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CHAPTER 150: BUILDING CODE

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§ 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

Section

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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

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)

CHAPTER 153: MOBILE HOMES; PARKS

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

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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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, rags, 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.

<i>Zoning Districts</i>	
<i>Zoning Districts</i>	
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) Freighting 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.*

Table of Parking Spaces Required	
Use	Parking Spaces Required
Table of Parking Spaces Required	
Use	Parking Spaces Required
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 selva 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)