

TITLE XI: BUSINESS REGULATIONS

Chapter

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

CHAPTER 110: GENERAL REGULATIONS

Section

110.01 Car washes

§ 110.01 CAR WASHES.

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

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

CHAPTER 111: ADULT SERVICE BUSINESSES

Section

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

§ 111.01 INTENT.

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

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

§ 111.02 DEFINITIONS.

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

meaning.

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

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

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

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

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

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

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

§ 111.03 PERMITTED WITH APPROVAL USES.

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

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

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

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

§ 111.04 LICENSE REQUIRED.

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

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

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

§ 111.05 PROCEDURE.

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

(A) *Board of Trustees approval.*

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

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

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

(4) The Board of Trustees shall give due notice of receipt of the application for the permitted with approval use and the

Planning and Zoning Commission's recommendation in a manner as is prescribed by law.

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

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

(B) *Approval standards.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 111.06 APPEAL.

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

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

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

§ 111.07 VIOLATION.

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

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

§ 111.08 ENACTMENT.

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

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

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

CHAPTER 112: CONTRACTOR LICENSING

Section

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

§ 112.01 APPLICABILITY.

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

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

§ 112.02 DEFINITION.

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

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

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

§ 112.03 REQUIREMENTS AND OBLIGATIONS.

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

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

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

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

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

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

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

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

§ 112.04 FEES.

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

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

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

§ 112.05 CONFLICT.

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

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

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

CHAPTER 113: PEDDLERS, SOLICITORS AND VENDORS

Section

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

- 113.99 Penalty

§ 113.01 PURPOSE.

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

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

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

§ 113.02 DEFINITIONS.

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

EMERGENCY SITUATION. An unforeseen occurrence that requires immediate attention, the absence of which would endanger the health or safety of others, cause the loss of perishable goods, or create an economic hardship due to the unavoidable imminent nature of the circumstance.

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

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

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

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

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

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

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

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

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

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

§ 113.03 LICENSE.

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

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

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

§ 113.04 FEES.

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

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

§ 113.05 DURATION.

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

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

§ 113.06 EXEMPTIONS.

- (A) Any non-profit that is the entity applying for the vendors licensing is exempt from any fees but must still complete the

application process and comply with all other requirements as set forth in this chapter.

(B) Residential yard sale activities that do not run more than four days within any three-month period are exempt from this chapter.

(C) Any persons, firms or organizations distributing goods or services for which there is no charge shall not be required to obtain a vendors permit, nor pay any fee.

(D) Any emergency situation shall be exempt.

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

§ 113.07 HOURS.

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

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

§ 113.08 SPECIAL PROVISIONS.

The following vendors may have the following specific regulations.

(A) Fireworks sales: fees as per fee schedule, insurance requirements

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

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

§ 113.09 ZONING AND OTHER REGULATIONS.

(A) An applicant shall comply with all zoning requirements and other regulations and ordinances of the town.

(B) Where there is a conflict of these provisions with the zoning regulations, the zoning regulations shall control or supersede this chapter.

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

§ 113.10 ENFORCEMENT.

(A) Any transient vendor or peddler not in compliance with this chapter shall pay a fine in accordance with §10.99.

(B) It shall be the duty of any police officer of code enforcement official of the town to enforce the provisions of this chapter.

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

§ 113.99 PENALTY.

(A) Any person, who violates any of the provisions of this chapter shall upon conviction, be subject to a fine as per the town's current fee schedule.

(B) Each day the violation shall exist shall be construed as a separate offense.

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

CHAPTER 114: TELECOMMUNICATIONS FACILITIES

Section

114.01 Purpose

114.02 Definitions

114.03 Approvals required for facilities and support structures

114.04 Facilities and support structures permitted by administrative approval

114.05 Facilities and support structures permitted by special permit

114.06 General standards and design requirements

- 114.07 Miscellaneous provisions
 - 114.08 Existing facilities and support structures
 - 114.09 Fees
 - 114.10 Violation
 - 114.11 Conflicts with other laws
-
- 114.99 Penalty

§ 114.01 PURPOSE.

The purpose of this chapter is to ensure that the placement, construction and modification of wireless telecommunication facilities is consistent with the town's land use policies, to minimize the impact of wireless telecommunication facilities, to encourage the collocation of wireless telecommunications facilities on existing structures, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of the facilities, and to protect the health, safety and welfare of the town's citizens while attempting to ensure access to reliable wireless communications services throughout the county.

(Ord. 10.040, passed 2-3-2008)

§ 114.02 DEFINITIONS.

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

ACCESSORY EQUIPMENT. Any equipment serving or being used in conjunction with a telecommunications facility or support structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

ADMINISTRATOR. The Planning and Zoning Board, Administrator or individual designated by the Board to conduct the administrative review referred to in this chapter

ADMINISTRATIVE APPROVAL. Zoning approval that the Administrator is authorized to grant after administrative review.

ADMINISTRATIVE REVIEW. The procedures established in § 114.04(E).

ANTENNA. Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. These structures and devices include, but are not limited to, the following: directional antennas, such as panels, microwave dishes and satellite dishes; and omnidirectional antennas, such as whips.

BOARD. The County Commission, Town Board of Trustees or other governmental body governing the district this chapter refers to.

COLLOCATION. The act of siting telecommunications facilities in the same location on the same support structure as other telecommunications facilities. **COLLOCATION** also means locating telecommunications facilities on an existing structure (for example: buildings, water tanks, towers, utility poles and the like) without the need to construct a new support structure.

CARRIER ON WHEELS or CELL ON WHEELS or COW. A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A **COW** is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

MAJOR MODIFICATIONS. Improvements to existing telecommunications facilities or support structures that result in a substantial change to the facility or structure. Collocation of new telecommunications facilities to an existing support structure without replacement of the structure shall not constitute a **MAJOR MODIFICATION**. **MAJOR MODIFICATIONS** include, but are not limited to, extending the height of the support structure by more than 20 feet or 10% of its current height whichever is greater, and the replacement of the structure.

MINOR MODIFICATIONS. Improvements to existing telecommunications facilities and support structures that result in some material change to the facility or support structure but of a level, quality or intensity that is less than a "substantial" change. These **MINOR MODIFICATIONS** include, but are not limited to, extending the height of the support structure by less than 20 feet or 10% of its current height, whichever is greater, and the expansion of the compound area for additional accessory equipment.

MONOPOLE. A single, freestanding pole-type structure supporting one or more antenna. For purposes of this chapter, a **MONOPOLE** is not a tower.

ORDINARY MAINTENANCE. Ensuring that telecommunications facilities and support structures are kept in good operating condition. **ORDINARY MAINTENANCE** includes inspections, testing and modifications that maintain functional

capacity and aesthetic and structural integrity; for example the strengthening of a support structure's foundation or of the support structure itself. **ORDINARY MAINTENANCE** includes replacing antennas and accessory equipment on a like-for-like basis within an existing telecommunications facility and relocating the antennas of approved telecommunications facilities to different height levels on an existing monopole or tower upon which they are currently located. **ORDINARY MAINTENANCE** does not include minor and major modifications.

REPLACEMENT. Constructing a new support structure of proportions and of equal height or other height as would be allowed under the definition of "minor modification" to a pre-existing support structure in order to support a telecommunications facility or to accommodate collocation and removing the pre-existing support structure.

STEALTH TELECOMMUNICATIONS FACILITY. Any telecommunications facility that is integrated as an architectural feature of a structure so that the purpose of the facility for providing wireless services is not readily apparent to a casual observer.

SUPPORT STRUCTURE(S). A structure designed to support telecommunications facilities including, but not limited to, monopoles, towers, utility poles and other freestanding self-supporting structures.

TELECOMMUNICATIONS FACILITY. Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A **TELECOMMUNICATION FACILITY** can consist of one or more antennas and accessory equipment or one base station.

TOWER. A lattice-type structure, guyed or freestanding, that supports one or more antennas.

(Ord. 10.040, passed 2-3-2008)

§ 114.03 APPROVALS REQUIRED FOR FACILITIES AND SUPPORT STRUCTURES.

(A) *Administrative review.* Telecommunications facilities located on any existing support structure shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter. New support structures that are less than 60 feet in height shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter. New support structures up to 199 feet in height shall be permitted in any Industrial District after administrative review and administrative approval in accordance with the standards set forth in this chapter. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter. Stealth telecommunications facilities shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this chapter.

(B) *Special permit.* Telecommunications facilities and support structures not permitted by administrative approval shall be permitted in any district upon the granting of a special permit from the Board in accordance with the standards set forth in this chapter.

(C) *Exempt.*

(1) Ordinary maintenance of existing telecommunications facilities and support structures, as defined herein, shall be exempt from zoning and permitting requirements.

(2) In addition, the following facilities are not subject to the provisions of this chapter:

- (a) Antennas used by residential households solely for broadcast radio and television reception;
- (b) Satellite antennas used solely for residential or household purposes;
- (c) COWs placed for a period of not more than 120 days at any location within the district after a declaration of an emergency or a disaster by the Governor or by the responsible official of the district; and
- (d) Television and AM/FM radio broadcast towers and associated facilities.

(Ord. 10.040, passed 2-3-2008)

§ 114.04 FACILITIES AND SUPPORT STRUCTURES PERMITTED BY ADMINISTRATIVE APPROVAL.

(A) *Telecommunications facilities located on existing structures.*

(1) Antennas and accessory equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing support structure in accordance with the requirements of this chapter.

(2) Antennas and accessory equipment may exceed the maximum building height limitations, provided the antenna and accessory equipment are in compliance with the requirements and standards of this chapter.

(3) Each antenna mounted on existing structures and any accessory equipment shall meet the following standards.

(a) Omnidirectional or whip antennas shall not exceed 20 feet in length and not exceed seven inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related

accessory equipment visually unobtrusive.

(b) Directional or panel antennas shall not exceed ten feet in length and two feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.

(c) Cylinder-type antennas shall not exceed ten feet in length and not exceed 12 inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the antenna and related accessory equipment visually unobtrusive.

(d) Satellite and microwave dishes shall not exceed ten feet in diameter. Dish antennas greater than three feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon towers or monopoles.

(e) Other antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the antennas listed above. This provision is specifically included in this chapter to allow for future technological advancements in the development of antennas.

(f) Accessory equipment must comply with § 114.06(E).

(B) *New support structures.*

(1) New support structure less than 60 feet in height shall be permitted in all zoning districts in accordance with the requirements of this chapter.

(2) New support structures up to 199 feet in height shall be permitted in all General Industrial Districts in accordance with the requirements of this chapter. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.

(3) In the case of a monopoles or replacement poles that will support utility lines as well as a telecommunications facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this chapter.

(a) The utility easement or right-of-way shall be a minimum of 100 feet in width.

(b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are 80 feet or greater in height.

(c) The height of the monopole or replacement pole may not exceed by more than 30 feet the height of existing utility support structures.

(d) Monopoles and the accessory equipment associated there with shall be set back a minimum of 15 feet from all boundaries of the easement or right-of-way.

(e) Single carrier monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by division (B)(3)(c) above.

(f) Poles that use the structure of a utility tower for support are permitted under this section. The poles may extend up to 20 feet above the height of the utility tower.

(g) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to telecommunications facilities shall be permitted in accordance with requirements of this chapter. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights and other types of utility poles in the public right-of-way.

(C) *Stealth telecommunications facilities.*

(1) Stealth telecommunications facilities shall be permitted in all zoning districts after administrative review and administrative approval in accordance with the requirements below.

(a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

(b) The structure utilized to support the antennas must be allowed within the underlying zone district. The structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets and steeples.

(c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

(D) *General standards, design requirements and miscellaneous provisions.* Unless otherwise specified herein, all telecommunications facilities and support structures permitted by administrative approval are subject to the applicable general standards and design requirements of § 114.06 and the provisions of § 114.07.

(E) *Administrative review process.*

(1) All administrative review applications must contain the following:

- (a) Administrative review application form signed by applicant;
- (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application;
- (c) Zoning drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this chapter, including property boundaries, setbacks, topography, elevation sketch and dimensions of improvements;
- (d) In the case of a new support structure:
 1. Statement documenting why collocation cannot meet the applicant's requirements. The statement may include technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 2. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical or financial reasons. If an existing tower or monopole is listed among the alternatives, the applicant must specifically address why the modification of the structure is not a viable option.
- (e) Administrative review application fee. Applications for new support structures with proposed telecommunications facilities shall be considered together as one application requiring only a single application fee.

(2) *Procedure.*

- (a) Within ten business days of the receipt of an application for administrative review, the Administrator shall either: inform the applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or schedule an administrative review meeting with the applicant within 30 days of the receipt of a complete application. This meeting is not a public hearing.
- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within 60 business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The administrative review meeting will be conducted to confirm that the proposed application is consistent with this chapter. The Administrator must issue a written decision granting or denying the request within 15 days of the meeting unless an extension of time is agreed to by the applicant. Failure to issue a written decision within 15 days shall constitute a denial of the application. The applicant may appeal the denial as provided in this chapter or applicable state or federal law.
- (d) Should the Administrator deny the application, the Administrator shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this chapter.
- (e) The applicant may appeal any decision of the Administrator approving, approving with conditions or denying an application or deeming an application incomplete, within 30 days to the Board in accordance with this chapter.

(Ord. 10.040, passed 2-3-2008)

§ 114.05 FACILITIES AND SUPPORT STRUCTURES PERMITTED BY SPECIAL PERMIT.

(A) Any telecommunications facility or support structures not meeting the requirements of §114.04 shall be permitted by special permit in all zoning districts subject to:

- (1) The submission requirements of division (B) below;
- (2) The applicable standards of divisions (G) and (H) below; and
- (3) The requirements of the special permit general conditions within Chapter 155 (zoning regulations).

(B) *Submission requirements for special permit applications.*

- (1) *Special permit applications.* All special permit applications for telecommunications facility and support structures must contain the following:
 - (a) Special permit application form signed by applicant;
 - (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application;
 - (c) Written description and scaled drawings of the proposed support structure, including structure height, ground and structure design, and proposed materials;
 - (d) Number and type of proposed antennas and their height above ground level, including the proposed placement of antennas on the support structure;

(e) When locating within a residential area, a written technical and operational analysis of why a monopole or similar structure at a height of less than 100 feet cannot be used;

(f) Line-of-sight diagram or photo simulation, showing the proposed support structure set against the skyline and viewed from at least four directions within the surrounding areas;

(g) A statement justifying why collocation is not feasible. The statement shall include:

1. Technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and

2. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical or financial reasons. If an existing tower was listed among the alternatives, the applicant must specifically address why the modification of the tower is not a viable option.

(h) A statement that the proposed support structure will be made available for collocation to other service providers at commercially reasonable rates;

(i) If required of other special permit applications, a property owner list that includes the name, address and tax parcel information for each parcel entitled to notification of the application; and

(j) Special permit application fee. Applications for new support structures with proposed telecommunications facilities shall be considered as one application requiring only a single application fee.

(2) *Procedure.*

(a) Within ten business days of the receipt of an application for a special permit, the Administrator shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.

(b) If an application is deemed incomplete, an applicant may submit additional materials to complete the application. An applicant's failure to complete the application within 60 business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

(c) Once an application is deemed complete, a review meeting shall be held within ten days.

(d) A complete application for a special permit shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this chapter.

(e) The posting of the property and public notification of the application shall be accomplished in the same manner required for any special permit application under this chapter.

(Ord. 10.040, passed 2-3-2008)

§ 114.06 GENERAL STANDARDS AND DESIGN REQUIREMENTS.

(A) *Design.*

(1) Monopoles shall be subject to the following.

(a) Monopoles shall be designed to accommodate at least three telecommunications providers.

(b) The compound area surrounding the monopole must be of sufficient size to accommodate accessory equipment for at least three telecommunications providers.

(c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration or the Board, monopoles shall have a galvanized silver or gray finish.

(2) Towers shall be subject to the following.

(a) Towers shall be designed to accommodate at least four telecommunications providers.

(b) A compound area surrounding the tower must be of sufficient size to accommodate accessory equipment for at least four telecommunications providers.

(c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration or the Board, towers shall have a galvanized silver or gray finish.

(3) Stealth telecommunications facilities shall be designed to accommodate the collocation of other antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the Board or Administrator.

(4) Upon request of the applicant, the Board or Administrator may waive the requirement that new support structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer antennas will promote community compatibility.

(B) *Setbacks.*

(1) Unless otherwise stated herein, monopoles and towers shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other support structures shall be governed by the setbacks required by the underlying zoning district.

(2) Unless otherwise stated herein, monopoles, towers and other support structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or replacement utility poles shall not be subject to a setback requirement.

(3) Unless otherwise stated herein, all accessory equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory equipment associated with an existing or replacement utility pole shall not be subject to a setback requirement.

(4) The Board or Administrator shall have the authority to reduce or waive any required setback upon the request of the applicant if the telecommunications facility or support structure will be less visible as a result of the diminished setback. The Board or Administrator must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this chapter. The structure must still meet the underlying setback requirements of the zone.

(C) *Height.*

(1) In nonresidential districts, support structures shall not exceed a height of 199 feet from the base of the structure to the top of the highest point. Any proposed support structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(2) In residential districts, support structures shall not exceed a height equal to 150 feet from the base of the structure to the top of the highest point. Any proposed support structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(3) In all districts, the Board shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request, the applicant shall submit the technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the Board.

(D) *Aesthetics.*

(1) *Lighting and marking.* Telecommunications facilities or support structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).

(2) *Signage.* Signs located at the telecommunications facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(3) *Landscaping.*

(a) In all districts, the Board or Administrator shall have the authority to impose reasonable landscaping requirements surrounding the accessory equipment.

(b) Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner.

(c) The Board or Administrator may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the Board or Administrator, landscaping is not appropriate or necessary.

(E) *Accessory equipment.* Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the telecommunication facility or support structure. Any equipment not used in direct support of the operation shall not be stored on the site.

(1) An equipment building, shelter or cabinet must not exceed 560 square feet and 12 feet in height, including the support structure for the equipment building.

(a) *Exception to size restriction.* A single equipment building or shelter may exceed 560 square feet if it is located at ground level, is used by more than one telecommunication provider and does not exceed 1,500 square feet.

(b) *Exception to height restriction.* Upon the applicant's request, the Board or Administrator may waive the height restriction to allow for the stacking of equipment on top of each other. The Board or Administrator must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. The Board or Administrator may also waive the height restriction where a higher support structure is needed to raise the equipment above a slope or flood plain.

(2) If the accessory equipment is at ground level in a residential zone, the Board or Administrator may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three feet in height at installation.

(a) The accessory equipment must conform to the setback standards of the applicable zone.

(b) In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Board or Administrator.

(Ord. 10.040, passed 2-3-2008)

§ 114.07 MISCELLANEOUS PROVISIONS.

(A) *Safety.*

(1) Ground-mounted accessory equipment and support structures shall be secured and enclosed with fence not less than six feet in height, or as deemed appropriate by the Board or Administrator.

(2) The Board or Administrator may waive the requirement of division (A)(1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

(B) *Abandonment and removal.*

(1) *Abandonment.* Any telecommunications facility or support structure that is not operated for a period of 12 consecutive months shall be considered abandoned.

(2) *Removal.*

(a) The owner of the telecommunications facility or support structure shall remove the facility within six months of its abandonment.

(b) The district authority shall ensure and enforce removal by means of its existing regulatory authority.

(3) *Multiple uses on a single parcel or lot.* Telecommunications facilities and support structures may be located on a parcel containing another principal use on the same site.

(Ord. 10.040, passed 2-3-2008)

§ 114.08 EXISTING FACILITIES AND SUPPORT STRUCTURES.

Telecommunications facilities and support structures that were legally permitted on or before the date this chapter was enacted shall be considered a permitted and lawful use.

(A) *Nonconforming telecommunications facility.*

(1) Nonconforming antennas or accessory equipment. Ordinary maintenance may be performed on nonconforming antennas and accessory equipment.

(2) Minor modifications to nonconforming telecommunications facilities may be permitted upon the granting of administrative approval by the Administrator.

(3) Major modifications to nonconforming telecommunications facilities may be permitted only upon the granting of special permit approval by the Board.

(B) *Nonconforming support structures.*

(1) Ordinary maintenance may be performed on a nonconforming support structure.

(2) Collocation of telecommunications facilities on an existing nonconforming support structure is permitted upon the granting of administrative approval by the Administrator.

(3) Minor modifications may be made to nonconforming support structures to allow for collocation of telecommunications facilities. Those minor modifications shall be permitted by administrative approval granted by the Administrator.

(4) Major modifications may be made to nonconforming support structures only upon the granting of special permit approval by the Board.

(Ord. 10.040, passed 2-3-2008)

§ 114.09 FEES.

Fees for all permits required herein, and fees required for filing of appeals, and fees for application for amendments to this chapter shall be established by the Town Board as listed per the current fee schedule on file at the town office.

(Ord. 10.040, passed 2-3-2008)

§ 114.10 VIOLATION.

It shall be unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure, or to use any land in

violation of any regulation in this chapter.

(Ord. 10.040, passed 2-3-2008) Penalty, see § 114.99

§ 114.11 CONFLICTS WITH OTHER LAWS.

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

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

(Ord. 10.040, passed 2-3-2008)

§ 114.99 PENALTY.

(A) Any person, firm, association, or corporation who violates, disobeys, omits, neglects or refuses to comply with, or resists, the enforcement of any of the provisions of this chapter shall upon conviction thereof, be subject to a fine of \$100 together with the cost of action; every day of violation shall constitute a separate offense.

(B) Fine shall not exceed one quarter of the assessed value of the property.

(C) Compliance therewith may also be enforced by an injunction order at the suit of the petitioner or the owner or owners of real estate within the district affected by the regulation of this chapter.

(D) Any noncompliance will stop construction, placement or erection until corrected.

(E) All ordinances not covered specifically by the town ordinances must meet state specifications or uniform building codes, whichever is more stringent.

(Ord. 10.040, passed 2-3-2008)

CHAPTER 115: WIND ENERGY SYSTEMS (WES)

Section

115.01 Purpose

115.02 Federal and state requirements

115.03 Definitions

115.04 Requirements for siting small wind energy systems

115.05 Requirements for siting large wind energy systems

115.06 Fees

115.07 Violation

115.99 Penalty

§ 115.01 PURPOSE.

The purpose of this chapter is to ensure that the placement, construction and modification of a wind energy system (WES) facility is consistent with the town's land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of the facilities, and to protect the health, safety and welfare of the town's citizens.

(Ord. 10.050, passed 2-3-2008)

§ 115.02 FEDERAL AND STATE REQUIREMENTS.

All WES facilities shall meet or exceed standards and regulations of the Federal Aviation Administration and state statutes and any other agency of federal or state government with the authority to regulate WES facilities.

(Ord. 10.050, passed 2-3-2008)

§ 115.03 DEFINITIONS.

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

BOARD. The County Commission, Town Board of Trustees or other governmental body governing the district this chapter refers to.

CONSTRUCTION. Any clearing of land, excavation or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

HIGH VOLTAGE TRANSMISSION LINE. A conductor of electric energy and associated facilities.

LARGE WIND ENERGY SYSTEM or **LWES.** All WES facilities, excluding small wind energy systems.

PERSON. An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, consumers power district or any other entity, public or private, however organized.

ROUTE. The location of a high voltage transmission line between two end points. The **ROUTE** may have a variable width of up to 1.25 miles.

SMALL WIND ENERGY SYSTEM or **SWES.** A WES facility with a single tower height of less than 75 feet used primarily for on-site consumption of power.

TOWER HEIGHT. The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

SYSTEM HEIGHT. The height above grade of the tallest point of the WES, including the rotor radius.

TURBINE. The parts of the WES including the blades, generator and tail.

UTILITY. Any person engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to, a private investor owned utility, a cooperatively owned utility, a consumers power district and a public or municipal utility.

WIND ENERGY SYSTEM or **WES.** A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

- (1) Tower or multiple towers, including foundations;
- (2) Generator(s);
- (3) Blades;
- (4) Power collection systems, including padmount transformers;
- (5) Access roads, meteorological towers, on-site electric substation, control building and other ancillary equipment and facilities; and
- (6) Electric interconnection systems or portion thereof dedicated to the WES.

(Ord. 10.050, passed 2-3-2008)

§ 115.04 REQUIREMENTS FOR SITING SMALL WIND ENERGY SYSTEMS.

(A) *Standards.* A small wind energy system shall be a permitted use in all zoning districts subject to the following requirements.

(1) *Setbacks.* The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and dwellings shall be equal to no less than 1.1 times the system height, unless written permission is granted by each affected person.

(2) *Access.* All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight feet above the ground.

(3) *Lighting.* A SWES shall not be artificially lighted unless the lighting is required by the Federal Aviation Administration.

(4) *Noise.* SWES facilities shall not exceed 55 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.

(5) *Appearance, color, finish.* The SWES shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.

(6) *Signs.* All signs, other than the manufacturer's or installer's identification, appropriate warning signs or owner identification on a wind generator, tower, building or other structure associated with a SWES visible from any public road

shall be prohibited.

(7) *Code compliance.* A SWES shall comply with all applicable state construction and electrical codes, and the National Electrical Code.

(8) *Utility notification.* No SWES shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(B) *Permit requirements.*

(1) A building permit shall be required for the installation of a SWES.

(2) The building permit shall be accompanied by a plot plan which includes the following:

(a) Property lines and physical dimensions of the property;

(b) Location, dimensions and types of existing major structures on the property;

(c) Location of the proposed SWES;

(d) The right-of-way of any public road that is contiguous with the property;

(e) Any overhead utility lines;

(f) Wind system specifications, including manufacturer and model, rotor diameter, tower height and tower type (monopole, lattice, guyed);

(g) Tower foundation blueprints or drawings;

(h) Tower blueprint or drawing;

(i) Proof of notification to the utility in the service territory in which the SWES is to be erected, consistent with the provisions of division (A)(8) above; and

(j) The status of all necessary interconnection agreements or studies.

(3) A permit issued pursuant to this chapter shall expire if:

(a) The SWES is not completely installed and functioning within 24 months from the date the permit is issued; or

(b) Installation has not commenced, the SWES is out of service, or otherwise unused for a continuous 12-month period.

(C) *Abandonment.*

(1) A SWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Board may issue a notice of abandonment to the owner of a SWES that is deemed to have been abandoned. The owner shall have the right to respond to the notice of abandonment within 30 days from notice receipt date. The Board shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides information that demonstrates the SWES has not been abandoned.

(2) If the SWES is determined to be abandoned, the owner of the SWES shall remove the wind generator from the tower at the owner's sole expense within three months of receipt of notice of abandonment. If the owner fails to remove the wind generator from the tower, the Board may pursue legal action to have the wind generator removed at the owner's expense.

(D) *Building permit procedure.*

(1) An owner shall submit an application to the Board for a building permit for a SWES. The application must be on a form approved by the Board accompanied by two copies of the plot plan identified, and must be submitted two weeks prior to the next regular scheduled Board meeting.

(2) The Board shall issue a permit or deny the application within 60 days from the date on which the application is received.

(3) The Board shall issue a building permit for a SWES if the application materials show that the proposed SWES meets the requirements of this chapter.

(4) If the application is approved, the Board will return one signed copy of the application with the permit and retain the other copy.

(5) If the application is rejected, the Board will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may reapply if the deficiencies specified by the Board are resolved.

(6) The owner shall conspicuously post the building permit on the premises so as to be visible to the public at all times until construction or installation of the SWES is complete.

(E) *Violations.* It is unlawful for any person to construct, install, or operate a SWES that is not in compliance with this

chapter or with any condition contained in a building permit issued pursuant to this chapter. SWES facilities installed prior to the adoption of this chapter are exempt.

(Ord. 10.050, passed 2-3-2008) Penalty, see § 115.99

§ 115.05 REQUIREMENTS FOR SITING LARGE WIND ENERGY SYSTEMS.

(A) *Mitigation measures.*

(1) *Site clearance.* The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWES.

(2) *Topsoil protection.* The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.

(3) *Compaction.* The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

(4) *Livestock protection.* The permittees shall take precautions to protect livestock on the LWES site from project operations during all phases of the project's life.

(5) *Fences.* The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.

(6) *Roads.*

(a) *Public roads.*

1. Prior to commencement of construction, the permittees shall obtain a moving permit that must identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to the approval of the moving permit allowing use of these haul roads. Where practicable, existing roadways shall be used for all activities associated with the WES. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

2. The permittees shall, prior to the use of approved moving permit and haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved the haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the town's and county's zoning offices of the arrangements.

(b) *Turbine access roads.* Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

(c) *Private roads.* The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

(d) *Control of dust.* The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.

(7) *Soil erosion and sediment control plan.*

(a) The permittees shall develop a soil erosion and sediment control plan prior to construction and submit the plan to the town zoning office.

(b) The soil erosion and sediment control plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan that uses native plant species to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance.

(c) Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

(B) *Setbacks.* LWES shall meet the following minimum spacing requirements.

(1) Distance from currently occupied off-site residences, business and public buildings shall be not less than 1,000 feet. Distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than 500 feet or 1.1 times the system height, whichever is greater. For the purposes of this section only, the term **BUSINESS** does not include agricultural uses.

(2) Distance from right-of-way (ROW) of public roads shall be not less than 500 feet or 1.1 times the system height, whichever is greater.

(3) Distance from any property line shall be not less than 500 feet or 1.1 times the system height, whichever is greater, unless appropriate easement has been obtained from adjoining property owner.

(C) *Electromagnetic interference.* The permittees shall not operate the LWES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event the interference is caused by the LWES or its operation, the permittees shall take the measures necessary to correct the problem.

(D) *Lighting.* Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

(E) *Turbine spacing.* The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.

(F) *Footprint minimization.* The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the extent practicable be mounted on the foundations used for turbine towers or inside the towers unless otherwise allowed by the landowner on whose property the LWES is constructed.

(G) *Electrical cables.* The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. This division does not apply to feeder lines.

(H) *Feeder lines.*

(1) The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property.

(2) Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way.

(3) If no public right-of-way exists, the permittees may place feeders on private property.

(4) When placing feeders on private property, the permittees shall place the feeder in accordance with the easement(s) negotiated.

(5) The permittees shall submit the site plan and engineering drawings for the feeder lines to the Board before commencing construction.

(I) *Height from ground surface.* The minimum height of blade tips at their lowest possible point shall be 25 feet above grade.

(J) *Towers.*

(1) Color and finish: the finish of the exterior surface shall be non-reflective or matte.

(2) All towers shall be singular tubular design, unless approved by the Board.

(K) *Noise.* Noise level produced by the LWES shall not exceed 55 dBA, average A-weighted sound pressure at the perimeter of occupied residences existing at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner of the residence.

(L) *Permit expiration.* The permit shall become void if no substantial construction has been completed within three years of issuance.

(M) *Required information for permit application.*

(1) Boundaries of the site proposed for LWES and associated facilities on United States Geological Survey Map or other map as appropriate;

(2) Map of easements for LWES;

(3) Map of occupied residential structures, business and public buildings within one-half mile of the proposed LWES site boundaries;

(4) Preliminary map of sites for LWES, access roads and utility lines. Location of other LWES within five miles of the proposed LWES site;

(5) Project-specific environmental and cultural concerns (e.g., native habitat, rare species and migratory routes). This information shall be obtained by consulting with the following agencies (evidence of the consultation shall be included in the application):

(a) State Department of Game, Fish and Parks;

- (b) U.S. Fish and Wildlife Service; and
- (c) State Historical Society.
- (6) Project schedule;
- (7) Mitigation measures; and
- (8) Status of interconnection studies/agreements.

(N) *Decommissioning.*

(1) *Cost responsibility.* The owner or operator of a LWES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.

(2) *Useful life.* A LWES is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of 12 months. The presumption may be rebutted by submitting to the Board for approval of a plan outlining the steps and schedule for returning the LWES to service within 12 months of the submission.

(3) *Decommissioning period.* The facility owner or operator shall begin decommissioning a LWES facility within eight months after the time the facility or turbine reaches the end of its useful life, as determined in division (N)(2) above. Decommissioning must be completed with 18 months after the facility or turbine reaches the end of its useful life.

(4) *Decommissioning requirements.*

(a) Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of 42 inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWES.

(b) To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine.

(c) Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

(5) *Decommissioning plan.* Prior to commencement of operation of a LWES facility, the facility owner or operator shall file with the Board the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board shall review a plan filed under this section and shall approve or disapprove the plan within six months after the decommissioning plan was filed. The Board may at any time require the owner or operator of a LWES to file a report describing how the LWES owner or operator is fulfilling this obligation.

(6) *Financial assurance.* After the tenth year of operation of a LWES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the LWES facility.

(7) *Failure to decommission.* If the LWES facility owner or operator does not complete decommissioning, the Board may take action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns, that the Board may take action as may be necessary to decommission a LWES facility and seek additional expenditures necessary to do so from the facility owner.

(O) *Pre-construction filing.*

(1) At least 45 days prior to commencement of construction, the applicant/permittee shall submit final maps depicting the approximate location of the proposed wind turbines, access roads and collector and feeder lines.

(2) Upon completion, the applicant shall also supply an "as-built" ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.

(Ord. 10.050, passed 2-3-2008)

§ 115.06 FEES.

Fees for all permits required herein, and fees required for filing of appeals, and fees for application for amendments to this chapter shall be established by the Town Board as listed per the current fee schedule on file at the town office.

(Ord. 10.050, passed 2-3-2008)

§ 115.07 VIOLATION.

It shall be unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure, or to use any land in

violation of any regulation in this chapter.

(Ord. 10.050, passed 2-3-2008) Penalty, see § 115.99

§ 115.99 PENALTY.

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

Statutory reference:

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

CHAPTER 116: ALCOHOLIC BEVERAGES

Section

- 116.01 Definitions
- 116.02 License and operating agreement required
- 116.03 License reissuance
- 116.04 Alcoholic beverages, malt beverages and wine license requirements and fees
- 116.05 Special event alcoholic beverage licenses
- 116.06 Requirements for on-sale full-service restaurant licenses
- 116.07 Hours of operation
- 116.08 Consuming, mixing or possession of alcoholic beverages in public places
- 116.09 Operating agreement requirements

- 116.99 Penalty

§ 116.01 DEFINITIONS.

Terms used in this chapter, unless the context otherwise plainly requires, shall mean:

ALCOHOLIC BEVERAGE. Any distilled spirits, wine and malt beverages as defined in this chapter.

BAR. Any permanently installed counter within the restaurant area, or establishment, from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages.

DISTILLED SPIRITS. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, containing not less than 0.5% of alcohol by weight.

FULL-SERVICE RESTAURANT. Any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths, or the bar. Any restaurant that only serves fry orders or food and victuals such as sandwiches, hamburgers, or salads is not a full-service restaurant.

MALT BEVERAGE. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption, containing not less than 0.5% of alcohol by weight.

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

OFF-SALE. The sale of any alcoholic beverage, for consumption off the premises where sold.

ON-SALE. The sale of any alcoholic beverage for consumption only upon the premises where sold.

ON-SALE DEALER. Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

OPERATING AGREEMENT. An agreement made and entered into by the town with the owner/operator of a restaurant,

bar, store, or establishment, for the purpose of allowing and regulating said business to operate with an on-sale and/or off-sale liquor or malt beverage license within the town.

PACKAGE. The bottle or immediate container of any alcoholic beverage.

PACKAGE DEALER. Any person, other than a distiller, manufacturer or wholesaler who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

PUBLIC PLACE. Any place, whether in or out of a public building, commonly and customarily open to or used by the general public and any street or highway.

RETAIL LICENSE. Any on-sale or off-sale license issued under the provisions of this chapter.

RETAILER OR RETAIL DEALER. Any person who sells alcoholic beverages for other than resale.

SALE. The transfer, for a consideration, of title to any alcoholic beverage.

TO SELL AND SERVE ALCOHOLIC BEVERAGES. To take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages.

WINE. Any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not more than 24% of alcohol by weight.

(Ord. 4.0, passed 9-15-2015)

§ 116.02 LICENSE AND OPERATING AGREEMENT REQUIRED.

It is a violation of this chapter to transact any business involving the sale of alcohol, wine, or malt beverages without first obtaining a license required by this chapter and SDCL Title 35, and entering into an annual operating agreement with the town. Any violation is subject to the general penalty of § 10.99.

(Ord. 4.0, passed 9-15-2015)

§ 116.03 LICENSE REISSUANCE.

Any application for the reissuance of a liquor, liquor restaurant, wine, or malt beverage license may be approved by the Hermosa Town Board without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation for the alcoholic beverage control law or the licenses has been suspended.

(Ord. 4.0, passed 9-15-2015)

§ 116.04 ALCOHOLIC BEVERAGES, MALT BEVERAGES AND WINE LICENSE REQUIREMENTS AND FEES.

(A) With the exception of any considerations referenced within the sections of this chapter, the following classifications and fees are established for on-sale, off-sale, on/off-sale, and/or package dealers in distilled spirits, liquors, wines, and malt beverages, as outlined below:

<i>Class of License</i>	<i>Annual Licensing Fee</i>	<i>Monthly Operating Agreement Fee</i>
<i>Class of License</i>	<i>Annual Licensing Fee</i>	<i>Monthly Operating Agreement Fee</i>
(1) On-sale dealer: Any person who sells or keeps for sale any alcoholic beverage, other than pursuant to another license under this chapter, for consumption on the premises where sold	\$0	\$350 per month + 5% of all alcoholic beverage purchases
(2) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases do not exceed over \$600	Initial one time as provided for in § 116.06(E).	\$125 per month + 5% of all alcoholic beverage purchases
(3) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases do not exceed over \$1,200	Initial one time as provided for in § 116.06(E).	\$250 per month + 5% of all alcoholic beverage purchases
(4) On-sale dealer: full-service restaurant, whose 5% of annual alcoholic beverage purchases exceed over \$1,200	Initial one time as provided for in § 116.06(E).	\$350 per month + 5% of all alcoholic beverage purchases

(5) Off-sale dealer: Any person who sells or keeps for sale any alcoholic beverage for consumption off the premises where sold	\$250	\$350 per month + 5% of all alcoholic beverage purchases
(6) Special (temporary) alcoholic beverage license in conjunction with a special event within the municipality to any civic, charitable, educational, fraternal, or veterans' organization.	N/A	\$50 per day, not to exceed 15 consecutive days.
(7) Malt beverage retailer: Any person who sells or keeps for sale, other than resale, malt beverages as both package dealers and on-sale dealers (RB)	\$300	\$25 per month + 5% of all alcoholic beverage purchases
(8) Off-sale malt beverage package dealer: Any person who keeps for sale or sells malt beverages for consumption off the premises where sold (PB)	\$200	\$25 per month
(9) Off-sale malt beverage and off-sale South Dakota wine package dealer: an off- sale malt beverage package dealer who also keeps for sale or sells wines produced pursuant to SDCL Chapter 35-12 for consumption off the premises where sold (PF)	\$225	\$25 per month
(10) Wine retailers, being both package dealers and on-sale dealers	\$500	\$25 per month + 5% of all alcoholic beverage purchases
(11) Malt beverage retailer and South Dakota wine retailers: Any person who sells or keeps for sale malt beverages and wines produced pursuant to SDCL Chapter 35-12 as both package dealers and on-sale dealers (BW)	\$325	\$25 per month + 5% of all alcoholic beverage purchases

(B) The monthly operating agreement fee for a non-profit organization or association applicant, or holder, shall be reviewed and set annually by the Hermosa Town Board upon the issuance, or renewal, of any liquor, liquor restaurant, wine, malt beverage, or temporary, license, and shall not exceed the monthly amount listed for the equal classification of license listed within division (A) of this section.

(C) Non-profit organizations and associations shall be required to provide a copy of the following items; Federal EIN letter, letter of incorporation, bi-laws, tax exempt status. Additionally, an annual report, along with any changes made to addresses, directors, officers, or registered agents, shall be submitted annually to effectively maintain non-profit status with the town.

(D) In lieu of the monthly operating agreement fee, as listed within division A of this section, each licensee who currently owns an off-sale malt beverage license, with or without a South Dakota Wine license, prior to the effective date of this chapter, shall be allowed to pay a one-time, flat fee of \$150, due at the time of signing the operating agreement, for the remaining 2015-16 licensing year which shall expire at 11:59 p.m. on June 30, 2016. After this date, said licensee shall be required to follow the monthly operating agreement fee schedule, as outlined within division (A) of this section.

(Ord. 4.0, passed 9-15-2015)

§ 116.05 SPECIAL EVENT ALCOHOLIC BEVERAGE LICENSES.

(A) Special event alcoholic beverage licenses may be issued by the Town Board in conjunction with special events held within the town. Any license issued pursuant to this section may be issued for a period of time established by the Town Board, not to exceed 15 consecutive days. The license shall be issued to a person at a specific place in the same manner as licenses issued pursuant to § 116.03.

(B) The special alcoholic beverage licenses available are as follows:

(1) *Special event malt beverage retailer.* Special event malt beverage retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03

(2) *Special event on-sale wine retailer.* Special on-sale wine retailers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03, or to a person licensed by the Department of Revenue under SDCL Chapter 35-12.

(3) *Special event on-sale dealer.* Special on-sale dealer licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03.

(4) *Special event off-sale package wine dealer.* Special off-sale package wine dealers licenses are available to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 116.03, or licensed pursuant to SDCL Chapter 35-4-2(19) or SDCL Chapter 35-12. A special off-sale package wine dealer licensee may only sell wine manufactured by a farm winery that is licensed pursuant to SDCL Chapter 35-12.

(C) Persons requesting a special event alcoholic beverage license shall make application on forms available from the Finance Office, and shall be subject to the same background check, notice and public hearing requirements as an applicant for a license under § 116.03. No public hearing is required for the issuance of a special event license pursuant to this section if the person applying for the special event license holds an eligible permanent license and the special event license is to be used on publicly-owned property.

(D) The hours of operation of each special event alcoholic beverage license shall be as set by the Town Board, but in no event shall the special event license hours exceed those for an on-sale dealer provided by § 116.07.

(E) No person may be issued more than 20 special event alcoholic beverage licenses within any calendar year. Notwithstanding the foregoing, any combination of licenses issued to the same person, at the same place, for the same time, and for the same special event, shall be counted only as one license for purposes of the 20-license limit.

(Ord. 4.0, passed 9-15-2015)

§ 116.06 REQUIREMENTS FOR ON-SALE FULL-SERVICE RESTAURANT LICENSES.

(A) An applicant for an on-sale full-service restaurant license shall provide documentation to the Finance Officer that the applicant meets all requirements of state law for an on-sale full-service restaurant license, including but not limited to: SDCL § 35-4-112. Documentation in support of initial application for full-service restaurant on-sale license. In the initial application, an applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality or county to prove that the primary source of revenue from the operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

(B) The renewal of an on-sale full-service restaurant license is conditioned upon the applicant satisfying all state requirements for renewal, including but not limited to: SDCL § 35-4-113. Renewal of full-service restaurant on-sale license-- Annual report. If the municipality or county is renewing a full-service restaurant on-sale license, the municipality or county shall condition the license renewal upon receiving documentation that at least 60% of gross revenue from the preceding 12 months operation of the full-service restaurant was derived from the sale of food and nonalcoholic beverages. The full-service restaurant on-sale licensee shall submit an annual report to the municipality or county on the revenues from the full-service restaurant that includes an oath verifying the validity of the information provided in the report. The report and the supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross revenues of the licensee for the following two categories: (1) food and nonalcoholic beverage gross revenues; and (2) total gross revenues.

(C) *Certain licensees to report amount paid for other licenses; objection to report; hearing; appeal.* Any person who purchased an on-sale license issued pursuant to SDCL §§ 35-4-2(4) or 35-4-2(6) within the last five years shall report to the town the amount paid for the license. If the town requests from any other licensee the amount originally paid for any other on-sale license pursuant to SDCL § 35-4-117, the licensee shall report that amount to the town. The declared purchase price shall be made under oath and shall include the documents establishing the amount paid for the on-sale license. If the transaction included other personal property or real property, the full market value of the other property on the date of the transaction shall be deducted from the total purchase price to establish the amount paid for the license. The person who owned the license as of the date of the adoption of this section has the burden of establishing the amount paid for the license. If the amount reported is used to determine current fair market value pursuant to SDCL § 35-4-117, any licensee who contends that the amount does not accurately reflect the fair market value of the license on the date of purchase may file an objection to the report. The objection shall be filed with the town within 30 days of the date the license fee is set pursuant to SDCL § 35-4-116. If an objection is filed, the Board of Trustees for the town shall conduct a hearing to determine the fair market value of the license. The determination of the Board of Trustees for the town may be appealed to circuit court.

(D) The city will maintain a registry of each on- sale license that is being offered and will provide a copy of the registry to anyone who requests a new on-sale full-service restaurant license.

(E) All full-service restaurant licensees shall be required to pay a one-time initial licensing fee equal to the market value of the license established by the board under SDCL § 35-4-117, which will be at least \$1 for each person residing within the municipality as measured by the last preceding decennial federal census. (Source SDCL §§ 35-4-19.1, 35-4-111, 35-4-116, and 35-4-117. *Nine, Inc. v. City of Brookings*, 797 N.W.2d 73 (SD 2011)).

(Ord. 4.0, passed 9-15-2015; Ord. passed 9-4-2018)

§ 116.07 HOURS OF OPERATION.

The following table establishes the hours during which alcoholic beverages may be sold and the holidays when alcoholic

beverages may not be sold for each class of license:

<i>Type of License</i>	<i>Hours</i>	<i>Days</i>	<i>Holidays</i>
<i>Type of License</i>	<i>Hours</i>	<i>Days</i>	<i>Holidays</i>
(A) On-sale dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(B) On-sale dealer (Full-service restaurant licensee)	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(C) Special (Temporary) alcoholic beverage dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(D) Off-sale dealer	7:00 a.m. to 12 midnight	Monday through Sunday	No Christmas Day sales
(E) Malt beverage retailer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(F) Off-sale malt beverage package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(G) Off-sale malt beverage and off-sale South Dakota wine package dealer	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(H) Wine retailers, being both package dealers and on-sale dealers	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A
(I) Malt beverage retailer and South Dakota wine retailers	12 midnight to 2:00 a.m. and 7:00 a.m. to 12 midnight	Monday through Sunday	N/A

(Ord. 4.0, passed 9-15-2015)

§ 116.08 CONSUMING, MIXING, OR POSSESSION OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.

(A) It is unlawful for any person to consume any intoxicating liquor or malt beverage or to mix or blend any alcoholic beverage with any other beverage, regardless of whether the beverage is an alcoholic beverage, in any public place, other than upon the premises of a licensed on-sale retailer where the alcoholic beverage was purchased from the dealer for on-sale purposes.

(B) It is unlawful for any person to possess an alcoholic beverage, in an unsealed container or in an open receptacle, in any public place other than upon the premises of a licensed on-sale retailer where the alcoholic beverage was purchased from the retailer for on-sale purposes.

(C) Nothing in this section shall be construed to prohibit the sale or consumption of malt beverages on the licensed premises of a park concessionaire as long as the malt beverages are purchased from the concessionaire.

(D) Notwithstanding divisions (A), (B), and (C), the Board of Trustees may authorize consumption of blending of alcoholic beverages in a public place, but not the sale of the same, in or upon property described by the Town Board, which property is publicly-owned, or owned by a non-profit corporation. The authorization shall not exceed 72 hours and hours of consumption shall not exceed those permitted for on-sale licensees.

(E) A licensee that is licensed to sell wine on-sale may permit a customer to carry out the unconsumed portion of a bottle of wine if the customer purchased the bottle of wine from the licensee and consumed a portion of it with a meal that was prepared and served by the licensee at a table on the licensed premises. The licensee shall securely reseal the bottle of wine with a cork or other similar cap and place the bottle in a sealed bag or other container. The licensee shall also attach a receipt for the meal and the wine to the bag or container. A bottle of wine that is recorked and sealed as provided in this division is not a violation of the provisions of division (B) if the cork and the seal have not been disturbed.

(F) A licensee that is licensed to sell wine on-sale may permit a customer to bring a sealed and unopened bottle of wine onto the licensed premises for consumption by the customer while eating a meal that was prepared by the licensee and that was served at a table on the licensed premises. The licensee may charge a corkage fee for serving wine supplied by a customer. Consumption of wine pursuant to this division is not a violation of division (A). The customer may carry out the unconsumed portion of the bottle of wine if it is securely resealed by the licensee as provided in division (E). Such resealed bottle is not a violation of division (B) if the cork and seal have not been disturbed.

(Ord. 4.0, passed 9-15-2015)

§ 116.09 OPERATING AGREEMENT REQUIREMENTS.

(A) It shall be unlawful for any establishment, bar, store, operator, manager, or person to engage in the operation, distribution, or sale of any malt beverage, alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and/or any other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use, without having entered into an annual operating agreement with the town.

(B) Operating agreements shall not be assigned, transferred, sold or in any manner conveyed without the express written and prior approval of the Town Board and such approval shall not be unreasonably withheld.

(C) Licensees shall comply with all laws of the State of South Dakota, and all ordinances of the Town of Hermosa. Failure to comply may result in termination or suspension of all licenses and operating agreements.

(D) No operating agreement may be modified or changed, unless such request has been submitted in writing to the Town Board, and said request has been approved by the Board of Trustees, with all approved changes to be recorded and signed by the operator(s) and the Board of Trustees.

(Ord. 4.0, passed 9-15-2015)

§ 116.99 PENALTY.

Any person violating any portion of this chapter is subject to the general penalty as set out in §10.99 of this Code, or by current fee schedule.

(Ord. 4.0, passed 9-15-2015)

CHAPTER 117: CABLE COMMUNICATIONS

Section

- 117.01 Short title and definitions
- 117.02 Grant of authority and general provisions
- 117.03 Application for new franchise
- 117.04 Construction and operations standards
- 117.05 System provisions and public services
- 117.06 Operation and administration provisions
- 117.07 Revocation, abandonment and sale or transfer
- 117.08 Miscellaneous provisions

§ 117.01 SHORT TITLE AND DEFINITIONS.

(A) *Short title.* This chapter shall be known and cited as the Cable Communications Regulatory Ordinance.

(B) *Definitions.* For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

BASIC CABLE SERVICE. Any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. **BASIC CABLE SERVICE** as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

CABLE PROGRAMMING SERVICE.

- (a) Any video programming provided over a cable system, regardless of service tier other than:
1. Video programming carried on the basic service tier;
 2. Video programming offered on a pay per channel or pay per program basis; or
 3. A combination of multiple channels of pay per channel or pay per program video programming offered on a multiplexed or time shifted basis so long as the combined service:

- a. Consists of commonly identified video programming; and
- b. Is not bundled with any regulated tier of service.

(b) **CABLE PROGRAMMING SERVICE** as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(l)(2) and 47 C.F.R. 76.901(b) (1993).

CABLE SERVICE. The one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

CABLE SYSTEM or **SYSTEM.** Shall have the meaning ascribed to it in federal law.

COUNCIL. The Hermosa, South Dakota City Council.

FRANCHISE. An initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system or other MVPD facility.

FRANCHISE AREA. The area within the legal boundaries of the grantor.

GRANTEE. The person which is granted a franchise in city pursuant to this chapter, its agents and employees, lawful successors, transferees or assignees.

GRANTOR. Is the City of Hermosa.

GROSS REVENUE. Only that monthly revenue net of bad debt received from basic cable service and premium pay services such as HBO. The term **GROSS REVENUES** shall not include any other revenue billed or received by the grantee including, franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements, cable ad sales, or any taxes or fees on services furnished by grantee imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by grantee for such governmental unit.

MULTICHANNEL VIDEO PROGRAM DISTRIBUTOR or **MVPD.** A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

OPEN VIDEO SERVICES or **OVS.** Any video programming services provided to any person by a franchisee certified by the FCC to operate an open video system pursuant to 47 U.S.C. § 573, as may be amended, regardless of the facilities used.

PAY TELEVISION. The delivery over the system of pay per channel or pay per program audio visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.

PERSON. Any person, firm, partnership, association, corporation, company, or other legal entity.

STANDARD INSTALLATION. Any residential installation which can be completed using a drop of 150 feet or less.

STREET. The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by grantor.

SUBSCRIBER. Any person who lawfully receives cable service.

VIDEO PROGRAMMING. Programming provided by, or generally considered comparable to programming provided by a television broadcast station.

(Ord. passed 9-16-2021)

§ 117.02 GRANT OF AUTHORITY AND GENERAL PROVISIONS.

(A) *Franchise required.* It shall be unlawful for any person to construct, operate or maintain a cable system or MVPD facility or to provide cable service, video programming or other MVPD services, including OVS, in the grantor without a franchise authorizing the same, unless applicable federal or state law prohibits the grantor's enforcement of such a requirement.

(B) *Grant of franchise.* Any franchise that is granted in city shall be subject to the terms and conditions contained herein.

(C) *Grant of nonexclusive authority.*

(1) A grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in franchise area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in franchise area of a cable system.

(2) A franchise shall be nonexclusive, and grantor reserves the right to grant a similar use of said streets to any MVPD at any time, provided, however, that all franchises shall contain the same terms and conditions as this franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a franchise or is granted a franchise to operate by the grantor, the terms and conditions of which do not comply with this

chapter, other grantees shall have the right either (i) to opt in to the competitor's franchise by providing ten days prior written notice to the grantor; or (ii) to petition the grantor for modifications to its franchise, in which case the grantor shall work in good faith with the affected grantee(s) to review and adopt modifications which the grantee(s) deem necessary, review and approval by grantor shall not be unreasonably denied.

(3) Before granting an additional franchise, the grantor shall give written notice to all grantees of any new application, identifying the applicant for such additional franchise and providing at least 30 days prior notice of the date, time, and place at which the grantor shall consider and/or determine whether such additional franchise should be granted.

(4) Every franchise shall apply to the entire service area of the grantor, as it exists now or may later be configured.

(5) In the event grantor grants one or more additional franchises or one or more non-franchised MVPD's commence providing cable service in the grantor, a grantee shall have the right to terminate or reduce the term of this franchise in its sole discretion.

(6) Neither city nor grantee(s) may unilaterally alter the material rights and obligations set forth in this franchise. In the event of a conflict between any other ordinance and this franchise, the franchise shall control.

(D) *Franchise term.* A franchise shall be in effect for a period of 15 years from the effective date of the agreement, unless renewed, revoked, or terminated sooner as herein provided.

(E) *Territorial area involved.* A franchise shall be granted for the corporate boundaries of grantor, as it exists from time to time. In the event of annexation by grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, that grantee(s) shall not be required to extend service beyond its present system boundaries unless there is a minimum of 25 homes per cable mile as measured from the last fiber node or terminating amplifier.

(F) *Written notice.* All notices, reports, or demands required to be given in writing under this chapter shall be deemed to be given when delivered personally to any officer of grantee or grantor's administrator of this chapter as specified in a franchise.

(Ord. passed 9-16-2021)

§ 117.03 APPLICATION FOR NEW FRANCHISE.

(A) An application for an initial franchise to provide video programming shall be in writing on a form provided by the city which shall contain where applicable:

(1) Applicant name and business address of applicant.

(2) A statement as to the proposed franchise area, and whether applicant holds an existing authorization to access the rights-of-way in the city and a map of the areas where such authorization exists if for an area other than the entire city.

(3) Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable service field.

(4) List of officers, directors, and managing employees of applicant and resumes of each.

(5) A proposed construction and schedule to provide cable service or video programming to subscribers.

(6) A certificate of insurance consistent with the requirements of this chapter.

(7) A description of the cable system the applicant intends to build, including its capacity, the types of equipment proposed for use and the cable services or video programming which will be offered.

(8) A description of the financial qualifications of the applicant to construct and operate the system including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three years of operation subsequent to system completion.

(9) A proposed plan for public, educational, and government access channels, including funding, facilities, and equipment and capacity on the system to be dedicated for educational and governmental use.

(B) The initial franchise application may be evaluated according to the following criteria, and approved within 180 days after city deems the application is complete. In the event applicant is already authorized to occupy the rights-of-way, the time for review and approval will be 90 days.

(1) The evidence of legal, technical and financial ability required in the applicant's proposal will be such as to assure the ability to complete the entire system within a reasonable time from the date the franchise is granted. The city will also consider the applicant's ability to operate the system and provide the necessary cable services or video programming in compliance with the terms of this chapter.

(2) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council.

(3) A public hearing shall be set prior to any grant of a franchise, at a time and date approved by the City Council. Within 30 days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted subject to what conditions.

(4) The city may consider any additional information that it deems applicable.

(Ord. passed 9-16-2021)

§ 117.04 CONSTRUCTION AND OPERATIONS STANDARDS.

Conditions on street use.

(A) A grantee shall obtain all required permits from grantor before commencing any construction upgrade or extension of the system.

(B) The grantor shall impose no permit fees upon a grantee.

(C) If at any time during the period of this franchise grantor shall elect to alter, or change the grade or location of any street, alley or other public way, a grantee shall, at its own expense, upon reasonable notice by grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system. If grantor reimburses other occupants of the street, a grantee shall be likewise reimbursed.

(D) A grantee shall, on request of any person holding a moving permit issued by grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and a grantee shall be given not less than ten days advance notice to arrange for such temporary changes.

(E) A grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.

(F) Nothing contained in this chapter shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities.

(G) In areas where all other utility lines are placed underground, grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(H) A grantee shall at all times construct and operate its system in accordance with applicable FCC technical specifications.

(I) In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this chapter, or the rights granted hereunder have been terminated, cancelled or have expired, grantee shall, subject to the rights of the city to acquire the system as specified in division (J) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.

(J) Any property of grantee to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of grantee in place, it shall submit to the city an instrument to be approved by the city, transferring to the city the ownership of such property.

(K) All cable and passive equipment for cable television reception service installed by grantee at a subscriber's location shall remain the property of grantee and grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

(L) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

(M) Where poles or other wire-holding structures already existing in use in serving the city are available for use by grantee, but it does not make arrangements for such use, the City Council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(N) Where the city or a public utility serving the city desires to make use of poles or other wire-holding structures of the grantee but agreement therefore with the grantee cannot be reached, the City Council may require the grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(O) Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

(P) During the term hereof, the city may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

(Ord. passed 9-16-2021)

§ 117.05 SYSTEM PROVISIONS AND PUBLIC SERVICES.

(A) *Operation and maintenance of system.* A grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

(B) *Service to schools and city.* A grantee shall, subject to the line extension requirements in §117.02(E), provide one drop and one outlet of basic cable service at no cost to one city building to be mutually agreed upon by city and a grantee.

(C) *PEG channel.* The grantee shall allocate one channel to the city as a public, educational or governmental access channel. Until such time as the city files a written request with grantee for full-time use of the channel, grantee shall have the right to use that portion of the channel capacity that is not being used by the city. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the city in obtaining the necessary licenses and frequency clearance to enable the city to use said channel.

(D) *Emergency use.* In the case of any emergency or disaster, a grantee shall, upon request of the city council, make available its facilities to the city for emergency use. A grantee shall comply with the emergency alert requirements of federal law.

(E) *Lockout device.* Upon the request of a subscriber, grantee shall provide by sale or lease a lockout device.

(Ord. passed 9-16-2021)

§ 117.06 OPERATION AND ADMINISTRATION PROVISIONS.

(A) *Indemnification of grantor.*

(1) A grantee shall indemnify, defend, and hold harmless grantor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a franchise granted pursuant to this chapter, except claims covered by worker's compensation insurance or any claims arising from or related to grantor's negligence. Nothing in this chapter relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regarding, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(2) In order for grantor to assert its rights to be indemnified, defended, and held harmless, grantor must with respect to each claim:

(a) Promptly notify a grantee in writing of any claim or legal proceeding which gives rise to such right;

(b) Afford grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(c) Fully cooperate with reasonable requests of grantee, at grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to division (A)(2)(b) above.

(B) *Insurance.* A grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of grantor in its capacity as such. The policies of insurance shall be in the sum of not less than \$300,000 for personal injury or death of any one person, and \$1,000,000 for personal injury or death of two or more persons in any one occurrence, \$300,000 for property damage to any one person and \$1,000,000 for property damage resulting from any one act or occurrence.

(C) *Franchise fee.*

(1) A grantor is authorized to charge grantee a monthly franchise fee up to 5% of the grantee's monthly gross revenue. Grantor may institute this fee by resolution and 90 days' notice to the grantor.

(2) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.

(3) The period of limitation for recovery of any franchise fee payable hereunder shall be three years from the date on which payment by grantee is due.

(Ord. passed 9-16-2021)

§ 117.07 REVOCATION, ABANDONMENT, AND SALE OR TRANSFER.

(A) *Grantor's right to revoke.* Grantor reserves the right to revoke, terminate or cancel a franchise, if after strictly following the procedures required by division (B) herein, it is determined that a grantee has violated any material provision of its franchise or this chapter and has failed to substantially cure said violation.

(B) *Procedures for revocation.*

(1) Grantor shall provide a grantee with written notice of a cause for revocation and the intent to revoke and shall allow

grantee 60 days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, grantor shall provide grantee with written findings of fact which are the basis of the revocation.

(2) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the 60-day notice provided in division (B)(1) above. Grantor shall provide grantee with written notice of its decision together with written findings of fact supplementing said decision.

(3) After the public hearing and upon written determination by grantor to revoke the franchise, grantee may appeal said decision with an appropriate state or federal court or agency.

(4) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.

(5) Upon satisfactory correction by grantee of the violation upon which said notice was given, the initial notice shall become void.

(C) *Sale or transfer of franchise.* No sale or transfer of a franchise shall take place without the written approval of the grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this franchise shall pass to and be binding upon the successor or assign of a grantee. Said approval shall not be required where a grantee grants a security interest in its franchise and assets to secure indebtedness.

(Ord. passed 9-16-2021)

§ 117.08 MISCELLANEOUS PROVISIONS.

(A) *Franchise renewal.* Any renewal of a franchise shall be done in accordance with applicable federal law.

(B) *Amendment of franchise.* A grantee and grantor may agree, from time to time, to amend a franchise. Such written amendments may be made at any time.

(C) *Marketing.* A grantee shall have the right to conduct direct selling in the franchise area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

(Ord. passed 9-16-2021)