFORMING USE.** A building, structure or use of land existing at the time of enactment of this chapter that does not conform to the regulations herein provided.

**PLANNING AND ZONING COMMISSION.** The Hermosa Board of Trustees in its capacity as the Planning and Zoning Commission for the Town of Hermosa as allowed under SDCL § 11-4-11.1.

**PLANNING COORDINATOR.** The person employed by the governing body to coordinate activities between landowners, subdividers, the Planning and Zoning Commission, other government agencies and the governing body. The **PLANNING COORDINATOR** may also administer other regulatory land development and land use programs.

**PLAT.** A map drawn to scale from an accurate survey for the purpose of recording a subdivision of land.

**PLAT, FINAL.** A plat that includes all items, certifications and statements as set forth in § 154.24.

**PLAT, PRELIMINARY.** A plat of a proposed subdivision to be used to establish the terms and conditions for development of the proposed subdivision. This plat shall include all items set forth in § 154.23.

**PROFESSIONAL ENGINEER.** A professional engineer who is currently licensed as such by the state.

**PUBLIC RIGHT-OF-WAY.** A strip of land defined by right-of-way lines on a plat that is intended to be occupied by a street, recreation trail, utility line or other similar use and to be used by the public. **PUBLIC RIGHTS-OF-WAY** intended to be occupied by a street shall have a minimum width of 66 feet.

**PUBLIC RIGHT-OF-WAY EASEMENT.** A portion of a parcel of land that is defined by a notation on a recorded plat as a permanent easement for use as a public right-of-way.

**RECORDED ACCESS.** A permanent easement providing legal access to an isolated tract of land.

**ROAD DISTRICT ASSOCIATION.** An association of land owners formed under the provisions of SDCL § 31-12A, to develop a subdivision road district with the intent and purpose of maintaining the system of streets within the subdivision so that they have the capacity to handle all of the internal traffic and provide adequate ingress and egress to the members of the entire subdivision. The **ASSOCIATIONS** are required by statute to develop rules and by-laws to govern the operation of the association including the election of officers, collection of fees and the authorization to develop, repair and maintain all streets within the system. The initial development of all streets within a subdivision is the responsibility of the developer or subdivider. All subdivision streets must meet town specifications as provided by this chapter, and be inspected and approved

for use by the Town Engineer and the Planning Coordinator.

**SANITARY SEWER.** A municipal, community, small or individual sewage disposal system of a type regulated by DENR.

**SETBACK.** The required distance between any structure and any property line on the lot on which it is located.

**SEWER DISTRICT ASSOCIATION.** An association of land owners formed to develop a community or subdivision district with the intent and purpose of developing a private sewage system with the capacity to handle the refuse of its members or the entire subdivision. The **ASSOCIATIONS** are required by statute to develop rules and by-laws to govern the operation of the association including the election of officers, collection of fees and the authorization to develop, repair and maintain the system. The design plans for all sewer district association construction projects shall be submitted to DENR for approval prior to any construction or development.

**SPECIFICATIONS.** Design standards that have been adopted by the governing body.

**STREETS.** Any public or private thoroughfare that affords the principal means of access to abutting property. This term may be used interchangeably with **ROAD, ROADWAY, DRIVE** or **HIGHWAY**. All **STREETS** must be within a public right-of-way, excluding private access roads.

(1) **ARTERIAL STREETS.** Streets of considerable continuity connecting various sections of a community or regions designed for high vehicular speed and large volumes of traffic.

(2) **COLLECTOR STREETS.** Streets of sufficient continuity to gather traffic from local streets and deliver this traffic to arterial streets.

(3) **LOCAL STREETS.** Streets that are used or will be used primarily for access to abutting properties and carry a limited volume of traffic.

(4) **PRIVATE ACCESS ROADS.** Roads that lie within private access easements and provide access into isolated tracts of land where a public right-of-way is deemed not to be necessary by the governing body.

**STREET, INTERIOR.** Any street located within a subdivision.

**STREET SPECIFICATIONS.** The required standards to which public streets within the jurisdiction of the town must be constructed.

**STRUCTURE.** Anything constructed or erected: with a fixed location on the ground; attached to something having a fixed location on the ground; on skids; or not on a fixed location but which sits directly on the ground.

**STRUCTURE, MAJOR.** All structures other than minor structures.

**STRUCTURE, MINOR.** A structure with a finished value of less than \$1,000; or a detached structure used for storage, playhouse or similar usage which does not exceed 160 square feet in area; or a fence not over six feet high; or a retaining wall not over four feet high; or an attached deck not over 160 square feet in area and not more than 30 inches above grade; or a platform walkway or driveway not over 30 inches above grade; or a window awning supported by an exterior wall and not extending more than 54 inches from the exterior wall.

**SUBDIVIDER.** The person(s), firm(s) or corporation(s), owning land and in the process of creating a subdivision of the land.

**SUBDIVISION.** The division of any tract or parcel of land by plat or other means into one or more lots, sites or other divisions thereof, normally for the purpose of resale as a residential, commercial or industrial property.

**SUBDIVISION, HIGH-DENSITY.** A subdivision created by division of land into one or more tracts(s), of which any lot, tract or parcel contains less than two acres.

**SUBDIVISION, LOW-DENSITY.** A subdivision created by division of land into one or more tract(s), all of which contain five or more acres.

**SUBDIVISION, MEDIUM-DENSITY.** A subdivision created by division of land into one or more tract(s), of which any lot, tract or parcel contains two or more acres, but less than five acres.

**SUPPLEMENTAL MATERIALS.** Those plans, reports, narratives, designs, requirements, agreements, covenants and other materials necessary for the development of a subdivision. These include, but are not limited to, those items listed in § 154.22.

**VARIANCE.**

(1) A specific exception, granted by the governing body, to the terms of this chapter where the deviation will not be contrary to the public interest and will be granted due to circumstances peculiar to this property.

(2) A **VARIANCE** shall not be granted if the issuance violates the intent and spirit of this chapter.

(Ord. 10.9, passed - -2005; Ord. passed 11-21-2023)

## § 154.03 SECTION LINE HIGHWAYS.

Any resident or landowner within the jurisdiction of the town desiring to have a section line highway developed or improved must petition the Board of County Commissioners to that end.

(Ord. 10.9, passed - -2005)

#### **§ 154.04 MOBILE HOME COURTS.**

All mobile home courts must meet the requirements of Chapter 153.

(Ord. 10.9, passed - -2005)

#### **§ 154.05 BUILDING AND GRADING PERMITS.**

(A) Building permits are required in the town for any of the following:

- (1) Construction of all major structures;
- (2) Additions made to any major structure;
- (3) Major structures that are to be moved from one parcel to another;
- (4) Major structures that are to be demolished or removed from the property;
- (5) Mobile homes that are to be located within the town, moved from one location to another within the town, or moved out of the town; and
- (6) Construction or installation of communications towers and other unoccupied structures.

(B) Grading permits are required in the town for all clearing or grading except when: grading for agricultural or gardening purposes; grading for a single-family dwelling where less than 5,000 square feet of soil is disturbed; clearing less than 5,000 square feet; excavating or filling less than 100 cubic yards of soil; installing less than 100 feet of utility line; excavating below finished grade for a basement or foundation for a major structure authorized by a valid building permit; or for clearing or grading for the installation of a minor structure.

(C) Building permits are not required for normal maintenance of existing buildings or for repair to facilitate the maintenance. Fire or storm damage repair of foundations, supporting walls or roof trusses shall require a building permit. Repair of fire- or storm-damaged structures located in flood hazard areas is also subject to the provisions of the town's floodplain development provisions, Chapter 151.

(D) All construction shall conform to codes and regulations adopted by the town including, but not limited to, individual and small on-site wastewater systems, plumbing, electrical and standard building codes.

(E) Building or grading permits shall only be issued to the owner of the property or the owner's designated (in writing) agent.

(F) If the work described in any building or grading permit has not begun within six months from the date of issuance thereof, the permit shall expire. The permit shall be canceled by the Finance Officer and notice thereof shall be given to the person affected.

(G) If the work described in any building or grading permit has not been substantially completed within one year of the date of issuance thereof, the permit shall expire. Notice shall be given to persons affected that further work as described in the expired permit shall not proceed unless and until an extension has been obtained.

(H) All structures will in general comply with sound engineering and safety regulations normally required by the town's adopted building codes.

(I) There are no exceptions for building or grading permits.

(J) Building or grading permits shall not be issued for construction on any land in the town that fails to conform to the requirements of this chapter.

(K) Fees for all permits shall be set by the governing body and shall be due and payable upon application for the permit.

(Ord. 10.9, passed - -2005)

#### **§ 154.06 VARIANCES.**

The governing body, upon the recommendation of the Planning and Zoning Commission, may vary these regulations due to unusual topography or other conditions so that substantial justice may be done and the public interest secured; provided that the variation will not have the effect of nullifying the intent and purpose of this chapter.

(Ord. 10.9, passed - -2005)

#### **§ 154.07 COMMERCIAL REMODELING.**

(A) Commercial remodel permits are necessary to ensure the safety and welfare of the public by requiring any proposed work to be done is designed and constructed in accordance with the State Building Code and the zoning by-laws of the town. Every change in commercial use should be verified with the Planning and Zoning Commission as a permitted use for the zone in which the building is located. All contractors and their sub-contractors must be licensed with the town. Building inspections are required.

(B) You need a permit if you intend to:

(1) Remodel a commercial building, involving structural, electrical, gas or plumbing. Plans with structural changes must be designed by an architect or engineer, and require a complete floor plan along with complete framing and wall section plan;

(2) Install or replace any equipment or fixtures covered by the Plumbing, Gas or Electrical Codes;

(3) Build an addition to a commercial building, repair, renovate or demolish any building or structure;

(4) Change the use and or occupancy of a commercial building. A change in commercial use may result in a requirement for more on-site parking; or

(5) Change, remove or install required means of egress (exits/stairs) in a commercial building.

(Ord. 10.9A3, passed - -2012)

## PROCEDURE FOR THE SUBDIVISION OF LAND

### § 154.20 GENERAL REQUIREMENTS.

(A) Plats shall be filed on any parcel that is subdivided into a non-aliquot part of the United States Public Land Survey System (USPLSS); an aliquot part of the USPLSS of less than 40 acres; or not a recorded government lot, Homestead Entry Survey (H.E.S.) or Mineral Survey (M.S.). The governing body, upon completion of a review per requirements of § 154.21(A), may waive the requirement to create and file a plat for subdivision into aliquot parts of the USPLSS when the requirements of § 154.22(A)(3) have been met.

(B) The subdivider is required to install or construct the improvements hereinafter described prior to receiving approval of the final plat unless the governing body accepts appropriate surety in lieu of construction. All improvements required under this chapter shall be constructed in accordance with specifications provided by and under the inspection of the Planning Coordinator and/or the Town Engineer or their representative. Appropriate surety shall be deemed to be cash or certified check or surety bond paid to the Finance Officer in an amount to be recommended by the Town Engineer for the estimated cost of the improvements plus a 30% reserve. The reserve is intended to cover potential town costs, such as, but not limited to, engineering review, construction administration, construction inspection, project management and general administrative costs, in the event of default or noncompliance with town specifications by the subdivider.

(C) All public streets shall be constructed to town street specifications. The street construction shall be subject to inspection by both the Town Engineer and the Planning Coordinator during construction and upon completion.

(D) Maintenance of public streets that have not been accepted for maintenance purposes by the town, or by any other governmental entity, shall be the responsibility of adjacent landowners unless the maintenance is accepted by the governing body. Landowners are encouraged to form a Road District Association as specified in SDCL § 31-12A but may petition the governing body for acceptance of maintenance by the town as follows.

(1) This petition shall contain a description of the exact location of the street to be maintained by the town.

(2) A statement shall be included describing the requested maintenance or improvements the petitioners desire the town to undertake. This statement is to be of sufficient detail to enable the Town Engineer and the Board of Trustees to reasonably determine the likely costs of the proposed action.

(3) An explanation shall be provided detailing why a Road District Association cannot or should not be formed.

(E) Private access roads are allowed and shall be indicated on plats within private access easements. Private access roads are intended to serve only one parcel. The Board may allow a private access road to be shared by two adjoining parcels where topography or access restrictions onto federal, state or county highways or town streets make the sharing desirable. Development of private access roads is not required.

(F) Storm sewers and drainage structures shall be designed and installed as recommended by the Town Engineer and in accordance with good engineering practice. Culverts shall be designed to withstand the effects of a 25-year, 24-hour rainfall and may be required to be certified as such by a professional engineer. Culverts shall be concrete or corrugated metal pipe and shall have a diameter of at least 18 inches unless otherwise first approved for use by the Town Engineer.

(G) All property corners, including the beginning (point of curvature) and ending (point of tangency) of curves along property lines, shall be accurately marked on the ground with a five-eighths inch to one and a quarter inch diameter iron rod at least 18 inches in length. These bars are to be capped with an aluminum or plastic cap indicating the license number of the surveyor who placed the bar in the ground.

(H) The subdivider shall contract with the County Highway Department for the installation of durable street name signs at

all public street intersections. Two street name signs are required for all intersections within municipal limits.

(I) All required improvements in the subdivision shall be installed under the inspection of the Planning Coordinator and/or the Town Engineer.

(J) The Planning and Zoning Commission may formulate additional written administrative rules that govern the procedure for processing subdivisions. These procedures will outline the responsibility of parties concerned with subdivisions and processing, and they will contain other information necessary to systematize handling and processing.

(K) Platting fees shall be set by the governing body.

(Ord. 10.9, passed - -2005)

#### **§ 154.21 PLATTING PROCEDURE.**

(A) The subdivider may prepare a sketch plan that shall be discussed with the Planning and Zoning Commission in order to establish the requirements of this chapter that will influence the design of the subdivision. The subdivider shall submit a plat application with the sketch plan and supporting materials to the Finance Officer more than two weeks (inclusive) before the next regularly scheduled meeting of the Planning and Zoning Commission. This submission shall consist of nine copies of the sketch plan and nine copies of the plat application and any supporting material.

(B) The subdivider shall submit a plat application with the preliminary plat and supplemental materials to the Finance Officer more than two weeks (inclusive) before the next regularly scheduled meeting of the Planning and Zoning Commission. This submission shall consist of nine copies of the preliminary plat, prepared on 15-inch by 26 inches paper, and nine copies of the plat application and any supplemental material. Platting fees are due and payable with the plat application.

(C) Upon official receipt of the sketch plan or preliminary plat, the Finance Officer will inform the subdivider of the date, time and location of the Planning and Zoning Commission meeting at which the plan or plat will be presented. The Finance Officer shall also mail or provide a copy of the plat to each Planning and Zoning Commission member, the Planning Coordinator and the Town Engineer for review and comment before the Planning and Zoning Commission meeting. The Planning Coordinator may solicit comments on the plat from other agencies before the Planning and Zoning Commission meeting. The Planning and Zoning Commission shall review the plat for compliance with this chapter at the scheduled meeting.

(D) The Planning and Zoning Commission shall have a maximum of 30 days following the presentation of the preliminary plat at a regular Planning and Zoning Commission meeting, unless otherwise agreed to by the subdivider, in which to review the preliminary plat and to approve, approve with conditions or disapprove the preliminary plat. The preliminary plat shall be forwarded to the governing body without recommendation if the Commission fails to act within the review period.

(E) The subdivider shall submit eight paper copies of the preliminary plat to the Finance Officer more than five days (inclusive) before the next regularly scheduled meeting of the governing body.

(F) Approval by the governing body of a preliminary plat shall be effective for three years from the date of approval. An extension(s) beyond three years, for a period not to exceed one year, may be granted upon agreement between the governing body and the subdivider. Approval of extensions may reflect changes to this chapter.

(G) Following approval of the preliminary plat by the governing body, the subdivider may proceed with the construction of streets and installation of other indicated improvements. The subdivider may request that the final plat be immediately considered for review with the preliminary plat by the Planning and Zoning Commission and the governing body.

(H) Alternately, the subdivider may, upon inspection and approval of streets and other indicated improvements by the Planning Coordinator and the Town Engineer, submit a final plat to the Finance Officer more than two weeks (inclusive) before the next regularly scheduled meeting of the Planning and Zoning Commission. This submission shall consist of eight copies of the final plat prepared on 15-inch by 26-inch paper.

(I) Upon official receipt of the final plat, the Finance Officer will inform the subdivider of the date, time and location of the Planning and Zoning Commission meeting at which the plat will be presented.

(J) Upon presentation of the final plat at a regular meeting, the Planning and Zoning Commission shall have a maximum of 30 days in which to review, prepare and submit its recommendation, along with the plat, to the governing body; provided however, that the subdivider may agree to an extension not to exceed 30 days. The final plat shall be forwarded to the governing body without recommendation if the Commission fails to act within the review period.

(K) The subdivider shall submit the Mylar original and seven paper copies of the final plat to the Finance Officer more than five days (inclusive) before the next regularly scheduled meeting of the governing body. The final plat, when submitted, shall include corrections requested by the Planning and Zoning Commission and the signatures of the owner(s), the surveyor, the appropriate highway authority(s) and the County Treasurer.

(L) The governing body shall have a maximum of 15 days to approve or disapprove the final plat after receipt of the Planning and Zoning Commission recommendation.

(M) The Planning Coordinator shall submit the Mylar original of the approved final plat to the office of the Register of Deeds to be recorded within 15 days after approval by the governing body or all formal action shall become void.

(N) The Finance Officer shall not issue building or grading permits within the newly-platted subdivision, except for subdivision improvements approved by the governing body after review of the preliminary plat, until the governing body has approved the final plat of the subdivision and the County Register of Deeds has recorded the approved final plat.

(Ord. 10.9, passed - -2005)

#### **§ 154.22 INFORMATION REQUIRED FOR PRELIMINARY PLATS.**

(A) The subdivider shall submit the following information to the Finance Officer with the plat application:

(1) A preliminary plat indicating the layout of all property lines, lots, streets, easements, watercourses, parks and open spaces within the proposed subdivision. This plat should show the subdivision's relation to any surrounding development, including property lines, streets and recorded utility easements or visible utilities;

(2) If any portion of the platted area falls within any area of special flood hazard as identified by FEMA, a note shall be placed on the plat which states "Flood Insurance Rate Map Panel \_\_\_\_ with an effective date of \_\_\_\_\_ indicates the presence of a flood hazard area within the subdivision area represented on this plat"; and

(3) If the proposed subdivision does not adjoin an existing county, state or federal highway or town street, the developer must provide evidence to the Planning and Zoning Commission and governing body that a street that meets current town street specifications exists within a public right-of-way that connects the proposed subdivision with such a highway. If a Road District Association governs the connecting street, then the developer shall petition the Association to add all land within the proposed subdivision to the district or enter into a street maintenance agreement with that Road District Association.

(B) The following supplemental materials may be required at the request of the Planning and Zoning Commission or the governing body.

(1) *Narrative on the intended development.* The narrative will describe the nature of the intended development, its integration into surrounding development, and its impact on the community. Any contemplated future development shall be included.

(2) *Street design plans.*

(a) Public streets may be required to be designed under the direction of a professional engineer whose seal shall be affixed to all drawings as stipulated in SDCL § 36-18A-45.

(b) The Town Engineer shall recommend the content of street design plans, which may include, but are not limited to, the following:

1. Plan and profile drawings are to be prepared for all proposed public streets within the subdivision;
2. The plan view shall indicate stationing, centerline, the location of drainage structures, guardrails, signage, horizontal curve data, super-elevation, street right-of-way, horizontal control points, property corners and other significant features;
3. The profile view shall indicate the existing centerline grade, the finish centerline grade, the exact location and elevation of all vertical curves, the location of drainage structures and the estimated amount of cut and fill;
4. Cross-sections are to be drawn at every full station and every major break in grade. They are to show existing and finish ground lines. Cross-sections are to be drawn at all points where a drainage structure crosses the street. The drainage structure is to be shown; and
5. As-built construction drawings prepared by a professional engineer.

(3) *Bridge plans.* Bridges are to be designed by a professional engineer.

(4) *Plans for proposed water and sewer systems.* Plans for any proposed water and sewer systems indicating points of connection with existing municipal systems, valve locations, meter types and locations, pipe sizes and locations, proposed tap fees and other pertinent information that may be requested by the Town Engineer or governing body.

(5) *Engineer's report on private water systems, sewer systems and significant hydrologic problems.* Small and individual on-site wastewater disposal systems shall conform to regulations established by the state in ARSD 74:53:02 and by County Ord. 2.

(6) *Soil erosion and sediment control plans.* Soil erosion and sediment control plans are to be prepared under the direction of a professional engineer whose seal shall be affixed to the documents as stipulated in SDCL § 36-18A. The Town Engineer shall recommend the content of the plans, which may include (but are not limited to) the following:

(a) A scaled, topographic survey map of the proposed subdivision site showing proposed lot lines and five-foot contour intervals;

(b) A soil erosion control plan showing locations and areas of anticipated soil disturbance and the proposed erosion control structures and practices that will be used to control the anticipated erosion;

(c) A sediment control plan detailing the structures and practices that will be applied to control sediment generated by

on-site erosion;

- (d) Proof of acceptance by DENR of these plans; and
- (e) A seeding and planting plan for any screening strips or other landscaped areas required by the governing body.

(7) *Storm drainage plan.* The storm drainage plan shall be made under the direction of a professional engineer. Storm drainage structures are to be designed to withstand the effects of a 25-year, 24-hour rainfall. The Town Engineer shall recommend the content of the plan, which may include (but is not limited to) the following:

- (a) The location of all proposed drainage ways, streams and ponds within the subdivision;
- (b) The location and size of proposed and existing drainage structures, including culverts, bridges, pipes and drop inlets;
- (c) The area of land contributing runoff to each drainage structure;
- (d) The location of easements, rights-of-way and maintenance access for all drainages;
- (e) The direction of water flow throughout the subdivision; and
- (f) With prior approval of the Town Engineer, the drainage plan may be combined with the street design plan.

(8) *Electronic plat map.* The plat preparer may be required to submit an electronic copy of the plat map in AutoCadd (.dwg) file format.

(a) The electronic copy shall include:

1. A complete layout of the subdivision, including lot and block numbers, street names, public right-of-way width dimensions, all lot lines with length and bearing data, and water and sewer main line locations;
2. The subdivision layout must be tied to a minimum of two existing town control points and the northing and easting data from the points provided;
3. Notes on special items such as easements and lift stations; and
4. The size and type of material of all water and sewer main lines.

(b) The electronic copy shall be submitted with the final plat and be subject to review and approval of the Town Engineer.

(c) The Town Engineer shall determine the media, content and format of all electronic data to be submitted.

(9) *Other supplemental data.* If the property involves areas where the soil characteristics, terrain, drainage, geology, ground cover or location imposes unusual requirements, the Planning and Zoning Commission may request additional supplementary data to demonstrate the feasibility of subdividing the land.

(Ord. 10.9, passed - -2005)

## **§ 154.23 CONTENT OF PRELIMINARY PLATS.**

The following information shall be shown on all preliminary plats:

(A) *Title.* Plat titles are to be broken into two parts, a primary title and a secondary title. The primary title shall be the subdivision name and shall comply with § 154.37. The secondary title shall state the names or numbers of the newly created lots of the subdivision and the subdivision name, state the legal parcel(s) from which these lots are taken, and describe the location of the lots being created. If reference is made to an existing plat of record, the book and page number of the plat is to be cited in a note on the plat.

(B) *Vicinity map.* The vicinity map shall show the boundary of the subdivision and the location of internal streets with their relation to external streets. The internal streets shall be drawn with "double lines". Scope and size of the vicinity map shall be approved by the Planning and Zoning Commission.

(C) *North arrow, bar scale and legend.*

(D) *Easements.* The location of boundary lines for all new, known and recorded easements shall be shown or indicated. The purpose of the easement shall be indicated.

(E) *Public land.* The location and dimension of land to be dedicated or reserved for public rights-of-way, parks, open space or other public use shall be shown. No private streets shall be platted within a subdivision, and no reserve strips shall be platted except where their control is vested in the governing body.

(F) *Tracts.* The name of each tract shall be clearly indicated and the exact length and bearing of all property lines shall be shown. Distance units are to be in feet to two decimal places and bearings are to be shown to the nearest second. The area of the tract shall be shown in acres to two decimal places. Tract names shall be subject to the approval of the Planning and Zoning Commission.

(G) *Lots and blocks.* Lot and block numbers shall clearly identify each parcel of land. The exact length and bearing of all

lot and block lines shall be shown. Distance units are to be in feet to two decimal places and bearings are to be shown to the nearest second. Numbering shall be subject to the approval of the Planning and Zoning Commission.

(H) *Streets*. The plat shall contain the following information:

- (1) The location of all existing and proposed street rights-of-way within and adjacent to the subdivision;
- (2) The widths of all existing and proposed rights-of-way; and
- (3) The names of all public streets shown on the plat.

(Ord. 10.9, passed - -2005)

#### **§ 154.24 CONTENT OF FINAL PLATS.**

The following information is required on all final plats.

(A) The original final plat shall be drawn in waterproof black ink upon Mylar. The size of the Mylar shall be 15 by 26 inches.

(B) The title shall be the same as that approved for the preliminary plat.

(C) The final plat shall show the following:

(1) The exact location of the exterior boundary lines of the subdivision and all parcels within the subdivision. The exterior boundary is to be the same as that approved on the preliminary plat;

(2) All property corners are to be identified with a symbol and legend designating the type of monument. This legend shall also indicate the registration number of the surveyor who set the monument, if known or available;

(3) The length and radius of all curves along boundary lines are to be indicated. The point of curvature (PC) and the point of tangency (PT) are to be shown. These points are property corners and are to be monumented as such;

(4) All section lines, section corners and quarter corners are to be shown if surveyed, and a description of the corner monuments included;

(5) The titles of adjoining subdivisions. These are to be ghost lines;

(6) The names of former subdivisions, parcels and tracts that are being subdivided. These are to be shown as ghost lines;

(7) The exact location of the boundary lines and widths of all public rights-of-way, reservations, easements and areas dedicated to public use;

(8) All public rights-of-way shall be designated as either "Dedicated Public Right-of-Way" or "Public Right-of-Way Easement";

(9) All dimensions are to be shown in feet and decimals of a foot to at least two decimal places;

(10) All bearings are to be shown to the nearest second. A reference bearing shall be indicated on the plat;

(11) The acreage of every new parcel is to be shown to at least two decimal places;

(12) True north is to be indicated with a north arrow;

(13) A bar scale shall be included;

(14) Each tract shall be named, and each lot and block shall be numbered;

(15) The primary title shall be the name of the subdivision. The secondary title shall be a complete legal description of the subdivision;

(16) A vicinity map;

(17) All public streets shall be named. The governing body shall accept or reject proposed street names;

(18) Floodplain note (if FEMA-defined flood hazard area is present within the subdivision): "Flood Insurance Rate Map Panel \_\_\_\_ with an effective date of \_\_\_\_\_ indicates the presence of a flood hazard area within the subdivision area represented on this plat."; and

(19) Water protection note: pursuant to SDCL §§ 11-3-8.1 and 11-3-8.2, the developer of the property described within this plat shall be responsible for protecting any waters of the state, including groundwater, located adjacent to or within the platted area from pollution from sewage from the subdivision and shall in prosecution of the protections conform to and follow all regulations of the State Department of Environment and Natural Resources relating to the same.

(D) The following certifications and signatures shall appear on all final plats.

(1) Every plat shall be certified by the landowner, or his or her duly authorized agent, as having been made at his or her request and under his or her direction for the purposes indicated therein, that he or she is the owner of all the land included

therein, and that the development of this land shall conform to all existing applicable zoning, subdivision and erosion and sediment and control regulations. This certification shall be acknowledged before some officer authorized to take acknowledgment of deeds, and this acknowledgment shall be endorsed on the plat.

(2) Every plat shall be certified by the registered land surveyor who actually performed the survey or had the survey performed under his or her direct supervision. His or her official seal shall be affixed thereto as specified in SDCL § 36-18A-45 as being in all respects correct.

(3) Every plat shall bear a certificate of the County Treasurer that all taxes that are liens upon any land included within the plat, as shown by the records of his or her office, have been fully paid.

(4) Every plat shall bear a certificate of the appropriate highway or street authority(s), that the location of the proposed access road(s) to the existing public street(s) is hereby approved and any change in the location of the access road(s) shall require additional approval.

(5) Every plat shall bear a certificate of the County Director of Equalization that he or she has received a copy of the plat.

(6) (a) Every plat shall bear a copy of the resolution of the Board of Trustees, and this resolution shall state that:

“WHEREAS there has been presented to the Board of Trustees of the town, South Dakota, the within plat of the above described lands, and it appearing to this Board that:

a. The system of streets conforms to the system of streets of existing plats and section lines of the town;

b. Adequate provision is made for access to adjacent unplatted lands by public dedication or section line when physically accessible;

c. All provisions of the town subdivision regulations have been complied with;

d. All taxes and special assessments upon the property have been fully paid; and

e. The plat and survey have been lawfully executed,

NOW THEREFORE, BE IT RESOLVED that the plat is hereby approved in all respects.”

(b) This resolution shall be signed and dated by the Chairperson of the Board and certified by the Finance Officer.

(7) Every plat shall bear a certificate of the County Register of Deeds indicating the date and time of recording. This certification shall also indicate the location of filing by plat book and page number.

(Ord. 10.9, passed - -2005)

## **SUBDIVISION DESIGN STANDARDS**

### **§ 154.35 CONFORMITY TO THIS CHAPTER.**

(A) All proposed subdivisions shall conform to this chapter.

(B) The following requirements are established to provide for orderly development of various types along with accessory uses and structures in a pleasant and stable manner.

(C) Topsoil and natural vegetation should be disturbed as little as possible. All disturbances shall be stabilized by seeding or planting within 30 days of completion of construction of subdivision improvements, unless otherwise first approved by the governing body.

(D) Existing features that would enhance the development of a subdivision as a whole, such as trees and historic sites, should be preserved in the design of the subdivision.

(E) Installation of sidewalks and street lights may be required by the governing body.

(F) The governing body may participate in the cost of improvements within, or serving, a subdivision if it is determined that the improvements would benefit areas of land not in the subdivision. The governing body may recover these costs through special property tax, special connection fee or impact fee assessments.

(G) Building and lot requirements:

(1) Chapter 155 (zoning regulations) shall regulate lot size and setback distances within the municipal limits of the town; and

(2) County Ord. 2, Subdivision and Land Use Ordinance, shall regulate lot size and setback distances within the three-mile platting jurisdiction outside the municipal limits of the town.

(H) All sites for public parks, schools and other public facilities shown on plats and located within the proposed subdivision shall be dedicated to the governing body or the independent school district board, subject to their consent.

(I) Any improvements the owner proposes to make outside the boundaries of the proposed subdivision, pursuant to the

development of the subdivision, shall be submitted to the Planning and Zoning Commission, in writing, with the preliminary plat. These improvements shall relate to streets, drainage, utilities and other improvements necessary to permit development within the subdivision.

(J) All public streets shall be constructed to town street specifications. The construction will be subject to inspection by both the Town Engineer and the Planning Coordinator during construction and upon completion.

(K) Private access easements are allowed and may be indicated on the plat. Private access roads may serve up to two parcels unless otherwise first approved by the Board. There is no requirement that private access roads be developed.

(L) Construction of all required improvements shall be the responsibility of the subdivider.

(M) Subdivisions shall have an acceptable water supply and distribution plan. All plans for water supply and distribution are the responsibility of the subdivider and will conform to the requirements of the governing body, and comply with all federal, state and town codes and regulations. Subdivisions within one-half mile of town municipal limits may be required to connect to the town water system.

(N) Subdivisions shall have an acceptable plan for disposal of wastewater. All plans for wastewater disposal are the responsibility of the subdivider and shall conform to the requirements of the governing body, and comply with all federal, state and town codes and regulations. These plans may include individual septic systems, however, the governing body may request that the subdivider provide further evidence prepared by a competent professional that the subject land is capable of accommodating the proposed individual sewer systems(s) without causing pollution. Subdivisions within one-half mile of the town municipal limits may be required to connect to the town sewer system.

(Ord. 10.9, passed - -2005)

### **§ 154.36 STREET REQUIREMENTS.**

(A) The Town Engineer shall recommend to the governing body the classification of public streets as arterial, collector or local streets.

(B) All public streets and alleys within the platting jurisdiction of the town shall comply with town street specifications adopted by the governing body.

(Ord. 10.9, passed - -2005)

### **§ 154.37 NAMES.**

(A) All subdivisions and streets shall be named.

(B) Subdivision names shall not duplicate or otherwise be confused with the names of existing subdivisions. Subdivision names are subject to approval by the governing body.

(C) No street name shall be used which will duplicate by spelling or sound or may otherwise be confused with the names of existing streets.

(Ord. 10.9, passed - -2005)

### **§ 154.38 UTILITY AND DRAINAGE EASEMENTS.**

(A) Easements are to be provided across lots or centered on rear or side lot lines for utilities and drainage where necessary.

(B) Utility easements shall not be less than 20 feet in width unless otherwise approved by the governing body.

(C) Where a subdivision is traversed by a watercourse, drainage way or stream, a drainage easement or right-of-way may be required that conforms substantially to the channel banks of the existing or planned drainage way.

(Ord. 10.9, passed - -2005)

### **§ 154.39 DRAINAGE PLANS.**

(A) The governing body may require a drainage plan for any proposed subdivision. Adequate provision shall be made within each subdivision to provide for needed drainage facilities, and these provisions shall account for the ultimate development within the tributary area.

(B) A storm sewer plan shall be prepared prior to other utility plans. These plans shall give preferential engineering considerations to gravity flow improvements.

(C) Off-premise drainage easements and improvements shall be designed to provide for subdivision runoff into a natural channel.

(D) Low areas subject to periodic inundation or that fall within an area of special flood hazard as identified by FEMA, shall not be developed until evidence is provided to the governing body that:

(1) The nature of the land use will not impede surface water runoff and that the land will not be subject to appreciable damage by inundation;

(2) The area may be filled or improved in a manner so as to prevent the periodic inundation, provided that the fill does not retard the flow of surface waters or result in the increase of water level endangering life and property of others;

(3) Base flood elevations shall be established where not delineated by FEMA flood insurance rate maps; and

(4) Lowest floor elevations will be established to prevent damage to any structures.

(E) The governing body may require additional engineering information if they deem it necessary to make decisions regarding areas of questionable drainage.

(Ord. 10.9, passed - -2005)

#### **§ 154.99 PENALTY.**

(A) Any person who violates any provision of this chapter or any amendments thereto, or who fails to perform any act required thereunder or who does any prohibited act, shall be guilty of a Class 2 misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed \$500, or by imprisonment for a period not to exceed 30 days, or by both fine and imprisonment for each offense, pursuant to SDCL§ 22-6-2(2). Each and every day during which any violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such thereunder.

(B) Additionally, any person who violates any provision of this chapter or any amendments thereto, or who fails to perform any act required thereunder or who does any prohibited act, shall be subject to an action for civil injunctive relief, pursuant to SDCL § 21-8.

(Ord. 10.9, passed - -2005)

#### **Statutory reference:**

*Maximum penalty, see SDCL § 9-19-3*

## **CHAPTER 155: ZONING CODE**

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### Section

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## **GENERAL PROVISIONS**

### **§ 155.01 TITLE AND PURPOSE.**

(A) This chapter provides for the establishment of zoning districts within which the proper use of land and natural resources shall be encouraged and regulated; to establish minimum standards for open space, building, and population density; to regulate the occupancy and use of dwellings, buildings, and structures, including tent and trailer coaches, that may hereafter be erected, altered, or moved; to provide for the administration hereof; to provide for a method of amending; to provide for conflicts with other acts, ordinances, or regulations; to provide for the collection of fees for the furtherance of the purpose of this chapter; to provide for petitions and public hearings; to provide for appeals and for the organization and procedure of the Board of Adjustment; and to provide for penalties for the violation of this chapter.

(B) *Title.* These regulations shall be known and may be cited as the Town of Hermosa Zoning Ordinance.

(C) *Purpose.* It is the purpose of this chapter to promote the safety, health, morals, convenience, and general welfare; to encourage the use of lands and natural resources in the town in accordance with their character, adaptability, and suitability for particular purposes; to conserve social and economic stability, property values, and the general character and trend of community development; to prevent excessive concentration of population; to lessen congestion on the public streets and highways, sewage and drainage, water supply and distribution, educational, and other public resources, by establishing herein standards for community development in accordance with these objectives and by providing for the enforcement of such standards.

(Ord. 10.6, passed 3-17-2009)

## § 155.02 DEFINITIONS.

(A) *Interpretation.* Words used in the present tense shall include the future tense; words in the singular number included the plural; and words in the plural number include the singular; the word **PERSON** includes a firm, partnership, or corporation, as well as an individual; the word **LOT** includes the word **PLOT** or **PARCEL**; and the word **BUILDING** includes the word **STRUCTURE**; the term **SHALL** is always mandatory and not directory; and the word **MAY** is permissive. The words **USED** or **OCCUPIED**, as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used or occupied."

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

**ACCESSORY BUILDING.** A subordinate building, the use of which is incidental to that of a main building located on the same lot therewith.

**ACCESSORY DWELLING UNIT (ADU).** A smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home. ADUs go by many different names, including accessory apartments, secondary suites, granny flats, guest houses, mother-in-law apartments, in-law suites, casitas, etc. To be considered a legal suite, it must have its own entrance, kitchen, sleeping, and bathroom facilities. ADUs can be attached or detached. A suite attached to or contained within a principal dwelling unit. Allowed in R1 zones only. Required to be stationary and on a permanent foundation. No ADU/tiny home shall be placed within the town limits that was manufactured more than 20 years before the date of application. Main and ADUs/tiny homes shall not cover more than 40% of the lot area. All such ADUs/tiny homes shall be connected to public water and sewer systems. Shipping containers/railroad cars and prefabricated items and structures originally built for purposes other than the storage of goods and materials are not permitted to be used. Lot will never be replatted and is required to stay with main residence. Applicable to all adopted UBC Codes, ordinances and zoning regulations as stated in §§ 155.30, 155.31, 155.32, 155.37 and 155.39.

**ADULT BUSINESS.** Any business which requires an age limitation for entrance.

**ADVERTISING.** Includes any writing, printing, painting, display, emblem, drawing, sign, or other device designed, used, or intended for advertising in commercial or industrial zoned areas. Whether placed on the ground, rocks, trees, tree-stumps, or other natural structures, or on a building, structure, milestone, signboard, billboard, wallboard, roofboard, frame, support, fence, or other manmade structure. Any such **ADVERTISING** is a structure within the meaning of the word structure, as used in this chapter.

**ALLEY.** A minor right-of-way dedicated to public use, which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

**ALTERATIONS.** As applied to a building or structure, means a change or rearrangement in the structural parts, or, whether by extending on a size or by increasing in height, or the moving from one location or position to another.

**AMUSEMENT AND RECREATION ESTABLISHMENTS.** Businesses whose primary function is entertainment, such as theaters, billiard halls, and the like.

**APARTMENT HOUSE.** See **DWELLING, MULTIPLE-FAMILY**.

**AREA, BUILDING.** The total areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces, and steps.

**AUTOMOBILE WRECKING.** The dismantling, storage, sale, crushing, or dumping of used motor vehicles, trailers, or parts thereof.

**AVERAGE GROUND ELEVATION.** The elevation of the mean finished ground surface at the front wall of a structure.

**BASEMENT.** A story partly underground but having at least one-half of its height above the average level of the adjoining ground. A basement shall be counted as a one-half story.

**BILLBOARD.** See **SIGN**.

**BOARD.** See **COMMISSION**.

**BOARDING HOUSE** and **HUNTING LODGE.** A dwelling other than a hotel where, for compensation and by pre-arrangement for definite periods, meals are provided for three or more, but not exceeding 12, persons on a weekly or monthly basis.

**BUILDABLE AREA OF A LOT.** That portion of a lot bounded by the required rear and side yards and front yard or the building setback line.

**BUILDING.** Any enclosed structure intended for shelter, housing, or enclosure of persons, animals, or chattel.

**BUILDING, ACCESSORY.** See **ACCESSORY BUILDING**.

**BUILDING, HEIGHT OF.** The vertical distance measured from the average ground elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the

mean height between eaves and ridge for gable, hip, and gambrel roofs.

**BUILDING INSPECTOR.** The inspector or his authorized representative appointed by the governing body to issue building and occupancy permits.

**BUILDING, MAIN or PRINCIPAL.** A building in which is conducted the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be a main building on the lot on which it is situated.

**BUILDING SETBACK LINE.** A line delineating the minimum allowable distance between the street right-of-way and the front of a structure, within which no building or other structure shall be placed except as provided in §§ 155.56 and 155.58. The building setback line is parallel to or concentric with the street right-of-way.

**BUILDING SITE.** A single parcel of land under one ownership, occupied or intended to be occupied by a building or structure.

**BUSINESS SERVICES.** Any activities conducted for gain which render service primarily to other commercial and industrial enterprises, or which service and repair appliances and machines used in a home or business.

**CELLAR.** A story partly underground and having more than one-half of its clear height below the average level of the adjoining ground. A **CELLAR** shall not be considered in determining the permissible number of stories.

**CLINIC.** See **MEDICAL FACILITIES**.

**CLUB, PRIVATE.** An organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes which are not conducted primarily for gain, providing that any vending stands, merchandising or commercial activities are conducted only as required generally for the membership of such club.

**COUNTRY CLUB.** A chartered, non-profit membership club, with or without dining facilities and cocktail lounge, catering primarily to its membership, providing one or more of the following recreational and social amenities: golfing, riding, outdoor recreation, clubhouse, locker room, or pro shop.

**COVERAGE.** The lot area covered by all buildings located therein, including the area covered by all overhanging roofs.

**DAY NURSERIES, PRIVATE.** Any place, home, or institution which receives young children, conducted for cultivation of the normal aptitude for exercise, play, observation, imitation, and construction.

**DESIGN CAPACITY.** The maximum number of persons which can be accommodated at any one time with a reasonable degree of comfort, safety, and convenience.

**DISTRICT.** Any section or sections of the town for which the regulations governing the use of land and the use, density, bulk, height and coverage of buildings and other structures are uniform.

**DRIVE-IN COMMERCIAL USES.** Any retail commercial use providing considerable off-street parking and catering primarily to vehicular trade, such as drive-in restaurants, drive-in theaters, and similar uses.

**DWELLING.** A building or portion thereof, exclusive of manufactured homes as herein defined, used for residential purposes.

**DWELLING, ATTACHED.** A dwelling with two or more party walls, or one party wall in the case of a dwelling at the end of a group of attached dwellings.

**DWELLING, MULTIPLE-FAMILY.** A detached building designed for occupancy by three or more families living independently of each other, exclusive of auto or trailer courts, or camps, hotels, or resort type hotels.

**DWELLING, SEMI-DETACHED.** Two dwellings with a single party wall common to both.

**DWELLING, SINGLE-FAMILY.** A detached building designed to be occupied exclusively by one family.

**DWELLING, TWO-FAMILY.** A detached building designed to be occupied by two families living independently of each other, exclusive of auto or trailer courts or camps, hotels, or resort type hotels.

**DWELLING UNIT.** One or more rooms and a single kitchen designed as a unit for occupancy by only one family for cooking, living, and sleeping purposes.

**ELECTRICAL UTILITY SUBSTATION.** An electrical utility facility containing large capacity transformers fed by incoming high voltage transmission lines. Within the facility, voltages are reduced and fed to several distribution circuits that distribute electrical energy to areas with a predominant single use (for example, industrial, residential, and commercial areas).

**FAMILY.** One or more persons related by blood, marriage, or adoption, or a group not to exceed five persons (excluding servants) none of whom are related by blood or marriage, occupying the premises and living as a single non-profit housekeeping unit, as distinguished from a group occupying a boarding or lodging house, hotel, club, or similar dwelling for group use.

**FEEDLOT, COMMERCIAL.** A lot used for the concentrated feeding of livestock, fowl, or fur animals where such feeding is not done as an accessory use to the production of crops on the premises of which the feedlot is a part.

**FENCE.** A structure that encloses an area, typically outdoors, and is usually constructed from posts that are connected by boards, wire, rails or netting. A **FENCE** differs from a wall in not having a solid foundation along its whole length.

Temporary fencing, to provide safety, security, and to direct movement; wherever temporary access control is required, especially on building and construction sites.

**FILLING STATION.** See **GASOLINE SERVICE STATION.**

**FLOOR AREA.** The sum of the gross floor area for each of the several stories under roof, measured from the exterior limits or faces of a building or structure.

**FOOD PROCESSING.** The preparation of food products for retail sale on the premises.

**FRATERNITY** or **SORORITY HOUSE.** A building housing the members of a fraternity or sorority group living together under a cooperative arrangement, as distinct from a boarding or lodging house or private club.

**FRONTAGE.** The commonly accepted front yard of the adjoining structures on that street.

**GARAGE, PRIVATE.** An accessory building or a part of a main building used for storage purposes only for not more than five automobiles, or for a number of automobiles which does not exceed two times the number of families occupying the dwelling unit to which such garage is accessory, whichever number is the greater. Such space shall not be used for storage of more than one commercial vehicle, which shall not exceed one and one-half tons rated capacity, per family living on the premises, and not to exceed two spaces shall be rented to persons not residing on the premises for storage of non-commercial passenger vehicles only.

**GARAGE, PUBLIC.** Any garage other than a private garage, available to the public, which is used for the storage, repair, rental, greasing, washing, sales, servicing, adjusting, or equipping of automobiles or other motor vehicles.

**GASOLINE SERVICE** or **FILLING STATION.** Any area of land, including structures thereon, that is used for the retail sale of gasoline or oil fuels, but not butane or propane fuels, or other automobile accessories, and incidental services including facilities for lubricating, hand washing and cleaning, or otherwise servicing automobiles, but not including painting, major repair, or automatic washing.

**GOVERNING BODY.** The duly elected officials of a corporate political entity to whom authority is given to make, adopt, or amend zoning regulations.

**GRADE, ESTABLISHED.** The elevation as officially established.

**HEALTH DEPARTMENT.** The South Dakota Health Department.

**HISTORICAL MONUMENTS** and/or **STRUCTURES.** Any antique structure or building existing contemporaneously with and commonly associated with an outstanding event or period of history, and any structure of building in which the relics and/or mementos of such event or period are housed and preserved.

**HOME OCCUPATION.** A gainful occupation conducted by members of the family only within the dwelling or on the premises, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, provided that no display except a regulated sign will indicate from the exterior that the building or land is being utilized in part for any purpose other than that of a dwelling.

**HOSPITAL.** See **MEDICAL FACILITIES.**

**HOTEL.** A building occupied as the more or less temporary abiding place of individuals who are lodged with or without meals and in which there are more than 12 sleeping rooms usually occupied singly with no provision made for cooking in any individual room or apartment.

**HOTEL APARTMENT.** An apartment building under resident supervision which maintains an inner lobby through which all tenants must pass to gain access to the apartment and which may furnish for the exclusive use of its tenants by previous arrangements and not to anyone who may apply, services ordinarily furnished by such hotels.

**HOUSE TRAILER.** See **MANUFACTURED HOME.**

**HOUSE TRAILER PARK.** See **MANUFACTURED HOME PARK.**

**JUNK YARD** or **SALVAGE YARD.** A lot, land, or structure, or part thereof, used primarily for the collecting, storage, and sale of wastepaper, rages, scrap metal, or discarded material, or for the collecting, dismantling, storing, and salvaging of machinery, or vehicles not in running condition, or for sale of parts thereof.

**KENNEL.** Any lot or premises on which four or more dogs, more than six months of age, are kept.

**KINDERGARTENS.** See **DAY NURSERIES, PRIVATE.**

**LOADING SPACE.** A space within the main building or on the same lot therewith, providing for the standing, loading, or unloading of a truck.

**LOT.** A parcel of land which is or may be occupied by a single main building and its accessory buildings or used customarily incident thereto, together with such yards or open spaces within the lot lines as may be required by this chapter.

**LOT AREA.** The total horizontal area included within lot lines.

**LOT, CORNER.** A lot of which at least two adjoining sides abut for their full lengths on a street, provided that the interior angle at the intersection of two such sides is less than 135°.

**LOT, DEPTH.** The average distance from the street line of the lot to its rear line, measured in the general direction of the side lines of the lot.

**LOT, DOUBLE FRONTAGE.** A lot which runs through a block from street to street and which has two non-intersecting sides abutting on two or more streets.

**LOT, FRONTAGE.** That dimension of a lot or portion of a lot abutting on a street, excluding the side dimension of a corner lot.

**LOT, INTERIOR.** A lot other than a corner lot.

**LOT, LINES.** The lines bounding a lot as defined herein.

**LOT LINE, FRONT.** In the case of an interior lot, the line separating said lot from the street. In the case of a corner or double frontage lot, the line separating said lot from that street which is designated as the front street in the request for building permit.

**LOT LINE, REAR.** The lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than ten feet long and wholly within the lot.

**LOT LINE, SIDE.** A side lot line is any lot boundary line, not a front lot line or a rear lot line.

**LOT WIDTH.** The width of a lot at the building setback line measured at right angles to its depth.

**MANUFACTURED HOME.** A movable living unit designed for year-round occupancy which is capable of being towed on its own chassis; is completely finished prior to delivery; and has a manufacturer's serial number which is reported to the County Director of Equalization for tangible personal property taxation differentiating it from other types of dwelling structures. A detachable hitch assembly and/or a perimeter frame or the placement of such a unit upon a permanent foundation shall not be construed as creating a dwelling unit as elsewhere defined in this chapter.

**MANUFACTURED HOME PARK.** Any areas, tract, or site or plot of land whereupon a minimum of two or more manufactured homes as herein defined are placed, located, or maintained, or intended to be placed located or maintained, and shall include all accessory buildings used or intended to be used as part of the equipment thereof.

**MANUFACTURED HOME SPACE.** A plot of ground within a manufactured home area which is designed for and designated as the location for two automobile and one manufactured home, and not used for any other purposes whatsoever other than the customary accessory use thereof.

#### **MEDICAL FACILITIES.**

**CONVALESCENT, RESPITE OR REST, OR NURSING HOME.** A health facility where persons are housed and/or furnished with meals and continuing nursing care for compensation.

**DENTAL CLINIC or MEDICAL CLINIC.** A facility for the examination and treatment of ill and afflicted human outpatients, provided, however, that patients are not kept overnight except under emergency conditions.

**HOSPITAL.** An institution providing health services primarily for human inpatient medical or surgical care for the sick or injured, and including related facilities such as laboratories, outpatient departments, training facilities, central services facilities, and staff offices which are an integral part of the facilities.

**PUBLIC HEALTH CENTER.** A facility primarily utilized by a health unit for the provision of public health services including related facilities such as laboratories, clinics, and administrative offices operated in connection therewith.

**SANITARIUM.** An institution providing health facilities for inpatient medical treatment or treatment and recuperation using natural therapeutic agents.

**MINIMUM FLOOR ELEVATION.** The lowest elevation permissible for the construction, erection, or other placement of any floor, including a basement floor.

**MOTEL.** A building, or group of buildings, used for the temporary residence of motorists or travelers.

**NON-CONFORMING USE.** A building, structure, or use of land existing at the time of enactment of this chapter and which does not conform to the regulations of the district in which it is situated.

**NOXIOUS MATTER.** Material (in gaseous, liquid, solid, particulate, or any other form) which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects upon the social, economic, or psychological well-being of individuals.

**OBSTRUCTION.** Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge conduit, culvert, building, wire, fence, rock gravel, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life or property.

**PARKING LOT.** An off-street facility including parking spaces along with adequate provision for drives and aisles for maneuvering and giving access, and for entrance and exit, all laid out in a way to be usable for the parking of more than six

automobiles.

**PARKING SPACE.** An off-street space available for the parking of one motor vehicle and having an area of not less than 200 square feet exclusive of passage-ways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

**PENTHOUSE.** An enclosed structure other than a roof structure, located on a roof, extending not more than 12 feet above the roof.

**PLANNING AND ZONING COMMISSION.** The Hermosa Board of Trustees in its capacity as the Planning and Zoning Commission for the Town of Hermosa as allowed under SDCL § 11- 4-11.1

**PLAT.** A legal document showing the location and boundaries of individual properties.

**PRINCIPAL USE.** The specific primary purpose for which land or a building is used.

**PUBLIC USES.** Public parks, schools, and administrative cultural and service buildings, not including public land or buildings devoted solely to the storage and maintenance of equipment and material.

**PUBLIC UTILITY.** Any person, firm, corporation, municipal department, or board duly authorized to furnish, and furnishing under state or municipal regulations, to the public, electricity, gas, steam, communication, telegraph, transportation, or water.

**PUBLIC UTILITY SUBSTATIONS, SERVICE YARDS, AND PUMPING STATIONS.** Shall include service yards used for the storage of utility supplies and for the servicing of utility vehicles and equipment.

**PUD.** A planned unit development specifically for tiny homes (single detached homes) would be zoned R2. And would require the assistance of professional and governmental planning and involves the approval of governmental bodies. Where circumstances are favorable, PUDs provide more latitude in land use than normal development to allow for planning, clustering facilities, consolidating green spaces, and internal recreation amenities. While densities higher than normal are often allowed, they must be justified by the preservation and consolidation of green space, increased screening, and landscaping, increased recreational amenities, and other significant improvements and design features beneficial to the residents, neighbors, and the general public. They are required to meet all ordinance requirements in that zoning, and applicable to all adopted UBC Codes, ordinances and zoning regulations as stated in §§ 155.30, 155.31, 155.32, 155.37 and 155.39.

**QUARRY.** A lot of land or part thereof used for the purpose of extracting stone, sand, gravel, or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.

**RECREATIONAL FACILITIES.** Country clubs, riding stables, golf courses, and other private non-commercial recreation areas and facilities, or recreation centers including private swimming pools.

**REGULATORY FLOOD.** A flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur in a particular stream. The **REGULATORY FLOOD** generally has a frequency of approximately 50 years determined from an analysis of floods on a particular stream and other streams in the same general region.

**REGULATORY FLOOD PROTECTION ELEVATIONS.** The elevations to which uses regulated by this chapter are required to be elevated.

**REQUIRED SETBACK.** A distance necessary to obtain the minimum front, side, and rear yards required in this chapter.

**ROOMING HOUSE.** A building where lodging only is provided for compensation to three or more, but not exceeding 12 persons. A building which has accommodations for more than 12 persons shall be defined as a hotel under the terms of this chapter.

**SANITARIUM.** See **MEDICAL FACILITIES.**

**SANITARY SEWER.** A municipal or community sewage disposal system of a type approved by the State Board of Health.

**SCHOOL, PRIVATE.** An institution of learning that is not tax supported, including colleges and universities.

**SCHOOL, PUBLIC.** A tax supported institution of learning, including colleges and universities.

**SELF-SERVICE LAUNDRY.** A laundry providing home type washing, drying, and ironing machines for hire to be used primarily by the customers on the premises.

**SERVICE YARDS.** See **PUBLIC UTILITY SUBSTATION.**

**SIGN, BILLBOARD, or OTHER ADVERTISING DEVICE.** Any structure or part thereof, or device attached thereto or represented thereon, which shall display or include any letter, words, model, banner, flag, pennant, insignia, or representation used as, or which is in the nature of an announcement, direction, or advertisement. The word **SIGN** includes the word **BILLBOARD** or any other type of **ADVERTISING DEVICE**, but does not include the flag, pennant, or insignia of any nation, state, city, or other political unit. Types of **SIGNS** are defined in the following categories.

**BILLBOARD.** A type of advertising sign having more than 100 square feet of display surface which is either erected on the ground or attached to or supported by a building or structure.

**BUSINESS SIGN.** A sign which directs attention to a business commodity, service, or entertainment conducted, sold, or offered elsewhere than on the premises and only incidentally on the premises if at all.

**ERECT.** When used in connection with signs shall mean to build, construct, attach, hang, place, suspend, or affix and shall also include the painting of wall signs.

**GROUND SIGN.** A sign supported by a pole, uprights, or braces on the ground.

**MARQUEE SIGN.** A projecting sign attached to or hung from a marquee and said marquee shall be known to mean a canopy structure that extends beyond the building, building line, or property line.

**POLE SIGN** or **BANJO SIGN.** A type of ground sign at least ten feet above the ground supported on a single post or pole most commonly associated with gasoline filling stations.

**PROJECTING SIGN.** A sign which is attached to the face or outside wall of a building which projects out at any angle therefrom and projects more than 12 inches beyond the face of such wall.

**ROOF SIGN.** A detached sign erected, constructed, or maintained above the roof of any building.

**TEMPORARY SIGN. TEMPORARY SIGNS** shall include any sign, banner, pennant, valance, or advertising display constructed of wood, metal, cloth, canvas, light fabric, cardboard, wallboard, or other light material, with or without frames, where either by reason of construction, or purpose, the sign is intended to be displayed for a short period of time only.

**WALL** or **FLAT SIGN.** Any sign erected parallel to the face or on the outside wall of any building and supported throughout its entire length by such wall, the edges of which do not project more than 12 inches therefrom.

**SORORITY.** See **FRATERNITY.**

**STAFF DOCTOR.** A doctor employed by a hospital, clinic, or other institution; or a doctor who is "on call" to such institution during certain specified periods of time in case of emergency or other need.

**STORY.** That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

**STORY, HALF.** A story under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

**STREET.** A public or private thoroughfare which affords the principal means of access to abutting property.

**STREET GRADE.** The officially established grade of the street upon which a lot fronts or in its absence the established grade of other street upon which the lot abuts, at the midpoint of the frontage of the lot thereon. If there is no officially established grade, the existing grade of the street at such midpoint shall be taken as the street grade.

**STREET INTERSECTING.** Any street which joins another street at an angle, whether or not it crosses the other.

**STRUCTURE.** A combination of materials to form a construction that is safe and stable and includes among other things stadiums, platforms, radio and television towers, sheds, storage bins, fences, and display signs.

**THEATER, MOVING PICTURE.** A building or part of a building devoted to the showing of moving pictures and/or interactive video on a paid admission basis.

**TINY HOMES STATIONARY (HOMES ON A FOUNDATION).** Would be considered an ADU, and applicable to all adopted UBC Codes, ordinances and zoning regulations as stated in §§ 155.30, 155.31, 155.32, 155.37 and 155.39.

**TINY HOUSES ON SKIDS.** Are built on temporary structures - often beams or rails - just like mobile homes. Allowed in R2 zones only. They slid into position, where they stay until they need to be moved. When the time comes to move them, they're loaded onto a large truck or trailer and transported for you. The Town of Hermosa would consider a tiny house on skids, legally a recreational vehicle (RV), A portable or mobile living unit used for temporary human occupancy away from the place of residence of the occupants, and not constituting the principal place of residence of the occupants, and subject to all ordinances, and zoning regulations as stated in § 155.33, but not limited to said ordinances.

**TINY HOUSE ON WHEELS.** It is generally thought of as a small house, typically sized under 500 square feet. This style of tiny house is often referred to as a THOW (tiny house on wheels). The Town of Hermosa would consider a tiny house on wheels, legally a recreational vehicle (RV), A portable or mobile living unit used for temporary human occupancy away from the place of residence of the occupants, and not constituting the principal place of residence of the occupants, and subject to all ordinances, and zoning regulations as stated in § 155.33.

**TOURIST CABIN.** See **MOTEL.**

**TOURIST COURT.** See **MOTEL.**

**TOURIST HOME** and **BED AND BREAKFAST.** A dwelling in which sleeping accommodations are provided or offered for transient guests for compensation.

**TRAILER** and **TRAILER COURT**. See **MANUFACTURED HOME** and **MANUFACTURED HOME PARK**.

**TRAILER, HAULING**. A vehicle which is designed for hauling animals, produce, goods, or commodities, including boats, said vehicle to be pulled behind an automobile or truck.

**TRAILER, TRAVEL** or **CAMPING**. A portable or mobile living unit used for temporary human occupancy away from the place of residence of the occupants, and not constituting the principal place of residence of the occupants.

**TRAVEL PARK**. A plot of ground primarily for use as parking and camping facilities by persons with transportable recreational housing with appropriate accessory uses.

**UNIFORM BUILDING CODES**. The Uniform Building Code, as officially adopted by the town.

**USE**. The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term **PERMITTED USE** or its equivalent shall not be deemed to include any non-conforming use.

**UTILITIES**. Municipal and franchised utilities

**WALKWAY**. A path or area for pedestrians.

**WAY**. A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

**YARD**. An open space between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward except where otherwise specifically provided in this chapter, that building or structure may be located in a portion of a yard required for a main building. In measuring a yard for the purpose of determining the width of the side yard, the depth of a front yard or the depth of a rear yard, the shortest horizontal distance between the lot line and the main building shall be used.

**YARD, FRONT**. An open unoccupied space on the same lot with a main building extending the full width of the lot and situated between the street line and the front line of the building projected to the side line of the lot. The depth of the **FRONT YARD** shall be measured between the front line of the building and the street line.

**YARD, REAR**. A space on the same lot with the principal building, between the rear line of the building and the rear line of the lot, and extending the full width of the lot, which is unoccupied except for permitted accessory structures.

**YARD, SIDE**. An open unoccupied space on the same lot with the building, situated between the building and the side line of the lot, and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

(Ord. 10.6, passed 3-17-2009; Ord. passed 11-13-2009; Ord. passed 11-3-2020; Ord. passed 4-19-2022; Ord. passed 11-21-2023)

## ZONING DISTRICTS AND MAP

### § 155.15 ESTABLISHMENT OF ZONING DISTRICTS.

For the purpose of promoting the public health, safety, morals, convenience, and the general welfare of the community, the town is hereby divided into districts of ten different types, each being of such number, shape, kind, and area, and such common unity of purpose, and adaptability of use that are deemed most suitable to carry out the purpose of this chapter.

<b>Zoning Districts</b>	
<b>Zoning Districts</b>	
RS	Residential stick built
R1	Stick built or manufactured homes
R2	Manufactured homes
RU	Recreational Use
CO	Commercial
GI	General Industrial
AG	Agricultural
GP	Government/Public Use
FW	Floodway District
RA	Residential Agriculture

(Ord. 10.6, passed 3-17-2009; Ord. 10.6R.A2, passed 2-17-2015)

### § 155.16 ZONING MAP.

(A) The location and boundaries of the zoning districts established by this chapter are denoted and defined as shown in the map entitled "Zoning Map of the City of Hermosa, South Dakota", adopted March 17, 2009, and certified by the City Finance Officer. The map, together with everything shown thereon, is hereby incorporated into this chapter as if fully set forth and described herein.

(B) The zoning map shall be kept and maintained at the Hermosa Town Office and shall be available for inspection and examination by members of the public during office hours as any other public record.

(Ord. 10.6, passed 3-17-2009)

### **§ 155.17 SCOPE OF REGULATIONS.**

The regulations applying to each district include specific limitations on the use of land and structure, height and bulk of structures, density of population, lot area, yard dimension, and area of lot that can be covered by structures.

(Ord. 10.6, passed 3-17-2009)

### **§ 155.18 RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES.**

Where uncertainty exists with respect to the precise location of any of the aforesaid districts shown on the zoning map, the following rules shall apply.

(A) Boundaries shown as following or approximately following streets, highways, or alleys shall be construed to follow the center lines of such streets, highways, or alleys.

(B) Boundaries shown as following or approximately following platted lot lines or other property lines, shall be construed to be said boundary lines.

(C) Boundaries shown as following or approximately following railroad lines shall be construed to lie midway between the main tracks of such railroad lines.

(D) Boundaries shown as following or approximately following the center line of streams, rivers, or other continuously flowing water courses shall be construed as following the channel center line of such water courses and the said boundaries shall be deemed to be at the limit of the jurisdiction of the city unless otherwise indicated.

(E) Boundaries shown as following or closely following the limits of political jurisdictions shall be construed as following such limits.

(F) Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two districts, the regulations of the more restrictive districts shall govern the entire parcel in question, unless otherwise determined by the governing body.

(G) Whenever any street, alley, or other public easement is vacated, the district classification of the property to which the vacated portions of land accrue shall become the classification of the vacated land.

(Ord. 10.6, passed 3-17-2009)

## **DISTRICT REGULATIONS**

### **§ 155.30 RESIDENTIAL DISTRICT (RS).**

(A) *General description.* This district is to provide for residential development. The principal uses of land range from residences, to uses which are functionally compatible with residential uses, recreational, religious, educational facilities, and other related uses in keeping with the residential character of the district may be permitted on review by the governing body. All structures in the RS District will be stick built.

(B) *Permitted principal and accessory uses and structures.* Property and buildings in the Residential District (RS) area shall be used only for the following purposes:

- (1) Detached single-family dwellings, but not including manufactured homes;
- (2) Two-family dwellings;
- (3) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to said construction work;
- (4) Transportation and utility easements, alleys, and rights-of-way; and
- (5) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.

(C) *Uses permitted on review.* The following uses may be permitted on review by the governing body in accordance with provisions contained in § 155.86.

- (1) Churches or similar places of worship, with accessory structures, but not including missions or revival tents;
- (2) Elementary or high schools, public or private;
- (3) Public parks, playgrounds and playfields, greenways, and neighborhood and municipal buildings and uses in keeping with the character and requirements of the district;
- (4) Libraries, museums, and historical monuments or structures;
- (5) Public utilities, substations, and pumping stations, subject to §155.55(C)(2);
- (6) Golf courses or country clubs, with adjoining grounds of not less than 60 acres, but not including miniature courses and driving tees operated for commercial purposes;
- (7) Medical facilities, except veterinary hospitals or clinics;
- (8) Home occupations as regulated in § 155.64;
- (9) Private daycare nurseries and kindergartens, as regulated in §155.55(C)(3);
- (10) A planned residential development as regulated in § 155.55(A); and
- (11) Signs, as regulated in § 155.62.

(D) *Area regulations.* All buildings shall be set back from street right-of-way lines and lot lines to comply with the following line requirements. Setbacks may be reduced up to 10% with the approval of the Planning and Zoning Commission and the Board of Trustees.

(1) *Front yard.*

- (a) For single, two-family dwellings the minimum depth of the front yard shall be 20 feet and in no case shall an accessory building be located to extend into the front yard.
- (b) Churches and other main and accessory buildings, other than dwellings, shall have a front setback of 25 feet.

(2) *Side yard.*

- (a) For dwellings, located on interior lots, there shall be side yards of not less than ten feet.
- (b) For unattached buildings of accessory use there shall be a side yard of not less than eight feet.
- (c) Churches and other main and accessory buildings, other than dwellings and buildings accessory to dwellings, shall set back from all side lot lines a distance of not less than 25 feet.

(3) *Rear yard.*

- (a) For main buildings, there shall be a rear yard of not less than 15 feet.
- (b) Unattached buildings of accessory use shall not be located closer to any rear lot line than five feet.

(4) *Intensity of use.*

- (a) For each single-family dwelling and building accessory thereto, there shall be a lot area of not less than 7,500 square feet.
- (b) For each two-family dwelling there shall be a lot area of not less than 7,500 square feet.
- (c) For churches and other main and accessory buildings, other than dwellings and buildings accessory to dwellings, the lot area shall be adequate to provide the yard areas required by this section and the off-street parking areas required in § 155.59; provided, however, that the lot for a church shall not be less than 30,000 square feet.

(5) *Maximum lot coverage.* Main and accessory buildings shall cover not more than 40% of the lot area.

(E) *Height regulations.* No main building shall exceed two and one-half stories or 35 feet in height, except as provided in § 155.57.

(F) *Off-street parking.* As regulated in § 155.59.

(Ord. 10.6, passed 3-17-2009)

**§ 155.31 RESIDENTIAL 1 DISTRICT (R1).**

(A) *General description.* This district is to provide for residential development. The principal uses of land range from residences, to uses which are functionally compatible with residential uses, recreational, religious, educational facilities, and other related uses in keeping with the residential character of the district may be permitted on review by the governing body. All structures in the R1 District will be on a permanent foundation.

(B) *Permitted principal and accessory uses and structures.* Property and buildings in the Residential 1 District (R1) area shall be used only for the following purposes:

- (1) Detached single-family dwellings, but not including manufactured homes under 24 feet wide;
- (2) Two-family dwellings;
- (3) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to said construction work;
- (4) Transportation and utility easements, alleys, and rights-of-way; and
- (5) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (6) Accessory dwelling units:
  - (a) One, and only one, accessory dwelling unit shall be allowed on any lot containing a single-family dwelling. An accessory dwelling unit shall not be allowed under § 155.54 on a lot that contains more than one dwelling unit. Both the ADU and the primary residence shall comply with state Building Code and Fire Code regulations for construction, minimum living space, fire exits and smoke alarms.
    - (b) Except as provided elsewhere in § 155.54, in order for a lot to be eligible for an accessory dwelling unit, the lot and all proposed structures and additions to existing structures shall conform to all zoning regulations as follows.
      1. Any municipal regulation applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to, lot area, yards, open space, off-street parking, building coverage, and building height.
    - (c) All accessory dwelling units shall comply with the following standards:
      1. The principal dwelling unit and the accessory dwelling unit shall not be separated ownership (including by condominium ownership).
      2. Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling as his or her principal place of residence. The owner shall provide documentation demonstrating to the satisfaction of the city that one of the units is his or her principal place of residence.
    - (d) When the property is owned by one or more trusts, one of the dwelling units shall be the principal place of residence of the beneficiary(ies) of the trust(s).
    - (e) Neither the principal dwelling unit nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this chapter.
    - (f) An attached accessory dwelling unit (AADU) shall comply with the following additional standards:
      1. An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.
      2. The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 800 square feet gross floor area. For the purpose of this provision, gross floor area shall not include existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit. Minimum size is 200 square feet.
    - (g) Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall be designed as the principal entrance and the other doors shall be designed to appear to be secondary.
    - (h) A detached accessory dwelling unit (ADU) shall comply with the following additional standards:
      1. In a General Residence district, the combination of the principal dwelling and the ADU shall comply with the minimum lot area per dwelling unit specified for the district.
      2. The ADU shall not have more than two bedrooms and shall not be larger than 800 sq. ft. gross floor area; except that the maximum gross floor area shall be 1,000 sq. ft. if the lot area is two acres or more. Not covering more than 40% of available land.
      3. The ADU shall be separated from the single-family dwelling by at least 20 feet.
      4. One off-street parking space shall be required.
    - (i) Before granting a conditional use permit for an attached or detached ADU, the Planning Board shall make the following findings:
      1. Exterior design of the ADU is consistent with the existing principal dwelling on the lot. The site plan provides adequate and appropriate open space, landscaping, and off-street parking for both the ADU and the primary dwelling.
      2. The ADU will maintain a compatible relationship to adjacent properties in terms of location, design, and off-street parking layout, and will not significantly reduce the privacy of adjacent properties.
      3. The ADU will not result in excessive noise, traffic, or parking congestion.

(j) A certificate of use issued by the Planning Department is required to verify compliance with the standards of this section, including the owner occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department.

(7) Planned unit development:

(a) Tiny house subdivision: A subdivision of land which promotes the development of tiny houses 200 to 800 square feet as a primary residential dwelling unit.

(b) Tiny homes, built as a two-story structure (maximum 30 feet) may be allowed in a planned unit development.

(c) Tiny house subdivision standards:

1. Tiny house subdivisions will consist of individual dwelling structures 200 to 800 square feet. The purpose of small lot subdivision is to encourage affordable housing, infill development and sustainable practices. All PUD and subdivision standards shall apply to tiny home subdivisions. Additional standards are required as follows: tiny house subdivisions can occur in R2 zoning.

2. Tiny house subdivisions may only be approved with the review and approval of a planned unit development (PUD) conditional use process.

3. Small lot subdivisions are not condominiums, multi-family, mobile homes or recreational vehicles. Properties are titled in fee simple.

4. Small lot homes must be structurally independent, with no shared foundations or common walls.

5. Lot size will be relative to accommodate the square footage of the tiny home; minimum lot size to accommodate a 400 - 800 square foot house is 1,600 square foot lot.

6. Side setbacks will be five feet and rear setbacks are ten feet.

7. Fifty percent open space is required.

8. Parking density; two on-site parking spaces per lot.

9. Tiny homes are required to connect to City of Hermosa water and sewer service lines.

10. These are private residential homes; not seasonal and not intended for commercial use.

11. Tiny houses must be built to all applicable adopted UBC Codes, ordinances and zoning regulations as stated in §§ 155.30, 155.31, 155.32, 155.37 and 155.39.

(C) *Uses permitted on review.* The following uses may be permitted on review by the governing body in accordance with provisions contained in § 155.86:

(1) Churches or similar places of worship, with accessory structures, but not including missions or revival tents;

(2) Elementary or high schools, public or private;

(3) Public parks, playgrounds and playfields, greenways, and neighborhood and municipal buildings and uses in keeping with the character and requirements of the district;

(4) Libraries, museums, and historical monuments or structures;

(5) Public utilities, substations and pumping stations, subject to §155.55(C)(2);

(6) Golf courses or country clubs, with adjoining grounds of not less than 60 acres, but not including miniature courses and driving tees operated for commercial purposes;

(7) Medical facilities, except veterinary hospitals or clinics;

(8) Home occupations as regulated in §155.64;

(9) Private daycare nurseries and kindergartens, as regulated in §155.55(C)(3);

(10) A planned residential development as regulated in §155.55(A); and

(11) Signs, as regulated in §155.62.

(D) *Area regulations.* The area regulations are the same as provided for in §155.30(D);

(E) *Height regulations.* The height regulations are the same as provided for in §155.30(E); and

(F) *Off-street parking.* As regulated in §155.59.

(Ord. 10.6, passed 3-17-2009; Ord. passed 4-19-2022)

## **§ 155.32 RESIDENTIAL 2 DISTRICT (R2).**

(A) *General description.* This district is to provide for less restrictive residential development than the R1 District. The

principal uses of land range from residences and manufactured homes, to uses which are functionally compatible with intensive residential uses. Recreational, religious, education facilities, and other related uses in keeping with the residential character of the district may be permitted on review by the governing body.

(B) *Permitted principal and accessory uses and structures.* Property and buildings in the Residential 2 District shall be used only for the following purposes:

- (1) Detached single-family dwellings;
- (2) Manufactured homes must meet requirements in Ordinance 10.6.5.B and Chapter 153;
- (3) Manufactured home subdivisions as regulated in § 155.55(A);
- (4) Two-family and multiple-family dwellings;
- (5) Rooming and boarding houses;
- (6) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to said construction work and which buildings shall be removed upon completion or abandonment of the construction work;
- (7) Transportation and utility easements, alleys, and rights-of-way;
- (8) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building; and
- (9) Signs, as regulated in § 155.62.

(C) *Uses permitted on review.* The following uses may be permitted on review by the governing body in accordance with provisions contained in § 155.88:

- (1) Churches or similar places of worship, with accessory structures, but not including missions or revival tents;
- (2) Elementary or high schools, public or private;
- (3) Public parks, playgrounds and playfields, neighborhood and municipal buildings. and uses in keeping with the character and requirements of the district;
- (4) Libraries, museums, and historical monuments or structures;
- (5) Public utilities substations and pumping stations subject to § 155.55(C)(2);
- (6) Golf courses or country clubs with adjoining grounds of not less than 60 acres, but not including miniature courses and driving tees operated for commercial purposes;
- (7) Fraternities, sororities, and denominational student headquarters;
- (8) Manufactured home parks, subject to the requirements set forth in Ordinance 10.6.5.B and Chapter 153;
- (9) Home occupations as regulated in § 155.64;
- (10) Private daycare nurseries and kindergartens, as regulated in § 155.55(C)(3);
- (11) A planned residential development as regulated in § 155.55(A); and
- (13) Medical facilities.

(D) *Area regulations.* The area regulations are the same as provided for in § 155.30(D);

(E) *Height regulations.* The height regulations are the same as provided for in § 155.30(E); and

(F) *Off-street parking.* As regulated in § 155.59.

(Ord. 10.6, passed 3-17-2009)

### **§ 155.33 RECREATIONAL USE DISTRICT (RU).**

(A) *General description.* This district is limited to recreational purposes for use by the public.

(B) *Permitted principal and accessory uses and structures.* This shall include, but not be limited to, the following:

- (1) Picnic facilities;
- (2) Playgrounds;
- (3) Athletic fields;
- (4) Rodeo or roping arenas;
- (5) Foot and bike trails;
- (6) Greenways; and

(7) Associated structures.

(C) *Uses permitted on review:* jails and juvenile detention facilities.

(Ord. 10.6, passed 3-17-2009)

### **§ 155.34 COMMERCIAL DISTRICT (CO).**

(A) *General description.* This commercial district is for personal and business services and general business activity. This district is established for the accommodation of those specified retail and business services activities that typically may be located and grouped along a major street or about a major street intersection or highway.

(B) *Uses permitted.* The following uses shall be permitted in the Commercial District:

(1) Retail establishments, including incidental manufacturing of goods for sale at retail on the premises, provided, however, that the space devoted to manufacturing does not exceed 20% of the gross floor area of the establishment; sales and display rooms and lots, not including yards for storage of new or used building materials or yards for any scrap of new or used building materials or yards for any scrap or salvage, or secondhand materials. The storage, display, and sale of used, repossessed, or traded-in merchandise incidental to a retail operation engaged primarily in the sale of new merchandise, if permitted;

(2) Eating and drinking establishments;

(3) Service and repair establishments;

(4) Personal service establishments;

(5) Hotel, motels, rooms, and boarding houses (and travel parks) as regulated in §155.55;

(6) Commercial recreational structures and uses, such as theaters, bowling alleys, pool rooms, amusement and recreation establishments, but not including miniature golf courses, driving ranges, and similar uses provided such structures meet all ordinances concerning public health, fire codes, morality codes, and all current building codes;

(7) Parking lots and garages;

(8) New and used car, truck, motorcycle, farm implement, and machinery sales, service, or rentals (U-Haul type);

(9) Manufactured home sales and service;

(10) Offices, studios, human health services clinics, and laboratories;

(11) Financial institutions;

(12) Private clubs and lodges;

(13) Outdoor advertising as regulated in §155.62;

(14) Auditoriums provided such structures meet all ordinances concerning public health, fire codes, morality codes, and all current building codes;

(15) Public or municipal swimming pools as subject to §155.67;

(16) Public buildings and grounds other than elementary or high schools;

(17) Business and vocational schools not involving operations of an industrial character;

(18) Wholesale and distributing centers not involving the use of any delivery vehicle rated at more than two and one-half ton capacity; nor a total of more than five delivery vehicles;

(19) On the same premises, and in connection with permitted principal uses and structures, other uses and structures which are customarily accessory and clearly incidental to permitted or permissible uses and structures;

(20) Any other store or shop for retail trade or for rendering personal, professional, or business service which does not produce more noise, dust, odor, vibration, blast, or traffic than those permitted uses enumerated above;

(21) Dwelling units will be allowed in multi-storied structures wherein the street or ground floor level is occupied by one of the permitted retail or business services enumerated above; and

(22) Other uses similar in character to those enumerated above and which in the opinion of the governing body will not be injurious to the district.

(C) *Uses permitted on review.* Uses may be permitted on review by the governing body in accordance with the provisions contained in § 155.89.

(D) *Area regulations.* The following requirements shall apply to all uses permitted in this district:

(1) *Front yard:* none;

(2) *Side yard:* no side yard is required except that the width of a side yard which abuts a residential district shall be not

less than 25 feet;

(3) *Rear yard*: where a commercial building is to be serviced from the rear, there shall be provided an alleyway, service courts rear yard, or combination thereof of not less than 35 feet in depth. The depth of a rear yard, which abuts a residential district, shall be not less than 30 feet. In all other cases, no rear yard is required; and

(4) *Maximum lot coverage*: main and accessory buildings shall cover not more than 75% of the lot area.

(E) *Height regulations*. No building or structure shall exceed two and one-half stories or 35 feet in height except as provided in § 155.57.

(F) *Off-street parking*. For permitted retail, business, and personal services establishments, off-street parking requirements are as per § 155.59(B).

(G) *Screening and landscaping*. All yard areas required under this section and other yards and open spaces existing around buildings shall be landscaped and maintained in a neat condition, as per Chapter 92.

(Ord. 10.6, passed 3-17-2009)

### **§ 155.35 GENERAL INDUSTRIAL DISTRICT (GI).**

(A) *General description*. The General Industrial District (GI) is established to provide areas in which the principal use of land is for light manufacturing and assembly plants, processing, storage, warehousing, wholesaling, and distribution in which operations are conducted so that noise, odor, dust, and glare is completely confined within an enclosed building.

(B) *Uses permitted*. Property and buildings in the General Industrial District shall be used only for the following purposes:

(1) A retail or service use only when it directly serves or is auxiliary to the needs of industrial plants or employees thereof;

(2) No residential use, except sleeping facilities required for caretaker or night watchman employed on the premises shall be permitted in this district;

(3) Business sign as regulated in § 155.62;

(4) Building material, sales yard, and lumber yards including the sale of rock, sand, gravel, and the like, as an incidental part of the main business, but not including a concrete batch plant or a transit mix plant;

(5) Contractor's equipment, storage yard or plant, or rental of equipment commonly used by contractors;

(6) Freightling or trucking yard or terminal;

(7) Outdoor storage facilities for coal, coke, building materials, sand, gravel, stone, lumber; open storage of construction contractor's equipment and supplies shall be screened by a seven-foot obscuring fence, wall, or mass plantings, or otherwise so located as not to be obnoxious to the orderly appearance of the district;

(8) Public utility substations, service yards, and pumping stations, electrical receiving, or transforming station, subject to § 155.55(C)(2);

(9) Auction houses;

(10) The following uses when conducted within a completely enclosed building:

(a) The manufacture, compounding, processing, packaging, or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries, and food products;

(b) The manufacture, compounding, assembling, or treatment of articles of merchandise from the following previously prepared materials: aluminum, bone, cellophane, canvas, cloth, cork, feathers, felt fur, glass, hair, horn, leather, paper, plastics, precious or semi-precious metals or stones, shell, rubbers textiles, tin, iron, steel, wood (excluding sawmill), yarn, and paint not involving a boiling process;

(c) The manufacture of pottery and figurines or other similar ceramic products, using only previously pulverized clay, and kilns fired only by electricity, gas, or oil;

(d) The manufacture and maintenance of electric and neon signs, commercial advertising structures, light sheet metal products, including heating and ventilating ducts and equipment, cornices, eaves, and the like;

(e) The manufacture of musical instruments, toys, novelties, and rubber and metal stamps;

(f) Automobile assembling, painting, upholstering, rebuilding, reconditioning, body and fender works, truck repairing and overhauling, tire retreading or recapping, and battery manufacturing;

(g) The sale, storage, and sorting of junk, waste, discarded or salvaged materials, machinery, or equipment, but not including processing;

(h) Blacksmith shop and machine shop;

(i) Foundry casting lightweight non-ferrous metal not causing noxious fumes or odors;

(j) Planing mill; and

(k) Wholesale or warehouse enterprise; and

(11) Buildings, structures, and uses accessory and customarily incidental to any of the above uses.

(C) *Uses permitted on review.*

(1) All of the following uses are declared to be special uses and a use permit may be authorized by the governing body for the location and operation thereof in the General Industrial District in accordance with § 155.88:

(a) Cement, lime, gypsum, or plaster-of-paris manufacture;

(b) Distillation of bones;

(c) Drop forge industries, manufacturing forging with power hammers, explosives manufacture or storage;

(d) Fertilizer manufacture;

(e) Rock, sand, or gravel or earth excavation, crushing, or distribution;

(f) Sawmill;

(g) Smelting of tin, copper, zinc, or iron ores;

(h) Business sign as regulated in § 155.62;

(i) Alcohol manufacture;

(j) A retail or service use only when it serves directly or is auxiliary to the needs of industrial plants or employees thereof;

(k) Boiler works;

(l) Brick, tile, or terra cotta manufacture;

(m) Concrete or cement products manufacture;

(n) Freight, terminal (railroad);

(o) Power plant;

(p) Quarry or stone mill;

(r) Rolling mills;

(s) Soap manufacture; and

(t) Tank storage of bulk oil and gasoline and the mixture of bulk storage of illuminating or heating gas, subject to the proper precautions as to location to prevent fire and explosion hazards and ground water contamination subject to OSHA and EPA requirements.

(2) In general, these uses which may be obnoxious or offensive by the reason of emission of odor, dust, smoke, gas, noise, vibration, and the like, and not allowed in any other district, provided, however, that any use not specified herein shall be approved by the governing body.

(3) Buildings, structures, and uses accessory and customarily incidental to any of the above uses.

(4) Adult businesses, as provided by Chapter 111.

(D) *Area regulations.* The following requirements shall apply to all uses permitted in this district.

(1) *Lot Area.* Any principal use together with all accessory uses shall be located on a lot having a minimum area of 10,000 square feet.

(2) *Front yard.* All buildings shall be set back from all street right-of-way lines not less than 25 feet.

(3) *Side yard.* No building shall be located closer than 25 feet to a side yard lot line. The width of a side yard which abuts a residential district shall be not less than 50 feet.

(4) *Rear yard.* No building shall be located closer than 25 feet to the rear lot line. The depth of a rear yard which abuts on a residential district shall be not less than 50 feet.

(5) *Maximum lot coverage.* Main and accessory buildings and off-street parking and loading facilities shall not cover more than 75% of the lot area.

(E) *Height regulations.* No building or structure shall exceed two and one-half stories or 35 feet in height, except as hereinafter provided in § 155.57.

(F) *Minimum off-street parking and loading requirements.* As regulated in §§ 155.59 and 155.61.

(G) *Screening and landscaping.* All yard areas required under this section and other yards and open spaces existing around buildings shall be landscaped and maintained in a neat condition.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.36 AGRICULTURAL DISTRICT (AG).**

(A) *General description.* This district is intended to protect agricultural lands and to preserve the natural beauty and open character of forested and other natural growth areas from incompatible land uses.

(B) *Uses permitted on review.*

- (1) Signs, as regulated in § 155.62; and
- (2) Plant nurseries.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.37 FLOODWAY DISTRICT (FW).**

(A) *General description.* This district is for the protection of drainage ways to permit the unimpeded flow of surface run-off without endangering life and health or causing property damage due to flooding. Specific uses and occupancies in the Floodway District are governed by the floodplain regulations, Chapter 151.

(B) No building or development is allowed in a floodway.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.38 GOVERNMENT/PUBLIC USE DISTRICT (GP).**

(A) *General description.* This district provides areas for government and public services.

(B) *Permitted principal and accessory uses and structures.* This shall include, but not be limited to, the following:

- (1) Government administration facilities;
- (2) Government maintenance facilities;
- (3) Government utilities;
- (4) Public schools;
- (5) Libraries, museums, and historical monuments or structures;
- (6) Cemeteries; and
- (7) Police station, fire station, and/or temporary holding facility, two cell maximum.

(C) *Uses on review:* jail and juvenile detention centers.

(D) *Area regulations.* The following requirements shall apply to all uses permitted in this district:

(1) *Front yard:* none.

(2) *Side yard.* No side yard is required, except that the width of a side yard which abuts a residential district shall be not less than 25 feet.

(3) *Rear yard.* Where a commercial building is to be serviced from the rear, there shall be provided an alleyway, service courts, rear yard, or combination thereof of not less than 35 feet in depth. The depth of a rear yard which abuts a residential district shall be not less than 25 feet. In all other cases, no rear yard is required.

(4) *Maximum lot coverage.* Main and accessory building shall cover not more than 75% of the lot area.

(E) *Off-street parking.* As regulated in § 155.59.

(F) *Height regulations.* As regulated in § 155.57.

(G) *Lighting.* To be reviewed.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.39 RESIDENTIAL AGRICULTURE DISTRICT (RA).**

(A) *General description.* This district is to provide for residential development, with the principal uses of land being residential with the allowance of livestock, as defined and regulated in Chapter 90. The principal uses of land may range from residences and manufactured homes, to uses which are functionally compatible with intensive residential uses while allowing limited livestock to be maintained on the property. Recreational, religious, education facilities, and other related

uses in keeping with the residential character of the district may be permitted on review by the governing body.

(B) *Permitted principal and accessory uses and structures:* as provided in § 155.32.

(C) *Uses permitted on review:* as provided in § 155.32.

(D) *Area regulations:* as provided in § 155.30.

(E) *Height regulations:* as provided in § 155.30.

(F) *Off-street parking:* as provided in § 155.59.

(Ord. 10.6R.A2, passed 2-17-2015)

## **SUPPLEMENTARY REGULATIONS**

### **§ 155.55 DEVELOPMENT STANDARDS FOR USES PERMITTED ON REVIEW.**

In order to accomplish the general purpose of this chapter, it is necessary to give special consideration to certain uses because they are unique in nature, require large land areas, are potentially incompatible with existing development, or because the effects of such uses cannot definitely be foreseen. The following uses shall be subject to compliance with the regulations in this section and with the procedure for authorizing uses permitted on review as set forth in § 155.89.

(A) *Residential 2 (R2) manufactured home subdivision.* The following property development standards shall apply for all manufactured home subdivisions and shall be zoned only as Residential 2.

(1) No parcel of land containing less than five acres may be used for a manufactured home subdivision.

(2) The manufactured home subdivision shall be subject to the yard, density, and set back provisions of the district in which it is located.

(3) Any manufactured home in the subdivision shall be situated on a permanent foundation and all elements contributing to its mobility (under-carriage, wheels, axles, and trailer hitch) shall be removed. All such homes shall be connected to public water and sewer systems.

(4) Any structure in a manufactured home subdivision shall comply with the yard, height, density, and parking regulations of the zoning district in which it is located.

(5) Low areas subject to any flooding must comply with FEMA regulations. This shall include anchoring and skirting.

(6) Public or community water and sanitary sewer service shall be provided to each manufactured home space before occupancy and shall be approved by the State Department of Environmental Protection.

(7) All required improvements and facilities shall be installed before occupancy of the manufactured home space.

(B) *Travel parks.* Travel parks shall be zoned only as Commercial (CO).

(1) *Property development standards.* The following property development standards shall apply for all travel parks established after adoption of this section.

(a) No parcel of land containing less than five acres may be used for the purpose permitted as a travel park.

(b) A travel park shall be subject to the following density requirements: there shall not be less than 1,500 square feet of lot area for each space provided in the travel park.

(c) The travel parks shall be located on a well-drained site properly graded to insure rapid drainage and freedom from stagnant pools of water.

(d) Yards adjacent to public streets shall be a minimum of 25 feet in depth. Yards adjacent to property outside the travel park without an intervening street or other permanent open space shall be at least 75 feet in width, provided, however, that this open space requirement may be reduced to a minimum of 25 feet upon adequate fencing and vegetative screening to protect occupants of adjoining properties from adverse influences within the travel park. All yards shall be landscaped and maintained.

(e) Internal streets shall provide safe and convenient access to the spaces in appropriate travel park facilities. Alignment and grade shall be properly adapted to topography. Construction and maintenance shall provide a smooth, hard, dense, dust-proof, well-drained surface. Such roadway shall be of adequate width to accommodate anticipated traffic and shall meet the following minimum requirements:

1. Entrance and all two-way roads (no parking): 25 feet; and

2. One-way (no parking): 12 feet.

(f) *Pedestrian walkways.* Streets serving less than 25 spaces may be used as part of the pedestrian circulation system. Elsewhere, if the relation of space locations to facilities within the campground necessitates such, pedestrian ways shall be provided, preferably as part of a common open space system away from streets. Access for construction and maintenance shall provide a smooth, hard, dense, dust-proof and drained surface pedestrians entering or leaving a travel

park shall be by safe and convenient routes. Such access need not be adjacent to or in the vicinity of vehicular access points. Where there are crossing of roads for pedestrians at the edge of the travel park, they shall be safely located, marked, and controlled where necessary. Adequate provisions shall be made for mutual visibility of drivers and persons crossing at such points.

(g) *Common area.* Not less than 10% of the area of the travel park shall be devoted to recreation area. Such recreation area may include space for common walkways and related landscaping in block interiors, provided that such common open space is at least 20 feet in width, as recreation space.

(h) Spaces shall be as located in relation to internal streets as to provide for convenient vehicular ingress and egress if the space is intended for use by wheeled units. Where back-in or back-out spaces are used, appropriate maneuvering room shall be provided in the adjacent internal street and within the space, and where there are obstacles within potential maneuvering areas which might not be seen by a driver, the limits of the safe area shall be indicated in a manner clearly visible to the driver, and ground blocks may be required to prevent backing into obstacles.

(i) That spaces be numbered to facilitate location by emergency vehicles.

(j) Where reasonably possible without excessive destruction of trees or other vegetation, particularly in campgrounds or portions of campgrounds intended for use by travel trailers, preference shall be given to a pull-through arrangement, so that no backing is necessary.

(k) Where spaces are to be used exclusively for erection of tents on the ground, it shall not be required to provide for vehicular access onto such spaces, but parking areas shall be provided within 100 feet thereof.

(l) No minimum dimensions are specified for spaces; but each shall provide a stand (unless used exclusively for erection of tents with no vehicles permitted) and the clearances and open spaces specified herein and the boundaries of each stand and space shall be clearly indicated.

(m) Stands shall be of such size and be so located and improved in the spaces as to provide for the type of units which are intended, vehicular access must be provided to the stand.

(n) If use is to be restricted to tents to be erected on the ground, the stand shall have a level surface suitable for erection of a tent, free of rocks, roots, or other impediments to the driving of pegs to the depth of at least eight inches, and graded and drained to prevent flow of surface water into or under tents erected on it. Stands for wheeled units shall provide a smooth hard, dense, well-drained, dust-free surface level or of a grade not to exceed 5%. Stands shall be so located that when used clearances from units including attached awnings and the like shall be as follows:

1. From units of adjoining stands, 15 feet;
2. From common walkways, internal streets, or parking areas, 15 feet; and
3. From portions of buildings containing uses which would be disturbing to stand occupants, 25 feet.

(o) Within each space there shall be provided a living area suitably located and improved for outdoor use by occupants of units not to be occupied by units or towing vehicle, such space to be at least ten feet minimum dimension and 200 square feet in area and so located as to be easily accessible from the entry side of units as normally parked and oriented on stands.

(p) *Parking.* No parking shall be permitted upon the internal streets of the travel park and vehicle parking space shall be provided within each space or where tent facilities are utilized within a common area.

(q) *Electrical hook-ups.* Each space with electrical hook-ups shall be equipped with one electrical hook-up, 120 volts, 30 ampere with ground on conduit support. All electrical lines shall be installed underground. Electric hook-ups must meet the standards of the National Fire Protection Association Code 501-D-1971, A119.4 1971 for recreation travel parks.

(r) *Water connections.* Each space with water connections shall include one water connection with three-quarter inch rise valve and three-quarter inch hose bib. All water installations shall conform to the State Plumbing Code and Uniform Building Code as amended. The water system shall be adequate to provide 15 pounds per square inch of pressure at all spaces.

(s) *Sewer hook-ups.* Sewer hook-ups shall be installed pursuant to the requirements of the State Plumbing Code and the Uniform Building Code as adopted by the city.

(t) *Toilet, washroom, and bathing facilities.* A travel park containing 100 spaces or less shall provide toilet, washrooms, and bathing facilities at the following minimum:

1. Men: four shower stalls, two water closets, three urinals, and four lavatories;
2. Women: four shower stalls, four water closets, and four lavatories; and
3. One additional toilet, lavatory, and shower stall shall be provided for each sex for every 25 additional spaces, and one additional men's urinal for every 50 additional spaces. All such facilities shall be constructed and installed pursuant to City Building and State Plumbing Codes.

(u) *Dumping station.* Each park shall include a sanitary dumping station to be located so as not to create a traffic hazard on the main or circulating roads, nor to be a health hazard to the occupants of the park. Such dumping station shall

be constructed to meet the minimum requirements of the State Plumbing Code, Uniform Building Code, and other applicable ordinances and regulations and shall meet the approval of the Health Department.

(v) *Fireplaces and the like.* Where fireplaces, cooking shelters, or similar facilities for open fires or outdoor cooking are provided within spaces or elsewhere, they shall be so located, constructed, maintained, and used as to minimize fire hazards and smoke nuisance within the park and in adjoining areas.

(2) *Permit required.* No travel park shall be operated within the city without first obtaining a permit therefore.

(a) Travel parks will be allowed only with the approval of the Planning Commission and Common Council.

(b) Travel parks will be licensed annually and a fee will be charged.

(c) An application for a travel park permit shall be as regulated hereunder.

1. The application for a permit shall be filed with and issued by the Finance Officer upon approval of the Common Council.

2. Each application shall be accompanied by six copies of the plot plan drawn to scale and prepared by a licensed engineer or architect. Such copies shall be reviewed and approved by the Health Department, Planning Commission, and the Common Council. The application for a permit shall be accompanied by a minimum fee as per current fee schedule, for every ten spaces or fraction thereof over the minimum of 100 spaces. The following information shall be shown on the application:

A. Location and legal description of the proposed travel park;

B. Plans and specifications of all buildings, improvements, facilities, and spaces constructed or to be constructed within the travel park;

C. Proposed use of buildings and spaces shown on the site;

D. The location and size of all recreational vehicle spaces;

E. Location of all points of entry and exit for motor vehicles and internal circulation pattern;

F. The location of all landscaping to be provided;

G. The location of all lighting and standards thereof to be provided;

H. Location of all walls and fences indicating height and materials of construction;

I. Name and address of the applicant; and

J. Such other architectural and engineering data as may be required to permit the Planning Commission and Common Council to determine if the provisions of this section are being complied with.

3. Such permit may be issued prior to construction or completion thereof provided that a time schedule for development shall be prepared, which shall demonstrate the applicant's readiness and ability to provide the proposed services and all required improvements and facilities shall be installed within one year.

4. *Permit fee.* The permit fee for operating a travel park shall be as per the current fee schedule, per year, for the first ten trailer spaces and additional fees, per year, for each trailer space in excess of ten. Any travel park adding a trailer space during a permit year shall pay additional fees as stated in the current fee schedule, for each space so added, for the unexpired portion of the year.

(C) *Other uses permitted on review.*

(1) *Cemetery.*

(a) The site proposed for a cemetery shall not interfere with the development of a system of collector and larger streets in the vicinity of such site. In addition, such site shall have direct access to a thoroughfare.

(b) Any new cemetery shall be located on a site containing not less than 20 acres.

(c) All other structures including, but not limited to, mausoleum permanent monument or maintenance building, shall be set back not less than 25 feet from any property line or street right-of-way line.

(d) All graves or burial lots shall be set back not less than 25 feet from any property line or street right-of-way line.

(e) All required yards shall be landscaped and maintained.

(2) *Public and private utilities and services.* Where permitted, public and private utilities and services shall be subject to the following requirements.

(a) *Health Department report.* Application for permission to operate water works and/or sewage treatment plants shall be accompanied by a report and a recommendation from the Health Department. Such recommendations as to design and construction, type of treatment, source of water, standards for testing and sampling, and standards for the quality of effluent shall be incorporated into and made a part of the application.

(b) *Lot area and location.* The required lot area and location shall be specified as part of the application and shall be determined in relation to the proposed use, the intensity of such use, and the effects of such use upon the environment.

(c) *Fencing and/or screening.* Where findings indicate that a hazard may result or that interference with the development or use and enjoyment of surrounding residential properties may ensue, fencing or screening with an evergreen hedge or other shielding material may be required in a manner consistent with such findings.

(d) *Public utilities service yards.* Service yards shall be screened by a seven-foot obscuring fence, wall, or mass planting, or otherwise so located as not to be obnoxious to the orderly appearance of the district.

(3) *Private day nurseries and kindergartens.* The facilities, operation, and maintenance shall meet the requirements of the County and State Health Department.

(4) *Automobile wrecking and junk yards.* Automobile wrecking and junk yards may be located in area zoned General Industrial (GI) only.

(a) *Location.* No such operation shall be permitted closer than 300 feet from any established residential district.

(b) *Screening.* All outdoor storage of salvage and wrecking operations shall be conducted minimum height of eight feet. Storage between the street and such fence is expressly prohibited. Any fence or wall erected for screening purposes shall be within the buildable area of the lot and shall be properly painted or otherwise maintained in good condition.

(c) *Off-street parking.* Off-street parking shall be as regulated in § 155.59.

(d) *Ingress and egress.* The number of vehicular access driveways permitted on any single street frontage shall be limited to:

1. One driveway where the parcel to be used has a maximum street frontage at least 100 feet;
2. Two driveways where the street frontage exceeds 100 feet; and
3. Driveways used for ingress and egress shall be limited to 25 feet in width, exclusive of curb returns.

(5) *Recreational fads.* An application for a permit for recreational fads including trampoline centers, cart tracks, and similar recreational activities not specifically covered by these regulations, shall be reviewed by the governing body. Recreational fads may be located in areas zoned Commercial (CO) only.

(6) *On-lot sewage disposal systems.* Any use involving a principal structure which is not served by a sanitary sewer, in addition to other requirements, shall have an approved on-lot sewage disposal system approved by the County-State Department of Health and DENR. The approval may be made contingent upon an agreement that the structure will be connected to a sanitary sewer when plans indicate that such sewer will be extended or constructed and become available. The approval shall further stipulate an increase in lot size to assure appropriate septic field, drainage, and relation to abutting development or any classified stream.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.56 ACCESSORY USES.**

(A) The uses of land, buildings, and other structures permitted in each of the districts established by this chapter are designated by listing the principal uses permitted. In addition to such principal uses, this section shall regulate uses customarily incidental to any principal use permitted in the district.

(B) *Permitted accessory structures.* Accessory uses shall be permitted as specified above, and such accessory uses shall be applicable to the principal use and shall include, but not be limited to, the following.

(1) *For dwellings:*

- (a) Shelter to house animal pets;
- (b) Children's playhouse and playground equipment;
- (c) Private greenhouse, vegetable, fruit, or flower garden, from which no products are sold or offered for sale;
- (d) Private garage or carport;
- (e) Private swimming pool and bath house; and
- (f) Shed for the storage of maintenance or recreation equipment used on the premises.

(2) *For church, chapel, temple, or synagogue:*

- (a) Parish house or residence for the clergyman of the congregation; and
- (b) Religious education building.

(3) *For educational institutions:*

- (a) Convent or lay teacher's quarters;

- (b) Dormitories;
- (c) Power or heating plants; and
- (d) Stadiums, gymnasiums, field houses, game courts, or fields.

(4) *For golf and country clubs:*

- (a) Dwelling for caretaker;
- (b) Maintenance equipment storage shed;
- (c) Pro shop; and
- (d) Lounge and dining area.

(5) *For hospitals and health institutions:*

- (a) Staff quarters;
- (b) Laundry, incidental to the principal use only;
- (c) Medical and nursing instruction; and
- (d) Chapel.

(6) *For industrial uses in the industrial districts:*

- (a) Offices;
- (b) Restaurants or cafeterias;
- (c) First aid clinics or dispensaries;
- (d) Watchman's quarters; and
- (e) Research or pilot structures.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.57 HEIGHT RESTRICTIONS.**

The following requirements are intended to provide exceptions or qualify and supplement, as the case may be, the specific district regulations set forth in §§ 155.30 through 155.39.

(A) In measuring heights, a habitable basement or attic shall be counted as a half story.

(B) The following structures or parts thereof are hereby exempt from the height limitations set forth in the zone districts:

- (1) *Agricultural buildings:* barns, silos, windmills; but not including dwellings;
- (2) Chimneys, smokestacks, penthouses, spires, flagpoles, ventilators, skylights, derricks, conveyors, and cooling towers;
- (3) Radio and television antennas and towers, observation towers, and power transmission towers;
- (4) Water tanks and standpipes; and
- (5) Other similar and necessary mechanical appurtenances pertaining to and necessary to the permitted uses of the districts in which they are located, provided that they are not used for human occupancy.

(C) Churches, schools, hospitals, sanitariums, and other public and semi-public buildings may exceed the height limitations of the zoning district provided the front, side, and rear yards required in the district are increased one foot for each two feet by which the height of such public or semi-public structure exceeds the prescribed height limit.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.58 YARD, BUILDING SETBACK, AND OPEN SPACE EXCEPTIONS.**

The following requirements are intended to provide exceptions or qualify and supplement, as the case may be, the specific district regulations set forth in §§ 155.30 through 155.39.

(A) The following regulations provide for the maximum safety of persons using sidewalks and streets, and for the maximum enjoyment of the use of property.

(1) Except in districts allowing the construction of buildings or structures to the property line, there shall be provided an unobstructed view across the triangle formed by joining points measured 20 feet along the property line from the intersection of two streets or 15 feet along both the street and alley line from the intersection of a street and alley. Within said triangle there shall be no sight obscuring or partly obscuring walls, fence, or foliage higher than 30 inches above grade, or in the

case of trees, foliage lower than eight feet. Vertical measurement shall be made at the top of the curb on the street or alley adjacent to the nearest side of the triangle or if no curb exists, from the edge of the nearest traveled way. This provision does not apply to chain link fences, on which no obstructions are attached thereto.

(2) In any required front yard, except as provided in division (A)(1) above, no fence, wall, hedge, or yard ornament shall be permitted which materially impedes vision across such yard above the height of five feet. This does not include single ornamental bushes and shrubs.

(3) *Trimming of trees required - city trimming at owner's expense.* The occupant of any private premises or the owner of the same if not occupied, abutting on any public street, road, or alley within the town shall keep all trees standing upon such premises or between the same and the center of the adjoining street, road or alley so trimmed that no bough or branch thereof shall be lower than 12 feet above the surface of the street, road, or alley, or eight feet above the surface of any sidewalk thereon, and shall keep all such trees trimmed so that no trunk, limb, or branch thereof shall be in any way or at any time interfere with the movement of delivery, maintenance, garbage disposal, and emergency service vehicles, or come in contact with any street lighting, power, or other electrically charged wire when such wires are lawfully strung on posts located on any public street, road, or alley, or between the lot lines and curb of any street. Said occupants or owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs, which constitute a menace to the safety of the public, and shall trim any tree or shrub which interferes with visibility of any traffic control device or signs; provided that upon the failure of any occupant or owner to trim such trees as in this section provided, the Director of Streets and Public Property of the town shall have the authority to remove them or cause them to be removed under his or her supervision, whether such trees be growing on privately owned property or on public property. The Director may cause the same to be trimmed and the expense charged to the occupant or owner of such property.

(B) The purpose here is to clarify certain conditions pertaining to the use of lots and access points:

(1) *Dwellings on small lots.* Where there are existing recorded lots which do not meet the minimum lot area requirement and are under separate ownership, single-family dwellings may be constructed as long as a side yard shall be not less than four feet and the arm of the side yards shall be not less than 12 feet, and as long as all other requirements, except lot size, are met.

(2) *Principal uses without building.* Where a permitted use of land involves no structures, such use, excluding agricultural uses, shall nonetheless comply with all yards and minimum lot area requirements applicable to the district in which located, as well as obtain any other license or permit applicable to that particular use.

(3) No dwelling shall be erected on a lot which does not abut on at least one street for at least 25 feet. A street shall form the direct and primary means of ingress and egress for all dwelling units. Alleys, where they exist, shall form only a secondary means of ingress and egress.

(Ord. 10.6, passed 3-17-2009; Ord. passed 1-8-2019)

#### **§ 155.59 MINIMUM OFF-STREET PARKING REQUIREMENTS.**

(A) *Off-street parking.* In all districts, except the Commercial District, there shall be provided at any time any building or structure is erected or enlarged or increased in capacity, off-street parking space for automobiles in accordance with the following requirements.

(1) Off-street parking for other than residential use shall be either on the same lot or within 200 feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot, without crossing any major thoroughfare; provided however, churches may establish joint parking facilities not to exceed 50% of the required spaces, with institutions and agencies that do not have a time conflict in parking demand. The joint parking facilities shall be located no further than 400 feet from the church sanctuary.

(2) Residential off-street parking space shall consist of parking lot, driveway, garage, or combination thereof, and shall be located on the lot they are intended to serve.

(3) For uses not specifically mentioned herein, off-street parking requirements shall be interpreted by the governing body.

(4) Any area once designated as required off-street parking shall not be changed to any other use unless and until facilities are provided elsewhere.

(5) Off-street parking existing at the effective date of these regulations in connection with the operation of an existing building or use shall not be reduced to an amount less than hereinafter required for a similar new building or use.

(6) Two or more buildings or uses may collectively provide the required off-street parking, in which case the required number of parking spaces shall be not less than the sum of the requirements for the several individual uses computed separately.

(7) The required off-street parking shall be for occupants, employees, visitors, and patrons, and shall be limited in use to motor vehicles. The storage of merchandise, motor vehicles for sale, or the repair of vehicles on such parking area is prohibited.

(8) Every company car, truck, tractor, and trailer normally stored at the plant site shall be provided with off-street parking space in an area reserved for the use as determined by the governing body.

(9) In the case of dual functioning of off-street parking where operating hours do not overlap, the governing body may grant an exception.

(10) The minimum number of off-street parking spaces shall be determined in accordance with division (B).

(B) *Parking spaces required.*

<b>Table of Parking Spaces Required</b>	
<b>Use</b>	<b>Parking Spaces Required</b>
<b>Table of Parking Spaces Required</b>	
<b>Use</b>	<b>Parking Spaces Required</b>
Automobile wrecking, junk, or salvage	1 space for each 2 employees, plus 1 yard which offers for sale to the public 1 space for each 10,000 square feet new or used merchandise of lot area, or 2 spaces for each 100 square feet of floor area, whichever is greater
Banks, business or professional offices	1 per 300 square feet of usable floor area, plus 1 per each 1.5 employees
Barber shops or beauty parlors	2 per barber or beauty shop chair
Boarding or rooming houses	1 space for each 3 boarders, 1 accommodation for each 2 guests provided overnight
Bowling alleys	5 per alley
Churches	1 per 4 seats; or 1 per 30 square feet of usable floor area of auditorium, whichever is greater
Commercial or trade schools	1 per 3 students plus 2 per 3 employees
Country clubs	1 per 5 members
Dormitories, fraternity or sorority	1 per each 3 permanent residents
Dwellings (multiple-family)	2 spaces per dwelling unit for the first 20 units, plus 1 space for each dwelling unit exceeding 20 units
Dwellings (single-family)	2 per dwelling
Establishments for sale and consumption on the premises of beverages, food, or refreshments	1 per 3 employees plus 1 per 100 square feet of usable floor space, or 1 per 3 fixed seats, whichever is greater
Gasoline service stations	1 parking space for each employee, plus 2 spaces for each service bay
Governmental office buildings	1 per 300 square feet of usable floor area, plus 1 per each 3 employees. Every governmental vehicle shall be provided with a reserved off-street parking space
Homes for the aged, sanitariums, nursing homes	1 space for each 4 patient beds, plus convalescent or 1 space for each staff doctor, plus 1 space for each 2 employees, including nurses
Hospitals	1 per 3 patient beds, exclusive of bassinets, plus 1 space for each 2 employees including nurses on the maximum working shift, plus adequate area for parking emergency vehicles
Hotels	1 per 2 rooms or suites, plus 2 per 3 employees
Industrial establishments	1.5 per 3 employees on the combined 2 largest successive shifts, plus adequate parking spaces for customer and visitor vehicles as determined by the governing body
Libraries	1 for each 400 square feet of floor space
Medical clinics	3 patient parking spaces per staff doctor, plus 2 per 3 employees

Mortuaries or funeral parlors	5 spaces per parlor or chapel unit, or 1 per 4 seats, whichever is greater
Motels and tourist courts	1 per guest bedroom
Private clubs, lodges, or union headquarters	1 per 3 members based on the design capacity of the facility
Retail stores, supermarkets, department service establishments, except as otherwise specified herein	1 per 100 square feet of retail floor space
Schools	
Elementary, junior high, and the equivalent private or parochial schools	2 spaces per 3 teachers and employees, and employees normally engaged in or about the building or grounds; plus 1 space for each 150 square feet of seating area including aisles, in any auditorium
Senior high schools and the equivalent private or parochial schools	2 spaces per 3 teachers and employees normally engaged in or about the building or grounds; plus 1 space per 5 students, or 1 space for each 150 square feet of seating area, including aisles, in any auditorium, gymnasium, or cafeteria intended to be used as an auditorium, whichever is greater
Kindergartens, day schools, and the equivalent private or parochial schools	2 parking spaces per 3 teachers and employees normally engaged in or about the building or grounds, plus 1 off-street loading space per 8 pupils
Shopping centers	There shall be a ratio of 4 square feet of parking (including driveways required for ingress and egress and circulation) to each 1 square foot of store area
Stadiums and sports	1 per 4 seats or 12 feet of benches
Swimming pools	1 per 30 square feet of water area
Theaters, auditoriums, and places of assembly with fixed seats	1 per 3 seats
Theaters, auditoriums, and places of assembly without fixed seats	1 per 3 people based on the design capacity of the structure
Wholesale establishments	1 for every 50 square feet of business service or customer service area, plus 2 per 3 employees based on the design capacity of the largest shift

(C) *Off-street parking lot layout, construction, and maintenance.* Wherever the required off-street parking requires the building of a parking lot, and wherever a parking lot is built, such parking lot shall be laid out, constructed, and maintained in accordance with the following regulations.

(1) Except for parcels of land devoted to one and two family uses, all areas devoted to off-street parking shall be so designed and be of such size that no vehicle is required to back into a public street to obtain egress.

(2) Each parking space shall be not less than 200 square feet in area and shall be a definitely designated stall adequate for one motor vehicle.

(3) In any determination of parking requirements as set forth in this section, where the resultant figure contains a fraction, any fraction less than one-half may be dropped and any fraction of one-half or more shall be counted as one parking space.

(4) All areas devoted to permanent off-street parking as required under this section shall be of such construction and maintained in such a manner that no dust will result from continuous use.

(5) The parking lot shall be drained to eliminate surface water.

(6) Where the parking lot abuts side lot lines of a residential district, there shall be established a setback of five feet from such side lot line unless vehicles are restrained by physical barrier from entering contiguous residential lots.

(7) Where the parking lot is contiguous to a residential district which has common frontage in the same block with the parking lot, there shall be established a setback line of ten feet from the street lot line. See § 155.58 for further information.

(8) Where the parking lot lies across the street and opposite a residential district, wherein the lots front on such street, there shall be established a setback line ten feet from the street lot line. See § 155.58 for further information.

(9) Where the parking lot abuts rear property lines of a residential district, there shall be established a setback line five feet from the rear lot line unless vehicles are restrained by physical barrier from entering contiguous residential lots.

(10) Where parking is to be provided in the front yard of a multiple family dwelling, there shall be established a setback line ten feet from the street lot line. The land between the setback line and the lot line in a parking lot is, for the purpose of this chapter, called a buffer strip. The ground in the front buffer strip shall be prepared and shall be planted with trees, shrubs, and grass.

(11) Plans for the layout of a parking lot must be approved by the governing body based on design standards approved by the Institute of Traffic Engineers.

(12) The governing body shall have the authority to approve off-street parking in any district which is more restrictive than that required for the major land use it is intended to serve subject to the preceding conditions. The following conditions shall also apply:

(a) The parking lot shall not have access from the more restrictive districts;

(b) All sides of the lot, except those openings for ingress and egress, shall be enclosed with an opaque ornamental fence, wall, or dense evergreen hedge, having a height of not less than five feet nor more than six feet. Such fence, wall, or hedge shall be maintained in good condition. Bumper stops shall be provided so as to prevent any vehicle from projecting over the buffer strip;

(c) The intensity of light and arrangement of reflectors shall be such as not to interfere with residential districts; and

(d) No sign of any kind shall be erected except information signs used to guide traffic and to state the conditions and terms of the use of the lot. Only non-intermittent white lighting of signs shall be permitted.

(D) *Ingress and egress.* The number of vehicular access driveways permitted on any single street frontage shall be limited to:

(1) One driveway where the parcel to be used has a maximum street frontage of at least 100 feet;

(2) Two driveways where the street frontage exceeds 100 feet upon application approval; and

(3) Driveways used for ingress and egress shall be limited to 25 feet in width, exclusive of curb returns.

(Ord. 10.6, passed 3-17-2009; Ord. passed 5-22-2019)

#### **§ 155.60 STORAGE AND PARKING OF TRAILERS AND COMMERCIAL VEHICLES.**

Commercial vehicles and trailers shall not be parked or stored on any lot occupied by a dwelling or on any lot in any residential district except in accordance with the following provisions.

(A) Not more than one commercial vehicle per family living on the premises shall be permitted; and in no case shall a commercial vehicle used for hauling explosives, gasoline, hazardous chemicals, radioactive materials, or liquefied petroleum products be permitted.

(B) No semi may park on any city right-of-way.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.61 MINIMUM OFF-STREET LOADING AND UNLOADING REQUIREMENTS.**

(A) In all districts, and on the same premises with every building, structure, or part thereof, erected and occupied for manufacturing, storage warehouse goods, display, a department store, a wholesale store, a market, a hotel, a hospital, or other uses similarly involving the receipt or distributions of vehicles or material or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading, and unloading.

(B) Minimum off-street loading and unloading spaces shall be provided as follows:

(1) One off-street loading and unloading space shall be provided for buildings up to and including 20,000 square feet of floor area, plus one additional off-street loading and unloading space for each additional 20,000 square feet of floor area up to and including 100,000 square feet;

(2) There shall be provided an additional off-street loading and unloading space for each additional 40,000 square feet of floor area in excess over 100,000 square feet; and

(3) Where trailer trucks are involved, such loading and unloading spaces shall be an area 12 feet by 75 feet with a 14-foot height clearance, and shall be designated with appropriate means of truck access to a street or alley as well as adequate maneuvering area.

(Ord. 10.6, passed 3-17-2009)

## § 155.62 SIGNS, BILLBOARDS, AND OTHER ADVERTISING STRUCTURES.

These conditions are established as a reasonable and impartial method of regulating advertising structures in order to insure safe construction, light, air, and open space, to reduce hazards at intersections, to prevent the accumulation of trash, to preclude the establishment of structures which would afford hiding places for immoral or criminal activities, and to protect property values of the entire community. The regulations for signs, billboards, and other advertising structures are indicated below.

(A) In any zoning district where signs are permitted, the following general regulations shall apply.

(1) No sign shall be erected or maintained at any location where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure, interfere with the view of, or be confused with any authorized traffic control sign, signal, or device. No sign shall be erected in any position where it obstructs or physically interferes with the driver's view of approaching, merging, or intersecting traffic.

(2) No sign shall contain or make use of any word, phrase, symbol, shape, form, or character in such manner as to interfere with, mislead, or confuse traffic.

(3) No sign having flashing, intermittent, or animated illumination shall be permitted within 300 feet of property in a residential district unless such sign is not visible from such property. Off- premises signs located adjacent to interstate and primary highways shall not contain, include, or be illuminated by any flashing, intermittent, or moving light or lights; except those giving public service information such as time, temperature, weather, or similar information. All such signs shall be effectively shielded to prevent any light from being directed onto the highway and shall not be of such brilliance or intensity as to cause glare on the highway or in any way impair the driver's vision or otherwise interfere with the safe operation of any vehicle.

(4) No illuminated sign shall be permitted within 50 feet of property in any residential district unless the illumination of such sign is so designed that it does not shine or reflect light onto such property.

(5) No billboard or ground sign shall be erected to exceed 35 feet above the ground level or 50 feet in length. The bottom coping of every ground sign shall be at least three feet above the ground or street level.

(6) No roof sign shall be at any point over 24 feet above the roof level. Roof signs shall not exceed the height limit of the zoning district.

(7) No part of any wall or projecting sign that is attached to a building shall be erected to a height greater than such building, unless the building and sign are architecturally integrated and designed as a unit.

(8) Permanent billboards and other similar outdoor advertising structure shall be erected or placed in conformity with the side and rear yard requirements of the district in which located. However, no permanent billboard shall be erected or placed closer than within 100 feet of any residential district. Off- premise signs located adjacent to interstate, national highway system, or primary highways shall be spaced not less than 100 feet apart. However, this limitation does not apply to signs that are separated by buildings or other obstructions in such a manner that only one sign surface within the above spacing stance is visible from the highway at any one time. All signs located adjacent to interstate, national highway system, or primary highways shall conform to all state and federal billboard regulations.

(9) No advertising sign shall be located in any area designated by the governing body as one of scenic beauty or historical interest.

(10) No building walls shall be used for display of advertising, except that pertinent to the use on the premises.

(11) Temporary signs shall not be erected or otherwise fixed to any permanent pole, tree, stone, fence, building, structure, or any object within the right-of-way of any street. No temporary sign shall be erected at the intersection of, or within, any street in such a manner as to obstruct free and clear vision, or be confused with any authorized traffic sign, signal, or device. Temporary signs may be erected or posted for a period not to exceed 30 days. Any sign posted for a longer period must meet the requirements for permanent signs. No temporary sign shall exceed 32 square feet in area.

(12) A temporary sign shall not be suspended across public streets or other public places, except as permitted by the governing body.

(13) No permanent sign shall be placed in any public right-of-way except publicly owned signs, such as traffic control signs and directional signs.

(14) Signs erected and overhanging any sidewalk must be placed at least nine feet above the sidewalk and may extend over the sidewalk a distance equal to two-thirds the width of the sidewalk, but in no case exceeding ten feet. This regulation does not imply any authority to grant the use of the public domain for private advertising.

(15) Pole signs shall not be over 30 square feet in area and shall be located not closer than ten feet to any street right-of-way line, and five feet from any other property line.

(16) Professional signs for home occupations, where permitted, shall not exceed two square feet in area provided such sign is either a wall or ground sign located not closer than five feet to the street right-of-way line.

(17) The area of a sign shall be determined by the smallest circle, triangle, or rectangle that can be used to enclose the

sign, exclusive to supporting members that bear no message. A sign designed to be viewed from two opposite directions shall be considered as one sign, provided that the two sign faces shall not be more than two feet apart if parallel, nor form an angle of more than 90° if angular. Where more than one sign is permitted on a lot, the net sign area shall be the sum of those signs designed to be viewed from one direction, and such signs shall not be less than 20 feet apart.

(B) *Public parks and recreation areas.* The following regulations shall apply in public parks and recreation areas.

(1) For historical monuments, structures, public parks, and/or playgrounds, information signs may be displayed but the total area of each sign shall not exceed nine square feet, and signs may have indirect lighting.

(2) Flashing lights or intermittent illuminations are prohibited.

(C) *Residential districts.* In residential districts, the following regulations shall apply.

(1) *Single-family, two-family, and multi-family dwellings.* Nameplates not to exceed two square feet in area, shall be permitted for each dwelling unit; such nameplates shall indicate nothing other than name and/or address of the occupants, premises, announcement of boarders or customary home occupation.

(2) *Multiple-family and group dwellings.* Identification signs, not to exceed nine square feet in area, shall be permitted; such sign shall be attached flush with the principal building and may have indirect illumination.

(3) *Announcement of church, school, or public building.* Bulletin boards of identification signs, not to exceed 20 square feet in area, shall be permitted; such bulletin boards or identification signs shall indicate nothing other than name and/or address of the premises, and schedule of services or other information relevant to the operation of the premises. Such sign shall be located not less than one-half the required setbacks and may have indirect illumination.

(4) Only one sign per street frontage shall be permitted.

(5) Flashing lights or intermittent illumination are prohibited.

(6) Billboards and other advertising structure are prohibited.

(D) *Commercial and General Industrial Districts.* In the Commercial (CO), and General Industrial (GI) Districts, the following regulations shall apply.

(1) *Public recreation uses, community facilities, hospitals, and clinics.* Bulletin boards or identification signs shall not exceed 20 feet in area.

(2) *Gasoline service stations.* Two pole signs not exceeding 200 square feet each in surface area and not exceeding 35 feet above ground level. Other business signs, the aggregate area of which does not exceed two square feet for each one lineal foot of lot adjoining a public street.

(3) For other permitted principal uses, business signs shall be permitted as incidental uses, not to exceed the number of signs nor to exceed the net area for all such signs permitted as follows: business signs not to exceed two square feet of surface for each one lineal foot of lot fronting on a public street, but in no case shall the surface area be limited to less than 50 square feet. All signs shall be mounted either on buildings or on sign display devices affixed permanently to the ground.

(E) In any district, the following signs shall be permitted.

(1) For each permitted or required parking area that has a capacity of more than four cars, one non-illuminating sign, not more than two square feet in area, designating each entrance to or exit from such parking area; and one non-illuminated sign, not more than 90 square feet in area, identifying or designating the conditions of use of such parking area.

(2) One non-illuminated "for sale" or "for rent" sign not exceeding four square feet in area and advertising the sale, rental, or lease of the premises on which the sign is located. A larger sign shall be permitted for two or more lots in single ownership or for properties in excess of 100 feet in width, provided that the area of such sign shall be increased on a graded scale of one square foot increase in area for each additional five feet of frontage over 100 feet, but in no case shall the sign exceed in the aggregate 200 square feet. Such sign shall be a ground or wall sign and located not closer than 20 feet from the street line.

(3) For each real estate subdivision that has been approved, one sign, not over 100 square feet in area, advertising the sale of property in such subdivision. Such sign shall be permitted only when located on some portion of the subdivision being advertised for sale and shall not encroach upon any required yard. Such sign may be illuminated, but no flashing, intermittent, or animated illumination is permitted. Such sign shall be maintained only during such time as some portion of the land is unsold.

(4) For construction or on development of a lot, one sign, not more than 12 square feet in area, giving the names of contractors, engineers, or architects, but only during the time that construction or development is actively underway.

(5) One sign, not more than four square feet in area, pertaining to the sale of agricultural products raised on the premises, except no sign of this type in areas zoned R1 or R2.

(6) Signs established by, or by order of, any governmental agency.

(7) For special events of public interest, one sign, not over 32 square feet in area and located upon the site of the event. Such sign shall not be erected more than 30 days before the event in question and shall be removed within 24 hours

following such event. Also directional signs, not more than three square feet in area, showing only a directional arrow and the name of the event of public interest. Such sign shall not be erected more than ten days before the event in question and shall be removed within 24 hours following such event.

(F) *Unsafe and unlawful signs.* The following regulations shall apply to unsafe and unlawful signs and for the maintenance of signs. Whenever it shall appear to the governing body that any sign has been constructed or erected or is being maintained in violation of the terms of this section, or is unsafe or insecure, such sign shall either be made to conform with all sign regulations as provided by this section or shall be removed within ten days after written notification from the governing body. Such sign shall be made to conform or shall be removed by, and at the expense of, the owner or lessee thereof.

(Ord. 10.6, passed 3-17-2009; Ord. passed 11-13-2009)

#### **§ 155.63 GASOLINE SERVICE STATIONS.**

The following regulations shall apply to all gasoline service stations.

(A) There shall be a building setback from all right-of-way lines a distance of not less than 40 feet.

(B) Service stations shall not be constructed closer than 50 feet to any residential district.

(C) The minimum distance between the intersection of right-of-way lines at a corner lot and the driveway to a service station shall be not less than 40 feet.

(D) When two curb openings are giving access to a single street, they shall be separated by an island with a minimum dimension of 25 feet at both the edge of the pavement and the right-of-way line. Curb cuts for driveways shall not be located closer than ten feet to any adjoining property line.

(E) To insure that sufficient room is provided on either side of the pumps without intruding upon sidewalks or on adjoining property, gasoline pumps shall not be located closer than 50 feet from any residential district and 15 feet from any public sidewalk.

(F) Gasoline pumps shall not be located closer than fifteen 15 feet to any street right-of-way line when no sidewalks exist.

(G) A masonry wall or solid fence shall be constructed when service station property abuts property zoned for residential purposes. Such wall shall be not less than five feet in height, except such wall or fence shall be not less than two feet or exceed three and one-half feet in height for that portion within the most restrictive setback requirements. All required yards shall be landscaped and maintained.

(H) Off-street parking shall be as regulated in §155.59.

(I) Signs shall be as regulated in § 155.62.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.64 CUSTOMARY HOME OCCUPATIONS.**

(A) This section defines customary home occupations and prescribes the conditions under which such occupations shall be permitted.

(B) A customary home occupation is a gainful occupation or profession conducted by members of a family residing on the premises and conducted entirely on the premises. In connection with a home occupation, no stock in trade shall be displayed outside the structures.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.65 TEMPORARY USES.**

The regulations contained in this section are necessary to govern the operation of certain transitory or seasonal uses, non-permanent in nature that are customarily done for profit and generating a flow of customers.

(A) An application for temporary use permit shall be made to the governing body and shall contain the following information:

(1) A survey or legal description of the property to be used, rented, or leased for a temporary use, including all information necessary to accurately portray the property;

(2) A description of the proposed use; and

(3) Sufficient information to determine the yard requirements, setbacks, sanitary facilities, and availability of parking space to service the proposed use.

(B) The following uses are deemed to be temporary uses and shall also be subject to the specific regulations and time limits which follow, and to the regulations of any district in which such use is located.

(1) *Carnival or circus.* In any non-residential district, a temporary use permit may be issued for a carnival or circus, but such permit shall be issued for a period not longer than 15 days. Such a use shall set back from all residential districts at a distance of 100 feet or more.

(2) *Christmas tree sale.* In any non-residential district, a temporary use permit may be issued for the display and open-lot sales of Christmas trees, but such permit shall be issued for a period not longer than 30 days.

(3) *Temporary buildings.* In any district, a temporary use permit may be issued for a contractor's temporary office and equipment sheds incidental to a construction project. Such office or shed shall not contain sleeping or cooking accommodations. Such permit shall be valid for not more than one year but may be renewed a maximum of two one-year extensions. However, such office or shed shall be removed upon completion of the construction project or upon expiration of the temporary use permit, whichever occurs sooner.

(4) *Real estate sales office.* In any district a temporary use permit may be issued for a temporary real estate office in an approved new subdivision. Such office shall contain no sleeping or cooking accommodations. Such permit shall be valid for not more than one year, but may be renewed a maximum of three one-year extensions. Such office shall be removed or converted to a conforming use upon completion of the development of the subdivision or upon expiration of the temporary use permit, whichever occurs sooner.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.66 TENTS.**

No tent shall be used, erected, or maintained as a permanent living quarters.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.67 SWIMMING POOLS.**

The following regulations shall apply to swimming pools.

(A) A private swimming pool shall be any pool or open tank not located within a completely enclosed building, and containing or normally capable of containing water to a depth at any point greater than three feet. Private swimming pools are permitted in any residential district provided:

(1) The pool is intended and is to be used solely for enjoyment of the occupants of the property on which it is located and their guests;

(2) If the swimming pool or part thereof is located in the front yard, it shall be not less than half of the required front yard set back; and

(3) The swimming pool area shall be so walled or fenced so as to prevent uncontrolled access by children from the street or from adjacent properties. Said fence or wall shall be not less than six feet in height and maintained in good condition.

(B) A community or club swimming pool not open to the public shall be any pool constructed by an association of property owners, or by a private club for use and enjoyment by members of the association or club and their families and guests. Community and club swimming pools shall comply with the following conditions and requirements:

(1) The pool is intended solely for the enjoyment of the members and families and guests of members of the association or club under whose ownership or jurisdiction the pool is operated;

(2) The pool and accessory structures thereto, including the areas used by the bathers, shall be not closer than 25 feet to any property line of the property on which located; and

(3) The swimming pool and all of the area used by the bathers shall be so walled or fenced so as to prevent uncontrolled access by children from the street or adjacent properties. Safe fence or wall shall be no less than six feet in height and maintained in good condition. The area surrounding the enclosure, except for parking spaces, shall be suitably landscaped with grass, hardy shrubs, and trees, and maintained in good condition.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.68 LIGHTING.**

Lighting of all types shall be directed so as to reflect from all residential districts, and shall be so situated so as not to reflect directly on any public rights-of-way.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.69 PRE-EXISTING CONDITIONS.**

Any otherwise lawful use of land or structure existing at the time of adoption of these regulations may be continued, maintained, and repaired, except as otherwise provided in this section.

(A) *Continuance of non-conforming uses.* The lawful operation of a non-conforming use as such use existed on the effective date of this chapter, or any amendment hereto, by which the use became a non-conforming use, may be continued; provided, however, that the number of dwelling units in a non-conforming dwelling use shall not be increased over or exceed the number of dwelling units in the non-conforming use on the effective date of this chapter.

(B) *Extension of non-conforming uses in structures.* A non-conforming use in a structure may be extended throughout the structure provided no structural alterations, except those required by law or ordinance, are made therein.

(C) *Termination of non-conforming uses.* Except as hereinafter provided, a non-conforming use that has been abandoned or discontinued for a year shall not be re-established.

(D) *Non-conforming use of open land.* A non-conforming use not enclosed in a building or structure, or one in which the use of the land is a use exercised principally outdoors and outside of a building or structure shall, after discontinuance of its principal use or abandonment of one year, become a prohibited and unlawful use and shall be discontinued.

(E) *Enlargement or extension of non-conforming structures.* A non-conforming structure in which a non-conforming use is operated shall not be enlarged or extended; a non-conforming structure in which only permitted uses are operated may be enlarged or extended in the enlargement or extension can be made in compliance with all of the provisions of this chapter established for structures in the district in which the non-conforming structure is located.

(F) *Restoration of damages non-conforming structures.* A non-conforming structure damaged in any manner and from any cause whatsoever to the extent of not more than 60% of its replacement cost may be restored to its original or better condition, provided restoration is completed within one year of the date of the damage.

(G) *Outdoor advertising signs and structures.* No outdoor sign or outdoor advertising structure which, after the adoption of this chapter, exists as a non-conforming use in any district, shall continue, as herein provided for non-conforming uses, but every such sign or structure shall be removed or changed to conform to the regulation of said district within a period of two years.

(H) *Non-conforming manufactured home use and change of ownership.* See Chapter 153 regarding mobile homes.

(Ord. 10.6, passed 3-17-2009)

## **§ 155.70 FENCING.**

Fences, walls, and screening are allowed in all yards provided they meet the following height limitations and construction standards unless otherwise stated:

(A) *Fence construction standards.*

(1) All posts and bracing shall face towards the owner.

(2) Shall be constructed on the owner's property and shall be allowed on the property line. And it is the fence owner's responsibility to know for sure where the line is. If it's found that the fence is on the wrong side of the line, it has to be (re)moved at their expense.

(3) Materials:

(a) Fences shall not be constructed of electrically charged wire, razor wire or wire fences such as those with hardware cloth, chicken wire, agriculture, or others. Moreover, materials not specifically manufactured for permanent fencing are not allowed, and no fence shall be made of, in whole or in part, cloth, canvas or other like material. With the exception of a snow fence.

(b) The cut or selvage end of wire or metal fencing materials may not be exposed at the top of a fence if the height of the fence is less than six feet. Fences designed for painting or similar surface finishes shall be maintained in their original condition as designed. All exposed steel, except galvanized metal fences, shall have a colored finished coat applied to them and be preserved against rust and corrosion.

(c) Property owners shall be responsible for the maintenance of the fencing, walls and hedges on their property, and for removal of any fence, wall, or hedge if it becomes unsightly or a menace to public safety, health or welfare.

(B) *Residential District - front yards.*

(1) Shall not exceed five feet.

(2) Shall not exceed two and one-half feet within the herein-defined "Traffic Visibility Triangle" on corner lots, unless construction is of a see through type.

(a) *Residential District.* Side and rear yards shall not exceed six feet; and front yard shall not exceed feet.

(b) *Commercial and Industrial.* All fencing, walls, buffer zones and screening shall not exceed eight feet.

(c) *Temporary fence.* The Board of Trustees may require that a temporary fence be constructed on or around any demolition or construction site, when deemed necessary to protect the public.

(d) *Flood zone.* A fence constructed in the flood zone requires a floodplain permit and approval by the Floodplain

Administrator. Fences generally must be a breakaway or drop fence (designed to fail under flood conditions.).

(C) *Variance; standards for variance approval.* When determining a variance to fence, wall, and hedge requirements, the zoning board shall consider the following:

- (1) Safety in regard to the subject property, adjacent properties, ingress and egress, streets, alleyways, and water bodies.
- (2) Visual impact on adjacent properties, streets, alleyways, and water bodies.
- (3) Design in relation to other structures on the same lot, adjacent properties, and the neighborhood.
- (4) Impact on ingress and egress, if applicable.
- (5) Screening, buffering or separation of any nuisance or hazardous feature.
- (6) Compatibility with adjacent properties.

(Ord. passed 11-3-2020)

## **ADMINISTRATION AND ENFORCEMENT**

### **§ 155.85 ORGANIZATION.**

(A) *Administration and enforcement.* An administrative official or Board designated by the Town Board shall administer and enforce this chapter. They will be provided with the assistance of such other persons as the Town Board may deem necessary, such as the police force, Building Inspector, and the like for the successful enforcement of this chapter. Should the governing body find that any of the provisions of this chapter are being violated, they shall notify, in writing, the party or parties responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct the violation. They shall order discontinuance of illegal use of land; removal of illegal buildings, or structures, or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to ensure compliance with or to prevent violations of its provisions. Before any inspections or work is begun, all contractors, carpenters, plumbers, gas/propane installers, or electricians shall pay an annual application fee to the town, as stated in the fee schedule, and provide proof of state certification and liability insurance.

(B) *Board of Adjustment.*

(1) In lieu of appointing a Board of Adjustment, the Town Board may act as and perform all the duties and exercise the powers of such Board of Adjustment as provided in SDCL § 11-4-24.

(2) The governing body, except as otherwise provided in SDCL § 11-4-24, shall provide for the appointment of a Board of Adjustment. Should the governing body elect not to comply with 1967 SDCL § 11-4-24, and then the governing body will appoint a Board of Adjustment which shall consist of five members, each residents of the town, who are not members of any governing body. Each member is appointed for a term of three years and removable for cause by the governing body upon written charges and after public hearing. Vacancies shall be filled for the unexpired term only.

(3) The Board shall elect a Chairman and Secretary from its membership, and shall prescribe rules for the conduct of its affairs. Meetings of the Board shall be held at the call of the Chairman, and at such other times as the Board may determine at a fixed time and place. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. It shall have power to call on any other departments for assistance in the performance of its duties, and it shall be the duty of such other departments to render all such assistance as may be reasonably required. In the case of all appeals, the Board shall call upon the governing body for all information pertinent to, and their recommendations.

(4) *Powers of the Board of Adjustment.* The Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses, and in the furtherance of their duties shall have the following powers:

(a) The Board shall have the power to hear and decide appeals wherein it is alleged there is an error in any order, requirement, decision, or determination of this chapter made by the governing body;

(b) To hear and decide variances to the terms of this chapter when such variances are allowed by this chapter; and

(c) To authorize upon appeal in specific cases such variance from terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed as substantial justice done.

(5) *Appeals procedures to the Board.*

(a) The governing body shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter.

(b) Appeals to the governing body may be submitted by any person aggrieved by any decision of the governing body. Such appeal shall be submitted within 60 days, as provided by the rules of such body, by filing it with the governing body.

The appeal shall specify the grounds thereof. The governing body shall forthwith transmit to the City Council all the papers constituting the record upon which the action appealed was taken from.

(c) An appeal to the governing body stops all erection, construction, enlarging, moving, or demolishing in the action appealed, unless the governing body files a certificate that, by reason of facts stated in the certificate, a discontinuance would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stopped otherwise than by a restraining order, which may be granted by the governing body or by a court of record, on application, on notice to the governing body, and on due cause shown.

(d) The governing body shall fix a time for the hearing of the appeal within 60 days of submission of such appeal, give public notice thereof, as well as due notice to the parties in interest and decide within 30 days of the hearing. Upon the hearing any party may appear in person or by agent or by an attorney.

(e) In exercising the powers mentioned, the governing body may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the governing body from whom the appeal is taken.

(f) The concurring vote of four members of the governing body shall be necessary to reverse any order, requirement, decision, or determination of the governing body or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(C) *Governing body.* The governing body shall:

(1) Establish such rules of procedure as are necessary to the performance of its functions hereunder;

(2) Review and give final decision on all applications for uses permitted on review in accordance with §155.55 and this section; and

(3) Study and report on all proposed amendments to this chapter; further to review annually this chapter and on the basis of such review, suggest amendments thereto.

(Ord. 10.6, passed 3-17-2009)

## **§ 155.86 VARIANCES.**

The purpose of the variance is to modify the strict application of the specific requirements of this chapter in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his lot as the Zoning Ordinance intended.

(A) *Application.* After written denial of a building permit from the governing body, a property owner may make application to the governing body for a variance, using forms obtainable.

(B) *Public hearing.* Upon receipt of an application and fee, the governing body shall hold a public hearing having first given 15 days notice. Such notice of the time and place of such hearing shall be published in a designated legal publication. The governing body shall consider and decide all applications for variances within 30 days of such public hearing and in accordance with the standards provided below.

(C) *Standards for variances.* In granting a variance, the governing body shall ascertain that the following criteria are met.

(1) Variances shall be granted only where special circumstances or conditions (such as exceptional narrowness, topography, or siting) as verified by the finding of the governing body, do not apply generally in the district.

(2) Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.

(3) For reasons fully set forth in the findings of the governing body, the aforesaid circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicants of any reasonable use of his land. Mere loss in value shall not justify a variance; there must be a deprivation of beneficial use of land.

(4) Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.

(5) The granting of any variance is in harmony with general purposes and intent of this chapter and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the comprehensive plan for development.

(6) A fee, as per the current fee schedule, due and payable at the time of application, shall be paid to the Town Clerk as agent for the governing body, to cover the costs of notices and other expenses incidental to the hearing.

(D) *Requirement for the granting of a variance.* Before the governing body shall have the authority to grant a variance, the persons claiming the variance have the burden of showing:

(1) That the granting of the permit will not be contrary to the public interest;

(2) That the literal enforcement of this chapter will result in unnecessary hardship;

- (3) That by granting the permit contrary to the provisions of this chapter the spirit of this chapter will be observed; and
- (4) That by granting the permit, substantial justice will be done.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.87 COURT REVIEW OF DECISIONS OF THE BOARD.**

(A) Any person or persons, jointly or severally, aggrieved by any decision of the governing body, or any taxpayer, any officer, department, board, or bureau of the municipality, may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing with the Chairman of the Board.

(B) Upon the presentation of such petition the court may allow a writ of certiorari directed to the governing body to review such decision of the governing body. The governing body shall be required to turn over to the court certified copies of all paper acted on by it, and any other information as may be pertinent and material to show the grounds of the decision appealed from.

(C) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(D) Costs shall not be allowed against the governing body unless it shall appear to the court that the governing body acted with gross negligence or in bad faith or with malice in making the decision appealed from.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.88 CERTIFICATE OF OCCUPANCY.**

A certificate of occupancy shall be required as regulated in the Uniform Building Code.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.89 PROCEDURE FOR AUTHORIZING USES PERMITTED ON REVIEW.**

The following procedure is established to integrate properly the uses permitted on review with other land uses located in the district. These uses shall be reviewed by the governing body and authorized or rejected under the following procedure.

(A) *Application.* An application shall be filed with the governing body for review. Said application shall show the location and intended use of the site, the names of the property owners and existing land uses within 500 feet, and any other material pertinent to the request which the governing body may require.

(B) *Public hearing.* Upon application, the governing body shall give a 30 day notification of a public hearing. Such notice of time and place of such hearing shall be published in a local legal publication.

(C) *Restrictions.* In the exercise of its approval, the governing body may impose such conditions regarding the location, character, or other features of the proposed use or buildings as it may deem advisable in the furtherance of the general purposes of this chapter.

(D) *Issuance of permit.* Upon completion of the necessary application, hearing, and approval of the governing body, the building permit shall be issued subject to all applicable rules, regulations, and conditions.

(E) *Validity of plans.* All approved plans, conditions, restrictions, and rules made a part of the approval of the governing body shall constitute certification on the part of the applicant that the proposed use shall conform to such regulations at all times.

(F) *Time limit and notification.* All applications for uses permitted on review shall be decided within 60 days of the date of application, and the applicant shall be provided with either a written notice of approval or denial.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.90 REZONING.**

The regulations, restrictions, boundaries, and options set forth in this chapter may be amended, supplemented, revised, or repealed from time to time as conditions warrant, subject to the following conditions.

(A) *Application.* An application for a proposed rezoning shall be filed with the town's Planning Commission. Amendments may be instituted by the property owner or his or her designated representative, by an appropriate governmental agency, or by the town's Planning Commission. For rezone applications the following requirements shall apply: public notice shall be sent to all owners of property adjacent to or within 250 feet of the perimeter of the property, inclusive of public right-of-way. Notice shall be sent by first class mail at least 14 days prior to the public hearing. When adjacent property is owned by a subdivision or condominium association, notification may be sent to the management company or board of such

association. The city may require the applicant to sign a certified affidavit prior to the public hearing as evidence to document compliance with the requirements of this section. The public notice shall provide the following information:

- (1) The area subject to the proposed rezoned;
- (2) The date, time, and location of the Planning Commission hearing;
- (3) A summary of the purposes of the rezone and the changing conditions that support the rezone;
- (4) Information regarding the existing zoning district and the proposed zoning district; and
- (5) Any other information the Director deems relevant and necessary.

(B) *Public hearings.* Upon application, the town's Planning Commission shall hold a public hearing thereon, subject to the same notice requirements as set forth herein for the Board of Trustees, and then submit its report to the Board of Trustees. The proposed amendment shall be adopted as other ordinances, except that the town's Finance Officer shall cause to be published once a week for at least two successive weeks prior to the date of the adoption of the ordinance, a notice of the time and place when and where all persons interested shall be given a full, fair, and complete hearing.

(C) *Time limit and notification.* All proposed amendments shall be decided by the Board of Trustees within 60 days of the public hearing.

(D) *Standards for amendments.* A proposed amendment shall be considered on its own merits using the following criteria as a guide.

(1) *Text or map amendments.* The following conditions shall be met for all amendments:

- (a) The proposed amendments shall be necessary because of substantially changed or changing conditions of the area and districts affected, or in the city generally;
- (b) The proposed amendments shall be consistent with the intent and purposes of this chapter;
- (c) The proposed amendment shall not adversely affect any other part of the town, nor shall any direct or indirect adverse effects result from the amendment; and
- (d) The proposed amendments shall be consistent with and not in conflict with the development plans of the town including any of its elements, major street plan, land use plan, comprehensive plan, and others.

(2) *Corrections.* Errors or oversights as may be found in this title as originally adopted shall be corrected under the normal amendment procedure.

(E) *Fees.* A fee shall be paid at the time of filing any application for a zoning amendment. The fee shall be set by the Board of Trustees.

(Ord. passed 4-2-2018)

## **§ 155.91 AMENDMENTS.**

The regulations, restrictions, boundaries, and options set forth in this chapter may be amended, supplemented, revised, or repealed from time to time as conditions warrant, subject to the following conditions.

(A) *Application.* An application for a proposed amendment shall be filed with the governing body. Amendments may be instituted by either the property owner or his designated representative or by an appropriate governmental agency.

(B) *Public hearing.* Upon application, the governing body shall schedule a hearing having first given 30 days notice of such hearings by one publication in a legally designated paper. The governing body shall consider and make recommendations on all proposed amendments, taking into account the testimony at the hearing; a site inspection of the property in question; the recommendations from the Health Department; or other official bodies; and the standards provided below.

(C) *Time limit and notification.* All proposed applications for amendments shall be decided by the governing body within 60 days of the public hearing.

(D) *Procedure.* Any amendment to this chapter shall be adopted as any other ordinance or change in ordinance.

(E) *Standards for amendments.* A proposed amendment shall be considered on its own merits using the following criteria as a guide:

(1) Text or map amendments:

- (a) The proposed amendment shall be necessary because of substantially changed or changing conditions of the area and district affected, or in the town generally;
- (b) The proposed amendment shall be consistent with the intent and purposes of this chapter;
- (c) The proposed amendment shall not adversely affect any other part of this chapter, nor shall any direct or indirect adverse effects result from such amendment; and

(d) The proposed amendment shall be consistent with and not in conflict with the comprehensive plan of the town including any of its elements; the major road plan, land use plan, community facilities plan, and others.

(2) No new zoning district shall be created to contain an area of less than four acres. The four acres need not be under common ownership.

(3) Errors or oversights as may be found in the ordinance as originally adopted shall be corrected under the normal amendment procedure.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.92 FEES.**

All fees for all permits or actions reference within this chapter shall follow the current fee schedule on file with the Hermosa Town Office.

(Ord. 10.6, passed 3-17-2009)

#### **§ 155.93 CONFLICTS WITH OTHER LAWS.**

In the interpretation and application of the provisions of this chapter, these provisions shall be held to be the minimum requirements adopted for the promotion of the public health, morals, safety, and the general welfare. 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. 10.6, passed 3-17-2009)

#### **§ 155.99 PENALTY.**

(A) It shall be unlawful to erect, construct, reconstruct, alter, maintain, or use any building or structure, or to use any land in violation of any regulation in this chapter. Any person, firm, association, or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or resists, the enforcement of any of the provisions of this chapter shall upon conviction thereof, be subject to a fine as stated in current fee schedule together with the cost of action.

(B) Every day of violation shall constitute a separate offense.

(C) Fines shall not exceed one-quarter of the assessed value of the property.

(D) Compliance with this chapter may also be enforced by an injunction order at the suit of the petitioner or the owner or owners of real estate within the district affected by the regulations of this chapter.

(E) Any non-compliance will stop construction until corrected.

(F) All subjects not covered specifically by town ordinances must meet state specifications or uniform building codes, whichever is more stringent.

(Ord. 10.6, passed 3-17-2009)

## **TABLE OF SPECIAL ORDINANCES**

Table

### **I. FRANCHISES**

### **II. REZONING**

## **TABLE I: FRANCHISES**

<b>Ord. No.</b>	<b>Date Passed</b>	<b>Description</b>
13	2-12-1962	Grants a telephone/telegraph system franchise to Northwestern Bell Telephone Company
12	5-13-1966	Grants an electric system franchise to the Black Hills Electric Cooperative
36	9-8-1986	Grants a non-exclusive franchise to Hermosa Cable, Inc. for a cable television system

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## TABLE II: REZONING

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
10.6.3.2-001	3-3-2009	Rezoning six different areas of land
10.6.3.2-002	8-17-2010	Rezones Lot 14 of Block 12 from Residential (R1) to Commercial (CO)
10.6.3.2-003	9-7-2010	Rezones Lot 2 of G&G Subdivision from Commercial (CO) to Residential (R1)
10.6.3.2-004	3-1-2011	Rezoning Lot 25 of Block 4 from Residential (R1) to Commercial (CO)
10.6.3.2-008	9-19-2017	Rezoning Lots 1-6 of Block 4 from Government/Public Use (GP) to Residential (R1)
155.16-009	2-5-2020	Rezoning Lots 7-8-9-10 Block 6 from Government/Public Use (GP) to Commercial (CO) and Lot 11 Block 6 from Residential 1 (R1) to Commercial (CO)

### PARALLEL REFERENCES

References to South Dakota Codified Laws

References to Resolutions

References to Ordinances

## REFERENCES TO SOUTH DAKOTA CODIFIED LAWS

<i>SDCL Cites</i>	<i>Code Section</i>
<i>SDCL Cites</i>	<i>Code Section</i>
2-14	154.02
9-1-1	10.02, 10.04
9-4	30.01
9-13-13	10.04
9-14-2	30.01
9-19-1	10.04
9-19-3	10.99, 115.99, 132.99, 150.99, 152.99, 154.99
9-29-3	130.01
9-36	151.01
9-47-19	50.11
9-47-28	50.01
9-48-26	51.08

9-48-53	51.02
10-4-2.4	153.01
10-45	31.02, 31.05, 31.11, 31.13, 31.99
10-46	31.03
10-52	31.01, 31.04
10.52A	31.10, 31.12
11-3-8.1	154.24
11-3-8.2	154.24
11-4	32.06, 151.01, 154.01
11-4-11.1	32.01, 32.06, 154.02, 155.02
11-4-24	155.85
11-6	32.06
21-8	154.99
22-6-2(2)	10.99, 115.99, 132.99, 150.99, 152.99, 154.99
31-12A	154.02, 154.20
32-23-7	71.03
34-20G	95.02, 95.03, 95.04, 95.09
34-20G-1	95.01
34-37-16.1	131.05
Title 35	116.02
35-1-1	31.11
35-4-2(4)	116.06
35-4-2(6)	116.06
35-4-2(19)	116.05
35-4-91.1	116.06
35-4-111	116.06
35-4-112	116.06
35-4-113	116.06
35-4-116	116.06
35-4-117	116.06
35-12	116.04, 116.05
36-18A	154.22
36-18A-45	154.22, 154.24
40-1-2	90.05

## REFERENCES TO RESOLUTIONS

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<i>Res. No.</i>	<i>Date Passed</i>	<i>Description</i>
2009-5	9-1-2009	50.11

## REFERENCES TO ORDINANCES

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<b>Ord. No.</b>	<b>Date Passed</b>	<b>Description</b>
7	6-6-1949	Ch. 73 Schd. I
8	12-8-1959	150.99
13	2-12-1962	TSO Table I
12	5-13-1966	TSO Table I
22	4-5-1971	70.07, 70.99
23	6-5-1972	70.07, 70.99
29	8-7-1972	70.01—70.03
31	9-4-1973	130.04
-	8-5-1974	Ch. 73 Schd. I
33	4-9-1979	150.02
34	3-2-1981	70.04, 70.99
36	9-8-1986	TSO Table I
-	4-6-1987	150.02, 150.99
9-2	5-2-2000	152.01, 152.02
10.018	3-20-2001	111.01—111.08
10.012	4-3-2001	91.01—91.09, 91.11
10.021	6-18-2002	110.01
9.019A	8-20-2002	70.05
10.019B	5-4-2004	153.01, 153.02, 153.99
10.012A	12-7-2004	91.07, 91.10
10.9	- -2005	154.01—154.06, 154.20—154.24, 154.35—154.39, 154.99
9.03	5-17-2005	70.05
-	3- -2006	50.40—50.47
9.05	6-6-2006	71.01—71.06
10	6-20-2006	50.01—50.23, 50.25, 50.26
15	6-20-2006	51.01—51.10
9.04A	8-15-2006	70.06
7.3	10-3-2006	31.01—31.05, 31.99
9.06	1-16-2007	132.01—132.07
10.040	2-3-2008	114.01—114.11, 114.99
10.050	2-3-2008	115.01—115.07
-	11-18-2008	30.05, 30.07
1.005A	11-18-2008	30.01—30.07
10.07	- -2009	150.03, 150.99
10.6.3.2-001	3-3-2009	TSO Table II
10.6	3-17-2009	155.01, 155.02, 155.15—155.18, 155.30—155.38, 155.55—155.69, 155.85—155.89, 155.91—155.93, 155.99
10.10	5-19-2009	92.01—92.15
10.1	8-18-2009	50.11
15.1	8-18-2009	51.08
-	11-13-2009	155.02, 155.62
9.07	4-6-2010	72.01—72.06, 72.99
10.6.3.2-002	8-17-2010	TSO Table II
10.6.3.2-003	9-7-2010	TSO Table II
10.6.3.2-004	3-1-2011	TSO Table II
8.003	4-17-2011	93.01—93.06
10.019C	8-16-2011	153.01
1.004R	9-6-2011	113.01—113.10, 113.99

10.03R	11-15-2011	151.01—151.04, 151.15—151.19, 151.99
10.9A3	- -2012	154.07
15.13(R-2012)	--2012	150.01
15.14(R-2012)	--2012	150.01
15.15(R-2012)	--2012	150.01
10.11	5-15-2012	112.01—112.05
10.8	12-4-2012	150.04, 150.99
10.03R(A1)	10-7-2014	151.02
10R-2015	2-2-2015	50.01-50.27
15R-2015	2-2-2015	51.01-51.11
9-1R	2-17-2015	90.01-90.19, 90.99
10.6R.A2	2-17-2015	155.15, 155.39
4.0	9-15-2015	116.01-116.09, 116.99
10.6.3.2-008	9-19-2017	TSO Table II
91.1A	5-30-2017	91.01, 91.99
-	6-12-2017	51.99
-	6-12-2017	50.99
90.07A	10-3-2017	90.07
52.02A	11-21-2017	50.02
31.06	3-6-2018	31.10-31.14, 31.99
-	4-2-2018	155.90
-	4-17-2018	91.07
-	4-17-2018	91.07
-	6-19-2018	52.01-52.07, 52.99
-	9-4-2018	116.06
-	1-8-2019	50.01
-	1-8-2019	51.02
-	1-8-2019	155.58
-	2-5-2019	94.01—94.03
-	5-7-2019	91.02
-	5-22-2019	155.59
155.16-009	2-5-2020	TSO Table II
-	8-4-2020	91.04—91.10
-	11-3-2020	155.02, 155.70
-	12-15-2020	90.01—90.19, 90.99
-	5-18-2021	50.01
-	9-16-2021	95.01—95.16, 95.99
-	9-16-2021	117.01—117.08
-	3-1-2022	30.01
-	3-1-2022	30.05
-	3-1-2022	30.06
-	3-15-2022	30.07
-	4-19-2022	155.02, 155.31
-	12-20-2022	52.03
-	12-20-2022	153.01
-	4-18-2023	50.01
-	4-18-2023	131.01—131.05, 131.99
-	6-6-2023	30.08
-	6-6-2023	90.07
-	10-17-2023	30.07
-	11-21-2023	32.01—32.06

-	11-21-2023	154.02
-	11-21-2023	155.02