

TITLE III: ADMINISTRATION

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CHAPTER 30: OFFICIALS AND EMPLOYEES

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§ 30.01 DEFINITIONS.

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

DOMICILE.

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

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

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

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

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

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

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

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

§ 30.02 RESIDENCY REQUIRED.

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

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

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

§ 30.03 CIRCUMSTANCES.

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

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

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

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

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

§ 30.04 WAIVER.

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

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

§ 30.05 PLANNING AND ZONING BOARD; WAIVER.

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

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

§ 30.06 BOARD OF TRUSTEES; WAIVER.

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

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

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

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

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

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

§ 30.07 BOARD MEMBER ATTENDANCE AND COMPENSATION.

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

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

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

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

§ 30.08 TERM LIMITS.

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

(Ord. passed 6-6-2023)

CHAPTER 31: TAX AND FINANCE

Section

Municipal Sales and Service Tax

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

Municipal Gross Receipts Tax

- 31.10 Purpose
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MUNICIPAL SALES AND SERVICE TAX

§ 31.01 PURPOSE.

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

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

§ 31.02 EFFECTIVE DATE AND ENACTMENT OF TAX.

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

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

§ 31.03 USE TAX.

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

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

§ 31.04 COLLECTION.

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

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

§ 31.05 INTERPRETATION.

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

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

MUNICIPAL GROSS RECEIPTS TAX

§ 31.10 PURPOSE.

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

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

§ 31.11 EFFECTIVE DATE AND ENACTMENT OF TAX.

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

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

§ 31.12 COLLECTION.

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

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

§ 31.13 INTERPRETATION.

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

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

§ 31.14 USE OF REVENUE.

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

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

§ 31.99 PENALTY.

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

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

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

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

CHAPTER 32: TOWN ORGANIZATIONS

Section

Town Planning and Zoning Commission

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

TOWN PLANNING AND ZONING COMMISSION

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

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

(Ord. passed 11-21-2023)

§ 32.02 ORGANIZATION.

(A) The Hermosa Board of Trustees, in its capacity as the Planning and Zoning Commission, shall elect a Chairperson from among its members for a term of one year (with eligibility for re-election) and shall also elect a Vice Chairperson and

Secretary in a manner prescribed by the rules of the members and shall hold meetings as needed and shall adopt rules for transaction of its business and keep a record of its resolutions, transactions, findings and determinations which shall be a public record.

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

(Ord. passed 11-21-2023)

§ 32.03 PREPARATION OF COMPREHENSIVE PLAN.

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

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

(Ord. passed 11-21-2023)

§ 32.04 ZONING REGULATIONS.

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

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

(Ord. passed 11-21-2023)

§ 32.05 SUBDIVISION PLATS AND REGULATIONS.

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

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

(Ord. passed 11-21-2023)

§ 32.06 POWERS AND DUTIES.

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

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

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

(Ord. passed 11-21-2023)