

TOWN OF LANGFORD, SOUTH DAKOTA

CODE OF ORDINANCES

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TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

11. TOWN STANDARDS

CHAPTER 10: GENERAL PROVISIONS

Section

- 10.01 Title of code
- 10.02 Rules of interpretation
- 10.03 Captions
- 10.04 Definitions
- 10.05 Severability
- 10.06 Reference to other sections
- 10.07 Reference to offices
- 10.08 Errors and omissions
- 10.09 Powers to enact, amend, or repeal ordinances and resolutions; generally
- 10.10 Ordinances repealed
- 10.11 Ordinances unaffected
- 10.12 Repeal or modification of an ordinance
- 10.13 Ordinances which amend or supplement code
- 10.14 Preservation of penalties, offenses, rights, and liabilities
- 10.15 Ordinance revision

- 10.99 General penalty

§ 10.01 TITLE OF CODE.

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

§ 10.02 RULES OF INTERPRETATION.

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

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

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

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

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

Statutory reference:

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

§ 10.03 CAPTIONS.

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

§ 10.04 DEFINITIONS.

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

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

COUNTY. Marshall County.

(SDCL § 9-1-1)

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

(SDCL § 9-1-1)

GOVERNING BODY. The board of trustees, the board of commissioners, or the common council, as the case may be, of a municipality concerned or affected.

(SDCL § 9-1-1)

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

(SDCL § 9-1-1)

MONTH. A calendar month.

MUNICIPALITY or **MUNICIPAL CORPORATION.** All cities and towns organized under the laws of this state but shall not include any other political subdivisions.

(SDCL § 9-1-1)

ORDINANCE. A permanent legislative act within the limits of its powers of the governing body of a municipality.

(SDCL § 9-19-1)

OWNER. As used in this code relating to local improvements, the grantee in the last deed of conveyance of any lot or parcel of land recorded in the office of the Register of Deeds of the county or counties in which the municipality is located, or his or her heirs or successors.

(SDCL § 9-1-1)

PUBLICATION. Any requirement for publication shall mean publication in the official newspaper of the municipality concerned or affected, if any; but if none, then, in a legal newspaper published in such municipality, if any; but if none, then, in any legal newspaper

which serves such municipality, except as provided by SDCL § 9-13-13. Personal service either within or without the state upon the person affected thereby by delivery of a copy of a notice required to be published shall be equivalent to the required **PUBLICATION**.

(SDCL § 9-1-1)

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

(SDCL § 9-19-1)

SDCL. South Dakota Codified Laws.

STATE. The State of South Dakota.

STREET, STREET includes **AVENUE**.

(SDCL § 9-1-1)

TOWN. The Town of Langford, South Dakota.

YEAR. A calendar year.

§ 10.05 SEVERABILITY.

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

§ 10.06 REFERENCE TO OTHER SECTIONS.

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

§ 10.07 REFERENCES TO OFFICES.

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

§ 10.08 ERRORS AND OMISSIONS.

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

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

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

§ 10.10 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

§ 10.11 ORDINANCES UNAFFECTED.

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

§ 10.12 REPEAL OR MODIFICATION OF AN ORDINANCE.

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

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

§ 10.13 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) If the legislative body shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically

repealed and a new chapter or section, containing the desired amendment, substituted in its place.

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

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

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this code. The liabilities, proceedings, and rights are continued; punishments, penalties, or forfeitures shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment, or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

§ 10.15 ORDINANCE REVISION.

This is a revision of all the ordinances of the town heretofore adopted except appropriation ordinances, franchise ordinances, bonding ordinances, or other ordinances granting easements or contract rights or zoning ordinances or other ordinances requiring a special method of enactment.

(Ord. 150, passed 6-9-2009)

§ 10.99 GENERAL PENALTY.

Where no penalty is prescribed for a violation of the provisions of any title, chapter, or section of this Code of the town, then any person or persons, firm or corporation violating such provisions of this Code of the town or failing to comply with any of the provisions thereof shall, upon conviction thereof, where no penalty of punishment is prescribed within the title, chapter, or section containing such provision be punished by a fine in a minimum amount of \$50 up to a maximum amount of \$10,000 or by imprisonment in the county jail for a period not exceeding 180 days, or by both such fine and imprisonment at the discretion of the court.

(Ord. -, passed 8-10-2021)

CHAPTER 11: TOWN STANDARDS

Section

11.01 Locations and boundaries

11.02 Voting precinct

§ 11.01 LOCATIONS AND BOUNDARIES.

The location of the town is within sections 29 and 32 of township 125, range 58; and the original plat and plats of subsequent surveys on file at the office of the Register of Deeds in the county are as follows:

(A) Beginning at a point 1,514 feet north of the SE corner of the SW1/4, 29-125-58; thence west one-half mile to the section line between sections 29 and 30; thence south on said section line to a point 1,514 feet south of the NW corner of the NW1/4, 32-125-58; thence east one-half mile to quarter line in section 32 and 29 to the point of beginning; and

(B) Subsequent annexations include:

- (1) Glodrey: lot one of Erickson's First Subdivision in the NE1/4, 31-125-58 (Glodrey Addition);
- (2) County-Line Seed: First Williams Family Subdivision in the SW1/4NW1/4, 32-125-58;
- (3) Foote: lot one of Erickson Outlots in SE1/4, NW1/4, 30-125-58. Nelson outlot A in SE1/4, 30-125-58;
- (4) Lot B (Rauch) in NE1/4 and of section 31, lot B;
- (5) School lot C F field;
- (6) Lot D (Erickson Paul) in NE1/4, 31-125-58; and
- (7) Erickson outlot 1, 2.

(Prior Code, § 2-1-1)

§ 11.02 VOTING PRECINCT.

The town is considered one precinct for voting purposes.

Chapter

- 30. GOVERNING BODY
- 31. OFFICIALS, EMPLOYEES, AND ORGANIZATIONS
- 32. ELECTIONS
- 33. PUBLIC SAFETY
- 34. FINANCE
- 35. MUNICIPAL PROPERTY

CHAPTER 30: GOVERNING BODY

Section

General Provisions

- 30.01 Forms of government
- 30.02 Classes of municipalities; change of classification
- 30.03 Vacancies
- 30.04 Conflict of interest
- 30.05 Maximum payment or indemnity; excess

Organization; Trustee Form

- 30.20 Composition and qualification
- 30.21 Qualifying for office; oath of office
- 30.22 Term of office
- 30.23 President
- 30.24 Regularly scheduled meetings and special meetings
- 30.25 Quorum; majority required for action

Ordinances and Resolutions

- 30.40 Style of ordinances; subject
- 30.41 Readings, passage, and publication
- 30.42 Effective date of ordinances and resolutions
- 30.43 Compilation of ordinances
- 30.44 Continuation in force of ordinances after change in form of government
- 30.45 Ordinance control authority
- 30.46 Rules and regulations regarding enactment of ordinances and resolutions
- 30.47 Expansion of powers beyond existing ordinances
- 30.48 Trial provisions

Statutory reference:

General powers of municipality, see SDCL Chapter 9-12

Public comment at meetings, see SDCL § 1-25-1

GENERAL PROVISIONS

§ 30.01 FORMS OF GOVERNMENT.

(A) Each municipality shall be governed by a Board of Trustees, a Mayor, and Common Council, or a Board of Commissioners. A Town Manager may serve with any of the forms of government.

(SDCL § 9-2-3)

(B) The town is governed by a Board of Trustees.

§ 30.02 CLASSES OF MUNICIPALITIES; CHANGE OF CLASSIFICATION.

(A) There are three classes of municipal corporations.

- (1) First Class, with a population of 5,000 or over;
- (2) Second Class, with a population between 500 and 5,000; and
- (3) Third Class, with a population of less than 500.

(SDCL § 9-2-1)

(B) The municipality may change its classification if the territory of the municipality has changed substantially since the last preceding census. The governing body, by resolution, may authorize and direct its Auditor or Clerk to determine the population by filing in his or her office a certificate showing the whole number of persons who voted at the last preceding annual municipal election, which number multiplied by three shall constitute the population for the purpose of classification until the next federal census shall have been completed.

(SDCL § 9-2-2)

§ 30.03 VACANCIES.

(A) *General.* If a vacancy exists on a municipal governing body, the remaining members shall appoint a replacement to serve until the next annual municipal election, or the vacancy may be filled by special election for the remainder of the unexpired term as provided in division (C) below.

(B) *Publication requirement.* If electing a person to fill the remainder of the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the publication required by SDCL § 9-13-14.1.

(C) *Special elections to fill vacancy on governing board procedures.*

(1) The governing body of any municipality may, by ordinance, require that any vacancy on the governing body be filled by a special election called for that purpose to be conducted as provided in SDCL § 9-13-14 and this division.

(2) No special election may be held less than 90 days before the annual municipal election. The Finance Officer of the municipality shall publish a notice in the official newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by the special election, the date of the election, and the time and place where nominating petitions may be filed for office.

(3) The notice shall be published each week for two consecutive weeks beginning at least 60 days before the special election. Nominating petitions for the vacancy shall be prepared and filed as provided in SDCL § 9-13-7, may not be circulated more than 60 days before the date of the special election, and shall be filed at least 30 days before the date of the special election. The number of signers required for a nominating petition shall be calculated as provided in SDCL § 9-13-9. If a nominating petition is filed before the second Tuesday in January, the prior year's calculation of registered voters shall be used. A notice of the special election shall be published as provided in SDCL §§ 9-13-13 and 9-13-14.

(SDCL § 9-13-14.2)

(D) *Elected official to hold office until vacancy filled.* If for any reason a municipality fails to elect any person to succeed an elected official whose term has expired or an elected official fails to file a nominating petition to qualify, the office is deemed vacant. The elected official whose term has expired shall continue to act in an official capacity until the vacancy is filled by election or appointment pursuant to divisions (B) or (C) above.

§ 30.04 CONFLICT OF INTEREST.

(A) No municipal official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:

- (1) The official has a direct pecuniary interest in the matter before the governing body; or
- (2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

(B) If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.

(SDCL § 6-1-17)

§ 30.05 MAXIMUM PAYMENT OR INDEMNITY; EXCESS.

(A) In no event may the total amount of payment or indemnity for any one officer or employee exceed the sum of \$25,000. However, this municipality may establish a different maximum amount of payment or indemnity by a resolution approved by its governing body.

(B) Indemnity in excess of \$25,000 or the maximum amount of the payment or indemnity approved by a resolution adopted by this municipality's governing body, whichever is greater, may be presented as a claim to the State Legislature.

(SDCL § 3-19-2)

ORGANIZATION; TRUSTEE FORM

§ 30.20 COMPOSITION AND QUALIFICATION.

The Board of Trustees of a third class municipality shall consist of not less than three nor more than five members elected at large. Each shall be a legal voter of the municipality. The number of Trustees of a municipality may be increased to five or reduced to three in the manner prescribed by SDCL Chapter 9-11.

§ 30.21 QUALIFYING FOR OFFICE; OATH OF OFFICE.

The members of the Board of Trustees shall qualify for office and begin discharging the duties of the office as soon as the officer has qualified by filing an oath or affirmation of office in the usual form provided by law. The officer shall file the form within ten days after the first meeting of the month following the appointment. The officer shall hold office until the appointment and qualification of a successor.

(Prior Code § 1-2-6)

§ 30.22 TERM OF OFFICE.

(A) The members of the Board of Trustees shall hold office for three years and until their successors are elected and qualified. A vacancy on the Board shall be filled as provided in SDCL §§ 9-13-14 or 9-13-14.2.

(Prior Code, § 1-2-5)

(B) Whenever any third class municipality is organized, the Trustees shall be elected for terms of one, two, and three years respectively at the first annual election. At subsequent elections, each Trustee shall be elected for a term of three years.

(SDCL § 9-7-3)

(C) Every elective officer, when elected for a full term, shall enter upon the discharge of his or her duties on the second Tuesday of May next succeeding his or her election or as soon thereafter as he or she have duly qualified.

(Prior Code, § 1-2-2)

§ 30.23 PRESIDENT.

At the first regular meeting after their election, the members of the Board of Trustees shall elect one of their number as President to serve for one year and until his or her successor is elected and qualified.

(SDCL § 9-7-5)

§ 30.24 REGULARLY SCHEDULED MEETINGS AND SPECIAL MEETINGS.

(A) (1) The official meetings of the state and its political subdivisions are open to the public unless a specific law is cited by the state or the political subdivision to close the official meeting to the public.

(2) It is not an official meeting of one public body if its members provide information or attend the official meeting of another public body for which the notice requirements of SDCL §§ 1-25-1.1 or 1-25-1.3 have been met. It is not an official meeting of a public body if its members attend a press conference called by a representative of the public body.

(3) For any event hosted by a non-governmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum in lieu of an agenda. The notice of a quorum shall meet the posting requirements of SDCL §§ 1-25-1.1 or 1-25-1.3 and shall contain, at a minimum, the date, time, and location of the event.

(4) The public body shall reserve at every regularly scheduled official meeting a period for public comment, limited at the public body's discretion, but not so limited as to provide for no public comment. At a minimum, public comment shall be allowed at regularly scheduled official meetings which are designated as regularly meetings by statute, rule, or ordinance.

(5) Public comment is not required at official meetings held solely for the purpose of an inauguration, swearing in of newly elected officials, or presentation of an annual report to the governing body regardless of whether or not such activity takes place at the time and place usually reserved for a regularly scheduled meeting.

(6) If a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meet solely for purposes of implementing previously publicly adopted policy, carrying out ministerial functions of that township, district, or municipality, or undertaking a factual investigation of conditions related to public safety, the meeting is not subject to the provisions of this chapter.

(7) A violation of this section is a Class 2 misdemeanor.

(B) (1) The Board shall hold regular meetings at such times as may be provided by ordinance.

(2) The regular monthly meeting of the Board of Trustees of the town shall be held on the second Tuesday of each month or as otherwise set by the Town President at the Finance Office at 306 Main Street in the town. In case such day falls on a holiday, the said meeting shall be held one day later.

(Prior Code, § 1-1-1)

(C) (1) Special meetings of the Board of Trustees may be held at any time on the call of the Town President, or in case of his or her absence or inability to act or refusal to act, then by quorum of two members of the Board of Trustees.

(Prior Code, § 1-2-1)

(2) Special meetings of the Board may consider only the matters for which the meetings were called, and the order of business provided for regular meetings in the preceding section shall not be observed.

(Prior Code, § 1-5-1)

(3) In case of a special meeting, it shall be the duty of the Town President calling the same issue notice to each of the members of the Board of Trustees. Such notice may be by person, letter, telephone, text message, or email message.

(Prior Code, § 1-3-1)

(D) The town shall abide by open meetings requirements as subscribed by the state codified law.

§ 30.25 QUORUM; MAJORITY REQUIRED FOR ACTION.

A majority of the members of the Board shall constitute a quorum, but no act of the Board shall be effective unless assented to by a majority of the members.

(SDCL § 9-7-7)

ORDINANCES AND RESOLUTIONS

§ 30.40 STYLE OF ORDINANCES; SUBJECT.

(A) The style of all ordinances shall be as follows:

- (1) An Ordinance _____ (Insert the Title); and
- (2) "Be it Ordained by the Town of Langford," followed by the substance of the ordinance.

(B) An ordinance must embrace but one subject which shall be expressed in its title.

(Prior Code, §1-4-2)

§ 30.41 READINGS, PASSAGE, AND PUBLICATION.

(A) All ordinances shall be read twice with at least one week intervening between the first and second reading, shall be signed by the Town President or Vice President, filed with the Finance Officer, and published once except that an ordinance incorporating and adopting comprehensive regulations or a code promulgated, approved, and published by a recognized and established national plumbing, safety, fire, health, or milk regulations need not be published in a newspaper; but upon adoption of such an ordinance, the Finance Officer shall publish a notice of the fact of adoption once a week for two successive weeks in the official newspaper, and 20 days after the completed publication of such notice, unless the referendum shall have been invoked, such ordinance shall become effective.

(B) (1) After being signed and filed, the ordinances must be published at least once in the official newspaper. The only exception to this is that an ordinance incorporating or adopting comprehensive regulations or a code promulgated, approved, and published by a recognized and established national organization prescribing building, electrical, plumbing, safety, fire, health, or milk regulations need not be published in newspaper but upon adoption of such an ordinance, the Auditor or Clerk shall publish a notice of the fact of adoption once a week for two successive weeks in the official newspaper, and 20 days after the completed publication of such notice, unless the referendum shall have been invoked, such ordinance shall become effective.

(SDCL § 9-19-7)

(2) If any amendment presented and approved by the governing body at the second reading of an ordinance substantially alters the substance of the ordinance from the first reading, the proposed ordinance as amended may not be considered for final adoption until at least five days after a duly noticed public meeting of the governing body pursuant to SDCL Chapter 1-25.

(SDCL § 9-19-7.1)

(3) The vote on the second reading of all ordinances must be recorded and published.

(SDCL § 9-19-9)

(C) Amendments to a planning or zoning ordinance may be published without republishing the full ordinance in the section or subsection of the ordinance containing the change is published in its entirety.

(SDCL § 11-4-8)

(D) Resolutions differ from ordinances in that any resolution may be passed after only one reading. The resolution must be recorded at length either separately or in the minutes of the meeting. The votes for and against the resolution must also be published.

(SDCL § 9-19-8)

(Prior Code, § 1-4-2)

§ 30.42 EFFECTIVE DATE OF ORDINANCES AND RESOLUTIONS.

Unless an ordinance or resolution is drawn to take effect immediately upon passage, all ordinances and resolutions become effective on the twentieth day after passage and publication, unless suspended by operation of a referendum.

(SDCL § 9-19-13)

§ 30.43 COMPILATION OF ORDINANCES.

(A) Municipalities can compile the ordinances of the municipality in book form provided that, while compiling the ordinances, they are not revised or amended. The Finance Officer shall furnish a free copy of the newly compiled book to the Circuit Clerk of the court and the county law library of each county in which the municipality is situated.

(SDCL § 9-19-15)

(B) Every municipality also has the power to revise their ordinances once every five years.

(SDCL § 9-19-16)

(C) (1) Upon the adoption of an ordinance which revises the ordinances of the municipality by the governing body, the Auditor or Clerk shall publish a notice of the adoption of the revised ordinances once in the official newspaper. Twenty days after the completed publication of the notice, unless the referendum is invoked, the ordinance shall become effective without publication in a newspaper.

(2) The governing body may publish the revised ordinances in book form. The Auditor or Clerk shall furnish a free copy of the book or the revised ordinances to the Circuit Clerk of the court and the county law library of each county in which the municipality is situated.

(SDCL § 9-19-17)

(D) If a municipality posts the ordinance book or any part of the book on the municipality's official website, the municipality shall ensure the most current version of the ordinance book or any part of the book is posted.

(SDCL § 9-19-14.1)

(E) (1) Except such resolutions or ordinances as may be necessary for the immediate preservation of the public peace, health, or safety or support of the municipal government and its existing public institutions, or which provide for an election or which call for bids, which take effect upon the passage and publication thereof, every resolution or ordinance passed by the governing body shall take effect on day 20 after its publication unless suspended by operation of a referendum.

(2) A resolution may be passed after one reading. It shall be recorded at length in the minutes of the meeting at which it is passed, with a statement of the number of votes for and against the same. It shall be published in full as part of the minutes.

(Prior Code, § 1-4-2)

§ 30.44 CONTINUATION IN FORCE OF ORDINANCES AFTER CHANGE IN FORM OF GOVERNMENT.

Any ordinance or resolution of this municipality shall continue in force and effect the same as though no change of government has occurred.

(SDCL § 9-11-10)

§ 30.45 ORDINANCE CONTROL AUTHORITY.

The Board of Trustees shall have authority to make, publish, ordain, amend, and repeal all such ordinances, bylaws, and police regulations not contrary to the Constitution of the United States and the laws of this state for the good of government and commerce of the town as may be necessary to carry into effect the powers vested in the Board of Trustees or any officer of said town by this act. They may also force the observance of all rules, ordinances, bylaws, and policies and other regulations made in pursuance of this act by fines not exceeding \$100 or imprisonment not exceeding 30 days, or by both such fines and imprisonment for any offense against the same.

(Prior Code, § 1-4-1)

§ 30.46 RULES AND REGULATIONS REGARDING ENACTMENT OF ORDINANCES AND RESOLUTIONS.

(A) All ordinances of the town shall be passed pursuant to such rules and regulations as the Board of Trustees may prescribe, provided that upon the passage of all ordinances the yeas and nays shall be entered upon the record of the Town Board. A majority of the votes of all the members of said Board present shall be necessary to their passage, provided a majority of all the members elected shall constitute a quorum for the transaction of business.

(B) All ordinances of the town may be proven by the ordinance book or the certificate of the town under the seal of the town, if there is such seal and when posted or published in a book or pamphlet form and purporting to be published or printed by authority of the town shall be read and received in all courts and places without further proof.

(Prior Code, § 1-4-2)

§ 30.47 EXPANSION OF POWERS BEYOND EXISTING ORDINANCES.

When by state law the power is confirmed upon the Town President and Board to do and perform any act or thing and the manner of exercising the same is not specifically pointed out, the Town President and Board may provide, by ordinance, the details necessary for the full exercise of such powers.

(Prior Code, § 1-4-3)

§ 30.48 TRIAL PROVISIONS.

Trial for violation of these ordinances shall be before a judge or magistrate empowered by state law to try such violations and such trial shall follow procedure prescribed by law.

(Prior Code, § 1-4-6)

CHAPTER 31: OFFICIALS, EMPLOYEES, AND ORGANIZATIONS

Section

Municipal Officers

- 31.01 Appointment
- 31.02 Warrant or certificate of appointment
- 31.03 Appointed Financial Official
- 31.04 Municipal Treasurer
- 31.05 Municipal Attorney
- 31.06 Municipal Engineer
- 31.07 Additional duties
- 31.08 Compatible and incompatible offices
- 31.09 Salaries and fringe benefits
- 31.10 Elective officers
- 31.11 Appointive officers
- 31.12 Mode of appointment
- 31.13 Certificates of appointment
- 31.14 Public records
- 31.15 Compensation

Removal from Office; Vacancies

- 31.30 Grounds for removal
- 31.31 Vacancies in office
- 31.32 Vacancies due to temporary resignation; temporary replacement and term
- 31.33 Officer's discharge of duties when elected to fill a vacancy
- 31.34 Temporary resignation for members of National Guard or reserves; notice; temporary replacement; length of term
- 31.35 Certain officers not to hold other office

Employees

- 31.50 Criminal background check

Statutory reference:

Municipal proceedings and municipal records, see SDCL Chapter 9-18

MUNICIPAL OFFICERS

§ 31.01 APPOINTMENT.

- (A) Such officers as needed and provided for by ordinance shall be appointed.
- (B) All appointive officers of a municipality governed by a Mayor and Common Council shall be appointed by the Mayor with the

approval of the Council and, in other municipalities, they shall be appointed by a majority vote of the members elected to the governing body, except as provided in the Town Manager law and subject to the provisions of the civil service applying to employees, police officers, and firefighters. The officers shall be appointed annually or at intervals determined by the governing body.

(SDCL § 9-14-3)

§ 31.02 WARRANT OR CERTIFICATE OF APPOINTMENT.

(A) All appointed officers, except the Auditor and Marshal, shall be commissioned by warrant, under the corporate seal, signed by the Mayor and Auditor. The Marshal shall be commissioned by warrant, under the corporate seal, signed by the President of the Board of Trustees and the Clerk.

(B) The Mayor shall issue a certificate of appointment under the seal of the municipality to the Auditor.

(SDCL § 9-14-4)

§ 31.03 APPOINTED FINANCIAL OFFICIAL.

The appointed Financial Official shall have the following duties:

(A) Supervising the accounting system for all departments and offices of the municipality in accordance with the recommendations of the Department of Legislative Audit, except that for those municipalities administered under the Town Manager form of government, the supervision is by the Town Manager;

(SDCL § 9-14-19)

(B) (1) Keeping an office at a place directed by the governing body;

(2) Keeping the corporate seal, all papers and records of the municipality, and a record of the proceedings of the governing body, whose meetings the Finance Officer shall attend;

(3) Drawing and countersigning all warrants on the treasury in pursuance of orders or resolutions of the governing body and keep a full and accurate account of all such warrants in books provided for that purpose; and

(4) Making or causing to be made estimates of the expenses of any work to be done by the municipality and countersign all contracts made on its behalf and certificates of work authorized by any committee of the governing body or by any municipal officer. However, the Finance Officer may destroy any record which the Records Destruction Board, acting pursuant to SDCL § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.

(SDCL § 9-14-17)

(C) (1) Keeping regular books of account in which shall be entered all indebtedness of the municipality, and which shall at all times show the financial condition of the municipality, the amount of bonds, warrants, certificates, or other evidences of indebtedness issued by the governing body, and the amounts of all bonds, warrants, certificates, or other evidences of indebtedness which have been redeemed and the amount of each outstanding.

(2) Countersigning all bonds, warrants, or other evidences of indebtedness of the municipality and keep accurate accounts of each, stating to whom and for what purpose issued and the amount of the bond, warrant, or other evidence of indebtedness of the municipality. The Finance Officer shall keep an account with all receiving and disbursing officers of the municipality, showing the amount received from the different sources of revenue and the amount which was disbursed under the direction of the governing body. However, the Finance Officer may destroy any record, which the Records Destruction Board, acting pursuant to SDCL § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.

(SDCL § 9-14-18)

(D) Keeping a list of all certificates issued for work or any other purpose. Before the levy by the governing body of any special tax, the Finance Officer shall, unless that duty is performed by the Engineer, report to the governing body a schedule of all lots that are subject to the proposed special tax or assessment and the amount of the special tax or assessment. The schedule shall be verified by the Finance Officer's affidavit.

(SDCL § 9-14-20)

§ 31.04 MUNICIPAL TREASURER.

(A) The Municipal Treasurer shall receive all money belonging to the municipality and shall keep accurate records of the money.

(SDCL § 9-22-2)

(B) The Municipal Treasurer shall perform all other duties as set out in SDCL §§ 9-22-1 et seq.

§ 31.05 MUNICIPAL ATTORNEY.

When required by the governing body or any officer of the municipality, the Municipal Attorney shall furnish an opinion upon any matter relating to the affairs of the municipality or the official duties of such officer; conduct the prosecution of all actions or proceedings arising out of the violation of any ordinance; and perform such other professional services incident to his or her office as may be required by ordinance or directed by the governing body.

(SDCL § 9-14-22)

§ 31.06 MUNICIPAL ENGINEER.

(A) If a municipality chooses to employ or retain a person to serve as a Municipal Engineer, the Municipal Engineer shall be a licensed professional engineer under SDCL Chapter 36-18A. If the Municipal Engineer is not also licensed as a land surveyor under SDCL Chapter 36-18A, the Municipal Engineer shall delegate any duties that are defined in SDCL Chapter 36-18A as the practice of land surveying to a licensed land surveyor.

(B) The governing body shall by ordinance or agreement prescribe the duties and fix the compensation of the Municipal Engineer.

(C) All surveys, profiles, plans, or estimates made by the Municipal Engineer for the municipality are the property of the municipality and shall be carefully preserved in the municipality's office or the office of the Municipal Engineer and are open to public inspection.

(SDCL § 9-14-24)

§ 31.07 ADDITIONAL DUTIES.

The governing body is authorized to prescribe by ordinance additional duties not inconsistent with the laws of the state to any municipal officer.

(SDCL § 9-14-27)

§ 31.08 COMPATIBLE AND INCOMPATIBLE OFFICES.

(A) *Compatible offices.*

(1) No Mayor, Alderman, Commissioner, or Trustee is disqualified from holding such office in any municipality as a result of holding any liquor license or being the spouse of a person holding any liquor license.

(SDCL § 9-14-16)

(2) (a) The provisions of divisions (A)(1) above and (B) below do not prohibit any Mayor, Alderman, Commissioner, or Trustee from serving in any other volunteer, unsalaried municipal position or providing any service for a municipality if the compensation for such service does not exceed \$5,000 per calendar year.

(b) The provisions of division (A)(1) above and (B) below do not prohibit any Mayor, Alderman, Commissioner, or Trustee from receiving compensation in excess of \$5,000 per calendar year for service to a municipal ambulance service in municipalities of the second or third class.

(SDCL § 9-14-16.1)

(B) *Incompatible offices.*

(1) No Mayor, Alderman, Commissioner, or Trustee shall hold any other office under the municipality while an incumbent of any such office.

(2) No Auditor or Clerk may hold the office of Treasurer in the municipality while an incumbent of such office.

(SDCL § 9-14-16)

§ 31.09 SALARIES AND FRINGE BENEFITS.

(A) The governing body shall fix and determine by ordinance or resolution the amount of salaries and compensation of all municipal officers and the times at which the same shall be paid.

(SDCL § 9-14-28)

(B) (1) The municipality may appropriate funds to pay the necessary expenses of its officers or employees in conducting such business or attending such meetings within or without the state as the governing body shall determine necessary to carry out its authorized municipal activities.

(SDCL § 9-12-3)

(2) The municipality is authorized to provide the following:

(a) Appropriation of funds to compensate the members of municipal boards and commissions;

(SDCL § 9-12-3.1)

(b) 1. By self insurance, or by purchase from private companies, group life, health and accident insurance, or any one or more of such insurance risks, for their respective employees and officers and the immediate families of such employees and officers, as the terms **EMPLOYEE** and **OFFICER** are defined in SDCL § 9-14-31. Such accident insurance applies only if benefits under the Worker's Compensation Law are not applicable; and

(SDCL § 9-14-30)

2. The policy or policies for the insurance provided in division (B)(2)(b)1. above may be administered by the municipality through its respective governing bodies, acting individually or jointly through some joint agency created by such governmental subdivisions for carrying out the purposes of SDCL §§ 9-14-30 to 9-14-35, inclusive, or the municipality may contract with any private firm to administer the policies.

(SDCL § 9-14-34)

(c) Inclusion in the municipal insurance program of retired employees and officers and their spouses, provided the officer or employee served for at least 15 years and participated in municipal insurance program at least five years immediately preceding retirement; and

(SDCL § 9-14-35)

(d) Appropriation of necessary funds for the cost of all or any portion of the insurance provided by SDCL § 9-14-30 and the deduction from salaries or wages, the employee's or officer's share of the cost of such an insurance program.

(SDCL § 9-14-33)

§ 31.10 ELECTIVE OFFICERS.

The elective officers of the town shall be three Trustees.

(Prior Code, § 1-2-1)

§ 31.11 APPOINTIVE OFFICERS.

The appointive officers of the town shall be Finance Officer, Utilities Manager, and other such officers as may be provided for by ordinances.

(Prior Code, § 1-2-3)

§ 31.12 MODE OF APPOINTMENT.

All appointive officers of the town shall be appointed by the Board of Trustees.

(Prior Code, § 1-2-4)

§ 31.13 CERTIFICATES OF APPOINTMENT.

(A) All appointive officers, except the Finance Officer, shall be commissioned by warrant under the corporate seal, signed by the Town President and Finance Officer.

(B) The Town President shall issue a certificate of appointment under the seal of the municipality to the Finance Officer.

(Prior Code, § 1-2-8)

§ 31.14 PUBLIC RECORDS.

(A) The Finance Officer shall keep a record of the official acts and proceedings of this office; such record shall be open to public inspection during the business hours under reasonable restriction.

(Prior Code, § 1-2-12)

(B) Requests for public information shall be made in writing to the Finance Officer on a form subscribed by the Board of Trustees.

(C) The Finance Officer shall investigate the request to determine if any other statute, ordinance, or rule expressly provides that particular information may not be made public.

(SDCL § 1-27-1.1)

(D) A reasonable fee may be charged for any specialized service. No fee may be charged for the electronic transfer of any minutes of open meeting actions.

(SDCL § 1-27-1.2)

Statutory reference:

For material relating to open meeting agenda item to be available; exceptions; violation as misdemeanor, see SDCL § 1-27-1.16

§ 31.15 COMPENSATION.

The compensation of all officials and personnel should be up to the discretion of the Board of Trustees.

(Prior Code § 1-2-13)

REMOVAL FROM OFFICE; VACANCIES

§ 31.30 GROUNDS FOR REMOVAL.

(A) Any officer may be charged, tried, and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality.

(SDCL § 3-17-6)

(B) The Board shall have the power to remove from office any employee appointed by it whenever it shall be the opinion of the Board that the interests of the town demand such removal. Such removal shall be by majority vote of the Board.

(Prior Code, § 1-2-10)

§ 31.31 VACANCIES IN OFFICE.

(A) The removal of any municipal officer from the ward or municipality for which the officer was elected or appointed, or the officer's failure, within ten days after the first meeting of the month following the election or appointment, to qualify and begin the duties of office, causes a vacancy in the office.

(SDCL § 9-14-10)

(B) In case of vacancy for any cause in the office of Finance Officer or maintenance personnel, the vacancies shall be filled by the Board of Trustees. Vacancies in the office of Trustees shall be filled by the Board of Trustees until the next regular election by the appointment of some qualified person from the town.

(Prior Code, § 1-2-9)

§ 31.32 VACANCIES DUE TO TEMPORARY RESIGNATION; TEMPORARY REPLACEMENT AND TERM.

(A) If any member of a governing body or any other elected officer of a municipality, who is incapacitated by an illness or an accident which causes the member or officer to be unable to attend meetings of the governing body or fulfill the duties of the office, the member may elect to temporarily resign from the governing body or office.

(B) Notice of temporary resignation may be given in the same manner as giving notice of resignation from the governing body or office. If the member or officer is unable to give notice, the member's or officer's spouse or guardian or any person who has durable power of attorney for the member or officer may give notice of resignation.

(C) A temporary replacement may be made in accordance with the provisions of statute applying to the governing body or office. The temporary member or officer shall serve until the member or officer is able to fulfill the requirements of office or until the expiration of the member's or officer's term, whichever comes first.

(SDCL § 3-4-9)

§ 31.33 OFFICER'S DISCHARGE OF DUTIES WHEN ELECTED TO FILL A VACANCY.

Each elective municipal officer, if elected to fill a vacancy, shall begin discharging the duties of the office as soon as the officer has qualified by filing an oath or affirmation of office in the usual form provided by law. The officer shall file the form within ten days after the first meeting of the month following the election. Except as otherwise provided, each officer, if elected for a full term, shall begin discharging the duties of the office on the first meeting of the month next succeeding the election or as soon thereafter as the officer has qualified.

(SDCL § 9-14-5)

§ 31.34 TEMPORARY RESIGNATION FOR MEMBERS OF NATIONAL GUARD OR RESERVES; NOTICE; TEMPORARY REPLACEMENT; LENGTH OF TERM.

If any member of a governing body of the municipality, who is also a member of the state's National Guard or another reserve component of the armed forces of the United States, is called into active duty which causes the member to be unable to attend meetings of the governing body, the member may elect to temporarily resign from the governing body. Notice of temporary resignation may be given in the same manner as giving notice of resignation from such governing body. A temporary replacement may be made in accordance with the provisions of statute applying to the governing body. The temporary member shall serve until the member returns from active duty or until the expiration of the member's term, whichever occurs first.

(SDCL § 3-4-8)

§ 31.35 CERTAIN OFFICERS NOT TO HOLD OTHER OFFICE.

No Board member shall hold any other office under the municipality while an incumbent of any such office.

(Prior Code, § 1-2-11)

EMPLOYEES

§ 31.50 CRIMINAL BACKGROUND CHECK.

Each person over 18 years of age seeking employment with a municipality shall submit, subject to the discretion of the municipality, to a state and federal criminal background investigation by means of fingerprint checks by the state's Division of Criminal Investigation and the Federal Bureau of Investigation. The completed fingerprint cards will be forwarded to the Division of Criminal Investigation before the prospective new employee enters into service. Upon completion of the state and federal criminal background check, the

Division of Criminal Investigation shall forward to the municipality all information obtained as a result of the check. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application.

(SDCL § 9-14-42)

CHAPTER 32: ELECTIONS

Section

- 32.01 Ballots
- 32.02 Required notices
- 32.03 Special elections
- 32.04 Nominating petition
- 32.05 Election returns and notice of election to candidates

Statutory reference:

For campaign finance requirements, see SDCL Chapter 12-27

§ 32.01 BALLOTS.

(A) *Preparation of ballots.* The Finance Officer shall prepare and furnish, at the expense of the municipality, all official ballots. The quantity of ballots shall be at least 10% more than the number of voters at the comparable election. The ballots shall be white in color, of good quality of print paper, printed in black ink, and in the English language only.

(B) *Availability of ballots.* The ballots for municipal elections shall be available for absentee voting no later than 15 days prior to election day. If the ballots are for a secondary election, the ballots shall be available no later than seven days prior to the secondary election day. Absentee voting shall be conducted pursuant to SDCL Chapter 12-19.

(C) *Form of ballots.* The names of the candidates for each office to be voted for in the precinct shall be arranged without any other designation than that of the office for which they are candidates. If more than one member of the governing body is to be elected, the ballot shall contain instructions as to how many candidates for the governing body are to be voted for. The Finance Officer shall determine, by lot, each candidate's position on the ballot. Each candidate may be present or represented when the position on the ballot is being determined. No candidate's name may be printed upon the official ballot unless the candidate has been nominated as provided in this SDCL Chapter 9-13.

(SDCL § 9-13-21)

§ 32.02 REQUIRED NOTICES.

Municipal officials shall make the following legal publications in the official newspaper in conjunction with municipal elections.

(A) The Finance Officer of the municipality shall publish a notice identifying which vacancies will occur by termination of the terms of office of elective officers, stating the time and place where nominating petitions may be filed. These notices are to be published once each week for two consecutive weeks between January 15 and January 30.

(SDCL § 9-13-6)

(B) Two notices of the availability of registration officials, stating when registration will be terminated and the effect of a failure to register. The notice must be published at least once each week for two consecutive weeks. The last publication to be not less than ten nor more than 15 days before the deadline for registration.

(SDCL § 12-4-5.2)

(C) (1) A notice of each municipal election shall be published once each week for two successive weeks, the first publication may not be less than ten days prior to the election. A facsimile of the official ballot shall be published in the calendar week prior to each election. The notice and ballot shall be published in the official newspaper or newspapers of the municipality as designated in SDCL § 9-12-6.

(2) If no newspaper is published in the municipality, the notice shall also be posted in three of the most public places in the municipality.

(SDCL § 9-13-13)

(D) If there is to be a secondary election, a notice of election shall be published once during the week before any secondary election, which shall include a list of all persons appearing on the ballot for the election.

§ 32.03 SPECIAL ELECTIONS.

(A) Every special election authorized by law, except as provided in SDCL §§ 6-8B-4 and 9-13-14.2, shall be held upon the same notice; at the same polling places; be conducted, returned, and canvassed; and the result declared as provided herein for the annual

municipal election.

(B) The notice of such special election shall state any question or questions to be voted upon.

(SDCL § 9-13-14)

§ 32.04 NOMINATING PETITION.

(A) No candidate for elective municipal office may be nominated unless a nominating petition is filed with the Finance Officer no later than 5:00 p.m. on the last Friday in February preceding the day of election. The petition shall be considered filed if it is mailed by registered mail by 5:00 p.m. on the last Friday in February before the election.

(B) The petition shall contain the name, residence address, and mailing address of the candidate and the office for which the candidate is nominated and shall be on the form prescribed by the state's Board of Elections. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class.

(C) The Finance Officer may only accept nominating petitions that are on the prescribed form and were circulated pursuant to the provisions in SDCL Chapters 9-13 and 12-6. Upon verification signed by the Finance Officer or Clerk that the nominating petition contains the minimum number of signatures of registered voters within either the municipality or ward, or both, and that the candidate is a registered voter within either the municipality or ward, or both, the filing of the petition constitutes nomination.

(SDCL § 9-13-7)

§ 32.05 ELECTION RETURNS AND NOTICE OF ELECTION TO CANDIDATES.

(A) The election returns shall be reported as soon as possible to the Finance Officer, and within seven days of the election, the governing body shall canvass the election returns, declare the result, and enter the result on its journal.

(SDCL § 9-13-24)

(B) The Finance Officer, within two days after the result of the election is declared, shall notify each person elected to office of the person's election. If a person does not qualify by filing an oath or affirmation of office in the usual form provided by law within ten days after the first meeting of the month next succeeding the election, the office becomes vacant.

(SDCL § 9-13-28)

CHAPTER 33: PUBLIC SAFETY

Section

Fire Department; Fire Code Adopted

- 33.01 Definition
- 33.02 Adoption of National Code
- 33.03 Enforcement
- 33.04 Limits on storage of flammable liquids and petroleum gas
- 33.05 Modifications
- 33.06 Appeals
- 33.07 Burning of buildings or other property
- 33.08 Open burning
- 33.09 Interference with electric posts and apparatuses

- 33.99 Penalty

Editor's note:

The town contracts with the county to provide law enforcement services, who is required to provide those services pursuant to town ordinances and state codified law.

FIRE DEPARTMENT; FIRE CODE ADOPTED

§ 33.01 DEFINITION.

Wherever the word **MUNICIPALITY** is used in the Code hereby adopted, it shall be held to mean the town.

(Prior Code, § 4-1-2)

§ 33.02 ADOPTION OF NATIONAL CODE.

(A) There is hereby adopted by the town for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain code known as the Uniform Fire Code recommended by the International Conference of Building Officials being the whole thereof save and except such portions as are hereinafter deleted, modified, or amended by the Town Board.

(B) A copy of the Code is on file in the office of the Fire Chief of the town, and the same is hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this section shall take effect, the provisions thereof shall be controlling within the limits of the town.

(Prior Code, § 4-1-1)

§ 33.03 ENFORCEMENT.

The Code adopted shall be enforced by the Chief of the Fire Department

(Prior Code, § 4-1-3)

§ 33.04 LIMITS ON STORAGE OF FLAMMABLE LIQUIDS AND PETROLEUM GAS.

Storage of flammable liquids in inside or outside aboveground or belowground storage containers of 500 total gallons or more is prohibited without prior approval from the Board of Trustees and Fire Chief. Liquid petroleum gases shall be handled, transported, and stored in a safe manner within the town limits.

§ 33.05 MODIFICATIONS.

The Chief of the Fire Department shall have power to modify any of the provisions of the Code hereby adopted upon application in writing by the owner or lessee or his or her duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the Code, provided that the spirit of the Code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the Chief of the Fire Department thereon shall be entered upon the records of the Department and a signed copy shall be furnished to the applicant.

(Prior Code, § 4-1-5)

§ 33.06 APPEALS.

Whenever the Chief of the Fire Department shall disapprove an application or refuse to grant a license or permit applied for or when it is claimed that the provisions of the Code do not apply or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Chief of the Fire Department to the Board of Trustees within 30 days from the date of the decision of the appeal.

(Prior Code, § 4-1-6)

§ 33.07 BURNING OF BUILDINGS OR OTHER PROPERTY.

No property owner or occupant shall destroy a building or other such property by fire unless he or she shall first notify and receive permission from the Fire Chief and Board of Trustees. A burn permit is needed. Burn permits are available at the Finance Office or the maintenance shop. County Sheriff's Department needs to be notified that it is a controlled burn. A permit is required.

Penalty, see § 33.99

§ 33.08 OPEN BURNING.

No person shall kindle or maintain any open bonfire, campfire, or rubbish fire within the corporate limits of this municipality, without a permit from the Fire Department, Volunteer Fire Department, governing body, or appropriate department, with the exception of barbecue grills.

Penalty, see § 33.99

§ 33.09 INTERFERENCE WITH ELECTRIC POSTS AND APPARATUS.

No person shall interfere with, injure, break, or jar any electric light, telephone, telegraph, or fire alarm system, post, pole or apparatus in any manner, or climb any telegraph telephone, electric light, or fire alarm pole without being properly authorized to do so.

(Prior Code, § 7-2-3) Penalty, see § 33.99

Editor's note:

For information regarding Fire Limits and Permissible Wooden Structures in Fire Limits, see Building Regulations

§ 33.99 PENALTY.

Any person violating any provision of this chapter for which no penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

CHAPTER 34: FINANCE

Section

Preparation of Budget (Appropriation Ordinance)

- 34.001 Preparation of appropriation ordinance
- 34.002 Appropriation ordinance passage and publication
- 34.003 Certification of levies
- 34.004 Supplemental and emergency appropriations
- 34.005 Disbursement of funds; prepayment
- 34.006 Annual report and publication

Taxation

- 34.020 Annual levy
- 34.021 Municipal tax
- 34.022 Special bed, board, booze, and ticket sales tax

Bids and Contracts

- 34.035 Contracts authorized
- 34.036 Interest in contracts
- 34.037 Performance bonds
- 34.038 Contracts; methods of awarding
- 34.039 Sealed bids
- 34.040 Sealed proposals
- 34.041 Unique supplies or services; sole source procurement; negotiations
- 34.042 Emergency procurement
- 34.043 Purchases of supplies and services under \$25,000
- 34.044 Cancellation of invitation for bids or request for proposals and rejection of bids or proposals
- 34.045 Public improvement contracts involving \$50,000; supplies and services contracts involving \$25,000 or more; advertisement for bids or proposals
- 34.046 Time for entering into contract
- 34.047 Recovery from defaulting bidder or offeror
- 34.048 Exempt procurements
- 34.049 Public sale or auction; performance bond; competitive quotations; records to be retained
- 34.050 Purchases from state contract list or below state contract price
- 34.051 Fuel purchased by local government units

Funds and Monies Received

- 34.065 Business improvement districts; usage of funds
- 34.066 Internal service fund for equipment purchases
- 34.067 Bad checks

Bonds and Notes

- 34.080 Municipal bonds and notes
- 34.081 Amount of Finance Officer's bond

- 34.999 Penalty

Statutory reference:

Centralized public bid exchange, see SDCL § 5-18A-13

Fiscal powers of municipalities, see SDCL § 9-12-2

Purchasing agency contracts, see SDCL § 5-18A-1 and Chapters 5-18A, 5-18B, 5-18C, and 5-18D

PREPARATION OF BUDGET (APPROPRIATION ORDINANCE)

§ 34.001 PREPARATION OF APPROPRIATION ORDINANCE.

The Finance Officer shall report to the governing body, on or before September 1, an estimate of expenses for the ensuing year and revenue to be raised for the current year. This estimate may contain a line item for contingencies, provided it does not exceed 5% of the total budget of the General Fund.

§ 34.002 APPROPRIATION ORDINANCE PASSAGE AND PUBLICATION.

(A) No later than the first regular meeting of the governing body in September, or within ten days thereafter, an annual appropriation ordinance for the ensuing year must be introduced in which it shall appropriate the sums of money necessary to meet all lawful expenses and liabilities of the municipality. The ordinance shall specify the function and sub-function as prescribed by the Department of Legislative Audit for which the appropriations are made and the amount appropriated for each function and sub-function, which amount shall be appropriated from the proper fund.

(SDCL § 9-21-2)

(B) Upon passage, the appropriation ordinance shall be published in the same manner as all other ordinances.

§ 34.003 CERTIFICATION OF LEVIES.

Pursuant to SDCL § 10-12-7, all tax levies must be certified to the County Auditor by the taxing district on or before October 1 of each year.

§ 34.004 SUPPLEMENTAL AND EMERGENCY APPROPRIATIONS.

(A) *Supplemental appropriation.* If no provision in the appropriation is made for the municipality to conduct the indispensable functions of government, the governing body may approve and adopt a supplement appropriation ordinance, provided that it sets out in detail the reason and amount for each appropriation. The procedures to adopt the supplemental appropriation are the same as for the annual appropriation ordinance.

(SDCL § 9-21-7)

(B) *Emergency appropriation.* If an event occurs that could not have been reasonably anticipated at the time the annual appropriation was created and adopted, the governing body may order the Mayor or President to borrow, in the name of the municipality and with the attest of the Finance Officer, an amount sufficient to provide for the necessary expense incurred by the emergency event.

(SDCL § 9-21-15)

§ 34.005 DISBURSEMENT OF FUNDS; PREPAYMENT.

For payment of any services or property is allowed, the following must occur.

(A) An itemized invoice accompanied by a voucher verified by the appropriate municipal official that the services, other than those provided by municipal employees, or materials have been received shall be submitted.

(B) (1) The invoice and voucher required by this section shall be filed in the office of the municipal Finance Officer.

(2) However, the governing body of any municipality may authorize the prepayment of claims against the municipality for services before they have been provided if the municipality has adopted an ordinance in advance that specifies the maximum amount allowable for any such prepayment and if a service contract exists.

(SDCL § 9-23-1)

(C) No claim against any municipality shall be audited or allowed unless it be fully itemized and a memorandum of the same entered upon the minutes of the meetings of the governing body.

(SDCL § 9-23-2)

§ 34.006 ANNUAL REPORT AND PUBLICATION.

(A) The Finance Officer shall make an annual financial report to the governing body, no later than the first regular meeting of May and must include the receipts, expenses, and financial condition of the municipality, including the amount of funds in the treasury at the time of making such report and where and in what amounts such funds are deposited or invested. By the last day of May each year the Finance Officer shall file a copy of the report with the state's Department of Legislative Audit.

(B) The annual report shall be published in the official newspaper within 30 days after the report is made to the governing body.

(SDCL § 9-22-21)

TAXATION

§ 34.020 ANNUAL LEVY.

Pursuant to SDCL § 9-21-19, the municipality shall include the annual tax levy in the annual appropriation.

§ 34.021 MUNICIPAL TAX.

(A) *Purpose.* The purpose of this section is to provide additional needed revenue for the municipality by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the state, by SDCL Chapter 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

(B) *Enactment of tax.*

(1) There is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 1% on the gross receipts of all persons engaged in business within the jurisdiction of the municipality who are subject to the state's retail occupational sales and service tax, SDCL Chapter 10-45, and acts amendatory thereto.

(2) Tax will not be applied to items that may be specifically exempt under state law. Items exempted from municipal tax include: farm machinery and irrigation equipment, parts or repairs for farm machinery, agricultural animal health products and medicine, passenger transportation service, collection and disposal of solid waste, veterinarian and animal specialty services, and air transportation.

(C) *Use tax.* In addition there is hereby imposed an excise tax on the privilege of use, storage, and consumption within the jurisdiction of the municipality of tangible personal property or services purchased from and after the January 1, 1998, at the same rate as the municipal sales and service tax upon all transactions or use, storage, and consumption which are subject to the state's Use Tax Act, SDCL Chapter 10-46, and acts amendatory thereto.

(D) *Collection.* Such tax is levied pursuant to authorization granted by SDCL Chapter 10-52 and acts amendatory thereto, and shall be collected by the state's Department of Revenue in accordance with the same rules and regulations as the Secretary of Revenue of the state shall lawfully prescribe.

(E) *Interpretation.* It is declared to be the intention of this section and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the state's Retail Occupational Sales and Service Act, SDCL Chapter 10-45, and acts amendatory thereto and the state use tax, SDCL Chapter 10-46, and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

(Ord. 114, passed - -) Penalty, see § 34.999

§ 34.022 SPECIAL BED, BOARD, BOOZE, AND TICKET SALES TAX.

(A) *Purpose.* The purpose of this section is to provide additional needed revenue for this municipality by imposing a municipal gross receipts tax pursuant to the powers granted to this municipality by the state, by SDCL Chapter 10-52A, and acts amendatory thereto.

(B) *Enactment of tax.*

(1) There may be hereby imposed a municipal gross receipts tax of 1% upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites, or other lodging accommodations within the municipality for periods of less than 28 consecutive days; the sale of alcoholic beverages as defined in SDCL §§ 35-1-1 et seq.; establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption; and ticket sales or admissions to places of amusement, athletic, and cultural events.

(2) The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of this municipality of who are subject to the state's Retail Occupational Sales and Service Tax, SDCL Chapter 10-45, and acts amendatory thereto.

(C) *Collection.* Such tax is levied pursuant to authorization granted by SDCL Chapter 10-52A and acts amendatory thereto, and shall be collected by the state's Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the state sales tax and under such additional rules and regulations as the Secretary of Revenue of the state shall lawfully prescribe.

(D) *Interpretation.* It is declared to be the intention of this section and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the state's Retail Occupational Sales and Service Act, SDCL Chapter 10-45, and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

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

Penalty, see § 34.999

BIDS AND CONTRACTS

§ 34.035 CONTRACTS AUTHORIZED.

(A) No contract of a municipality is valid unless the contract has been authorized by a vote of the governing body at a duly assembled meeting thereof.

(B) Each written contract shall be executed in the name of the municipality by the Mayor or President of the Board of Trustees, be countersigned by the Auditor or Clerk, and have the corporate seal attached. However, the governing body of a municipality may, by

ordinance or resolution, delegate to any employee of the municipality the authority to enter in to a contract on behalf of the municipality and to execute the contract and any other instrument necessary or convenient for the performance of the contract subject to the limitations delegated by the governing body.

(SDCL § 9-1-5)

§ 34.036 INTEREST IN CONTRACTS.

No elected or appointed official or his or her agent shall be interested in any contract entered into by the municipality pursuant to SDCL § 6-1-1.

§ 34.037 PERFORMANCE BONDS.

(A) Whenever any contract for the construction of a public improvement is entered into, the contractor shall furnish surety in an amount not less than the contract price. The contractor shall also guarantee that he or she will promptly pay all persons supplying him or her with labor.

(B) The performance bond may be waived when the bid submitted does not exceed \$25,000.

(C) The contractor shall also pay all taxes which may arise under SDCL Chapters 10-46, 10-46A, and 10-46B. For the purposes of this section and § 5-21-4, the term **SURETY** means a bond or undertaking executed by a surety company authorized to do business in the state.

Statutory reference:

Similar provisions, see SDCL §§ 5-21-1, 5-21-1.1, 5-21-3

§ 34.038 CONTRACTS; METHODS OF AWARDING.

Unless otherwise authorized by law, each contract for supplies, services, and construction shall be awarded by one of the following methods:

- (A) Competitive sealed bids as provided in SDCL § 5-18A-5;
- (B) Competitive sealed proposals as provided in SDCL §§ 5-18A-6 and 5-18A-7;
- (C) Small purchases as provided in SDCL § 5-18A-11;
- (D) Sole source procurement as provided in SDCL § 5-18A-8; or
- (E) Emergency procurement as provided in SDCL § 5-18A-9.

(SDCL § 5-18A-3)

§ 34.039 SEALED BIDS.

(A) *Required.* Contracts shall be awarded by the use of competitive sealed bids except as otherwise provided in SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D.

(SDCL § 5-18A-4)

(B) *Procedures.* The following procedures apply to the use of competitive sealed bids.

- (1) Public notice of the invitation for bids shall be given pursuant to SDCL § 5-18A-14.
- (2) The invitation for bids shall include a purchase description, and all contractual terms and conditions applicable to the procurement. The invitation for bids for supplies shall include the length of time, not to exceed 45 days, between the bid opening and the award of the bid.
- (3) A bid may be submitted either manually or electronically in a manner authorized by the purchasing agency.
- (4) Each bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified, together with the name of each bidder shall be recorded. Except as otherwise provided by law, the record and each bid shall be open to public inspection.
- (5) Each bid shall be unconditionally accepted without alteration or correction, except as authorized in this section. Each bid shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workpersonship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(6) Any bid may be withdrawn by letter or by electronic communications or in person before the time specified in the advertisement for bid. The purchasing agency may allow modification of bids by mail, facsimile, or electronic notice received at the place designated in the invitation to bid not later than the time set for the opening of bids. A modification may not reveal the bid price but shall provide the addition or subtraction or the modification so that the final prices or terms will not be known to the purchasing agency until the sealed bid is opened. A modification may not be withdrawn after the time set for the opening of bids. Each modification shall be confirmed in

writing by the successful bidder before award of the contract. No bid made may be changed or altered by telephone. After bid opening, no withdrawal of a bid or change in bid prices or other provisions of bids prejudicial to the interest of the purchasing agency or fair competition is permitted. The purchasing agency may waive technical irregularities in the bid or proposal of the low bidder or offeror which irregularities do not alter the price, quality, or quantity of the services, or items of tangible personal property bid or offered. Any decision to permit the correction or withdrawal of a bid, or to cancel an award or a contract based on a bid mistake, shall be supported by a written determination made by the purchasing agency, and included in the bid file.

(7) The contract for services or public improvement shall be awarded within 30 days and the contract for supplies shall be awarded within 45 days of the bid opening by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The purchasing agency may reject any and all bids and readvertise for bids if none of the bids are satisfactory, or if the purchasing agency believes an agreement has been entered into by the bidders to prevent competition. If the low bidder is not responsible or the bid is not made in accordance with the requirements of SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D or the low bid is withdrawn as authorized by this section, the bid of the next lowest responsible and responsive bidder may be accepted.

(8) If it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(9) If, after advertising for bids, no firm bids are received, the purchasing agency may negotiate a contract for the purchase of the supplies, services, or public improvement projects at the most advantageous price, if the specifications of the original bid are met.

(10) If two or more competitive sealed bids submitted are identical in price and product quality, the bids are the low bid, and no resident bidder preference is applicable, the purchasing agency may:

- (a) Award the bid by lottery to one of the identical low bidders; or
- (b) Reject all the bids and resolicit bids for the required supplies, services, or public improvement.

(SDCL § 5-18A-5)

§ 34.040 SEALED PROPOSALS.

(A) *Competitive sealed proposals; when permitted.* A contract may be entered into by competitive sealed proposals if the purchasing agency determines in writing that the use of competitive sealed bids is either not practicable or not advantageous.

(SDCL § 5-18A-6)

(B) *Procedures.* The procedures for issuing a contract through competitive sealed proposals are as follows.

(1) The proposals shall be solicited through a request for proposals. The request for proposals shall state the relative importance of price and other factors, if any.

(2) Public notice of the request for proposals shall be given pursuant to SDCL § 5-18A-14.

(3) A proposal may be submitted either manually or electronically in a manner authorized by the purchasing agency.

(4) Each proposal shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared documenting the name and address of each offeror and identifying each offeror awarded a contract. The register shall be open for public inspection after contract award.

(5) As provided in the request for proposals, a discussion may be conducted with any responsible offeror who submitted a proposal determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Each offeror shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of a proposal. A revision may be permitted after a submission and prior to an award for the purpose of obtaining the best and final offer. In conducting any discussion, there may be no disclosure of any information derived from any proposal submitted by a competing offeror.

(6) An award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the purchasing agency taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to each offeror. The purchasing agency may reject any and all proposals and readvertise for proposals if none of the proposals are satisfactory, or if the purchasing agency believes an agreement has been entered into by the offerors to prevent competition.

(7) This section does not apply to state professional service contracts issued pursuant to SDCL §§ 5-18A-37, 5-18D-17 to 5-18D-24, inclusive.

(SDCL § 5-18A-7)

§ 34.041 UNIQUE SUPPLIES OR SERVICES; SOLE SOURCE PROCUREMENT; NEGOTIATIONS.

(A) *Unique supplies and services.* A contract may be awarded for supplies or services without competition if the purchasing agency determines in writing that the supplies or services are of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the supplies or services.

(B) *Sole source.* The determination that the contractor selected is justifiably the sole source shall be based on either the uniqueness of the supplies or services or the sole availability at the location required.

(C) *Negotiations.* In such cases, the purchasing agency shall conduct negotiations, including price, delivery, and quantity to obtain the most advantageous price and shall include the written verification of the sole source in the contract file. This section does not apply to construction services or construction equipment.

(SDCL § 5-18A-8)

(D) *Records of sole source procurement contracts.* The purchasing agency shall maintain a record listing each contract made under sole source procurement and emergency procurement for a minimum of five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies, services, and public improvements procured under each contract.

(SDCL § 5-18A-10)

§ 34.042 EMERGENCY PROCUREMENT.

(A) *Allowed.* A purchasing agency may make or authorize others to make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions of SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D in a timely manner is not an emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(SDCL § 5-18A-9)

(B) *Records of sole emergency procurement contracts.* The purchasing agency shall maintain a record listing each contract made under sole source procurement and emergency procurement for a minimum of five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies, services, and public improvements procured under each contract.

(SDCL § 5-18A-10)

§ 34.043 PURCHASES OF SUPPLIES AND SERVICES UNDER \$25,000.

Unless otherwise specified by statute, purchases of supplies and services under \$25,000 shall be made as follows.

- (A) Purchases under \$25,000 may be made in accordance with procedures established by the purchasing agency.
- (B) No purchases may be artificially divided to constitute a small purchase under this section.

(SDCL § 5-18A-11)

§ 34.044 CANCELLATION OF INVITATION FOR BIDS OR REQUEST FOR PROPOSALS AND REJECTION OF BIDS OR PROPOSALS.

(A) An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, if the purchasing agency determines it is in the best interests of the agency.

- (B) The reasons for the cancellation or rejection shall be made part of the contract file.

(SDCL § 5-18A-12)

§ 34.045 PUBLIC IMPROVEMENT CONTRACTS INVOLVING \$50,000; SUPPLIES AND SERVICES CONTRACTS INVOLVING \$25,000 OR MORE; ADVERTISEMENT FOR BIDS OR PROPOSALS.

If the purchasing agency intends to enter into a contract for any public improvement that involves the expenditure of \$100,000 or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of \$25,000 or more, the purchasing agency shall advertise for bids or proposals. The advertisement shall appear as a legal notice in the appointed legal newspaper. The advertisement shall be printed at least twice, with the first publication at least ten days before opening of bids or the deadline for the submission of proposals. The first publication shall be in each official newspaper of the purchasing agency, and the second publication may be in any legal newspaper of the state chosen by the purchasing agency. If the purchasing agency has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the jurisdiction of the purchasing agency to be selected by the purchasing agency. The advertisement shall state the time and place where the bids will be opened or the deadline for the submission of proposals. In each notice, the purchasing agency shall reserve the right to reject any or all bids or proposals.

(SDCL § 5-18A-14)

§ 34.046 TIME FOR ENTERING INTO CONTRACT.

After receiving notice of a contract award, the successful bidder or offeror shall enter into a contract with the purchasing agency within the time specified in the invitation for bids or request for proposals. If any bidder or offeror fails to enter into a contract within the time specified, the contract may be awarded to the next lowest responsive and responsible bidder or offeror for the same kind of work and material, unless all bids or proposals are rejected. The defaulting bidder or offeror shall be responsible for the difference in price.

(SDCL § 5-18A-15)

§ 34.047 RECOVERY FROM DEFAULTING BIDDER OR OFFEROR.

If any successful bidder or offeror fails to fulfill the conditions of an awarded contract, the purchasing agency may proceed to recover from the defaulting party whatever damages may have been sustained as a result of the default. The purchasing agency shall have all remedies provided in the contract and provided by law.

(SDCL § 5-18A-16)

§ 34.048 EXEMPT PROCUREMENTS.

The provisions of SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D do not apply to:

- (A) Any highway construction contract entered into by the Department of Transportation;
- (B) Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;
- (C) Any purchase of supplies or services, other than professional services, by purchasing agencies from any active contract that has been awarded by any government entity by competitive sealed bids or competitive sealed proposals or from any contract that was competitively solicited and awarded within the previous 12 months;
- (D) Any equipment repair contract;
- (E) Any procurement of electric power, water, or natural gas; chemical and biological products; laboratory apparatus and appliances; published books, maps, periodicals, and technical pamphlets; works of art for museum and public display; medical supplies; communications technologies, computer hardware and software, peripheral equipment, and related connectivity; tableware or perishable foods;
- (F) Any property or liability insurance or performance bonds, except that the actual procurement of any insurance or performance bonds by any department of the state government, state institution, and state agency shall be made under the supervision of the Bureau of Administration;
- (G) Any purchase of surplus property from another purchasing agency;
- (H) Any animals purchased;
- (I) Any authority authorized by SDCL Chapters 1-16A, 1-16B, 1-16G, 1-16H, 1-16J, 5-12, or 11-11;
- (J) Any purchase of supplies for any utility owned or operated by a municipality if the purchase does not exceed the limits established in SDCL § 5-18A-14;
- (K) For political subdivisions, any contract for asbestos removal in emergency response actions and any contract for services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, or auction services; or
- (L) For political subdivisions, any purchase of equipment involving the expenditure of less than \$50,000.

(SDCL § 5-18A-22)

§ 34.049 PUBLIC SALE OR AUCTION; PERFORMANCE BOND; COMPETITIVE QUOTATIONS; RECORDS TO BE RETAINED.

(A) *Exempted.* The governing Board of a unit of this municipality shall be exempted from the provisions of SDCL Chapters 5-18C, 5-18A, 5-18B, and 5-18D if it is able to purchase supplies at a substantial savings at a public sale or auction.

(B) *Performance bond waived.* Any performance bond required by SDCL § 5-21-1 may be waived on items purchased for less than \$10,000 at a public sale or auction.

(C) *Competitive quotes.* The governing Board shall contact and attempt to obtain competitive quotations from at least three suppliers of identical or similar supplies. The Board may authorize an agent to attend a sale or auction and expend an amount not in excess of 80% of the average of the quotations received.

(D) *Records retained.* A record of the names of the suppliers, the quotations received, and the procurement procedures used in purchasing shall be documented, noted in the minutes, and retained on file by the governing Board.

(SDCL § 5-18C-3)

§ 34.050 PURCHASES FROM STATE CONTRACT LIST OR BELOW STATE CONTRACT PRICE.

Notwithstanding the provisions of SDCL Chapters 5-18C, 5-18A, 5-18B, or 5-18D, any purchasing agency of a local governmental unit may purchase, without advertising for bids, from a willing vendor, any supplies contained in the state contract list established pursuant to SDCL § 5-18D-6, or from any willing vendor at a price at or below that shown in the state contract. The governing body of the purchasing agency shall note in its minutes what supplies were purchased from the state contract and shall further note the identity and address of the vendor and the price paid. If an item is purchased at a price lower than that found on the state contract, the purchasing agency shall note that fact in its minutes and show the identity and address of the vendor and the price paid.

(SDCL § 5-18C-8)

§ 34.051 FUEL PURCHASED BY LOCAL GOVERNMENT UNITS.

(A) The bid requirements of SDCL Chapter 5-18C, 5-18A, 5-18B, and 5-18D do not apply to the purchase of fuel by units of local government. The governing board of a unit of local government may, instead of advertising for bids, negotiate a contract for the purchase of fuel at the most advantageous price.

(B) The governing board shall contact and attempt to obtain competitive quotations from at least three suppliers. A record of the names of the suppliers, the quotations received, and the procurement procedures used in purchasing shall be documented, noted in the minutes, and retained on file by the governing body.

(C) The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor.

(SDCL § 5-18C-6)

FUNDS AND MONIES RECEIVED

§ 34.065 BUSINESS IMPROVEMENT DISTRICTS; USAGE OF FUNDS.

Any money generated pursuant to SDCL § 9-55-2 may be used for any one or more of the following purposes:

(A) The acquisition, construction, maintenance, and operation of public off-street parking facilities for the benefit of the district area;

(B) Improvement of any public place or facility in the district area, including landscaping and plantings;

(C) Construction or installation of convention or event centers; pedestrian shopping malls or plazas; sidewalks, including moving sidewalks; parks; meeting and display facilities; bus stop shelters; lighting; benches or other seating furniture; sculptures; trash receptacles; shelters; fountains; skywalks; and pedestrian and vehicular overpasses and underpasses or any useful or necessary public improvement;

(D) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the district area;

(E) Creation and implementation of a plan for improving the general architectural design of public areas in the district area;

(F) The development of any activities and promotion of the district area;

(G) Maintenance, repair, and reconstruction of any improvements or facilities authorized by SDCL Chapter 9-55;

(H) Any other project or undertaking for the betterment of the facilities in the district area, whether the project is capital or noncapital in nature;

(I) Enforcement of parking regulations within the district area; and

(J) Employing or contracting for personnel, including administrators for any improvement or promotional program under this chapter, and providing for any service necessary or proper to carry out the purposes of SDCL Chapter 9-55.

(SDCL § 9-55-3)

§ 34.066 INTERNAL SERVICE FUND FOR EQUIPMENT PURCHASES.

The governing body of a municipality may by resolution create an internal service fund to provide for the acquisition of equipment. Moneys may be budgeted and transferred to the fund from any source which may lawfully be used for such purpose, including equipment usage charges on any municipal department or agency. For purposes of this section, the term *EQUIPMENT* includes machinery, motor vehicles, and any other equipment or personal property.

(SDCL § 9-21-32)

§ 34.067 BAD CHECKS.

(A) It shall be unlawful for any person to make and deliver for draw and deliver or utter or give to the town, or to any officer, employee, agent, agency, board, bureau, or commission thereof, in payment of any license, fee, fine, penalty, assessment, tax, debt, obligation, or other exaction, payment, or amount of money which the municipality or such officer, employee, agent, agency, board, bureau, or commission is lawfully authorized to receive or collect, any check or draft upon any bank or banking association with knowledge that the maker or drawer thereof does not have an account in or with such bank or banking association subject to such check or draft. The fact that payment of such check or draft, when presented in the usual course of business, shall be refused by such bank or

banking association for lack of sufficient funds to the credit of the drawer or maker with which to pay the same, or because such drawer or maker has no account subject to such check or draft, shall be prima facie evidence that the same was made and delivered or drawn and delivered or uttered or given with the knowledge hereinabove mentioned.

(B) The bad check fee to be set by resolution may be assessed against returned checks as allowed by state law.

Penalty, see § 34.999

BONDS AND NOTES

§ 34.080 MUNICIPAL BONDS AND NOTES.

A municipality may borrow money from any source willing to lend the money by issuing a promissory note subject to the limitations set in SDCL §§ 9-25-13 to 9-25-16, inclusive. Notes issued pursuant to this section are payable solely from the sources provided in SDCL § 9-25-13 and do not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory provisions or limitations, any provisions in the notes set forth or set forth in the resolution authorizing the notes to the contrary notwithstanding. The notes shall recite the authority under which the notes are issued and shall state that the notes are issued in conformity with the provisions, restrictions, and limitations of SDCL §§ 9-25-13 to 9-25-16, inclusive, and that the notes and the interest thereon are payable from the sources provided. The notes shall be authorized, issued, and sold in accordance with SDCL Chapter 6-8B. No election is required and the notes may not be issued for a term in excess of five years. However, a note issued for any loan authorized by the United States Department of Agriculture may be issued for a term of not more than ten years and an unsecured promissory note under the municipal debt limit may be issued for a term of not more than 20 years.

(SDCL § 9-25-12)

§ 34.081 AMOUNT OF FINANCE OFFICER'S BOND.

The amount of the bond of the Finance Officer shall be annually established by the Board of Trustees in an amount equal to the maximum amount estimated to be on hand at any one time, but the amount shall not exceed the sum of \$50,000.

(Prior Code, § 1-2-7)

§ 34.999 PENALTY.

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

(B) (1) Any person failing or refusing to make reports or payments prescribed by § 34.021 and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto, are authorized for the collection of these excise taxes by the Department of Revenue.

(C) (1) Any person failing or refusing to make reports or payments prescribed by § 34.022 and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or imprisoned in the county jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.

CHAPTER 35: MUNICIPAL PROPERTY

Section

- 35.01 Surplus property
- 35.02 Transfer of property to other units of government
- 35.03 Intentional damage to property
- 35.04 Injuring signs
- 35.05 Interference with electric posts and apparatus

35.99 Penalty

§ 35.01 SURPLUS PROPERTY.

The governing board of a municipality may sell, trade, destroy, or otherwise dispose of any land, structures, equipment, or other property which the governing board has, by appropriate motion, determined is no longer necessary, useful, or suitable for the purpose for which it was acquired. No motion is required to sell, trade, destroy, or otherwise dispose of consumable supplies, printed text, zoo

animals, or subscriptions.

(SDCL § 6-13-1)

Statutory reference:

Surplus property, see SDCL Chapter 6-13

§ 35.02 TRANSFER OF PROPERTY TO OTHER UNITS OF GOVERNMENT.

(A) Notwithstanding any other provision of law to the contrary, but, in compliance with the provisions of the Constitution of the state, this municipality, authorized by law to levy taxes, may lease or sell or give and convey any personal property, real property, or money of such entity or perform any work or render any services, to the state or any public corporation thereof, to be used by such grantee for an authorized public purpose.

(B) The lease or sale or gift and conveyance, or the performance of such work to be authorized, shall be made or done on the terms and in the manner provided by resolutions of the governing body. However, no money may be transferred from any sinking or interest fund unless sufficient money is left therein to pay all interest which may accrue on and the principal of all outstanding bonds.

(SDCL § 6-5-5)

§ 35.03 INTENTIONAL DAMAGE TO PROPERTY.

It shall be unlawful for any person to intentionally injure, damage, or destroy public property without the lawful consent of the governing body having jurisdiction thereof, or private property in which other persons have an interest, without the consent of the other persons.

Penalty, see § 35.99

§ 35.04 INJURING SIGNS.

(A) No person shall deface, remove, change, mar, or in any way interfere with or obliterate either wholly or in part any sign, signboard, or card placed, posted, extended, or erected by the town.

(Prior Code, § 7-2-1)

(B) (1) No person shall deface, injure, move, obstruct, or interfere with any official traffic sign or signal, street sign, or parking meter.

(2) No person shall place, maintain, or display upon or in view of any street any unofficial sign, signal, or device which purports to be or is an imitation of or resembles an official traffic sign or signal, or which attempts to direct the movement of traffic. Every such prohibited sign, signal, or device is hereby declared to be a public nuisance and the Town Board is hereby empowered to remove the same or cause the same to be removed without notice.

(Prior Code, § 7-2-2) Penalty, see § 35.99

§ 35.05 INTERFERENCE WITH ELECTRIC POSTS AND APPARATUS.

No person shall interfere with, injure, break, or jar any electric light, telephone, telegraph, or fire alarm system, post, pole, or apparatus in any manner, or climb any telegraph telephone, electric light, or fire alarm pole without being properly authorized to do so.

(Prior Code, § 7-2-3) Penalty, see § 35.99

§ 35.99 PENALTY.

Any person violating any provision of this chapter for which no penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

TITLE V: PUBLIC WORKS

Chapter

50. UTILITY SERVICES GENERAL PROVISIONS

51. SEWER AND WATER SYSTEMS

52. ELECTRIC SYSTEM

53. GARBAGE COLLECTION SERVICES AND RUBBLE SITE

54. RENEWABLE ENERGY/UTILITIES

CHAPTER 50: UTILITY SERVICES GENERAL PROVISIONS

Section

- 50.01 Application for electrical and/or water and sewer services
- 50.02 Unauthorized connection with gas, water, or electricity
- 50.03 Hookup fee required
- 50.04 Security deposit required
- 50.05 Inspection of premises
- 50.06 Rates
- 50.07 Monthly billing
- 50.08 Past due bills; notice to customer
- 50.09 Delinquent bills; termination of service
- 50.10 Payment plans
- 50.11 Service discontinuance
- 50.12 Utility accounts placed on “cash only” basis
- 50.13 Re-connection fee
- 50.14 Bankruptcy of customer
- 50.15 Interference with municipal utilities property
- 50.16 Connection of franchised cable television company

- 50.99 Penalty

§ 50.01 APPLICATION FOR ELECTRICAL AND/OR WATER AND SEWER SERVICES.

(A) Application for new electrical, water, and sewer services to a physical property that currently has no access to such services shall be made by the owner or agent of the property in writing to the Utilities Manager on a form subscribed by the town. No permit shall be granted until the applicant shall agree to comply with the terms and conditions required for those receiving electrical, water, and sewer services.

(B) Application to establish a new utility billing account to a physical property that currently has access to electrical and/or water and sewer services shall be made by the property owner or tenant in writing to the Finance Officer on a form subscribed by the town. Services shall not be provided until all applicable fees are paid by the applicant.

Penalty, see § 50.99

§ 50.02 UNAUTHORIZED CONNECTION WITH GAS, WATER, OR ELECTRICITY.

No person shall, without lawful authority, connect with any main service line, pipe, wire, or other device for the purpose of obtaining gas, water, or electric current therefrom. No person shall, with intent to defraud, interfere with any meter installed to register the amount of gas, water, or electricity supplied to any customer.

(Prior Code, § 7-2-5) Penalty, see § 50.99

§ 50.03 HOOKUP FEE REQUIRED.

A hookup fee is required for the electric meter(s) and the water meter(s). When requesting utility services, hookup fees must be paid to the town in an amount set by resolution of the Board of Trustees and on file with the Finance Officer. Fees must be paid prior to usage of utility services.

(Prior Code, § 9-1-2) (Ord. passed 12-8-2010) Penalty, see § 50.99

§ 50.04 SECURITY DEPOSIT REQUIRED.

(A) When requesting utilities, a deposit in an amount set by resolution of the Board of Trustees and on file with the Finance Officer is required to be paid prior to usage of utility services. The security deposit will be retained until utility services are no longer acquired from the town. The owner(s) of rental property shall be responsible for unpaid utility payment(s) over and above the security deposit paid by the tenant of his, her, or their property in the event the tenant leaves the rental property without providing full payment for utility services, to include electrical, water, sewer, and garbage services.

(B) In instances where the person(s) holding the utility account with the town becomes deceased, individual(s) residing in the residence and desiring to secure utility services through the town are required to establish the account in his, her, or their name(s), providing documentation is required for a new utility account with the town, and shall, at that time, be required to provide a security deposit in the amount as set by resolution of the Board of Trustees and on file with the Finance Officer. Establishment of a new account

shall occur within 30 days of the death of the owner of the residence. Such security deposit shall be retained by the town until such time services are no longer requested by the person(s) currently holding the utility account.

(Prior Code, § 9-1-3) (Ord. passed 12-8-2010; Ord. passed 3-13-2018) Penalty, see § 50.99

§ 50.05 INSPECTION OF PREMISES.

The Utilities Manager and other duly authorized persons shall have access at all reasonable hours upon reasonable notice to all premises which are serviced for the purpose of reading meters, installing or removing meters, or making repairs.

(Prior Code, § 9-1-6) Penalty, see § 50.99

§ 50.06 RATES.

Rates for use of the utilities furnished by the town (electricity, water, and/or sewer) shall be established by resolution of the Board of Trustees and placed on file with the Finance Officer.

(Prior Code, § 9-1-7)

§ 50.07 MONTHLY BILLING.

(A) Monthly bills are categorized as follows:

- (1) *Utility bills.* Bills for garbage, sewer, water, electricity, or other utility services which may be provided by the town; and
- (2) *Other bills.* Bills for the rental and purchase of property and equipment owned by the town and for the cost of miscellaneous services which may be provided by town.

(B) The Finance Officer shall prepare the monthly utility bills and the Utilities Manager shall provide the Finance Officer with prepared bills for other goods sold and services rendered by the Maintenance Department; other bills will be sent along with utility bills by the Finance Officer. The amount shown on each statement shall be due and payable on or before the tenth day of each month. Payments shall be applied in the following order: unpaid fines, unpaid bills other than utility bills, followed by utility bills (electricity, water, water surcharges, sewer surcharges, garbage, and applicable sales tax).

(Prior Code, § 9-1-8) Penalty, see § 50.99

§ 50.08 PAST DUE BILLS; NOTICE TO CUSTOMER.

(A) Utility bills and other bills (with the exception of government accounts, that is, Langford School, Marshall County Shop, Post Office) that carry forward an unpaid balance after the tenth of the month shall be assessed a fine in an amount set by resolution by the Board of Trustees and on file with the Finance Officer.

(B) If the tenth of the month falls on a Saturday, a Sunday, or a holiday or any other day that no town employee is on duty to collect payments, payment must be made during regular working hours on the next working day or the fine will be applied. Unpaid utility bills and other bills are considered "past due" after this day. When utility and other bills become past due, the Finance Officer shall mail a termination notice to each of the customers concerned, except government entities, showing the amount owed, services that are to be discontinued and the date of scheduled discontinuance, a statement of the right to appeal and where to appeal, and the date and time the customer will have the opportunity to exercise the right to appeal. Utility payments must still be received on or before deadline dates; refunds will be granted when/if the Finance Officer is instructed to do so by the Board of Trustees through the appeals process.

(Prior Code, § 9-1-9) Penalty, see § 50.99

§ 50.09 DELINQUENT BILLS; TERMINATION OF SERVICE.

(A) Services will normally be scheduled for disconnection if full payment has not been received by the twentieth of the month or on the day specified in the termination notice, unless, before that time, the customer has appeared at a hearing and made other arrangements for payment. Unpaid utility and other bills are considered delinquent at that time and additional late fees are assessed to the account in an amount set by the Board of Trustees and on file with the Finance Officer.

(B) Example of payment schedule:

- (1) January 20: meters read and utility bills and other bills prepared;
- (2) February 10: last day to pay bill without a fine being imposed;
- (3) February 11: bills become "past due" and a fine is imposed. Termination notices mailed; and
- (4) February 20: bills become "delinquent" if not paid and service is discontinued.

(Prior Code, § 9-1-10) Penalty, see § 50.99

§ 50.10 PAYMENT PLANS.

The Finance Officer along with the Board President may enter into agreements with customers as to a mutually satisfactory payment plan for delinquent bills. Failure by the customer to comply with the terms of an agreement entered into with the town shall cancel said agreement and utility services shall be terminated without further notice until such time that the entire balance of customer's account is

paid in full. Payment plans will incur an administration fees and late fees in an amount determined through resolution by the Board of Trustees and on file at the Finance Office. Payment plans apply only to the past-due portion of the account balance at the time of inception of the payment plan, and not to future billings. Landlords shall have the right to prevent the town from entering payment plans with their tenants to avoid potential loss to the landlord.

(Prior Code, § 9-1-11) Penalty, see § 50.99

§ 50.11 SERVICE DISCONTINUANCE.

Should electrical service be discontinued for any reason, the Utilities Manager will remove the electric meter. Should water service be discontinued for any reason, the Utilities Manager will turn off water at the curb stop and may remove the water meter.

(Prior Code, § 9-1-12) Penalty, see § 50.99

§ 50.12 UTILITY ACCOUNTS PLACED ON “CASH ONLY” BASIS.

(A) The Finance Officer is directed to place utility accounts on a “cash only” basis when payment for the utility account balance has been returned to the financial institution for nonsufficient funds (refer also to § 34.067).

(B) The Finance Officer is directed to require customers whose utility accounts have been placed on a “cash only” basis to adhere to the following requirements.

(1) Payments shall be received via cash or certified funds for the next three consecutive billing cycles.

(2) Should the same utility account be placed on a “cash only” basis once again, the Finance Officer shall receive payment via cash or certified funds for the 12 consecutive utility bill cycles, and the same 12-month schedule shall be maintained for any other occurrences whereby the utility account is placed on a “cash only” basis.

Penalty, see § 50.99

§ 50.13 RE-CONNECTION FEE.

Should termination of service be necessary, a re-connection fee set by the Board of Trustees and on file with the Finance Officer shall be paid in full along with payment in full of all utility bills before service can be resumed.

(Prior Code, § 9-1-13) Penalty, see § 50.99

§ 50.14 BANKRUPTCY OF CUSTOMER.

Notwithstanding any provision in this public works code, the town may not alter, refuse, or disconnect service to or discriminate against the trustee or a debtor in bankruptcy, solely on the basis that a debt owed by the debtor to such utility for service rendered before the order of relief is not paid when due. The town may disconnect service if neither the trustee or the debtor in bankruptcy, within 20 days after the date of the bankruptcy court’s order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. The amount of such deposit shall be determined by the Finance Officer. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

(Prior Code, § 9-1-14) Penalty, see § 50.99

§ 50.15 INTERFERENCE WITH MUNICIPAL UTILITIES PROPERTY.

No person shall climb or in any manner interfere with any building, water tower, fence, or structure belonging to the town, unless authorized to do so by the town; and no person shall in any manner injure or deface any such structure.

(Prior Code, § 7-2-6) Penalty, see § 50.99

§ 50.16 CONNECTION OF FRANCHISED CABLE TELEVISION COMPANY.

It shall be unlawful to connect or otherwise tamper with any service connection of any franchised cable television company without the express prior approval from a designated agent of the cable television company.

Penalty, see § 50.99

§ 50.99 PENALTY.

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

(B) (1) Any person or commercial business found to be violating any provision of this chapter shall be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction of such violation. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person or commercial business who shall continue any violation beyond the time limit provided for shall be fined in an amount established by the Board of Trustees and reviewed periodically. (In accordance with § 50.06, all payments to the town are applied in the following order: unpaid fines, unpaid bills other than utility bills, then unpaid utility bills.) Continuation of the violation may result in disconnection of utility services and/or additional fines.

CHAPTER 51: SEWER AND WATER SYSTEMS

Section

Sewer System

- 51.01 Sewer connection; cost of owner
- 51.02 Sewer surcharge credits in instances of water leaks
- 51.03 Adoption of National Code
- 51.04 Scope
- 51.05 Repeal and interpretation
- 51.06 Specifications
- 51.07 Grease trap
- 51.08 Connection with cesspools prohibited
- 51.09 Discharge into sewer system
- 51.10 Inspection
- 51.11 Consultation with Board of Trustees prior to new commercial construction
- 51.12 Duties of Utilities Manager

Water System

- 51.25 Water connection; cost of owner
 - 51.26 Repair or service
 - 51.27 Owner responsible for pipes and fixtures
 - 51.28 More than one consumer from one service
 - 51.29 Check valves
 - 51.30 Testing meters
 - 51.31 Water shut off for repairs
 - 51.32 Water rationing
 - 51.33 Unlawful use without meter
 - 51.34 Consultation with Board of Trustees prior to new commercial construction
 - 51.35 Duties of Utilities Manager
 - 51.36 Sanitary regulations
-
- 51.99 Penalty

SEWER SYSTEM

§ 51.01 SEWER CONNECTION; COST OF OWNER.

After a permit is granted and appropriate fees are paid, the applicant will, at the property owner's expense, provide for the extension of the sewer system from the mains to the property owner's property. Future maintenance and/or replacement costs of providing for the extension of the sewer system from the main line to the customer's property are the responsibility of the property owner.

(Ord. 2016-02, passed 5-10-2016)

§ 51.02 SEWER SURCHARGE CREDITS IN INSTANCES OF WATER LEAKS.

(A) Sewer surcharge credits in instances of water leaks.

(B) During instances of water leaks, credit for a portion of the sewer surcharge fee may be issued when the following conditions have been met:

(1) A request for credit must be made to the Finance Officer by the twentieth of the month following the month of billing whereby the leak was discovered;

(2) A credit to the utility account may be issued when documentation of the scope and cost of the repairs, completed by a state licensed contractor (holds a current, valid state sales tax license), is provided to the Finance Office and approved by the Board of Trustees;

(3) When proper documentation has been received in the Finance Office, the Finance Officer shall calculate an average water usage for the three billing cycles before the water break or water leak due to faulty plumbing fixtures was reported to the Finance Office, and present the information to the Board of Trustees at the next regular Board meeting. With Board approval, credit on the sewer surcharge will be given accordingly;

(4) The customer is responsible to pay all current utility charges on the current utility statement; credit will be applied to a future bill cycle;

(5) The customer is responsible for all repairs except those which are shown as the town's responsibility in other sections of this public works code; and

(6) Customers whose accounts have received late charges two or more times within the prior 12 months will not qualify for sewer surcharge credits in instances of water leaks.

(Ord. 2016-01, passed 4-12-2016)

§ 51.03 ADOPTION OF NATIONAL CODE.

There is hereby adopted by the Board of Trustees for the purpose of establishing rules and regulations governing plumbing as defined in this code including permits and penalties, that certain plumbing code known as the "National Standards Plumbing Code" as adopted by the American Standards Association, being the whole thereof, excepting such portions as are hereinafter deleted, nullified, or amended by the Town Board. A copy is on file in the office of the Finance Officer, and the same is hereby adopted and incorporated as fully as if set out at length herein and from the date on which this chapter took effect, the provisions thereof shall be controlling pertaining to plumbing, as defined in this Code, within the corporate limits of the town.

(Prior Code, § 8-1-1)

§ 51.04 SCOPE.

(A) *Title.* This Code shall be known as the National Standards Plumbing Code, may be so cited, and will be referred to in this chapter as "this Code." The administration and enforcement of this section shall be the duty of the Town Board who is hereby authorized to take such actions as may be reasonably necessary to enforce the purposes of this Code. Such persons may be appointed and authorized as assistants or agents of such administrative authority as may be necessary to carry out the provisions of this Code.

(B) *Scope.* The provisions of this Code shall apply to govern plumbing as defined in this Code, including the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

(1) Sanitary drainage or storm drainage facilities;

(2) The venting system;

(3) The public or private water supply systems, within or adjacent to any building or other structure or conveyance; and

(4) The practice and materials used in the installation, maintenance, extension, or alteration of the storm water or sewage system of any premises to their connection with any point of public disposal or other terminal.

(C) *Facilities.* It is recognized that certain facilities in or adjacent to public streets that are referred to in this Code are only partially owned or controlled by the owner or occupants of the building or premises to which this Code applies.

(Prior Code, § 8-1-2)

§ 51.05 REPEAL AND INTERPRETATION.

All ordinances or parts of ordinances in conflict with the provision of the National Standards Plumbing Code are hereby repealed, and in the event any ordinance or parts of an ordinance of the town is inconsistent in any manner with the provisions of said National Standards Plumbing Code, then in that case the provisions of the National Standards Code shall govern.

(Prior Code, § 8-1-3)

§ 51.06 SPECIFICATIONS.

All sewers shall be constructed and connected in accordance with the provision of the National Standards Plumbing Code heretofore adopted by §§ 51.03, 51.04, and 51.05 . All new or replaced connections to the system must use a band-type service saddle.

(Ord. passed 11-6-2018)

§ 51.07 GREASE TRAP.

A proper grease trap or catch basin shall be provided by all hotels, restaurants, butcher shops, and lard rendering establishments.

(Prior Code, § 9-2-2) Penalty, see § 51.99

§ 51.08 CONNECTION WITH CESSPOOLS PROHIBITED.

No connection from any cesspool or privy vault shall be made with any sewer or drainage pipe.

(Prior Code, § 9-2-3) Penalty, see § 51.99

§ 51.09 DISCHARGE INTO SEWER SYSTEM.

(A) It is unlawful for any person or for the owner or occupant of any premises or business in the town to discharge or permit to be discharged or cause to be discharged into the sanitary sewer system of the town or into any drain or sewer connected with such sanitary sewer system, any storm-water whatever from the roofs of buildings, from the overflow of cisterns, storm-water, surface water, groundwater, footing drains, cooling water, or unpolluted industrial process waters or otherwise; and no person shall allow water to run a sump and then allow such water to be pumped from there to the sanitary sewer system; except sump pumps may discharge into sanitary sewers located in a family dwelling house between October 31 and April 1, provided that all plumbing is visible for inspection and no storm sewer is available for discharge.

(B) It is lawful for the Board President, Board members, or agents or employees to enter any building within the town, which is connected to the sanitary sewer system of the town, to ascertain if the prohibited acts of this section are being violated, and they and each of them shall have the right to enter such premises or buildings at all reasonable hours, and it is unlawful for any person to resist such entry. If the owner or occupant of any premises shall refuse access to the premises by the officers or employees of the town for such purposes, utility services (water) to the premises may be disconnected.

(Ord. passed 3-10-2020) Penalty, see § 51.99

§ 51.10 INSPECTION.

(A) The Utilities Manager or other duly authorized employees and agents of the town shall inspect all sewers, connections, and appurtenances thereto before any trenches and grades are refilled. All sewers shall be left open and clean for inspection of joints and sewer lines. The applicant or his or her agent for the sewer permit shall notify the Utilities Manager when the sewer is ready for inspection. Upon completion of said inspection, the applicant shall be immediately notified if the sewer is approved or rejected.

(B) The Maintenance Department employees and other duly authorized employees of the town, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing pertinent to discharge to the community system.

(C) The Maintenance Department employees or other duly authorized employees are authorized to obtain information concerning industrial processes, which have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential by establishing that the revelation to the public of the information in question might result in an advantage to competitors.

(D) While performing the necessary work on private properties, the Maintenance Department employees or duly authorized employees of the town shall observe all safety rules applicable to the premises, and the property owner shall be held harmless for injury or death to the town employees, and the town shall indemnify the property owner against loss or damage to the property by town employees and against liability claims and demands for personal injury or property damage asserted against the property owner growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the property owner to maintain adequately safe conditions.

(E) The Maintenance Department employees or duly authorized employees of the town shall be permitted to enter all private properties to which the town provides sewer services for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities.

(Prior Code, § 9-2-6) (Ord. passed 3-10-2020) Penalty, see § 51.99

§ 51.11 CONSULTATION WITH BOARD OF TRUSTEES PRIOR TO NEW COMMERCIAL CONSTRUCTION.

Consultation with the Board of Trustees and Utilities Manager regarding requirements for sewer services is required before any new construction of commercial services begins; this applies to all new commercial properties within the town limits and any new commercial properties outside the town limits that could qualify for usage of town utilities.

Penalty, see § 51.99

§ 51.12 DUTIES OF UTILITIES MANAGER.

Under the supervision of the Board of Trustees, the Utilities Manager shall have the charge and management of the sewer system. He or she shall report to the Board of Trustees whenever required the condition of the sewer system and shall make suggestions for the improvement thereof as he or she may deem advisable. He or she shall also perform such other duties as the Board of Trustees may require.

(Prior Code, § 9-3-1) Penalty, see § 51.99

WATER SYSTEM

§ 51.25 WATER CONNECTION; COST OF OWNER.

(A) After a permit is granted and appropriate fees are paid, the applicant will, at the property owner's expense, provide for the extension of the water system from the mains to the property owner's property. The town will provide for the corporation cock and saddle for the water connection. Future maintenance and/or replacement costs of providing for the extension of the water system from the main line to the customer's property, including curb stop, are the responsibility of the property owner.

(B) If town maintenance employees are unable to turn water on and off when necessary due to the condition of the curb stop or if the curb stop is damaged to such a degree that the maintenance employees cannot turn it with a wrench or if the curb stop is leaking, the property owner shall, at the property owner's expense, replace the curb stop immediately upon request from the town.

(C) If property owner does not comply within 30 days, the town shall hire a contractor for the repairs and/or replacement of the curb stop at the property owner's expense. All stages of such extension and connection and future maintenance and/or replacement shall be supervised by the Town Board, Utilities Manager, or any duly authorized representative thereof.

(D) The town will supply three-fourths inch to one and one-half inches water meters and re-setters to all customers at the town's cost; the additional cost for meters larger than one and one-half inches will be billed to the customer. Customers are responsible for the replacement of frozen meters and/or meters that have been tampered with will be billed to the customer.

(Ord. 2016-02, passed 05-10-2016)

§ 51.26 REPAIR OR SERVICE.

All corporation cocks and curb stops shall be of the kind and pattern prescribed by the Town Board. All service pipes must be laid as much below the surface of the ground as the main pipes in the street and protected to prevent rupture from freezing. All service pipes leading from the main to any premises, or pipes leading from such service pipes to any part of the premises, and up to the meters shall be of not less than three-fourths inch extra heavy copper or other suitable material approved by the Town Board.

(Prior Code, § 9-3-2) Penalty, see § 51.99

§ 51.27 OWNER RESPONSIBLE FOR PIPES AND FIXTURES.

All owners must, at his, her, or their own expense, keep his, her, or their service pipe, from the point of connection with the corporation cock, and all other apparatus in good working order and properly protected from frost and other damage. No claim shall be made against the town by reason of the breaking of any of the service pipes or apparatus or for any damage that may result from any shutting off or turning on of water, or from any variation in pressure. Water shall not be wasted or improperly used and no reduction will be made from the rates because of leaking pipes or fixtures or any other cause.

(Prior Code, § 9-3-3) Penalty, see § 51.99

§ 51.28 MORE THAN ONE CONSUMER FROM ONE SERVICE.

Two or more premises cannot be supplied from the same service pipe unless each premise has its own curb stop. Owners of buildings who lease or subdivide shall be responsible for all water used in said premises. If more than one meter is placed upon one service pipe, the piping must be arranged such that each meter can be set on separate pipe lines and shall be so placed that no one of them shall measure water which has passed through another meter.

(Prior Code, § 9-3-4) Penalty, see § 51.99

§ 51.29 CHECK VALVES.

Check valves are required on all water connections to steam boilers or any other connection deemed by an authorized inspector to require one. Double check safety and release valves shall be placed on all boilers or other steam apparatus connections with the water system where the steam pressure may be raised in excess of 50 pounds per square inch.

(Prior Code, § 9-3-5) Penalty, see § 51.99

§ 51.30 TESTING METERS.

If a consumer doubts the accuracy of any meter, he or she may ask the Utilities Manager to have the meter tested by an outside agency. If the meter is more than 5% fast, proper deductions will be made from the bill for the preceding period. If the meter is more than 5% slow, the proper amount will be added to the bill. The cost of testing the meter shall be borne by the customer if the meter proves to be accurate. If the meter proves to be inaccurate, the cost of testing shall be borne by the town.

(Prior Code, § 9-3-6) Penalty, see § 51.99

§ 51.31 WATER SHUT OFF FOR REPAIRS.

The town reserves the right to discontinue service to any or all customers of the water system without notice when necessary for repairs. No claim shall be made against the town by reason of the breaking of any service pipe or apparatus or for any other damage that may result from shutting off water for repairing or any other purpose or for any variation in pressure or ram of water from mains.

(Prior Code, § 9-3-7) Penalty, see § 51.99

§ 51.32 WATER RATIONING.

The town has the authority to impose water rationing in case of a water shortage or repairs to the water system on a basis to be determined by resolution of the Town Board.

(Prior Code, § 9-3-8) Penalty, see § 51.99

§ 51.33 UNLAWFUL USE WITHOUT METER.

It shall be unlawful for any person to use water from any premises without the consent of the owner or to use water from the town waterworks except through a meter regularly installed under the provisions of this chapter. It shall be unlawful to turn the water on or off at any curb stop or street valve or tamper with any water service connection without the permission of the Town Board or its designated representative.

(Prior Code, § 9-3-9) Penalty, see § 51.99

§ 51.34 CONSULTATION WITH BOARD OF TRUSTEES PRIOR TO NEW COMMERCIAL CONSTRUCTION.

Consultation with the Board of Trustees and Utilities Manager regarding requirements for water services is required before any new construction of commercial services begins; this applies to all new commercial properties within the town limits and any new commercial properties outside the town limits that could qualify for usage of town utilities.

Penalty, see § 51.99

§ 51.35 DUTIES OF UTILITIES MANAGER.

Under the supervision of the Board of Trustees, the Utilities Manager shall have the charge and management of the water system. He or she shall report to the Board of Trustees whenever required the condition of the water system and shall make suggestions for the improvement thereof as he or she may deem advisable. He or she shall also perform such other duties as the Board of Trustees may require.

(Ord. passed 3-10-2020) Penalty, see § 51.99

§ 51.36 SANITARY REGULATIONS.

It shall be the duty of the Board of Trustees to make such regulations from time to time as it may deem necessary and expedient for the welfare and health of the people of said town. Such regulations shall be made public through newspaper publications or via website or social media platforms, or through such communications as the Board of Trustees deems necessary and expedient as circumstances arise.

(Prior Code, § 5-1-1)

§ 51.99 PENALTY.

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

(B) (1) Any person or commercial business found to be a violation of this chapter shall be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction of such violation. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person or commercial business who shall continue any violation beyond the time limit provided for shall be fined in an amount established by the Board of Trustees and reviewed periodically. (In accordance with § 50.06, all payments to the town are applied in the following order: unpaid fines, unpaid bills other than utility bills, then unpaid utility bills.) Continuation of the violation may result in disconnection of utility services and/or additional fines.

(Prior Code, § 9-2-6) (Ord. passed 3-10-2020)

CHAPTER 52: ELECTRIC SYSTEM

Section

- 52.01 Adoption of National Electric Code
- 52.02 Electrical connection; cost to owner
- 52.03 Service disconnect on all new services and newly remodeled existing services
- 52.04 Shunting
- 52.05 Separate electric meters for each unit in buildings containing multiple units
- 52.06 Telephone and electric poles
- 52.07 Wires to be free from trees
- 52.08 Interference with electric posts and apparatus

52.09 Requirements for solar energy systems

52.10 Consultation with Board of Trustees prior to new commercial construction

52.99 Penalty

§ 52.01 ADOPTION OF NATIONAL ELECTRIC CODE.

There is hereby adopted by the town for the purpose of establishing rules and regulations to govern the use of electricity for light, heat, power, radio, and for other purposes that certain electrical code known as the National Electric Code, recommended by the National Fire Protection Association being the whole thereof, save and except such portions as are hereby deleted, modified, or amended by the Town Board. A copy is on file in the office of the Utilities Manager and/or the Finance Officer of the town and the same is hereby adopted and incorporated as full as if set out at length therein, and, from the date on which this section took effect, the provisions thereof shall be controlling within the corporate limits of the town.

(Prior Code, § 9-4-1)

§ 52.02 ELECTRICAL CONNECTION; COST TO OWNER.

(A) After a permit is granted and appropriate fees are paid, the applicant will, at his or her expense, provide the masthead and meter base required for the electrical connection. The town will provide the meter. The applicant is responsible for the service line and installation costs and transformer to residence. If the service line is underground, the applicant is responsible for any additional costs.

(B) All new construction projects require underground service from the transformer to the residence/place of business. The town will reimburse the property owner for one-half of the cost of the electrical wire.

(C) Regarding existing overhead lines, the town will reimburse the property owner for one-half of the cost of the electrical wire if the service line is buried underground.

(Ord. passed 1-8-2019) Penalty, see § 52.99

§ 52.03 SERVICE DISCONNECT ON ALL NEW SERVICES AND NEWLY REMODELED EXISTING SERVICES.

(A) The town requires that a service disconnect be installed before the meter on all new services or remodeled existing services that do not fall under NEC 230.85 or NEC 230.82.

(B) Any new service or remodeled existing service that has CTs and/or PTs installed for metering purposes must have a means of disconnecting the power from the meters in a group in the same location and must have a service disconnect in each unit. Removing the meter from the meter socket or pulling the cutout on the pole does not qualify as a means of disconnect.

(C) Customers are required to provide the town with the capability to lock said service in the on and off position, and the disconnect must be located in an outdoor location that is readily accessible at all times.

(D) Plans for electrical service disconnect must meet the latest version of NEC (National Electric Code) adopted by the state and approved by the town's Utilities Department and approved by the Board of Trustees.

Penalty, see § 52.99

§ 52.04 SHUNTING.

(A) No consumer of electrical current from the town's electrical system shall use or permit to be used or installed at or near the meter used by such consumer any shunt or other device for conveying electric current into his or her premises other than through the meter.

(B) Whenever the Utilities Manager or any officer or employee of the town shall discover such shunt or device at or near the meter of any consumer or whenever information is provided by other persons which would establish that fact, the electric service shall be immediately cut off from the place or building where such device was found.

(C) Before such service shall be reconnected, the consumer shall make application to the Utilities Manager to make an estimate of the value of current that may have been used by such consumer without being metered or paid. The amount so estimated by the Utilities Manager shall be paid in advance before re-connection. In addition to paying the amount estimated to be due as stated above, the consumer shall in addition pay a penalty as set by the Board of Trustees and on file with the Finance Officer before his or her service shall be reconnected.

(Prior Code, § 9-4-2) Penalty, see § 52.99

§ 52.05 SEPARATE ELECTRIC METERS FOR EACH UNIT IN BUILDINGS CONTAINING MULTIPLE UNITS.

New construction of properties that house separate units such as apartment dwelling units or office rental units are required to install separate electric meters to each unit.

(Ord. 9-4-6, passed 1-12-2021) Penalty, see § 52.99

§ 52.06 TELEPHONE AND ELECTRIC POLES.

It shall be unlawful for any person, company, or corporation to erect or maintain any poles for the purpose of stringing any telephone or electric wires in or on the streets or alleys in the town without written permission from the Town Board.

Penalty, see § 52.99

§ 52.07 WIRES TO BE FREE FROM TREES.

It shall be the duty of all owners, occupants, or persons in charge of any lot or lots to trim all trees, plants, and shrubs in such a manner as not to interfere in any way with the electrical distribution system of the town.

(Prior Code, § 9-4-4) Penalty see § 52.99

§ 52.08 INTERFERENCE WITH ELECTRIC POSTS AND APPARATUS.

No person shall interfere with, injure, break, or jar any electric light, telephone, telegraph, or fire alarm system, post, pole or apparatus in any manner, or climb any telegraph telephone, electric light, or fire alarm pole without being properly authorized to do so.

(Prior Code, § 7-2-3) Penalty, see § 52.99

§ 52.09 REQUIREMENTS FOR SOLAR ENERGY SYSTEMS.

(A) This section permits, as an accessory use, solar energy systems, while protecting the health, safety, and welfare of town residents and the property interests of adjacent and surrounding land uses through appropriate zoning and land use controls.

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

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM. A solar energy system that is directly incorporated into the building by replacing typical building materials.

GROUND-MOUNTED SOLAR ENERGY SYSTEM. A solar energy system that is installed onto the ground directly or by means of brackets or poles. Roof-mounted solar energy system. A solar energy system mounted to a house or other building.

PERMITTED ACCESSORY USES. Solar energy systems are allowable as an accessory use in all zoning districts, subject to the following requirements:

(1) *Standards.*

(a) *Height.* Roof-mounted solar energy systems shall not project beyond the peak of the roof and shall not be more than four feet above the roof surface to which they are attached. Ground-mounted solar energy systems shall not exceed 15 feet in height.

(b) *Location.* Ground-mounted solar energy systems must be located in the rear yard only.

(c) *Setbacks.* Ground-mounted solar energy systems shall be set back a minimum of 20 feet from all buildings located on adjacent lots, a minimum of 20 feet from all public right-of-way, and a minimum of 20 feet from all utility easements. Roof-mounted solar energy systems shall comply with all building setbacks in the applicable zoning district and shall not extend beyond the exterior perimeter of the building on which the system is mounted.

(d) *Coverage.* Roof-mounted solar energy systems shall not cover more than 25% of the total area of the roof. Solar energy systems must have clearance for two three-foot paths to facilitate emergency responder access and comply with state statutes.

(e) *Feeder lines.* All power exterior electrical or other service lines must be buried below the surface of the ground.

(g) *Exemption.* Building integrated solar energy systems are exempt from the requirements of this section and shall be regulated as any other building element.

(h) *Weight.* Roof top solar projects must not overload the designed weight limit of the roof.

(2) *Safety.*

(a) *Compliance with building codes.* All solar energy systems shall comply with the state's and National Building Code and any local building code requirements.

(b) *Compliance with electric code.* All solar energy systems shall comply with the National Electric Code (NEC).

(c) *Compliance with plumbing code.* All solar thermal systems shall comply with the state's Plumbing Code.

(d) *Certification.* Solar energy system components shall be certified by Underwriters Laboratories, Inc. and the Solar Rating and Certification Corporation. The town reserves the right to deny a building permit for proposed solar energy systems deemed to have inadequate certification.

(3) *Approval.*

(a) *Town building permit.* The erection, alteration, improvement, and movement of a solar energy system requires a building permit from the town.

(b) *Municipal utilities.*

1. *Qualifying status.* Owner must meet the criteria for obtaining qualifying status.

2. *Interconnect agreement.* The owner of a solar energy system that will physically connect to a house or other building's electrical system and/or the electric utility grid must enter into a signed interconnection agreement with town's public utilities prior to the issuance of a building permit.

3. *Photovoltaic system.* No grid-intertied photovoltaic system shall be installed until the owner has submitted notification to the town and has completed the proper permits and agreements.

(4) *Abandonment.* If the solar energy remains nonfunctional or inoperative for more than 12 consecutive months, the system shall constitute a public nuisance. The owner shall obtain a demolition permit and remove the abandoned system at his or her expense. Removal includes the entire structure, including collector, mount, and transmission equipment.

(5) *Aesthetics.*

(a) All solar energy systems shall use colors that blend with the color of the roof or other structure. Reflection angles from collector surfaces shall be oriented so as not to interfere with the use and equipment other properties. Where necessary, screening may be required to address glare.

(b) No solar equipment or solar electric systems shall create or cause unreasonable glare on other property or public roadways. Unreasonable glare shall mean a public safety hazard as determined by the Board of Trustees or the appropriate roadway authority.

(6) *Easements.* It shall be the responsibility of the property owner to secure/provide any desired solar easement by the town to protect solar access for the system (per state statutes).

(7) *Installation.* Solar energy systems shall be installed to meet state's Building and Electrical Codes and be inspected by the state's Electrical Inspector.

(8) *Homeowner expense.* All costs associated with the solar energy system is solely the responsibility of the owner.

(9) *Proof of Insurance.* Owners of a solar energy are required to provide a copy of insurance with a minimum coverage amount as shown within the town's rate resolution to cover any damages caused by the owner's system to the other residents, to the town's distribution system, and/or to the owner's system.

(10) *Interconnection fee.*

(a) Anyone with a solar energy system that is interconnected with the town's municipal utilities will be charged an interconnection fee. The interconnection fee applies to any solar energy system in the town limits or any businesses or residents that are using the town's electricity.

(b) Rates are established by resolution and determined by the following:

1. Interconnection fee are based on the solar rating certification corporation's capacity of the installed system with the first 3KW waived.

2. Example: Customer's rated system of 10KW would be charged: 10KW-3KW waived = 7KW @ \$6.94 per KW = \$48.58.

(11) *System inspection.* Customers that have a solar energy system interconnected to the town's municipal electric system are subject to an annual inspection by a licensed electrician of mutual agreement, at the town's request, and at the homeowner's expense to ensure that everything in the solar energy system is working properly for the safety of hired contractors and out employees.

(12) *Buying back of excess power produced.* The town's municipal utilities will buy back from any resident and municipal electric user their excess solar energy at an avoided cost rate as long as it meets all above requirements. All bought energy will be issued in the form of a credit on the account and any surplus will be issued by check to the account holder.

(13) *Off grid solar energy system.* Any off-grid solar energy system is only exempt from interconnection fees and the buying back of excess power produced by the owner's system if the owner is not interconnected to the town's power distribution system and not selling excess power produced. All other rules and fees apply.

(14) *Multiple connections.* The town does not permit the connection of a solar garden or community solar energy system to multiple homes and/or businesses. Permits only allow one customer per solar system.

SOLAR ENERGY SYSTEM. A set of devices whose primary purpose is to provide for the collection storage, and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

SOLAR THERMAL SYSTEM. A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs of the building.

Penalty, see § 52.99

§ 52.10 CONSULTATION WITH BOARD OF TRUSTEES PRIOR TO NEW COMMERCIAL CONSTRUCTION.

Consultation with the Board of Trustees and Utilities Manager regarding requirements for electric services is required before any new construction of commercial services begins; this applies to all new commercial properties within the town limits and any new commercial properties outside the town limits that could qualify for usage of town utilities.

Penalty, see § 52.99

§ 52.99 PENALTY.

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

(B) (1) Any person or commercial business found to be violation of any provisions of this chapter shall be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction of such violation. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person or commercial business who shall continue any violation beyond the time limit provided for shall be fined in an amount established by the Board of Trustees and reviewed periodically. (In accordance with § 50.06, all payments to the town are applied in the following order: unpaid fines, unpaid bills other than utility bills, then unpaid utility bills.) Continuation of the violation may result in disconnection of utility services and/or additional fines.

CHAPTER 53: GARBAGE COLLECTION SERVICES AND RUBBLE SITE

Section

Garbage Collection Services

53.01 Garbage disposal

53.02 Garbage rates

Rubble Site

53.15 Authorization to operate facility

53.16 Authorized patrons

53.17 Authorized wastes

53.18 Unauthorized wastes

53.19 Unauthorized use

53.20 Sale or transfer of solid waste by-products, recyclable materials, or scraps from restricted use sites

53.99 Penalty

GARBAGE COLLECTION SERVICES

§ 53.01 GARBAGE DISPOSAL.

(A) Town residents shall dispose of all rubbish and garbage by using the curbside collection service provided by the town.

(B) Commercial customers that do not own dumpsters shall dispose of all rubbish and garbage using the curbside collection service provided by the town.

(C) Commercial customers that own dumpsters may opt out of the town’s collection service with prior approval from the Town Board. Such opt out shall remain effective until the town’s next contract renewal with a trash collection provider.

(Prior Code, § 5-1-2) Penalty, see § 53.99

§ 53.02 GARBAGE RATES.

(A) Garbage rates will apply to all homes and businesses in the town and such rates shall be set by resolution of the Town Board and on file with the Finance Officer. The Town Board is empowered to set the fees according to the needs of the town to pay for the contracted garbage collection services.

(B) When a resident is moving between residences within the town, only one garbage charge will be made.

(Prior Code, § 5-1-3)

RUBBLE SITE

§ 53.15 AUTHORIZATION TO OPERATE FACILITY.

This facility is authorized to operate under the laws of the state and under the restrictions imposed by this chapter.

(Prior Code, § 9-5-1)

§ 53.16 AUTHORIZED PATRONS.

(A) Residents and commercial businesses within the town limits and those patrons outside town limits that receive utility services (electricity and/or water and sewer services) from the town are authorized to use the town's rubble site for its authorized purposes.

(B) Nonresidents and commercial businesses that do not receive utility services (electricity and/or water and sewer services) from the town are authorized to use the town's rubble site only after they have applied for use of, and have agreed to pay the appropriate fees established, and have been granted use of this facility by the Town Board.

(C) The Town Board is empowered to set the fees according to the needs of the town to pay for disposal of wastes deposited at the facility.

(Prior Code, § 9-5-2) Penalty, see § 53.99

§ 53.17 AUTHORIZED WASTES.

The following are authorized wastes:

(A) Untreated lumber, wood, trees and tree branches, wooden shingles;

(B) White goods: place refrigerators, washers, dryers, freezers, stoves, water heaters, and other recyclable metals excluding fuel tanks in the area so designated. All appliances containing freon must have the freon removed before discarding;

(C) Reasonable amounts of painted or stained wood may be placed in the rolloff. The Utilities Manager or other duly authorized person has the authority to determine "reasonable amounts;" and

(D) Furniture, carpeting, and mattresses are acceptable.

(Prior Code, § 9-5-3) Penalty, see § 53.99

§ 53.18 UNAUTHORIZED WASTES.

The following are unauthorized wastes not to be disposed of at the facility:

(A) Hazardous waste, pesticide containers, petroleum contaminated soil, regulated asbestos containing material, lead-acid batteries, and putrescible wastes;

(B) Construction and demolition debris (non-burnable) such as concrete, brick, stonework, asphaltic concrete, concrete blocks, asphaltic or fiberglass shingles, painted or stained wood, attached insulation, and similar wastes;

(C) Asphaltic or fiberglass shingles, attached insulation, and similar wastes;

(D) Waste oil, contaminated water, other liquid wastes, scrap tires, wood treated with chromate copper arsenate (CCA) and pentachlorophenol (PCP) or creosote; and

(E) Miscellaneous wastes, such as ash from other than wood burning stoves or on-site burning of trees, branches, and untreated wood.

(Prior Code, § 9-5-4) Penalty, see § 53.99

§ 53.19 UNAUTHORIZED USE.

Unauthorized use of this facility by other than authorized persons, misplacing authorized wastes, and disposing of unauthorized waste at this facility shall be subject to a fine as set out in § 53.99. The rummaging and pilfering of garbage will be deemed as unauthorized use of this facility.

(Prior Code, § 9-5-5) Penalty, see § 53.99

§ 53.20 SALE OR TRANSFER OF SOLID WASTE BY-PRODUCTS, RECYCLABLE MATERIALS, OR SCRAPS FROM RESTRICTED USE SITES.

The Utilities Manager or Assistant Utilities Manager shall be authorized to sell or transfer all such excess materials to any interested party. The Town Board of Trustees may attempt to identify additional prospective buyers and may negotiate the conditions of such transactions with prospective buyers, including price, delivery, transport, quantity, and length of contract, to obtain the price or conditions most advantageous to the governing body, all as allowed by SDCL § 34A-6-63.1. No Town Board member or other officer or employee of the municipality may purchase or acquire the materials described in this section unless such materials are available for sale or acquisition by the general public.

(Res. 14-01, passed 5-15-2014)

§ 53.99 PENALTY.

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

(B) (1) Any person or commercial business found to be a violation of any provisions of this chapter shall be served with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction of such violation. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person or commercial business who shall continue any violation beyond the time limit provided for shall be fined in an

amount established by the Board of Trustees and reviewed periodically. (In accordance with § 50.06, all payments to the town are applied in the following order: unpaid fines, unpaid bills other than utility bills, then unpaid utility bills.) Continuation of the violation may result in disconnection of utility services and/or additional fines.

(Prior Code, § 9-2-6) (Ord. passed 3-10-2020)

CHAPTER 54: RENEWABLE ENERGY/UTILITIES

Section

- 54.01 Purpose
- 54.02 Definitions
- 54.03 Permitted accessory uses
- 54.04 Abandonment
- 54.05 Aesthetics
- 54.06 Easements
- 54.07 Installation
- 54.08 Homeowner's expense
- 54.09 Proof of insurance
- 54.10 Interconnection fee
- 54.11 System inspection
- 54.12 Rates
- 54.13 Off-grid solar energy system
- 54.14 Solar gardens; community systems; one system multiple users
- 54.15 Criteria for obtaining qualifying status
- 54.16 Incentives offered for solar in the state
- 54.17 Net metering; pay from utility for excess generation
- 54.18 Anti-islanding agreement

§ 54.01 PURPOSE.

This chapter permits, as an accessory use, solar energy systems, while protecting the health, safety, and welfare of the town residents and the property interests of adjacent and surrounding land uses through appropriate zoning and land use controls. The qualifying facility system shall not affect the safety, reliability, or operation of the town's distribution system or adversely affect the quality of service of any adjacent customers. The qualifying facility shall not supply power to the town during any outages of the distribution system or be used to energize any portion of a de-energized utility circuit for any reason. Islanding is not permitted. The town may require that the qualifying facility discontinue parallel operation due to safety, reliability, operational, and power quality issues. The qualifying facility is responsible for providing protection for the installed equipment and must adhere to all applicable national, state, and local codes.

(Ord. passed 8-10-2021)

§ 54.02 DEFINITIONS.

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

ACCESSORY USE. The systems are meant to be used as an accessory to the home's current source of power and or water.

AVOIDED COST. The incremental costs to Heartland of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, Heartland would generate itself or purchase from another source.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM. A solar energy system that is directly incorporated into the building by replacing typical building materials.

GROUND-MOUNTED SOLAR ENERGY SYSTEM. A solar energy system that is installed onto the ground directly or by means of brackets or poles.

INTERCONNECTION COSTS. The reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the town directly related to the installation and maintenance of the physical facilities

necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the town would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. **INTERCONNECTION COSTS** do not include any costs included in the calculation of avoided costs.

ISLANDING. The condition in which a qualifying facility continues to power a location even though external electrical grid power is no longer present. In the case of a power outage, the solar panels will continue to deliver power as long as irradiance is sufficient.

OFF GRID SOLAR SYSTEM. A solar energy system used for personal use only and not made available for re-sale or interconnected into the town's power distribution system.

PURCHASE. The purchase of electric energy or capacity or both from a qualifying facility by Heartland.

RATE. Any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

ROOF-MOUNTED SOLAR ENERGY SYSTEM. A solar energy system mounted to a house or other building.

SALE. The sale of electric energy or capacity or both by the town to a qualifying facility.

SOLAR ENERGY SYSTEM. A set of devices whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

SOLAR THERMAL SYSTEM. A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs of the building.

SYSTEM EMERGENCY. A condition on the regional transmission system with which Heartland or the town is interconnected which is likely to result in imminent significant disruption of service to the town and/or its customers or is imminently likely to endanger life or property

(Ord. passed 8-10-2021)

§ 54.03 PERMITTED ACCESSORY USES.

Solar energy systems are allowable as an accessory use, subject to the following requirements.

(A) *Standards.*

(1) *Height.* Roof-mounted solar energy systems shall not project beyond the peak of the roof and shall not be more than four feet above the roof surface to which they are attached. Ground-mounted solar energy systems shall not exceed 15 feet in height.

(2) *Location.* Ground-mounted solar energy systems must be located in the rear yard only.

(3) *Setbacks.* Ground-mounted solar energy systems shall be set back a minimum of 20 feet from all buildings located on adjacent lots, a minimum of 20 feet from all public rights-of-way, and a minimum of 20 feet from all utility easements. Roof-mounted solar energy systems shall comply with all building setbacks in the applicable zoning district and shall not extend beyond the exterior perimeter of the building on which the system is mounted.

(4) *Coverage.* Roof-mounted solar energy systems shall not cover more than 25% of the total area of the roof. Solar energy systems must have clearance for two three-foot paths to facilitate emergency responder access and comply with state statutes.

(5) *Feeder lines.* All power exterior electrical or other service lines must be buried below the surface of the ground.

(6) *Exemption.* Building-integrated solar energy systems are exempt from the requirements of this section and shall be regulated as any other building element.

(7) *Weight.* Roof top solar projects must not overload the designed weight limit of the roof.

(8) *Ground-mounted solar energy systems.* The ground-mounted solar energy system shall not cover more than 20% of the gross lot size

(B) *Safety.*

(1) *Compliance with building codes.* All solar energy systems shall comply with the state's and National Building Code and any local building code requirements.

(2) *Compliance with Electric Code.* All solar energy systems shall comply with the National Electrical Code (NEC).

(3) *Compliance with Plumbing Code.* All solar thermal systems shall comply with the state's Plumbing Code.

(4) *Certifications.* Solar energy system components shall be certified by Underwriters Laboratories, Inc. and the Solar Rating and Certification Corporation. The town reserves the right to deny a renewables and building permit for proposed solar energy systems deemed to have inadequate certification.

(C) *Approval.*

(1) *Town renewable energy building permit.* The erection, alteration, improvement, and movement of a solar energy system requires

a renewable energy building permit from the town.

(2) *Town municipal utilities.*

(a) *Interconnect agreement.* The owner of a solar energy system that will physically connect to a house or other building's electrical system and/or the electric utility grid must enter into a signed interconnection agreement with the town's municipal utilities prior to the issuance of a renewable energy building permit.

(b) *Photovoltaic system.* No grid-intertied photovoltaic system shall be installed until the owner has submitted notification to the town and has completed the proper permits and agreements have been made.

(Ord. passed 8-10-2021) Penalty, see § 10.99

§ 54.04 ABANDONMENT.

If the solar energy remains nonfunctional or inoperative for more than 12 consecutive months, the system shall constitute a public nuisance. The owner shall obtain a building permit and remove the abandoned system at his, her, or their expense. Removal includes the entire structure, including collector, mount, and transmission equipment.

(Ord. passed 8-10-2021)

§ 54.05 AESTHETICS.

(A) All solar energy systems shall use colors that blend with the color of the roof or other structure. Reflection angles from collector surfaces shall be oriented so as not to interfere with the use and enjoyment of other properties. Where necessary, screening may be required to address glare.

(B) No solar energy equipment or solar electric systems shall create or cause unreasonable glare on other property or public roadways. **UNREASONABLE GLARE** shall mean a public safety hazard as determined by the Town Council or the appropriate roadway authority.

(Ord. passed 8-10-2021) Penalty, see § 10.99

§ 54.06 EASEMENTS.

It shall be the responsibility of the property owner to secure/provide any desired solar easement by the town to protect solar access for the system (per state statutes).

(Ord. passed 8-10-2021) Penalty, see § 10.99

§ 54.07 INSTALLATION.

Solar energy systems shall be installed to meet the state's Building, Plumbing, and Electrical Codes. They must also be inspected by the state's Electrical and Plumbing Inspector.

(Ord. passed 8-10-2021) Penalty, see § 10.99

§ 54.08 HOMEOWNER'S EXPENSE.

All costs associated with the installed system is solely the responsibility by the owner.

(Ord. passed 8-10-2021)

§ 54.09 PROOF OF INSURANCE.

(A) Due to potential liability resulting from the customer's operation of a power generating facility, the town requires the customer to maintain a minimum general liability insurance umbrella policy of \$300,000. Customers with a qualifying facility nameplate capacity greater than 30 kilowatts will be reviewed on a case-by-case basis. Depending on the size of the qualifying facility, its relative output compared to the customer's own energy requirements, and other relevant aspects, the town may require an increased minimum level of general liability insurance.

(B) All insurance secured by the customer for interconnection of a qualifying facility with the town's power distribution system shall be issued by insurance companies acceptable to the town. The customer should advise its insurance carrier that the customer is adding a power generating system to its home or facility that will be interconnected with the town's power distribution system. All insurance shall include coverage against claims for damages resulting from personal injury, bodily injury, death, and property damage arising out of the customer's ownership, operation, and maintenance of the qualifying facility.

(C) Such insurance, by proper endorsement, shall include the town as an additional insured. The town shall not by any reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium for the insurance.

(D) The customer will provide the town with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage, and shall provide 30 days' written notice to the town prior to any cancellation, termination, alteration, or material change of such insurance. The customer agrees to hold the town harmless from any liability, including additional premium due, because of the customer's failure to maintain adequate coverage to insure against all claims arising out of the customer's ownership, operation, and maintenance of the qualifying facility. The customer should advise its insurance carrier that the customer is adding a power generating system to its home or facility that will be interconnected with the town's power distribution system. The customer must provide the town with certificates proof of said liability town. The town's approval or acceptance of certificates of insurance does not

constitute the town's assumption of responsibility for the validity of any insurance policies, nor does the town represent that the minimum coverage required by the town is adequate to protect the customer, any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefor.

(Ord. passed 8-10-2021) Penalty, see § 10.99

§ 54.10 INTERCONNECTION FEE.

(A) Anyone with a solar energy system that is interconnected with the town's municipal utilities will be charged an interconnection fee.

(B) The interconnection fee applies to any solar energy systems in the town limits or any businesses or residents that are using the town's electricity.

(C) These rates are established by resolution _____ and by the following:

(1) Interconnection fee is \$6.94 per KW based on the solar rating certification corporation's capacity of the installed system with the first 3KW waived; and

(2) Example: Customer's rated system of 5KW would be charged: $5KW - 3KW \text{ waived} = 2KW * \$6.94 \text{ per KW} = \$13.88$.

(D) The purpose of the interconnection fee because the owner still has our electrical services as needed and the town has to handle the metering and billing of the power.

(Ord. passed 8-10-2021)

§ 54.11 SYSTEM INSPECTION.

(A) Customers that have a solar energy system interconnected to the municipal electric are subject to an annual inspection, if the town deems necessary, by a licensed electrician of mutual agreement, at the town's request, and at the home owner's expense to ensure everything involved in the solar energy system is working properly for the safety of our hired contractors and employees.

(B) The town requires that systems connected to its electrical grid have an anti-islanding test performed by an electrician once every two years. The anti-islanding test confirms that the distributed generation system will not energize the utility electric grid if power goes out.

(C) The customer shall assure that the interconnection shall be made in such manner that, if the voltage from the town is absent, the electrical interconnection is immediately broken.

(D) Neither the town nor Heartland will assume any responsibility for protection of any portion of the qualifying facility. The customer is fully responsible for protecting its equipment in such manner that faults or other disturbances on the town's system or the regional transmission system, with which the town is interconnected, do not cause damage to the qualifying facility, the general public, or any equipment or personnel.

(Ord. passed 8-10-2021)

§ 54.12 RATES.

(A) For qualifying facilities that qualify for net metering, the town will calculate the customer's bill for the billing period using the following calculation and with the following conditions.

(1) The customer will be placed in the rate class in accordance with the rate structure and monthly charges that the customer would be assigned if the customer had not interconnected a qualifying facility.

(2) If energy supplied by the town exceeds energy generated by the customer during a billing period, the customer shall be billed for the net energy supplied by the town in accordance with the appropriate rate schedule.

(3) If the kW generated by the customer's qualifying facility exceeds the kW supplied by the town during the billing period, the town shall credit the customer's account by the dollar value of the excess kW generated, calculated by multiplying the excess kW generated for the month by the appropriate avoided cost rate then in effect and in accordance with Heartland Consumers Power District's Interconnection of Facilities Policy.

(4) An outstanding credit balance on the account will be applied against the customer's total monthly charges from the town in each subsequent month until the credit balance is completely offset. The phrase "total monthly charges from the town" refers to all charges included on the town bill pertaining to electricity, including any or all of the following: electric energy furnished by the town; monthly customer charge; and purchased power cost adjustment (if any).

(5) If the sum of any monthly credits remaining at the time of the last monthly billing period before the end of the town's fiscal year is positive (that is, if the sum of the monthly excess energy times the avoided cost rate calculations is greater than the sum of the monthly charges), the town shall pay the customer the positive credit amount.

(6) If the customer leaves the system, an outstanding credit balance on the account due to excess kW generated will be paid to the customer after the final readout process, in the same manner an outside credit balance on the account due to other reasons is handled.

(B) The rates for sales and purchases of electricity will change over the time of this agreement, as the town's rate schedule is adjusted and as the amount of the avoided cost changes. Therefore, the customer and the town agree that sales and purchases will be made under

the rates in effect each month during the time this agreement is in force.

(C) When a new applicable tariff is developed and approved by the Board of Trustees, the provisions in the previous tariff will come to an end. The customer will abide by the terms and conditions laid out within the new tariff.

(Ord. passed 8-10-2021)

§ 54.13 OFF-GRID SOLAR ENERGY SYSTEM.

Any off grid solar energy system is only exempt from interconnection fees and the buying back of excess power produced by the owners system if the owner is not interconnected to the town's power distribution system and not selling excess power produced. All other rules and fees apply.

(Ord. passed 8-10-2021)

§ 54.14 SOLAR GARDENS; COMMUNITY SYSTEMS; ONE SYSTEM MULTIPLE USERS.

The town welcomes solar energy and other forms of renewable energy but does not permit the connection of a solar garden or community solar energy systems to multiple homes and/or businesses. Permits only allow one customer per solar system.

(Ord. passed 8-10-2021)

§ 54.15 CRITERIA FOR OBTAINING QUALIFYING STATUS.

(A) *Criteria for obtaining qualifying status.*

(1) Criteria for qualifications of small power production facility and co-generation facility are set out in FERC rules (18 C.F.R. Chapter I, part 292).

(2) Criteria for qualifications of small power production facility and co-generation facility are set out in FERC rules (18 C.F.R. Chapter I, part 292).

(3) Criteria under FERC's rules for determining the eligibility of facilities for the benefits prescribed by PURPA can be summarized as follows.

(a) Criteria for a qualifying facility, either a co-generation or a small power production facility, must be owned by someone other than a person primarily engaged in the generation or sale of electric power. The ownership test is satisfied if more than 50% of the equity interest in a qualifying facility is owned by persons other than electric utilities and related entities.

(b) A small power production facility may not become a qualifying facility if its capacity exceeds 80 megawatts. Also, its primary energy source (more than 75%) must be a renewable resource such as water power, solar energy, wind energy, geothermal energy, biomass, or waste.

(c) The regulations do not place a size limitation on co-generation facilities; however, the regulations do prescribe certain operating and efficiency standards for co-generation facilities.

(4) Compliance with all provisions of 18 C.F.R. § 292.207 is required to qualify as a qualifying facility under this policy.

(C) *Heartland's obligations.* Heartland is not required to purchase electric energy from a qualifying facility until 90 days after the owners or operators thereof notify Heartland that it is a qualifying facility, or until 90 days after an application has been made to FERC for certification of the facility.

(D) *Heartland's/town's obligations.*

(1) Subject to the provisions of this Interconnection Process and Requirements Document and the requirements of §§ 201 and 210 of PURPA, including 18 C.F.R. § 292.303, of the regulations pertaining to said described sections, Heartland assumes the following obligations and any others contained in the regulations unless specifically exempted:

(a) To purchase any electric energy and capacity which is made available from a qualifying facility; and

(b) The town assumes the following additional obligations and any others contained in the regulations unless specifically exempted:

1. To sell any qualifying facility any electric energy and capacity requested;

2. To make interconnections with any qualifying facility as may be necessary to accomplish purchases from or sales to qualifying facilities, subject to interconnection cost obligations pursuant to 18 C.F.R. § 292.306 and standards for operating reliability pursuant to 18 C.F.R. § 292.308;

3. To offer to operate in parallel with a qualifying facility, provided the qualifying facility complies with any applicable standards established in accordance with 18 C.F.R. § 292.308;

4. To implement administrative interconnection procedures, guidelines, and safety and reliability standards; and

5. a. To require any qualifying facility complete an interconnection application prior to approval for connection to the town's distribution system; and

b. The qualifying facility will include all pertinent infrastructure, safety, reliability, and economic information in its

application, and provide copies to Heartland and the town prior to approval by the town's FERC's rules for determining the eligibility of facilities for the benefits prescribed by PURPA can be summarized as follows.

i. Criteria for a qualifying facility, either a co-generation or a small power production facility, must be owned by someone other than a person primarily engaged in the generation or sale of electric power. The ownership test is satisfied if more than 50% of the equity interest in a qualifying facility is owned by persons other than electric utilities and related entities.

ii. A small power production facility may not become a qualifying facility if its capacity exceeds 80 megawatts. Also, its primary energy source (more than 75%) must be a renewable resource such as water power, solar energy, wind energy, geothermal energy, biomass, or waste.

iii. The regulations do not place a size limitation on co-generation facilities; however, the regulations do prescribe certain operating and efficiency standards for co-generation facilities.

(2) Compliance with all provisions of 18 C.F.R. § 292.207 is required to qualify as a qualifying facility under this policy.

(3) Heartland is not required to purchase electric energy from a qualifying facility until 90 days after the owners or operators thereof notify Heartland that it is a qualifying facility, or until 90 days after an application has been made to FERC for certification of the facility.

(Ord. passed 8-10-2021)

§ 54.16 INCENTIVES OFFERED FOR SOLAR IN THE STATE.

Incentives currently offered for solar in the state include:

(A) *Federal tax credit.* A taxpayer may claim a credit of 26% of qualifying upfront capital costs for a solar energy system.

(1) This incentive applies to the installation of both solar water heaters and solar panels.

(2) This tax credit began to decline in 2020 but was pushed back to 2023 to begin a phase out of 22% tax credit.

(B) *State property tax credit.* The first \$50,000 or 70% of the assessed value of solar energy systems (less than five MWs), whichever is greater, is exempt from the real property tax.

(SDCL §§ 10-4-42 to 10-4-45)

(Ord. passed 8-10-2021)

§ 54.17 NET METERING; PAY FROM UTILITY FOR EXCESS GENERATION.

(A) Net metering is a policy in which a utility must purchase power generated by its customers at the same retail price it sells electricity to the customer. Typically used as an incentive for customers who install renewable energy systems like solar, net metering was first considered as a result of the Public Utility Regulatory Policies Act of 1978. At the time, state policymakers debated and chose not to implement it. Having considered this on numerous occasions since then, the state legislature concluded mandatory net metering is not of the public interest.

(B) Net metering has not been adopted for several reasons. First, the utility would be forced to pay the generator an above market cost of generation. Further, the utility would not be able to schedule the generation of electricity and it would be worth less than electricity they are already buying for a lower price.

(C) Second, retail electricity rates are based on the variable cost of energy generation and a portion of the fixed costs of generation, distribution, and transmission facilities. If utilities must pay above market rates for substandard power, rates will eventually have to rise to cover increased expenses. In addition, net metered customers do not pay their fair share of the utility's fixed costs and those costs are shifted to the utility's other customers causing their rates to increase. Increased rates will have the largest effect on low income customers, who couldn't afford the upfront costs of renewable energy systems in the first place.

(D) Small generators have the opportunity to sell power to a utility without net metering. The purchase price the utility pays must reflect the value of generation and be similar to the utility's wholesale cost of power. It does not include costs of transmission, distribution, and overhead, as well as other costs of providing electrical service that are included in net-metered rates.

(E) With an average cost of around \$3 per watt of solar, the average size of solar in the state is 5KW; meaning the average cost of solar panels for a residential home is \$14,900 installed. Add in the first year 26% tax credit and the decrease in property taxes, solar is looking like a viable option for people.

(F) With the state not requiring net metering, we buy back someone's solar at the avoided cost rate compared to in Minnesota they have net metering and they have to buy the excess power generated from their customers at the price they sell their power to customers for.

(Ord. passed 8-10-2021)

§ 54.18 ANTI-ISLANDING AGREEMENT.

Anti-Islanding Certificate

The Town of Langford requires that distributed generated systems, such as solar or wind, connected to its electrical grid have an anti-islanding test performed by an electrician once every two years. The anti-islanding test confirms that the distributed generation system will not energize the utility electric grid if power goes out. This document may be submitted to _____ at _____ as proof of this testing.

I _____ (print), state electrical license number _____, state that the distributed energy system located at _____ on the date of _____ automatically disconnected from Langford Municipal Electric after grid power was removed from the distributed energy system.

Signature _____

Please remember to have your system tested and submit this document to the Town of Langford in **two** years' time, every two years from the date of interconnection.

(Ord. passed 8-10-2021)

TITLE VII: TRAFFIC CODE

Chapter

70. TRAFFIC CODE; DYNAMIC BRAKE DEVICES; RECREATIONAL VEHICLES

CHAPTER 70: TRAFFIC CODE; DYNAMIC BRAKE DEVICES; RECREATIONAL VEHICLES

Section

Traffic Code

- 70.01 Traffic code authority
- 70.02 Adoption of state traffic laws

Dynamic Brake Devices

- 70.15 Use of dynamic brake device prohibited

Recreational Vehicles

- 70.30 Storage and parking of recreational vehicles
- 70.31 Guest recreational vehicles
- 70.32 Golf cart definition
- 70.33 Terms of use of golf carts within town limits
- 70.34 Snowmobiles

- 70.99 Penalty

TRAFFIC CODE

§ 70.01 TRAFFIC CODE AUTHORITY.

Law enforcement services are provided to the town pursuant to contract entered into by and between the town and the county; law enforcement services are provided pursuant to SDCL and town ordinances.

§ 70.02 ADOPTION OF STATE TRAFFIC LAWS.

The provisions of SDCL Title 32 are adopted by reference. It shall be unlawful for any person to violate those provisions. All traffic-control signs, devices, signals, and markings shall be deemed erected pursuant to SDCL Title 32.

DYNAMIC BRAKE DEVICES

§ 70.15 USE OF DYNAMIC BRAKE DEVICE PROHIBITED.

The purpose of this section is to prohibit the excessive, loud, unusual, or explosive use of engine and compressed air braking devices within the town. It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated within the town any engine brake, compression brake, or mechanical exhaust device designed to aid in the braking or deceleration of any vehicle that results in excessive, loud, unusual, or explosive noise from such vehicles, unless such use is necessary to avoid imminent danger. Emergency vehicles shall be exempt from application of this section.

(Ord. 2018-02, passed 2-6-2019) Penalty, see § 70.99

RECREATIONAL VEHICLES

§ 70.30 STORAGE AND PARKING OF RECREATIONAL VEHICLES.

(A) Recreational vehicles are defined as travel trailers, tent trailers, campers, coach, or any motorized dwelling.

(B) Parking of personal vehicles is allowed year-round unless the vehicle is connected to town utility services (water and sewer services).

(1) The vehicle shall in no way inconvenience a neighboring property.

(2) The parking location shall be aesthetically appealing to neighboring properties.

(3) The vehicle shall in no way block a street, alley, or driveway of any kind, and may not be parked or partially parked on the street or alley right-of-way.

§ 70.31 GUEST RECREATIONAL VEHICLES.

(A) One guest recreational vehicle is allowed for a maximum of 15 days in any three-month period. Exceptions may be granted by the Town Board.

(B) The guest recreational vehicle is to be connected to an external electrical source and the vehicle generator may not be used.

§ 70.32 GOLF CART DEFINITION.

The following definition shall apply unless the context clearly indicates or requires a different meaning.

GOLF CART. A four-wheeled vehicle originally and specifically designed and intended to transport one or more individuals and golf clubs for the purpose of playing the game of golf on a golf course.

(Ord. 2012-01, passed 4-10-2012)

§ 70.33 TERMS OF USE OF GOLF CARTS WITHIN TOWN LIMITS.

The town hereby permits the use of golf carts on the municipal streets of the town, subject to the following terms.

(A) The golf cart is to be insured.

(B) The person operating the golf cart must hold a valid driver's license.

(C) The person operating the golf cart shall obtain a permit from the town to operate the golf cart on municipal streets. The fee for said permit shall be at an amount determined by the Town Board. This is an annual permit and must be renewed annually. The permit must be affixed to the rear fender or bumper of the golf cart.

(D) Operation of the golf cart is permitted from dawn to dusk unless the golf cart is equipped with operating head-lights and tail-lights.

(Ord. 2012-01, passed 4-10-2012)

§ 70.34 SNOWMOBILES.

No person may operate a snowmobile in the following manner:

(A) At a speed that is greater than is reasonable or prudent under the circumstances;

(B) In any reckless way so as to endanger the person or property of another; or

(C) Without a functioning muffler complying with SDCL § 32-15-17.

(SDCL § 32-20A-2)

§ 70.99 PENALTY.

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

(B) Failure to abide by § 70.34 shall be deemed a Class 2 misdemeanor.

(Ord. 2012-01, passed 4-10-2012)

Statutory reference:

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

TITLE IX: GENERAL REGULATIONS

Chapter

- 90. NUISANCES
- 91. ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLES
- 92. LITTER
- 93. ANIMALS
- 94. STREETS AND SIDEWALKS; SNOW REMOVAL; TREES
- 95. RECREATION FACILITIES
- 96. NOISE
- 97. PARADES AND SPECIAL EVENTS

CHAPTER 90: NUISANCES

Section

General Provisions

- 90.01 General authority
- 90.02 Definitions
- 90.03 Dilapidated buildings
- 90.04 Conditions and/or acts constituting a nuisance
- 90.05 Slot machine and premises public nuisance
- 90.06 Appliances and other air-tight containers
- 90.07 Harboring flies, insects, or rodents
- 90.08 Abandoned property
- 90.09 Accumulation of lumber, junk, and other materials
- 90.10 Hay, straw, and the like
- 90.11 Junk yards adjacent to interstate and primary highways; regulation
- 90.12 Offensive, foul, or vicious smells
- 90.13 Public nuisance not legalized by lapse of time
- 90.14 Liability of successive owners for continuing nuisance
- 90.15 Impure food
- 90.16 Offensive substance
- 90.17 Offensive sewage
- 90.18 Dead animals
- 90.19 Disposal of dead animals or decayed matter
- 90.20 Burial of dead animals
- 90.21 Slaughter houses
- 90.22 Depositing offensive matter

Nuisance Vegetation

90.35 Certain weeds and plants declared nuisances

90.36 Noxious vegetation to be cut

90.37 Failure to comply

Administration and Enforcement

90.50 Notice to owner of nuisance

90.51 Failure to comply with notice; removal of nuisance; costs

90.52 Hearing; time; issuance of order; appeal

90.53 Abatement of nuisance; notice required; taxing cost of abatement; civil action

90.99 Penalty

GENERAL PROVISIONS

§ 90.01 GENERAL AUTHORITY.

This municipality shall have the power to declare what shall constitute a nuisance and prevent, abate, and remove the same pursuant to SDCL § 9-29-13.

§ 90.02 DEFINITIONS.

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

ABANDONED PROPERTY. Any deteriorated, wrecked, or derelict property in unusable condition, having no value other than nominal scrap or junk value, if any, and which has been left unprotected outside of a permanent structure from the elements, and shall include, with being so restricted, deteriorated, wrecked, inoperative, or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furnitures, and any other similar articles in such a condition.

ANIMAL WASTE. Any accumulation of waste manure or straw resulting from the transportation, housing, or confining of animals not awaiting transportation, sale, or slaughter in a duly licensed stockyard, sale pavilion, or hatchery. **ANIMAL WASTE** is also known as **LIVESTOCK WASTE**.

APPLIANCE. Any household or office device operated by gas or electrical current which would include by not be limited to stoves, refrigerators, washing machines, and dryers.

BREEDING PLACES FOR FLIES. The accumulation of manure, garbage, or anything whatever which are harboring places and breeding places for flies.

BREEDING PLACES FOR RATS AND OTHER RODENTS. The accumulation of manure, garbage, or anything whatever, which are harboring places and breeding places for rats and other rodents.

BUILDING OFFICIAL. The Municipal Health Inspector, the Fire Inspector, the Building Inspector, their respective authorized representatives, or any other municipal official authorized by the governing body with the enforcement of this code.

GARBAGE and REFUSE. Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any animal or vegetable matter which attends the processing, preparation, transportation, cooking, eating, sale, or storage of meat, fish, vegetables, fruit, and other food or food products found within the municipality which are likely to transmit disease or which may be a hazard to health.

GARBAGE HANDLING IMPROPERLY. Throwing or letting fall on or permitting to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel, or wood while engaged in handling or removing any such substances.

IMPERFECT PLUMBING. Any imperfect, leaking, unclean, or filthy sink, water closet, urinal, or other plumbing fixture in any building used or occupied by human beings.

MANURE. The accumulation of **MANURE** or livestock waste unless it be in a securely tied, closed biodegradable package placed in a leak-proof container with a tight fitting cover.

NUISANCE.

- (1) Unlawfully doing an act or omitting to perform a duty, which act or omission either:
 - (a) Annoys, injures, or endangers the comfort, repose, health, or safety of others;
 - (b) Offends decency;
 - (c) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, sidewalk, street, or highway; and
 - (d) In any way renders other persons insecure in life, or in the use of property.

(SDCL § 21-10-1)

(2) Nothing which is done or maintained under the express authority of a statute can be a **NUISANCE**.

(SDCL § 21-10-2)

(3) Whatever is dangerous to human health, whatever renders the ground, the water, the air, or food a hazard or an injury to human health.

(Prior Code, § 5-2-1)

POLLUTING RIVER. Throwing or leaving any dead animal or decayed animal or vegetable matter or any slops or filth whatsoever, either solid or fluid, into any pool water.

PREMISES. A lot or parcel of land, improved or unimproved, parking areas thereon, walkways, and sidewalks.

PRIVATE NUISANCE. Every other nuisance that is not a public nuisance is a **PRIVATE NUISANCE**.

(SDCL § 21-10-3)

PUBLIC NUISANCE. One which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

(SDCL § 21-10-3)

RUBBISH. Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any combustible refuse matter such as paper, sweepings, rags, grass, tree branches, wood shavings, wood, magazines, cardboard, and the like.

STAGNANT WATER. Any water or liquid in which mosquito larvae exist.

VEGETATION.

(1) All weeds or plants declared to be primary or noxious weed or secondary noxious weed by the state's Weed Board and all other weed and grass growing upon any lot or parcel of land in the municipality to a greater height than eight inches, which have gone or are about to go to seed. This division (1) does not prohibit the cultivation of crops.

(2) Fallen tree limbs, dead trees, and dead tree limbs, which, in the opinion of the governing body or appointed official, constitute a health, safety, or fire hazard.

(3) Limbs of trees hanging within less than seven feet in height from any sidewalk or 14 feet in height from the traveled portion or parking area of any street or road right-of-way within the municipality, all of which collectively are hereinafter referred to as **OVERHANGING LIMBS**.

WASTE MATERIAL. All noncombustible inorganic matter such as ashes, glass, sand, earth, stones, concrete, mortar, metals, tin cans, and the like.

§ 90.03 DILAPIDATED BUILDINGS.

Any buildings or structure within the limits of the town which is dilapidated, decayed, out of repair, unsafe, unsanitary, or utterly fails to provide the amenities essential to decent living such that it is unfit for human habitation and is likely to cause or is causing or aggravating sickness or disease so as to work an injury to the health, morals, safety, or general welfare of the community shall be removed within 30 days after receiving notice from the Board of Trustees to do so.

(Prior Code, § 7-4-2) Penalty, see § 90.99

§ 90.04 CONDITIONS AND/OR ACTS CONSTITUTING A NUISANCE.

One or more of the following conditions and/or acts, either alone or in combination with other, which at the same time affects an entire community or neighborhood, or a considerable number or persons, although the extent of annoyance or damage inflicted upon the individuals may be unequal, constitutes a public nuisance; however, this enumeration shall not be deemed to be exclusive:

- (A) The keeping of a premises at variance with the zoning laws applicable to the premises;
- (B) The interference, obstructing, or rendering dangerous for passage any lake, or navigable river, bay, stream, public park, street, alley, or highway;
- (C) Broken windows, doors, attic vents, and underfloor vents;
- (D) Allowing the exterior building coverings to deteriorate as to encourage decay, dry rot, warping, and cracking;
- (E) Any malfunctioning, leaking, unclean or filthy sink, water closet, urinal, or other plumbing fixture in any building open for public use;
- (F) Any sign or sign structure that is dismantled, partially dismantled, defective, broken, deteriorated, in disrepair, or defaced;
- (G) The accumulation of dead animals or fowl; animal or fowl matter or waste of any kind; dead; decayed, diseased trees, and other vegetation;

(H) Failure to store in a covered metal container or throwing or letting fall on or permit to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel, small dead animals, wood, or like material;

(I) Allowing the movement by natural elements, or the accumulation, or discarding, or throwing of litter, which would include, but not be limited to: trash, refuse, debris, newspapers, magazines, glass, plastic containers, or Styrofoam containers;

(J) Depositing, maintaining or permitting to be maintained or be accumulated upon any public or private property any combustible refuse matter such as papers, sweepings, rags, grass, tree branches, wood shavings, wood, magazines, cardboard, and the like;

(K) The accumulation of junk and/or litter maintained upon any premises;

(L) Undressed hides kept longer than 24 hours, except at the place where they are to be manufactured, or in storeroom or basement whose construction is approved by the Health Department;

(M) Parking or permitting a livestock truck or trailer to remain on any street, area, or public ground in a residential district when such truck or trailer gives off an offensive odor or is contaminated with manure or other filth;

(N) Any excavation or depression in which stagnant water is permitted to collect or allow for the multiplication of insects;

(O) (1) Maintaining upon such premises or upon the sidewalk abutting or adjoining such lot, parcel, tract or piece of land, loose earth, mounds of soil, fill material, asphalt, concrete rubble, or waste material of any kind (all such materials shall hereinafter be referred to as waste materials), except for waste materials used for construction or landscaping upon premises in which case it shall be the duty of the owner, lessee, occupant, or persons in possession of premises wherein waste material exist, to maintain weed control during construction, and to level or remove waste materials after construction is completed or, in any event, within eight months for time or placement of waste materials; and

(2) For sites where filling, grading, or excavation activities have or will span more than one year, it shall be the duty of the owner, lessees, occupant, or person on possession of said premises to level or remove the waste materials from said premises at least once each year during the months of either June, July, or August for the purpose of maintaining weed and rodent control.

(P) Livestock and poultry when a public nuisance. The collecting, keeping, or feeding of any cattle, sheep, swine, goats, horses, or poultry upon premises which are not maintained in a reasonably clean and sanitary condition, free from any noxious or offensive odor, or which will unreasonably interfere with the proper enjoyment of property in the area for residential or business purposes.

Penalty, see § 90.99

§ 90.05 SLOT MACHINE AND PREMISES PUBLIC NUISANCE.

(A) All slot machines capable of being used for gambling and places where they are kept or operated together with all property of any kind kept or used in connection with the operation of the same, are hereby declared to be public nuisances.

(B) This section does not prohibit the manufacture, or any act appurtenant to the manufacture of slot machines or devices in this state for distribution.

(SDCL § 22-25-14) Penalty, see § 90.99

§ 90.06 APPLIANCES AND OTHER AIR-TIGHT CONTAINERS.

(A) The keeping of any discarded icebox, refrigerator, or other air-tight container is hereby declared to constitute a public nuisance and the same shall be abated as provided by state law and the abatement of such nuisance shall not, in any manner, affect any penalty which may be imposed for the violation of this subchapter.

(B) It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building, or other structure or within any unoccupied or abandoned building, dwelling, or other structure under his or her control, in a place accessible to children, any abandoned or discarded icebox, refrigerator, or other container which has an air-tight door or lid, snap lock, or other locking device which may not be released from the inside without first removing the door or lid, snap lock, or other locking device from the icebox, refrigerator, or container.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.07 HARBORING FLIES, INSECTS, OR RODENTS.

(A) It shall be a nuisance and unlawful to place, leave, dump, or permit the accumulation of manure, garbage, or anything whatever, which harbors or favors the multiplication of flies, insects, or rodents.

(B) Accumulation of junk, old iron, wood, automobiles, cement slabs, or parts hereof, or anything in which rodents may live or breed or accumulate is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.08 ABANDONED PROPERTY.

It shall be a nuisance and unlawful to leave abandoned, discarded, or unused furniture, appliances, sinks, toilets, cabinets, or other household fixtures or equipment and any property of any kind.

Penalty, see § 90.99

§ 90.09 ACCUMULATION OF LUMBER, JUNK, AND OTHER MATERIALS.

(A) It shall be a nuisance and unlawful to allow the accumulation of lumber, boxes, barrels, bricks, stones, or any other material unless placed on open racks that are elevated not less than eight inches above ground, and evenly piled or stacked so that such material will not afford harborage for rodents.

(B) It shall be a nuisance and unlawful to allow the accumulation of junk, old iron, or parts of motor vehicles, campers, trailers, tractors, or other like property.

Penalty, see § 90.99

§ 90.10 HAY, STRAW, AND THE LIKE.

Depositing or stacking any hay, straw, shavings, or other easily combustible material in any yard or lot in open air at less than 300 feet from any dwelling house situated within the town is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.11 JUNK YARDS ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS; REGULATION.

(A) For the purposes of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junk yards in areas adjacent to the interstate and primary systems within this state.

(B) Junk yards that do not conform to the requirements of this subchapter are public nuisances.

(SDCL § 31-30-1) Penalty, see § 90.99

§ 90.12 OFFENSIVE, FOUL, OR VICIOUS SMELLS.

It shall be unlawful for any person or persons, within the limits of the municipality, to permit or suffer any public nuisance involving offensive, foul, or vicious smelling substances upon his or her property.

Penalty, see § 90.99

§ 90.13 PUBLIC NUISANCE NOT LEGALIZED BY LAPSE OF TIME.

No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

(SDCL § 21-10-4)

§ 90.14 LIABILITY OF SUCCESSIVE OWNERS FOR CONTINUING NUISANCE.

Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

(SDCL § 21-10-8) Penalty, see § 90.99

§ 90.15 IMPURE FOOD.

Selling or offering for sale within the town any spoiled, diseased, or rotten meat or provision of any kind is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.16 OFFENSIVE SUBSTANCE.

Permitting any dead carcass, carrion, or other offensive, nauseous, or unwholesome substance to be in any building or remain upon the surface of any lot in the town for any period exceeding 24 hours is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.17 OFFENSIVE SEWAGE.

Suffering or permitting any house, barn, cellar, vault, private draft, cesspool, privy, or sewer upon any premises within the limits of the town to become nauseous or offensive or injurious to public health is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.18 DEAD ANIMALS.

For the owner of any animal which shall have died to permit the same to lie in any public street, alley, public ground, or private lot or place within the town is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.19 DISPOSAL OF DEAD ANIMALS OR DECAYED MATTER.

Dumping or leaving any animal or any vegetables or decayed matter or any slops or filth whatever, solid or fluid, in any pool of water in the town is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.20 BURIAL OF DEAD ANIMALS.

For any person, firm, or corporation having dead chickens, dogs, cats, or animals of any description on or about his, her, or their premises to dispose of the same in any manner or form other than burial. It shall be unlawful for any person, firm, or corporation to remove any such dead chickens, dogs, cats, or animals from the place where the same may be found dead other than the purpose of destruction by burial is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.21 SLAUGHTER HOUSES.

For any person, firm, or corporation to carry on the business of slaughtering animals or rendering any animal matter, or manufacturing the same into fertilizing material by the use of heat or otherwise, at any place within the town, except by permit of any ordinance passed by the Board of Trustees is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

§ 90.22 DEPOSITING OFFENSIVE MATTER.

Throwing or depositing in any of the streets, avenues, alleys, or public grounds of the town any offal, dead, or decaying animals, fruit, or vegetable matter, or materials offensive to the public or liable to cause injury to persons or vehicles in the lawful use of such streets, avenues, alleys, or public grounds is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 90.99

NUISANCE VEGETATION

§ 90.35 CERTAIN WEEDS AND PLANTS DECLARED NUISANCES.

(A) The following weeds and plants are hereby declared to be noxious weeds and vegetation and are hereby declared to be nuisances: rag weed, thistle of any kind, wild sunflower, goldenrod, cocklebur, sand burr, wild oats, wild mustard, wild lettuce, wild salsify, pigweed, wild firebush, burdock, and all other useless, noxious, and unhealthful vegetation suffered or allowed to grow during the growing season.

(B) State declared noxious weeds: leafy spurge, Canada thistle, perennial sow thistle, hoary cress, Russian knapweed, purple loosestrife, and salt cedar.

(Prior Code, § 7-3-1)

§ 90.36 NOXIOUS VEGETATION TO BE CUT.

It shall be the duty of the occupant, person in charge, or the owner of any lot or parcel of land in the town to keep such lot or parcel free from any noxious or unhealthful vegetation and particularly as to the weeds and plants mentioned in § 90.35, and to cut or cause vegetation at such time or times as may be necessary to prohibit its growth and bearing seed. The town shall, in like manner, cut or cause to be cut all such noxious or unhealthful vegetation being and growing on the streets and alleys of the town.

(Prior Code, § 7-3-2)

§ 90.37 FAILURE TO COMPLY.

If the owner, occupant, or person in charge of any lot or lots shall fail or neglect to cut or destroy any such noxious and unhealthful vegetation as aforesaid being or growing upon any such lot or lots or parcel of land, the Board of Trustees of the town shall notify such persons of the violation. If, within ten days after the notice is provided, the owner, occupant, or person in charge of any lot or lots shall continue to fail or neglect to cut or destroy any such noxious and unhealthful vegetation, the Board of Trustees shall cause the work to be done and report the expenses thereof to the Board of Trustees of the town and the cost of such cutting or destruction shall be collected from the property owner in such a manner as authorized by law including, but not limited to, special assessments against the property pursuant to state statutes regarding this matter.

(Prior Code, § 7-3-3)

ADMINISTRATION AND ENFORCEMENT

§ 90.50 NOTICE TO OWNER OF NUISANCE.

(A) If any nuisance, source of filth, cause of sickness, or condition, which endangers the public health, is found on any property, the county's Health Officer shall, by written notice served personally or by mail upon the property owner, describe the nuisance or condition found to exist and any corrective action to be taken by the owner of the property.

(SDCL § 34-16-19)

(B) The Board of Trustees shall give written notice to any person, firm, or corporation creating, permitting, or maintaining any nuisance to abate such nuisance forthwith, and if such person, firm, or corporation shall neglect or refuse to do so within ten days after such notice, he or she shall be deemed guilty of violation of this section. The Board of Trustees shall cause to be removed or abated any such nuisance upon the expiration of a reasonable time after the serving of such notice, and reasonable time after the serving of such notice, and the town may recover the expenses so incurred from the person maintaining such nuisance as authorized by law.

(Prior Code, § 5-2-2)

§ 90.51 FAILURE TO COMPLY WITH NOTICE; REMOVAL OF NUISANCE; COSTS.

(A) If an owner of property fails to comply with the requirements of a notice served pursuant to SDCL § 34-16-19, the Health Officer shall proceed to have the nuisance, source of filth, cause of sickness, or condition which endangers the public health removed from the property or abated and report the cost of the removal or abatement to the municipality.

(B) The cost of such removal or abatement shall be assessed and charged against the property on which the nuisance or condition was located in the manner that other taxes are collected.

(SDCL § 34-16-20)

§ 90.52 HEARING; TIME; ISSUANCE OF ORDER; APPEAL.

(A) Any hearing requested pursuant to SDCL § 34-16-19 shall be held during an open session of the governing body and shall be held no later than 45 days after filing the request for hearing.

(B) Following hearing, the governing body shall issue an appropriate order, including a statement of any corrective action which the Town Board deems necessary. A decision of the governing body may be appealed to the circuit court in accordance with the provisions of SDCL Chapter 7-8.

(SDCL § 34-16-21)

§ 90.53 ABATEMENT OF NUISANCE; NOTICE REQUIRED; TAXING COST OF ABATEMENT; CIVIL ACTION.

(A) A public nuisance may be abated without civil action by any public body or officer as authorized by law. Any municipality may defray the cost of abating a public nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred or against the real property abutting or adjoining the unrepaired sidewalk as set forth in § 94.049 . If the nuisance abated is an unsafe or dilapidated building, unrepaired sidewalk, junk, trash, debris, or similar nuisance arising from the condition of the property, the municipality may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment.

(B) Any private person may abate a public nuisance which is specially injurious to that person or any private nuisance injurious to that person by removing or if necessary destroying that which constitutes the nuisance without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon the wrongdoer's land, reasonable notice shall be given to the wrongdoer before entering to abate it.

(SDCL § 21-10-6)

§ 90.99 PENALTY.

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

(B) Any person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who intentionally does not perform any legal duty relating the removal of a public nuisance, may be punished by not more than 30 days in jail or a fine not to exceed \$500 or both.

(C) It shall be a violation for any person who has been served with personal notice by a law enforcement agency concerning the condition of such person's property to fail to abate the public nuisance within 60 days of receipt of the personal notice.

Statutory reference:

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

CHAPTER 91: ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLES

Section

91.01 Definitions

91.02 Storing, parking, or leaving vehicles declared a nuisance

91.03 Exceptions

91.04 Racing or antique vehicles

91.99 Penalty

§ 91.01 DEFINITIONS.

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

ABANDONED MOTOR VEHICLE. Any motor vehicle as deemed hereinabove which is left unattended on any public street, alley, public place, or parking lot within the municipality for a longer period than 24 hours without notifying the Chief of Police and making arrangements for the parking of such motor vehicle.

JUNKED MOTOR VEHICLE. Any car bodies, wrecked cars, abandoned and unusable cars, or equipment of any type, except in authorized junk vehicles.

MOTOR VEHICLE. Any vehicle which is self-propelled and designed to travel along the ground and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf-carts, campers, and trailers.

PERSON. Any person, firm, partnership, association, corporation, company, or organization of any kind.

PRIVATE PROPERTY. Any real property within the municipality which is privately owned and which is not public property as defined herein.

PUBLIC PROPERTY. Any street, alley, or highway or boulevard which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means any other publicly owned property or facility.

REMOVAL AGENCY. Any public body, private, or nonprofit organization authorized by the municipality to remove and salvage abandoned or inoperable motor vehicles.

VEHICLE. Any conveyance which is designed to travel along the ground or in the water and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, pull trailers, go-carts, golf carts, boats, campers, and trailers.

§ 91.02 STORING, PARKING, OR LEAVING VEHICLES DECLARED A NUISANCE.

(A) No person, whether owner, tenant, occupant, lessee, or other, shall allow an abandoned, discarded, wrecked, burned, dismantled, inoperable, junked, or partially dismantled vehicle or parts thereof on private or public property. Any abandoned, discarded, wrecked, burned, dismantled, inoperable, junked, or partially dismantled vehicle is hereby declared a nuisance, which may be abated as such in accordance with the provision of this chapter.

(B) It is unlawful to keep or place any such vehicle or vehicles parts:

(1) Upon public streets or property except on an emergency basis; or

(2) Upon private property of any person owning, in charge of, or in control of any real property in the municipality, whether as an owner, tenant, occupant, lessee, or otherwise, for longer than 30 days unless it is within a fully enclosed building or structure. A tarpaulin, tent, unenclosed garage or shed, or other similar temporary structure shall not be deemed to satisfy the requirements of this section.

(C) Any person, persons, or business that shall leave or have on his, her, or their property a vehicle or vehicles which do not display a current license shall move or cause to be moved said vehicle or vehicles outside of town limits within 30 days after having received notice from the Board of Trustees.

(Prior Code, § 7-4-1) Penalty, see § 91.99

§ 91.03 EXCEPTIONS.

(A) This chapter shall not apply to:

(1) One inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. If this inoperable vehicle is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway for longer than 30 days;

(2) Filling stations, automobile repair shops, or any other motor vehicle related business in compliance with applicable municipal ordinances may place inoperable vehicles being repaired or offered for sale on the premises; and

(3) Junk yards operated and maintained in compliance with municipal ordinances.

(B) Historical or vintage vehicles shall be an exception to division (A) provided that such vehicles are stored in a manner as not to be adverse to the aesthetic quality of the area.

(Prior Code, § 7-4-5)

§ 91.04 RACING OR ANTIQUE VEHICLES.

No owner or occupant of private property shall have an uncovered motor vehicle in an inoperable condition specifically adopted or designed for operation on drag strips or raceways or an uncovered motor vehicle retained on private property for antique collection purposes.

Penalty, see § 91.99

§ 91.99 PENALTY.

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

(B) The town shall cause to have offensive materials removed and the cost applied to the owner or to the respective tax list.

(Prior Code, § 7-4-4)

(C) Residents may be assessed \$25 per month per vehicle; assessments may be applied to the owner or the respective tax list.

(Res. passed 7-1-2003)

CHAPTER 92: LITTER

Section

- 92.01 Definitions
- 92.02 Throwing or depositing in or upon streets, sidewalks or public or private places
- 92.03 Sweeping into gutters, streets, or other public places
- 92.04 Litter not contained prohibited
- 92.05 Hauling
- 92.06 Construction sites
- 92.07 Loading or unloading options
- 92.08 Distribution of handbills
- 92.09 Miscellaneous debris
- 92.10 Litter carried by wind

- 92.99 Penalty

§ 92.01 DEFINITIONS.

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

GARBAGE. Putrescible animal and vegetable wastes resulting from the storage, distribution, handling, preparation, cooking, and consumption of food.

HANDBILL. Any printed or written matter, any sample, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any printed or otherwise reproduced original or copy of any matter of literature.

LITTER. Any quantity garbage, trash, refuse, rubbish, debris, or other waste material including, but not limited to, cans, bottles, jars, treated or untreated paper, wrappings, ashes, cigarettes, cardboard, rags, yard clippings, leaves, grass, wood, glass, crockery, dead animals, scrap metal, salvaged metal, and motor vehicle parts that is not in a container.

LITTER TO BE CONTAINED. Any litter which is not enclosed within a building or placed securely in a container designed or reasonably adapted for use as a place for storing litter for the purpose of collection for disposal.

§ 92.02 THROWING OR DEPOSITING IN OR UPON STREETS, SIDEWALKS, OR PUBLIC OR PRIVATE PLACES.

No person shall throw or deposit any litter in or upon any street, sidewalk, or other public place or any private property except in public or private containers designed and intended for the collection of litter. Persons placing litter in such containers shall do so in such manner as to prevent its being carried or deposited by the elements upon any street, sidewalk, or other public place or private property.

Penalty, see § 92.99

§ 92.03 SWEEPING INTO GUTTERS, STREETS OR OTHER PUBLIC PLACES.

No person shall sweep into or deposit in any gutter, street, or other public place within the municipality any accumulation of litter from

any building or lot or from any public or private sidewalk or driveway.

Penalty, see § 92.99

§ 92.04 LITTER NOT CONTAINED PROHIBITED.

Any person being the owner, tenant, or person in control of any private property shall at all time maintain the premises free of litter that is not contained.

Penalty, see § 92.99

§ 92.05 HAULING.

No person shall drive or move any truck or other vehicle unless such vehicle is so constructed or loaded as to prevent any load, contents, or litter from falling, being blown, or otherwise being deposited upon any street, alley, other public place, or any private property.

Penalty, see § 92.99

§ 92.06 CONSTRUCTION SITES.

(A) No person being the owner or person in charge of any property upon which a structure is being constructed or demolished shall permit the accumulation of litter that is not contained upon such property or permit litter therefrom to become blown or scattered upon such property or any property or public place.

(B) No person being the owner of any property upon which a structure is being constructed or demolished shall fail to provide adequate containers to hold all litter produced upon such property or otherwise appearing thereon.

Penalty, see § 92.99

§ 92.07 LOADING OR UNLOADING OPTIONS.

No person owning or having charge of any premises upon which objects or materials are being loaded upon or unloaded from any vehicle or other device for conveyance shall permit any litter that is not contained resulting from such loading or unloading to accumulate upon such property or to be blown or scattered upon such property or any other property or public place.

Penalty, see § 92.99

§ 92.08 DISTRIBUTION OF HANDBILLS.

(A) No person shall throw or deposit any handbill in or upon any street, sidewalk, or public place nor shall any person throw, deposit, or place any handbill upon any vehicle without the specific and immediate consent of the person having charge of such vehicle.

(B) This section shall not prohibit the handing out of handbills to persons willing to receive such handbill.

Penalty, see § 92.99

§ 92.09 MISCELLANEOUS DEBRIS.

(A) Any miscellaneous debris which is either unsightly or dangerous to the public shall likewise be removed.

(B) Any debris is capable of retaining water which may provide a breeding container for mosquitos must be drained or removed.

(Prior Code, § 7-4-3) Penalty, see § 92.99

§ 92.10 LITTER CARRIED BY WIND.

Dumping or depositing or causing the same to be done on any street, alley, lot, or parcel of land within the town any paper, litter, or other substance capable of being carried by the wind is hereby declared to constitute a nuisance.

(Prior Code, § 5-2-1) Penalty, see § 92.99

§ 92.99 PENALTY.

(A) Violation of any provision of this chapter may be punishable by not more than 30 days in jail or a fine not to exceed \$500 or both.

(B) The town shall cause to have offensive materials removed and the cost applied to the owner or to the respective tax list, as per § 92.09.

(Prior Code, § 7-4-4)

Statutory reference:

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

General Provisions

- 93.01 Authority
- 93.02 Definitions

Pets and Other Animals

- 93.15 Number of dogs and cats limited
- 93.16 Vaccination required
- 93.17 Application for license certificate and tag
- 93.18 Record keeping requirements
- 93.19 Farm animals prohibited
- 93.20 Exception to prohibition of farm animals
- 93.21 Definition of wild or dangerous animals
- 93.22 Wild or dangerous animals prohibited
- 93.23 Specific animals prohibited as dangerous
- 93.24 Reporting escaped dangerous animals
- 93.25 Vicious animals
- 93.26 Injury to person trespassing; teasing dog; attempting to commit crime
- 93.27 Continued ownership of vicious animal

Rabies Control

- 93.40 Report of rabies
- 93.41 Confinement of animal that has bitten or attacked
- 93.42 Confinement of pet bitten by animal suspected of having rabies
- 93.43 Destruction of animal required

Miscellaneous Regulations

- 93.55 Responsibility
- 93.56 Disturbing the peace
- 93.57 Neglect, abandonment, or mistreatment of animals
- 93.58 Unattended animals
- 93.59 Cruelty to animals
- 93.60 Poisoning
- 93.61 Trapping of animals
- 93.62 Hunting prohibited
- 93.63 Running at large
- 93.64 Stray, abandoned, or unkept animals

- 93.99 Penalty

GENERAL PROVISIONS

§ 93.01 AUTHORITY.

This municipality shall have the power to regulate or prohibit the running at large of dogs, animals, and poultry, to establish pounds, appoint poundmasters, and regulate the impounding of animals, and to impose a tax or license on dogs running at large pursuant to SDCL § 9-29-12.

§ 93.02 DEFINITIONS.

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

ABANDONMENT. Giving up with the intent of never again regaining one's interests in, or rights to, an animal other than placing ownership with a responsible party.

ANIMAL. Any mammal, bird, reptile, amphibian, or fish, except humans.

ANIMAL CONTROL OFFICER. An individual, approved by the governing body, with police authority, whose duty it is to apprehend animals within the jurisdiction of this chapter whose owner are in violation of this chapter. The Police Department shall also act as **ANIMAL CONTROL OFFICERS**.

ANIMAL SHELTER. A building and facilities therein approved by the governing board and the health authority for the impounding of animals.

ANTI-ESCAPE. Any housing, fencing, or device which a guard dog cannot go over, under, through, or around.

AT LARGE.

(1) An animal when off or away from the premises and not under the control of the owner, possessor, keeper, agent, servant, or a member of its immediate family by a leash.

(2) An animal when on the premises of the owner, possessor, keeper, agent, or servant if not attended by a competent person unless that animal is chained, restrained, enclosed, or confined in a manner preventing it from leaving the premises.

CONTRACTED AGENT. The person, organization, governmental agency, or corporation with whom the municipality and/or county contracts to perform animal control functions.

DOMESTIC ANIMAL. Any animal that, through long association with humans, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation, or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind.

EXPOSED TO RABIES. An animal has been **EXPOSED TO RABIES** if it has been bitten by, or been exposed to, any animal known to be or suspected of being infected with rabies.

GUARD DOG. Any dog that is utilized to protect commercial property, or is housed unattended on commercial property at any time other than normal business hours, except that such definition shall not apply to pet stores, boarding kennels, veterinary offices, and animal shelters.

HANDLER. A person who is responsible for or capable of controlling the operations of a guard dog.

HUMANE SOCIETY INVESTIGATOR. An individual, approved by the governing body, with police authority, whose duty it is to apprehend animals within the jurisdiction of this chapter, whose owners are in violation of this chapter.

IMPOUNDMENT. Taking physical control and custody of an animal.

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

NEUTERED DOG/CAT. Any male dog/cat which has undergone surgery to prevent reproduction, whose owner can provide proof of surgery.

OWNER. Any person harboring or keeping an animal and who is the head of the household of the residence of the owner or manager in charge of the establishment or premises at which an animal remains or returns to. An animal shall be deemed harbored if it is fed or sheltered for 20 consecutive days.

(SDCL § 40-12-4)

PET. Any dog, cat, or other species of carnivore kept for domestication or display.

(SDCL § 40-12-4)

RESTRAINT. A leash or chain, not longer than six feet in length, held by a competent person, or enclosing an animal within a vehicle being driven or parked on the streets, or keeping the animal within the property limits of its owner or keeper.

SERVICE ANIMAL. Any dog owned by any state, county, or Municipal Police Department or any state or federal law enforcement agency which has been trained to aid law enforcement officers and is actually being used for law enforcement purposes, or any properly trained dog certified by a licensed seeing-eye or hearing-ear dog agency and actually being used by a visually or hearing impaired person.

SHELTER MANAGER. The owner and/or supervisor of the animal shelter, either as an employee of the municipality or a contractor with the municipality. The individual is charged, together with the Police Department, with the overall enforcement of this chapter, and performs the professional services required in the care, treatment, or euthanization of the animals being handled.

SPAYED DOG/CAT. Any female dog/cat which has undergone surgery to prevent conception, whose owners can provide suitable proof of such surgery.

WILD ANIMAL. Any animal(s) other than domestic dogs and cats, which in a wild state are carnivorous or which because of their

nature or physical make up are capable of inflicting serious physical harm or death to human beings, including but not limited to, animal(s) which belong to the cat family; snakes which are poisonous or otherwise present a risk of serious physical harm of death to human beings as a result of their nature or physical makeup; and all raccoons, skunks, foxes, bears, coyotes, wolverines, badgers, lions, and tigers.

PETS AND OTHER ANIMALS

§ 93.15 NUMBER OF DOGS AND CATS LIMITED.

It is unlawful for any person or persons in any residence or business operation within the municipality to have or keep more than two domestic cats and two domestic dogs unless such person or persons residing on or in the lot or premises has a valid kennel license issued by the municipality.

Penalty, see § 93.99

§ 93.16 VACCINATION REQUIRED.

(A) Any dog, cat, or other animal susceptible to rabies, held as a pet in this municipality, that is six months of age or older is required to be vaccinated against rabies by a licensed veterinarian or other qualified individual approved by the Town Board. All subsequent rabies vaccinations must be administered at the appropriate intervals and documentation provided to the Finance Officer.

(Prior Code, § 6-2-2)

(B) Any dog or cat or other animal susceptible to rabies that is acquired by birth, purchase, or adoption shall notify the Finance Officer of such birth, purchase, or adoption and the owner shall have that animal vaccinated within one month of acquisition or when that animal reaches the age of six months.

(Prior Code, § 6-2-3) Penalty, see § 93.99

§ 93.17 APPLICATION FOR LICENSE CERTIFICATE AND TAG.

(A) Any person or persons desiring to keep, maintain, or have in his or her custody or control by himself or herself or agent within the said town any dog or cat shall, at the time specified by the Board of Trustees, apply to the Finance Officer for a license to keep such pet. In addition, the applicant shall exhibit to the Finance Officer a certificate by a registered veterinarian showing that such pet has been inoculated against rabies and that said inoculation will be effective during the period for which the pet is licensed. License tags will show expiration date.

(Prior Code, § 6-2-2)

(B) The applicant shall pay to the Finance Officer a license fee for each dog or cat and said license fees shall be set by the Town Board and on file at the office of the Finance Officer. The rabies inoculation tag and the town tag will serve as the pet license.

(Prior Code, § 6-2-3)

§ 93.18 RECORD KEEPING REQUIREMENTS.

It shall be the duty of the Finance Officer to keep accurate and detailed records of the licensing of all dogs and cats within the municipality, as well as records of complaints and the actions taken regarding complaints, as well as fines issued to pet owners.

§ 93.19 FARM ANIMALS PROHIBITED.

(A) No person or corporation shall keep horse(s), cow(s), sheep, goat(s), duck(s), goose (geese), pig(s), or other domestic fowl or farm animal, or erect or maintain any building or enclosure for use in keeping any such animals within the municipality.

(Prior Code, § 7-6-4)

(B) No persons shall place, keep, or erect or maintain any building or enclosure for use in keeping pigs within the municipality, excepting such hogs of the railway companies for shipping purposes, or in pens, houses, yards, stockyard, packing houses, or butcher shops for immediate shipment or slaughter.

(Prior Code, § 7-6-5) Penalty, see § 93.99

§ 93.20 EXCEPTION TO PROHIBITION OF FARM ANIMALS.

The exception to § 93.19 shall allow the ownership of a maximum of five chicken hens, which shall not be found to be running at large or causing a disturbance to surrounding residents or businesses in any way.

Penalty, see § 93.99

§ 93.21 DEFINITION OF WILD OR DANGEROUS ANIMALS.

Any **WILD** mammal, reptile, or fowl which is not naturally tame or gentle but is of a wild nature or disposition, and, which because of its size, vicious nature, or other characteristics could constitute a danger to human life or property if it escaped from secure quarters. **DANGEROUS ANIMAL** also includes any domestic mammal, reptile, or fowl, which because of its size or vicious propensity or other characteristic would constitute a danger to human life or property if it escaped from secure quarters.

(Prior Code, § 6-2-9)

§ 93.22 WILD OR DANGEROUS ANIMALS PROHIBITED.

It shall be unlawful for any person to keep, maintain, or to have in his, her, or their possession or under his, her, or their control within the town any poisonous reptile or any other dangerous animal or carnivorous wild animal or reptile, or any other animal or reptile of wild, vicious, or dangerous propensities.

(Prior Code, § 6-2-9) Penalty, see § 93.99

§ 93.23 SPECIFIC ANIMALS PROHIBITED AS DANGEROUS.

(A) It shall be unlawful for any person to keep, maintain, or have in his, her, or their possession or under his, her, or their control within the town any of the following animals:

- (1) Any animal which has been declared to be protected or endangered by the U.S. Department of the Interior;
- (2) All poisonous animals, including rear-fang snakes;
- (3) Badgers (melinae);
- (4) Bears (ursidae);
- (5) Beavers (castoridae);
- (6) Canids, that is wolves, foxes, coyotes, jackals, dingo, raccoon dogs, or any hybrid thereof;
- (7) Civet (viverrinae);
- (8) Civet or raccoon dog (nyctereutes procyonoides);
- (9) Constrictor snakes;
- (10) Crocodilians, that is: alligators, crocodiles, caimans, gavials;
- (11) Eagles, hawks, owls;
- (12) Edentata, that is: anteaters, tamanduas, sloths, armadillos;
- (13) Emus (casuariiformes);
- (14) Felids, that is: lions, tigers, leopards, cheetahs, jaguars, pumas, lynx, ocelots, bobcats, or any hybrid thereof;
- (15) Game cocks and other fighting birds;
- (16) Hyaenidae (hyenas);
- (17) Marsupials, that is: opossums, Tasmanian wolf, kangaroos, koalas, wombats;
- (18) Muskrats (ondata);
- (19) Ostriches (struthio);
- (20) Porcupine (hystricomorpha);
- (21) Primates (non-human) that is: apes, monkeys, baboons, chimpanzees, gibbons, gorillas, orangutans, siamangs;
- (22) Procuoriids, that is: raccoons, coatis, kinkajous, ring-tail cats, pandas;
- (23) Rheas (rheiformes);
- (24) Skunks (mephitidae);
- (25) Squirrels (sciuridae);
- (26) Sharks (chondrichthyes);
- (27) Swine (suidae);
- (28) Ungulates, that is: elephants, zebras, tapirs, rhinoceroses, camels, llamas, caibou, antelopes, bison, reindeer, deer, giraffes, hippopotamuses, wild boars, gazelles, gnus;
- (29) Water buffalo (bubalus);
- (30) Wart hogs (phacochoerus aethiopicua); and
- (31) Weasels (ferret).

(B) Commercial animal shows or circus companies may obtain a permit from the town for shows to be performed in the town.

(Ord. 6-2, passed 7-14-2009) Penalty, see § 93.99

§ 93.24 REPORTING ESCAPED DANGEROUS ANIMALS.

The owner or keeper of any member of a species of the animal kingdom that escapes from his, her, or their custody or control and that is a dangerous animal not indigenous of this state or presents a risk or serious physical harm to persons or property shall, within one hour after they discover or reasonably should have discovered the escape, report it to a law enforcement officer or elected official of the town and to the Sheriff's office.

(Prior Code, § 6-2-9) Penalty, see § 93.99

§ 93.25 VICIOUS ANIMALS.

(A) Any animal, which, when unprovoked, in a vicious or terrorizing manner approaches in apparent attitude of attack, or bites, inflicts injury, assaults, or otherwise attacks a human being upon the streets, sidewalks, or any public grounds or places.

(B) Any animal which, on private property, when unprovoked, in a vicious or terrifying manner approaches in apparent attitude of attack, or bites, or inflicts injury or otherwise attacks a mailperson, meter reader, service person, journey person, delivery person, or other employed person who is on private property by reason of permission of the owner or occupant of such property or who is on private property by reason a course of dealing with the owner of such private property.

(C) Any animal which, according to records of the appropriate authority, has inflicted serious injury on a human being on public or private property; any animal, according to records of appropriate authority, has killed or seriously injured a domestic animal while off of the owner's property; any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained in fighting; any animal which chases or approaches a person upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack.

(Prior Code, § 6-2-8) Penalty, see § 93.99

§ 93.26 INJURY TO PERSON TRESPASSING; TEASING DOG; ATTEMPTING TO COMMIT CRIME.

(A) No animal shall be declared vicious if the threat, injury, or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the animal, or was teasing, tormenting, abusing, or assaulting the animal, or have in the past been observed or reported to have teased, tormented, abused, or assaulted the animal or was committing or attempting to conduct a criminal activity.

(B) If any animal is of a vicious disposition or has dangerous habits or is suspected of being diseased, the Finance Officer or the police shall notify the owner or possessor of such animal orally or by written private or public notice to confine or muzzle such animal and if thereafter such owner or possessor fails to comply with such notice, the police are authorized, empowered, and directed to kill, or cause to be killed, such animal, whether found running at large or upon the premises of the owner of such animal, forthwith, and without impounding such animal.

(Prior Code, § 6-2-8) Penalty, see § 93.99

§ 93.27 CONTINUED OWNERSHIP OF VICIOUS ANIMAL.

It shall be unlawful for any person to keep, maintain, or have in his, her, or their possession or under his, her, or their control within the town any vicious animal.

(Ord. 6-2, passed 7-14-2009) Penalty, see § 93.99

RABIES CONTROL

§ 93.40 REPORT OF RABIES.

Any person who knows of an animal infected with rabies shall report the same to the animal control officer with a description of the animal and the name and address of the owner, if known.

§ 93.41 CONFINEMENT OF ANIMAL THAT HAS BITTEN OR ATTACKED.

(A) When an owner of an animal has been notified that the animal has bitten or attacked a person, that owner shall immediately place the animal under the care instructed by the Town Board or the County Police.

(B) All examination expenses are to be paid by the owner, as well as boarding expenses if the animal is placed in confinement for a period of time recommended by a certified veterinarian.

(C) If, during confinement, the animal shows signs of rabies or it is known that animal has been exposed to rabies, then that animal's confinement may be extended upon the recommendation of a certified veterinarian, for as long a period is necessary to determine a diagnosis.

(D) (1) If the owner of an animal that has bitten or attacked can produce proof of a current rabies vaccination given within 30 days prior to the date of the bite or attack, then he or she may prevent the euthanization of the animal by order of the health authority or a certified veterinarian.

(2) Any animal that has bitten any person may be euthanized by order of the health authority, if, in its opinion and based on sound medical judgments, a greater risk is present if the animal is not euthanized. The health authority shall take into consideration the following factors: history of the animal, including its exposure to rabies; vaccination record of the animal; health of the animal; nature,

seriousness, and location of bite; and circumstances surrounding the bite.

(3) Any animal impounded for an unprovoked attack which results in injury to any human shall be euthanized or, at the discretion of the Town Board, the animal may be placed at a home outside of the town. Unless permitted by the Board of Trustees, no vicious animal shall be returned to reside in the town. Because of the dangers involved in housing a vicious animal, the owner must show cause in court within five days of impoundment of vicious animal why the animal should not be destroyed.

(Prior Code, § 6-2-8)

Statutory reference:

Maximum penalty, see SDCL §§ 9-19-13 and 22-6-2(2)

§ 93.42 CONFINEMENT OF PET BITTEN BY ANIMAL SUSPECTED OF HAVING RABIES.

The Department may serve written notice upon the owner of a dog or cat known to have been bitten by an animal known or suspected of being affected by rabies, requiring the owner to confine such dog or cat for a period of not less than six months. However, if such dog or cat had been properly treated with an antirabic vaccine, confinement shall be for a period of not less than three months. In the case of any pet other than a dog or cat, the Department may serve written notice upon the owner of such animal that the owner shall have the animal euthanized immediately.

(SDCL § 40-12-6)

§ 93.43 DESTRUCTION OF ANIMAL REQUIRED.

The Town Board or Police Department may order the destruction of any animal after it has been determined that rabies exists in such animal or for any reason to believe that an animal or person has been attacked or bitten by an animal with rabies.

MISCELLANEOUS REGULATIONS

§ 93.55 RESPONSIBILITY.

(A) No person shall create or maintain any condition or operate any equipment or keep any animal, fowl, pet, or insect under his or her jurisdiction in such a way that such condition or operation causes or is likely to cause the transmission of diseases from animals or insects to humans.

(B) No owner, caretaker, or attendant of an animal shall allow an animal to defecate on public or private property other than his or her own. If such animal does defecate upon public or private property, the owner, keeper, caretaker, or attendant must immediately and thoroughly clean the fecal matter from such property.

(C) Anyone walking an animal on public or private property other than his or her own must carry with him or her visible means of cleaning up any fecal matter left by the animal. Animals used in parades or involved in law enforcement are exempt from this division (C).

Penalty, see § 93.99

§ 93.56 DISTURBING THE PEACE.

(A) No person owning any dog, license or unlicensed, confined on the premises, or otherwise, shall suffer or permit such dog to disturb the peace and quiet of the neighborhood by continuous barking or making other loud or unusual noises.

(Prior Code, § 6-2-4)

(B) Any animal control officer or police officer may remove and impound any animal which is disturbing the peace when the owner of animal cannot be located. A notice advising the owner of the impoundment shall be left on the premises.

(C) Any person having custody or control of any female dog or cat in heat shall be required to keep such dog or cat confined in a building, secure enclosure, veterinary hospital, or boarding kennel so that it cannot attract or come into contact with another animal on public or private property except for controlled breeding purposes.

(D) (1) Upon signed complaint to the Town Board or its designated representative that any person is keeping or harboring any pet which disturbs the peace as herein set forth, the owner of said pet shall be notified in writing of said complaint, and after such owner has been given 48 hours' notice of such habit, any police officer or person of proper authority is hereby authorized and empowered to go upon the premises and impound such animal so disturbing the peace.

(2) In addition to the impounding of such animal or other penalties prescribed, the owner thereof shall be subject to the penalties described in § 93.99.

(Prior Code, § 6-2-4)

(E) In any proceedings for violation of the provisions divisions (A) and (D) above relating to pets, the use of the words herein, **PERMIT AND SUFFER** such pet to disturb the peace, shall not be construed as making ignorance of the offense an excuse for violation, and the knowledge of the person or persons committing the act of violating this chapter shall be considered immaterial.

(Prior Code, § 6-2-7)

Penalty, see § 93.99

§ 93.57 NEGLECT, ABANDONMENT, OR MISTREATMENT OF ANIMALS.

No person owning or responsible for the care of an animal may neglect, abandon, or mistreat the animal.

(SDCL § 40-1-2.3) Penalty, see § 93.99

§ 93.58 UNATTENDED ANIMALS.

(A) A person may not leave any animal unattended in a standing or parked motor vehicle in a manner that endangers the animal's health or safety.

(B) A person found to be in violation of this section shall bear the costs and fees associated with any required care, treatment, impounding, or kenneling of the animal.

Penalty, see § 93.99

§ 93.59 CRUELTY TO ANIMALS.

No person shall cruelly or immoderately beat, torture, or injure any domestic animal, overload any working animal, or willfully or negligently maltreat, abuse, neglect, or treat in a cruel or inhuman manner any such animal.

(Prior Code, § 7-6-1) Penalty, see § 93.99

§ 93.60 POISONING.

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

Penalty, see § 93.99

§ 93.61 TRAPPING OF ANIMALS.

No person without permission of the Town Board shall set, allow to be set, or use any trap for the purpose of catching any animal, which trap could injure or kill any animal, except rodent traps in the interior of a building, and except by persons employed by or agents of the Town Board for purposes of the town's health and welfare.

Penalty, see § 93.99

§ 93.62 HUNTING PROHIBITED.

(A) (1) No person shall hunt game in the town.

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

GAME. Any wild bird or animal hunted for sport or for use as food.

HUNT. To pursue game while in possession of a firearm or weapon for sport, food, or to kill.

(B) This section does not apply to peace officers or town personnel in the discharge of his, her, or their official duties.

Penalty, see § 93.99

§ 93.63 RUNNING AT LARGE.

(A) It shall be unlawful for any person or persons to permit or suffer to run at large within the town limits of the town any animal, licensed or unlicensed, and any police officer or person of proper authority is hereby authorized and empowered to impound any such animal found running at large.

(B) Any dog or cat shall be deemed running at large within the meaning of this section when such animal is not confined upon the premises of its owner or on a leash in the hands of some attendant, or unless such animal, if loose, is accompanied by its owner or attendant.

(Prior Code, § 6-2-4) (Ord. passed 4-13-2015) Penalty, see § 93.99

§ 93.64 STRAY, ABANDONED, OR UNKEPT ANIMALS.

No person shall harbor or keep any stray animals.

Penalty, see § 93.99

§ 93.99 PENALTY.

(A) Any person, firm, or corporation violating any provision of this chapter shall be guilty of a second degree misdemeanor and may be punished by a fine as established in the most current penalty resolution.

(B) Any person who violates the provisions of this chapter shall be deemed to have engaged in a public nuisance as defined in SDCL Chapter 21-10.

(C) Violations of the following sections are declared a public nuisance, and any person in violation of the following provisions shall be guilty of a Class 2 misdemeanor:

- (1) Section 93.17 - Application for License Certificate and Tag;
- (2) Section 93.22 - Wild or Dangerous Animal Prohibited;
- (3) Section 93.23 - Specific Animals Prohibited as Dangerous;
- (4) Section 93.24 - Reporting Escaped Dangerous Animals;
- (5) Section 93.25 - Vicious Animals; and
- (6) Section 93.56 - Disturbing the Peace.

(Prior Code, §§ 6-2-10 and 6-2-11)

(D) Any owner who allows a vicious animal to be in violation of the provisions of § 93.17 shall be guilty of a misdemeanor and, if convicted, will be guilty of a further violation each day that such condition is allowed to exist or goes uncorrected. Any animal involved in an unprovoked attack, which results in serious injury to any human, shall be impounded and, if unable to be captured, any law enforcement officer is authorized to destroy to prevent further endangerment to human life.

(E) Failure to obtain a license under § 93.17 results in fines of \$25 per month, per licensed pet.

Statutory reference:

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

CHAPTER 94: STREETS AND SIDEWALKS; SNOW REMOVAL; TREES

Section

General Provisions

- 94.001 Authority
- 94.002 Plats
- 94.003 Official map
- 94.004 Names of streets and avenues
- 94.005 Town's responsibility to assign building numbers
- 94.006 Owner's responsibility to display building number

Streets

- 94.020 Authority over streets; improvements
- 94.021 Railroads
- 94.022 Materials in streets
- 94.023 Cleaning streets or sidewalks of rubbish
- 94.024 Crowds on streets
- 94.025 Buildings in streets
- 94.026 Obstruction on streets
- 94.027 Posts and awnings in the street
- 94.028 Posts and poles
- 94.029 Injuring sidewalks, streets, and the like
- 94.030 Excavations under sidewalk or near street

Sidewalks

- 94.045 Definition; municipal authority
- 94.046 Notice to construct or repair sidewalk

- 94.047 Width and material of sidewalks; location
- 94.048 Refusal to construct sidewalks
- 94.049 Failure to keep sidewalks in repair; liability
- 94.050 Assessment of sidewalk repair costs
- 94.051 Cleaning sidewalks
- 94.052 Goods on sidewalks
- 94.053 Animals and vehicles on sidewalks
- 94.054 Signs above sidewalks
- 94.055 Town may construct curbs and gutters
- 94.056 Eaves pipes
- 94.057 Mailboxes
- 94.058 Encroachments restricted
- 94.059 Encroachment; removal
- 94.060 Injuring sidewalks

Snow Removal

- 94.075 Duty of owner or occupant
- 94.076 Town may remove snow
- 94.077 Snow removal schedule

Trees

- 94.090 Wires to be free from trees
- 94.091 Trimming trees
- 94.092 Failure to trim
- 94.093 Planting trees
- 94.094 Trees and grass plats
- 94.095 Diseased trees
- 94.096 Injury to trees, lawns, and the like
- 94.097 Destroying trees and plants

- 94.999 Penalty

GENERAL PROVISIONS

§ 94.001 AUTHORITY.

(A) *Utility openings and lights in streets and alleys.* This municipality shall have power to regulate openings in streets or alleys for laying of gas or water mains, sewers, tunnels, and drains, and the erecting of gas or electric lights pursuant to SDCL § 9-30-1.

(B) *Cleaning, removal of obstructions, injury, and the like.* This municipality shall have the power to regulate the use of sidewalks, streets, alleys, wharves, parks, and public grounds, to provide for cleaning the same, to prevent and remove obstructions and encroachments upon the same, to prevent injury to the same, to regulate or prevent any practice having a tendency to annoy persons frequenting the same, and to regulate or prohibit structures under sidewalks and riding and driving thereon pursuant to SDCL § 9-30-2.

(C) *Signs and advertising in public places.* This municipality shall have power to regulate and prohibit the use of streets, sidewalks, and public grounds for signs, signposts, awnings, flying of flags or banners, posting of bills and advertisements, the exhibition or carrying of banners, placards, or advertisements, and the distribution of handbills pursuant to SDCL § 9-30-3.

(D) *Traffic and sales in public places.* This municipality shall have power to regulate traffic and sales upon the streets and sidewalks and in public places pursuant to SDCL § 9-30-4.

(E) *Snow removal; weed removal; expense paid by special assessment.* This municipality shall have power to require the owner of abutting property to remove snow and ice from sidewalks and weeds from parking, and to provide for their removal and for taxing the expense thereof by special assessment against the abutting property pursuant to SDCL § 9-30-5.

§ 94.002 PLATS.

Those plats indicating names of streets and avenues of the town are now on file in the office of the Register of Deeds of the county are hereby incorporated as a part of this chapter.

(Prior Code, § 10-1-1)

§ 94.003 OFFICIAL MAP.

The official map of the town shall be that maintained in the office of the Register of Deeds of the county.

(Prior Code, § 10-1-2)

§ 94.004 NAMES OF STREETS AND AVENUES.

The official names of the streets and avenues in the town shall be those as shown on the official map or maps maintained in the office of the Register of Deeds of the county.

(Prior Code, § 10-1-3)

§ 94.005 TOWN'S RESPONSIBILITY TO ASSIGN BUILDING NUMBERS.

It shall be the responsibility of the Finance Officer to assign house (or other building) numbers. In the case where a house (or other building) is incorrectly numbered, the Finance Officer and/or the Board of Trustees may require the owner or agent thereof to correctly number the same, and it shall be unlawful for such owner or agent to refuse to comply.

(Ord. passed 1-12-2021)

§ 94.006 OWNER'S RESPONSIBILITY TO DISPLAY BUILDING NUMBER.

It shall be the responsibility of the owner or agent in control of any house or building to have said house or building neatly, clearly, and properly numbered, so as to be clearly visible from the street fronting the lot.

(Ord. passed 1-12-2021) Penalty, see § 94.999

STREETS

§ 94.020 AUTHORITY OVER STREETS; IMPROVEMENTS.

This municipality may lay out, establish, open, vacate, construct, alter, widen, extend, improve, repair, grade, gravel, surface, pave, repave, bridge, construct a viaduct upon or over, erect equipment for street lighting in and otherwise improve, and establish and change the grade of roads, streets, alleys, sidewalks, and public grounds, and to regulate the making of openings and connections therein and the erection of lights thereon as provided in SDCL § 9-45-1.

(SDCL § 9-45-1)

§ 94.021 RAILROADS.

(A) All railroad companies in this municipality shall make, keep open, and repair their crossings of streets and public roads, and to make, keep open, and repair ditches, drains, sewers, and culverts along and under their tracks, so that drainage of adjacent property shall not be impeded and the right-of-way shall be properly drained.

(SDCL § 9-35-8)

(B) This municipality may extend any street, alley, or highway over, under, or across, or to construct any sewer, water pipe, or main under or through any railroad track, right-of-way, or land of any railroad company within the corporate limits pursuant to SDCL § 9-35-7.

§ 94.022 MATERIALS IN STREETS.

(A) After consultation with the Board President, the town's Maintenance Department is authorized to grant permission in writing to any person, persons, company, or corporation to deposit and keep lumber, stone, brick, or other materials for building in any public street, road, or alley adjacent to the building to be constructed or repaired for a space of time not exceeding ten days unless special permission is granted by the Town Board.

(B) Any person, company, or corporation depositing and keeping any building materials on such sidewalk, street, road, or alley shall keep two or more lights and/or reflective materials placed in such a manner as may be easily seen by persons passing along such sidewalk, street, road, or alley and shall keep such material adequately protected and guarded so as to prevent personal injury therefrom.

(Prior Code, § 10-3-1)

§ 94.023 CLEANING STREETS OR SIDEWALKS OF RUBBISH.

Any person, persons, company, or corporation to whom permission has been granted through § 94.022 to place and keep building materials in the sidewalk, street, road, or alley shall cause all such rubbish resulting therefrom to be removed from such sidewalk, street, road, or alley by the end of each day.

(Prior Code, § 10-3-2)

§ 94.024 CROWDS ON STREETS.

It shall be unlawful for persons to gather in crowds or groups or for any person to stand in any public street or sidewalk in the town in such a manner so as to obstruct the free use and passage thereon, or to annoy other persons passing along the same; law enforcement officials are hereby authorized to disperse any such crowd or group, and to cause the removal of any person violating the provisions of this section.

(Prior Code, § 10-3-3) Penalty, see § 94.999

§ 94.025 BUILDINGS IN STREET.

No person shall erect or maintain any building in such position that the same shall stand in whole or in part upon any public street, road, alley, or sidewalk in this town or be so constructed that any part of the building shall project into or over such street, road, alley, or sidewalk, provided that jutting windows, brick, cornices, and other projections from the buildings above the first story may extend over the adjoining street, road, alley, or sidewalk, not exceeding 18 inches; and no person shall construct any step area or other appurtenance to any building so extending more than 30 inches, nor shall any person erect in any public street, road, alley, or sidewalk any flight of stairs leading to the second or any higher story of any building.

(Prior Code, § 10-3-4) Penalty, see § 94.999

§ 94.026 OBSTRUCTION ON STREETS.

No person shall place, leave, or keep on any public street, road, alley, sidewalk, or other public ground in the town any wagon, automobile, cart, truck, sleigh, or other vehicle, except when the same shall be in actual use, nor shall any person place, leave, or keep on any public street, road, alley, sidewalk, or other public ground in this town any other article, substance, or material, which may obstruct the free use of said street, road, alley, sidewalk, or public ground, except as hereinafter provided.

(Prior Code, § 10-3-6) Penalty, see § 94.999

§ 94.027 POSTS AND AWNINGS IN THE STREET.

No person shall set any post or other obstruction in the road, street, or alley in this town for the purpose of fastening thereto any awning or sign; nor shall any person erect or construct any wooden awning or shed in or over any street, alley, or sidewalk in this town; nor drop any awning or allow the same to hang lower than nine feet above the surface of the sidewalk, unless the owner of the property obtains special permission to do so from the Town Board. The property owner shall be responsible for any bodily injuries or property damage arising out of the construction or placement of such obstructions.

(Prior Code, § 10-4-2) Penalty, see § 94.999

§ 94.028 POSTS AND POLES.

(A) It shall be unlawful for any person, company, or corporation to install any pole or post of any kind in the right-of-way without previous written approval from the Town Board.

(B) Locates are required before installation of any poles or posts of any kind, including mailboxes; turnouts may be required.

§ 94.029 INJURING SIDEWALKS, STREETS, AND THE LIKE.

No person, without proper authority, shall tear up, break, or injure any pavement, crosswalk, or other improvement in any street, road, alley, or public ground.

(Prior Code, § 7-2-7) Penalty, see § 94.999

§ 94.030 EXCAVATIONS UNDER SIDEWALK OR NEAR STREET.

(A) Any person, company, or corporation having or erecting any building abutting upon any street, alley, or sidewalk in the town may excavate under sidewalk to the curb for the purposes of constructing a cellar or basement in front of or adjoining said building; however, said excavation shall be surrounded on the outer sides and end with substantial brick, stone, or cement wall, sufficient to maintain said sidewalk. Permission to make said excavation must first be obtained from the Town Board and Finance Officer as provided for in § 150.40 and also said excavation shall be securely guarded as provided for in § 150.41.

(Prior Code, § 10-5-4)

(B) It shall be unlawful for any person, owner, (B) or occupant of any lot or parcel of land within the town to make or cause to be made any excavation on said lot or parcel of land unless the same be security guarded so as to prevent the injury of any person or persons or animals passing upon or along said streets, alleys, public grounds, or traveled path.

(Prior Code, § 10-5-5) Penalty, see § 94.999

SIDEWALKS

§ 94.045 DEFINITION; MUNICIPAL AUTHORITY.

(A) For the purposes of this subchapter, the term **LOT** includes tracts or other parcels of land.

(SDCL § 9-46-4.2)

(B) Nothing contained in this subchapter limits or restricts any municipal power or authority as set forth in SDCL Title 11.

(SDCL § 9-46-12)

§ 94.046 NOTICE TO CONSTRUCT OR REPAIR SIDEWALK.

(A) *Generally.*

(1) If the municipality deems it necessary that any sidewalk be constructed, and after plans and specifications are filed with the Finance Officer, the municipality shall draft a proposed resolution of necessity for the sidewalk and shall schedule a public hearing on the resolution.

(2) The proposed resolution of necessity shall contain the proposed location of the sidewalk to be constructed and the date by which the construction must be completed. The proposed resolution may provide that:

(a) The owner of the real property abutting or adjoining the sidewalk to be constructed shall construct the sidewalk and be responsible for all cost of constructing the sidewalk commensurate with the benefit to the property;

(b) The owner of the real property abutting or adjoining the sidewalk to be constructed shall be assessed any definite, specified portion or all of the cost of the sidewalk; or

(c) The municipality shall pay any definite, specified portion or all of the cost of the sidewalk.

(3) The proposed resolution of necessity shall state that details, plans, and specifications may be reviewed at the Finance Office during regular office hours. Multiple sidewalks may be embraced by one resolution of necessity if the requirements of this section are followed for each sidewalk set forth in the resolution.

(SDCL § 9-46-2.1)

(B) *Notice of hearing.* The notice of hearing on the proposed resolution of necessity shall contain the time and place of the hearing and shall state that the municipality will consider any objections to the proposed resolution by owners of the property abutting or adjoining the sidewalk proposed to be constructed. Notice of hearing on the proposed resolution of necessity shall be published once, not less than ten nor more than 20 days before the hearing on the resolution of necessity.

(SDCL § 9-46-2.2)

(C) *Mailing.*

(1) In addition to the published notice set forth in division (B) above, the municipality, not less than ten nor more than 20 days before the hearing on the proposed resolution, shall cause a copy of the notice of hearing, set forth in division (B) above, to be mailed by first class or certified mail to each owner of real property abutting or adjoining the sidewalk proposed to be constructed.

(2) The mailed notice shall contain the location of the sidewalk to be constructed and the date by which the construction must be completed.

(SDCL § 9-46-2.3)

§ 94.047 WIDTH AND MATERIAL OF SIDEWALKS; LOCATION.

(A) This municipality may, by ordinance, prescribe the width of sidewalks and may establish different widths in different areas of the municipality and determine the kind of material of which the sidewalk shall be constructed, having regard to the business and amount of travel in the vicinity of each.

(SDCL § 9-46-1)

(B) This municipality may, by resolution, require the owner of real property abutting or adjoining a public right-of-way or abutting or adjoining public property containing a highway to construct a sidewalk in a location as designated in the resolution.

(SDCL § 9-46-1.3)

(C) All public sidewalks and curbs, hereafter constructed within the town, shall be of the following widths:

(1) All walks constructed on Main Street within the fireproof building limits shall be of a width of ten feet;

(2) All other walks shall be a width of five feet; and

(3) All curbs shall be 14 feet from the lot line.

(Prior Code, § 10-2-1)

(D) All public sidewalks and curbs hereafter constructed in the town shall be of cement, unless permission is obtained from the Board of Trustees to use other material. Such permission shall be given in the form of a resolution.

(Prior Code, § 10-2-3) Penalty, see § 94.999

§ 94.048 REFUSAL TO CONSTRUCT SIDEWALKS.

(A) If any property owner refuses to construct a sidewalk along the street of his or her property and two or more families are inconvenienced by reason of his or her refusal, then a petition may be signed by the aggravated parties and left with the Finance Officer, who shall put it before the Board of Trustees at its next regular meeting. The Board of Trustees may then have the sidewalk constructed and the costs of the same will be levied against abutting real estate and collected in the manner provided by law for collecting special assessments or in another manner as authorized by law.

(Prior Code, § 10-2-2)

(B) If the sidewalk is not constructed in the manner and within the time set forth in the resolution of necessity pursuant to § 94.046, the municipality may cause the sidewalk to be constructed and make assessments for the sidewalk pursuant to § 94.050.

(SDCL § 9-46-4)

§ 94.049 FAILURE TO KEEP SIDEWALKS IN REPAIR; LIABILITY.

(A) Any owner of real property who fails to keep the sidewalks abutting or adjoining the property in repair creates or maintains a public nuisance and the owner is liable to the municipality for any damage or injury caused by neglect and responsible for the costs of abating the public nuisance pursuant to SDCL § 21-10-6.

(SDCL § 9-46-2)

(B) If the sidewalk is not constructed in the manner and within the time set forth in the resolution of necessity pursuant to § 94.047, the municipality may cause the sidewalk to be constructed and make assessments for the sidewalk pursuant to § 94.050.

(SDCL § 9-46-4) Penalty, see § 94.999

§ 94.050 ASSESSMENT OF SIDEWALK REPAIR COSTS.

If the municipality, pursuant to § 94.047(A), deems it necessary that a sidewalk be constructed and financed in total or in part by special assessment, the procedures set forth in SDCL Chapter 9-43 shall be followed. A resolution of necessity adopted pursuant to § 94.048(A) shall satisfy the requirements of SDCL § 9-43-82.

(SDCL § 9-46-4.1)

§ 94.051 CLEANING SIDEWALKS.

(A) It shall be the duty of the occupant or the owner of any lot or parcel of land in the town abutting on any alley or sidewalk, to keep such sidewalk or alley to the center thereof free from all filth, snow, unwholesome substance, or matter, manure, straw, brush, or rubbish of any sort.

(B) Due to the many vacant lots on Main Street, from Park Street to Lindley Street, the town may remove snow as it sees fit.

(Prior Code, § 10-2-5)

§ 94.052 GOODS ON SIDEWALKS.

Any person may place on the outer three feet of the sidewalk in front of his or her premises, for a period not exceeding ten hours, goods or merchandise which he or she may be receiving or delivering, or may display on or over the sidewalk in front of, and within two feet, of the buildings used by him or her as a place of business, any goods or merchandise for sale or exhibition. Under no circumstances shall any of the above articles be left upon the sidewalk in the nighttime or in such a way as to obstruct the sidewalk.

(Prior Code, § 10-3-8) Penalty, see § 94.999

§ 94.053 ANIMALS AND VEHICLES ON SIDEWALKS.

No person shall ride, drive, or lead any horse, cow, or other animal upon any public sidewalk in the town, or drive or propel or cause to be driven or propelled thereon any motor vehicle unless it is necessary to do so in entering or leaving such premises.

(Prior Code, § 10-3-9) Penalty, see § 94.999

§ 94.054 SIGNS ABOVE SIDEWALKS.

No person shall place, hang, or maintain on or over any sidewalk in the town any sign which shall extend more than six feet from the building to which it is attached or belongs or be less than seven feet above the sidewalk, unless he or she obtains special permission from the Board of Trustees.

(Prior Code, § 10-4-1) Penalty, see § 94.999

§ 94.055 TOWN MAY CONSTRUCT CURBS AND GUTTERS.

Where the Board of Trustees has determined that a necessity exists for the construction of curbing, guttering, or paving of streets, then the Board may levy the costs thereof against the abutting real estate and collect in the manner provided in § 94.050.

(Prior Code, § 10-2-4)

§ 94.056 EAVES PIPES.

No person shall place or maintain any pipes leading from the eaves of any building in such a position that the water discharged thereby may flow upon or over any public sidewalk.

(Prior Code, § 10-3-7)

§ 94.057 MAILBOXES.

(A) Mailboxes are permitted to be located on or adjacent to a municipal street, curb, or sidewalk provided that all other requirements as set out by the municipality for installing the mailboxes have been met.

(SDCL § 9-46-11)

(B) Prior to installation of a mailbox, authorization must be obtained from the United States Postal Department, who will determine if the proposed mailbox locations qualifies for mail deliver on their established routes.

§ 94.058 ENCROACHMENTS RESTRICTED.

It shall be unlawful for any person to erect, construct, install, place, or to permit the erection, construction, installation, placing of any encroachment upon or above any portion of any residential sidewalk in the municipality.

Penalty, see § 94.999

§ 94.059 ENCROACHMENT; REMOVAL.

Whenever any encroachment exists in violation of these provisions, written notice shall be given to the owner of record requiring removal within 14 days. If the owner of record fails to remove the encroachment within the time specified in the notice, the municipality shall remove the encroachment at the owner's expense.

§ 94.060 INJURING SIDEWALKS.

No person without property authority shall tear up, break, or injure any sidewalk on public ground.

(Prior Code, § 7-2-7) Penalty, see § 94.999

SNOW REMOVAL

§ 94.075 DUTY OF OWNER OR OCCUPANT.

(A) (1) The record owner of any building or ground within the municipality fronting upon or adjoining a street where a sidewalk exists in front of or adjoining such premises shall clear or make arrangements to clear the sidewalk in front of or adjoining such buildings and ground to the width of the sidewalk within 24 hours after snow or ice has fallen or formed. Where it is impossible to take the snow and ice from the walk by reason of its being frozen to the sidewalk, the record owner shall sprinkle or spread some suitable material upon the same to prevent the walk from becoming slippery and dangerous to travel.

(Prior Code, § 10-6-1)

(2) A **RECORD OWNER** shall be the fee owner of real property as shown in the records of the county Register of Deeds. A **CONTRACT PURCHASER** of real property means the record owner for the purpose of this section.

(B) If the record owner of any building or lot fails or neglects to remove snow and ice from the sidewalk adjoining the property within 24 hours after the same has fallen or formed, the municipal Public Works Director or his or her designee may arrange for an independent contractor to remove the snow and ice. The municipality may also, at its discretion, remove the snow or ice if it deems such action appropriate. In either case, the municipality shall be entitled to a fee for the costs of arranging the removal plus the actual cost paid to the contractor or, in the event the removal is done by municipality employees, the record owner shall pay a sum as determined by the municipality plus material per hour for each employee. Such sums shall be recoverable by the same legal means as for the recovery of other nuisance abatements, including, but not limited to, direct billing of the property owner, assessment of the sum against the property itself, or by bringing an action against the property owner. Each day the record owner fails to remove the snow and ice, after notice as provided for in this section, shall constitute a separate violation of this section and shall be subject to a civil fine, as set by the municipality, per day for each separate violation.

Penalty, see § 94.999

§ 94.076 TOWN MAY REMOVE SNOW.

In case the owner of any premises shall fail or refuse to remove any snow and/or ice, the Utilities Manager may cause said snow and/or ice to be removed and the expense of removal shall be collected in such a manner as authorized by law.

§ 94.077 SNOW REMOVAL SCHEDULE.

(A) The town is authorized and empowered to determine and establish upon any street and highway within the town, or any part thereof, emergency snow routes when two or more inches of snow have accumulated. When two to four inches of snow has accumulated, snow removal shall begin on Main Street and the proceeds to the other side streets and alley ways in such order as determined by the Utilities Manager or as directed by the Board of Trustees.

(B) (1) It shall be unlawful for any person to stop, stand, park, or leave unattended any motor vehicle, trailer, or object upon such snow route immediately after three or more inches of snow has accumulated and until the snow has been plowed past the edge of the street.

(2) Failure to remove said object will result in a warning and then final towing charges.

(C) Emergency snow routes established as follows: Main Street followed by the streets surrounding the school if school is in session; and West Front Street to Elm Street, to Britton Street, to Linden Street, and back to West Front Street.

(D) (1) When two to four inches of snow has accumulated, snow removal shall begin on Main Street and then proceed to the other side streets and alley ways in such order as determined by the Town Utilities Manager or as directed by the Town President.

(2) When four or more inches of snow has accumulated, snow removal shall proceed as soon as practical beginning with Main Street and then moving on to other emergency snow routes. Once these routes have been cleared sufficient for traffic flow, side streets and alley ways that are used as a primary means of entrance/exit to homes, apartments, and businesses shall be cleared to the maximum extent possible. The order of clearance of side streets and alley ways shall be at the direction of the Utilities Manager or as ordered by the Board of Trustees.

(Prior Code, § 10-6-3)

TREES

§ 94.090 WIRES TO BE FREE FROM TREES.

It shall be the duty of all owners, occupants, or persons in charge of any lot or lots to trim all trees, plants, and shrubs in such manner so as not to interfere in any way with the electrical distribution system of the town.

(Prior Code, § 9-4-4) Penalty, see § 94.999

§ 94.091 TRIMMING TREES.

(A) The person or persons owning or occupying any private premises abutting any street, road, alley, or sidewalk shall keep all trees standing on such premises so trimmed that no bough or branch thereof shall hang lower than seven feet above the surface of the street, road, alley, or sidewalk.

(B) No trees or shrubs shall extend into the alley row.

(Prior Code, § 10-7-1) Penalty, see § 94.999

§ 94.092 FAILURE TO TRIM.

If any owner, occupant, or person in charge of any lot or lots shall fail or neglect to trim the trees, plants, or shrubs as aforesaid, the Town Board or its designated representative shall, in writing, notify such person of the violation. If, within ten days after written notice is given, the work has not been done, the town may cause the work be done and report the expense thereof to the Finance Officer be billed to the owner of said lot or lots. If not paid within 30 days, the charge shall be collected by other means authorized by law.

(Prior Code, § 9-4-5)

§ 94.093 PLANTING TREES.

(A) All trees hereafter planted in the town shall be planted ten feet from the lot line of the abutting lot. Trees may not be planted under any power lines, wires, or cables.

(B) Before planting any trees, a call to "SD One Call" is required to locate all buried utilities.

(Prior Code, § 10-7-2) Penalty, see § 94.999

§ 94.094 TREES AND GRASS PLATS.

It shall be lawful for persons owning or occupying lots or parcels of land in the town to embellish the same by planting trees within the limits of the streets adjoining said premises, provided such trees are planted between the sidewalk and gutter, and not within five feet of the line of the street, and also to make and keep in order lawns and grass plats between the sidewalk and the curbing.

(Prior Code, § 10-7-3)

§ 94.095 DISEASED TREES.

(A) It shall be the duty of the owner, occupant, or person in charge of any lot or lots in the town to remove any dead or diseased trees from such lot or lots including that area between the sidewalk and the curbing.

(B) Trees marked to designate as diseased or dying must be removed within 30 days.

(Prior Code, § 10-7-4)

§ 94.096 INJURY TO TREES, LAWNS, AND THE LIKE.

(A) No person other than the owner or his or her authorized agent shall injure or cause to be injured any trees, shrubs, grass, or lawn

growing on any public or private ground within the town except as hereinbefore authorized.

(B) Failure by owner to trim back all trees and shrubs which obstruct or could potentially obstruct clear travel by town equipment or construction grants the town to remove said trees and shrubs with the cost for such removal billed to the owner or assessed to the property's taxes.

Penalty, see § 94.999

§ 94.097 DESTROYING TREES AND PLANTS.

(A) No person shall willfully injure, destroy, or deface any tree, shrub, plant, or grass in any parking lot or park.

(B) No person shall willfully injure or destroy any cultivated fruits or vegetables or ornamental trees, shrubs, hedges, vines, or flowers nor injure or carry off any of the products thereof, which are the property of another.

(Prior Code, § 7-2-3) Penalty, see § 94.999

§ 94.999 PENALTY.

Any person violating any provision of this chapter for which no penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

CHAPTER 95: RECREATION FACILITIES

Section

Municipal Park

95.01 Authority

95.02 Control of park

95.03 Athletic facilities; fees; park fund

Sport Shooting Range

95.15 Definition

95.16 Operation and use of any sport shooting range

MUNICIPAL PARK

§ 95.01 AUTHORITY.

This municipality shall have the authority to establish, improve, maintain, and otherwise regulate public parks pursuant to SDCL §§ 9-38-1 et seq.

Statutory reference:

Budget of park boards, see SDCL §§ 9-38-42 and 9-38-44

§ 95.02 CONTROL OF PARK.

Except as provided for by first or second class municipalities under a commission form of government the public parks of every municipality, whether within or without the limits of the municipality, shall be under the control and supervision of the governing body thereof unless a park board shall have been created as provided in this pursuant to SDCL Chapter 9-38.

§ 95.03 ATHLETIC FACILITIES; FEES; PARK FUND.

(A) A municipality may establish, maintain, and operate golf courses, tennis courts, ball grounds, and other athletic amusements, and necessary facilities in connection therewith, as a part of its park system, and charge fees for the use thereof.

(B) All fees received under this section and any other money received for use of the Board including tax revenues, which may be appropriated for park purposes, shall be kept in a special park fund and shall be paid upon requisition by the president and secretary of the Board and warrant drawn and executed as other warrants.

SPORT SHOOTING RANGE

§ 95.15 DEFINITION.

A **SPORT SHOOTING RANGE** is an area designed and operated for the use of rifles, shotguns, or pistols as a means of silhouette, skeet, trap, black powder, or other sport shooting. A **SPORT SHOOTING RANGE** includes any shooting range located on public or private land or operated by a private entity or by a public entity, and a law enforcement shooting range.

(SDCL § 21-10-33)

§ 95.16 OPERATION AND USE OF ANY SPORT SHOOTING RANGE.

(A) The use or operation of a sport shooting range may not be enjoined as a nuisance if the range is in compliance with those statutes, regulations, and ordinances that applied to the range and its operation at the time when the initial operation of the range commenced. The use or operation of a sport shooting range may not be enjoined as a nuisance due to any subsequent change in any statute, regulation, or ordinance pertaining to the normal operation and use of sport shooting ranges.

(SDCL § 21-10-28)

(B) The use or operation of a sport shooting range may not be enjoined as a nuisance by a person who acquires title to real property adversely affected by the normal operation and use of a sport shooting range which commenced operation prior to the time the person acquired title.

(SDCL § 21-10-29)

(C) The provisions of SDCL §§ 21-10-28 through 21-10-34 do not apply to any recovery for any act or omission relating to the operation or use of any sport shooting range based on negligent or willful or wanton misconduct.

(SDCL § 21-10-30)

(D) The provisions of SDCL §§ 21-10-28 through 21-10-34 do not apply if there has been a substantial change in the primary use of the sporting range.

(SDCL § 21-10-31)

Penalty, see § 10.99

Statutory reference:

Significant threat to human life or private habitations, see SDCL § 21-10-28.1

CHAPTER 96: NOISE

Section

- 96.01 Purpose and intent.
- 96.02 General restrictions
- 96.03 Permit for outdoor sound amplification equipment
- 96.04 Revocation of permit
- 96.05 Hearing; revocation; appeal
- 96.06 Exceptions to application of chapter

- 96.99 Penalty

§ 96.01 PURPOSE AND INTENT.

This chapter is enacted to protect, preserve, and promote the health, safety, welfare, peace, quiet, and tranquility of the citizens of the municipality and persons or visitors frequenting the municipality through the reduction, control, and prevention of noise which is disruptive and constitutes an annoyance to the citizens and persons.

§ 96.02 GENERAL RESTRICTIONS.

No person may:

(A) Make noise or play a musical instrument audible to an adjacent business or residence or use sound equipment in public between the hours of 10:00 p.m. and 10:00 a.m., except as authorized by the Board of Trustees;

(B) Operate any jack hammers or heavy equipment within 600 feet of a residence, church, hospital, hotel, or motel between 7:00 p.m. and 6:00 a.m.;

(C) Operate sound equipment in a vehicle audible or causing vibration 30 feet from the equipment;

(D) Permit any dog, licensed or unlicensed, confined on the premises or otherwise, to disturb the peace and quiet of the neighborhood by continuous barking or making other loud or unusual noises; or

(Prior Code, § 6-2-4)

(F) Use or operate or cause to be used or operated within the town any engine brake, compression brake, or mechanical exhaust device designed to aid in the braking or deceleration of any vehicle that results in excessive, loud, unusual, or explosive noise from such

vehicles, unless such use is necessary to avoid imminent danger. Emergency vehicles shall be exempt from application of this section.

(Ord. 2018-02, passed 2-6-2019) Penalty, see § 96.99

§ 96.03 PERMIT FOR OUTDOOR SOUND AMPLIFICATION EQUIPMENT.

(A) Except as provided in this chapter, any person, partnership, association, corporation, or business desiring to use or operate any loudspeaker, public address system, or other sound amplifying equipment outdoors or indoors, but designed to project the sound outdoors, must first obtain a permit from the Municipal Police Department, which will then be brought forth to the governing board for approval. The permit may authorize the use or operation of the sound amplifying equipment between the hours of 10:00 p.m. and 10:00 a.m.

(B) The application for the permit shall be filed with the Finance Officer and shall provide the following information:

- (1) The name, address, and telephone number of both the owner and the user of the sound amplifying equipment;
- (2) The license number of the motor vehicle, if any, upon which the equipment is to be used;
- (3) The general description of the sound amplifying equipment which is to be used; and
- (4) The dates and location of the proposed operation of the equipment.

(C) The permit may contain conditions as may be necessary to ensure compliance with this chapter and any other ordinances of the municipality as may be in effect when the permit is issued.

§ 96.04 REVOCATION OF PERMIT.

A permit issued under this chapter may be revoked or terminated by the Chief of Police if the noise, which is produced under the permit, becomes unreasonably loud, raucous, jarring, disturbing, disruptive, or annoying to residents or other persons within the municipality.

§ 96.05 HEARING; REVOCATION; APPEAL.

(A) (1) If the municipality determines that facts exist for revocation of a permit, the municipality shall notify the permittee in writing of the intent to revoke the permit, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the municipality. Within five working days of receipt of the notice, the permittee may provide to the Chief of Police or person appointed by the municipality, in writing, a response that shall include a statement of reasons why the permit should not be revoked. Within three days of the receipt of the permittee's written response, the Chief of Police or person appointed by the municipality shall notify the permittee in writing of the hearing date on the permittee's revocation proceeding.

(2) Within ten working days of the receipt of the permittee's written response, the Chief of Police or person appointed by the municipality shall conduct a hearing at which the permittee shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Chief of Police or person appointed by the municipality in the time stated or, if after the hearing, the Chief of Police or person appointed by the municipality finds that grounds exist for revocation, the decision shall become final five days after the Chief of Police or person appointed by the municipality sends, by certified mail, written notice that the permit has been revoked. The notice shall include a statement advising the permittee of the right to appeal the decision to a court of competent jurisdiction.

(3) If the Chief of Police or person appointed by the municipality finds that no grounds exist for revocation of a permit, then within five days after the hearing, the Chief of Police or person appointed by the municipality shall withdraw the intent to revoke the permit and shall so notify the permittee in writing by certified mail of that action and shall contemporaneously issue the permit.

(B) When a decision to revoke a permit becomes final, the permittee whose permit has been revoked shall have the right to appeal the action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the municipality's enforcement of the revocation, the municipality shall immediately issue the permittee a provisional permit. The provisional permit shall allow the permittee to continue operation of the business and will expire upon the court's entry of a judgment on the permittee's action to appeal, challenge, restrain, or otherwise enjoin the municipality's enforcement.

§ 96.06 EXCEPTIONS TO APPLICATION OF CHAPTER.

The following shall be exceptions to the application of this chapter:

- (A) Parades, community events, festivals, band concerts;
- (B) Emergency vehicles, and for emergency purposes such as police, fire, and ambulance sirens or warning devices and loudspeakers used in connection with crimes, disasters, or emergencies;
- (C) An employee of a governmental entity engaged in the employee's official duty; and
- (D) Church bells and chimes.

§ 96.99 PENALTY.

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

CHAPTER 97: PARADES AND SPECIAL EVENTS

Section

- 97.01 Definitions
- 97.02 Permit required; application
- 97.03 Permit; issuance
- 97.04 Permit; contents
- 97.05 Permit; denial; appeal procedure
- 97.06 Deviation from permit
- 97.07 Permit; revocation
- 97.08 Use of sirens by emergency vehicles participating in parade
- 97.09 Insurance requirements
- 97.10 Exceptions
- 97.11 Notification requirement
- 97.12 Findings required
- 97.13 Conditions to permit
- 97.14 Duty of permittee
- 97.15 Public conduct during a parade, assembly, or public event
- 97.16 Hold harmless clause and insurance
- 97.17 Special event alcoholic beverage license

- 97.99 Penalty

§ 97.01 DEFINITIONS.

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

ACTIVITY. A parade or public meeting or assembly or special event.

PARADE.

(1) Any scheduled walk, demonstration, procession, march, or motorcade consisting of persons, animals, vehicles, or a combination thereof having a common purpose, design, designation, or goal, upon any public street, sidewalk, alley, or other public thoroughfare, which does not comply with normal and usual traffic regulations and controls; and

(2) A march or procession of any kind.

PUBLIC MEETING OR ASSEMBLY. A planned or organized gathering of a group of persons or a ceremony, show, exhibition, or pageant which may reasonably be expected to result in the gathering of a group of more than ten persons, upon any public street, sidewalk, park, or other public property.

SPECIAL EVENT.

(1) Any planned assembly, block party, demonstration, rally, or gathering of a group of 25 or more persons, animals, vehicles, or a combination thereof, in a public space that has a common purpose, design, or goal and:

- (a) Which substantially inhibits the usual flow of pedestrians or vehicular travel on public streets;
- (b) Which involves a temporary and exclusive use of a public space; or
- (c) Involves a substantial deviation from the public space's current use.

(2) **SPECIAL EVENTS** do not include the following:

- (a) Parades;
- (b) The use of public space by governmental agencies acting within the scope of their authority;
- (c) Funeral processions; or

(d) Picnics or gatherings in reserved spaces within public parks which are reserved in advance through the municipality or any designated department.

(3) A community activity or activities that involve the use of public facilities, buildings, streets, sidewalks, or property.

USE. To construct, erect, or maintain in, on, over, or under any street, right-of-way, park, or other public place, any building, structure, sign, equipment, or scaffolding; to paint, spray, or write on the surface of a public right-of-way thereof; or to otherwise occupy in such a manner as to obstruct the normal public use of any public street, right-of-way, park, or other public property within the town, including any use related to parade or special events.

(Prior Code, § 6-3-1)

§ 97.02 PERMIT REQUIRED; APPLICATION.

(A) No person shall conduct, manage, or participate in any parade or special event unless a permit has been issued in accordance with this chapter. If a permit is issued, no person shall conduct, manage, or participate in any parade or special event which is in violation of the terms or conditions of the permit.

(B) A permit must be applied for in writing on a form obtained from the municipality or any designated department and shall be filed at least 72 hours prior to the commencement of any parade or special event, unless an exception to the deadline is granted by the municipality or as provided in division (D) below. Late applications may be accepted at the discretion of the municipality or designee. The application shall set forth the following information:

(1) Name, address, and telephone number of any individual, group, association, firm, or corporation requesting the permit, and the applicable title or office of the person so applying;

(2) The name, address, and telephone number of the person(s) responsible for the organization, coordination, and conduct of the proposed activity;

(3) Time and date of commencement and termination of the proposed activity;

(4) A detailed narrative and timeline nature and purpose of the parade or special event, including a description of all activities, schedule of events, and all other pertinent information;

(5) A detailed event site plan mapping the physical areas for the event;

(6) The anticipated maximum number of persons, vehicles, bands, floats, and other units of persons, horses, or other animals to participate; and

(7) Such other reasonably relevant information as the municipal staff may request for investigation of the application.

(C) The applicant shall submit nonrefundable permit fee(s) to be set by resolution of the governing body with the application. Additional fees approved by resolution of the governing body may also be required. If the municipality or its designees determine that the event requires or utilizes municipal resources beyond what is reasonable for a parade or special event, staff may deny the permit or may charge applicant additional fees equivalent to the municipality's cost to provide the resources. Such fees may include municipality cost to provide barricades, police presence, sanitation, waste removal, picnic tables, and the like and may be billed before the permit is issued or after the parade or special event occurs.

(D) Demonstrations as defined below may be issued a special event or parade permit, as applicable. The municipality or its designee may consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the permit application and to obtain municipal services for the event and if the circumstance that gave rise to the event application did not reasonably allow the applicant apply within the time prescribed in division (B) above. A **DEMONSTRATION** under this section is defined a parade or special event which involves a rally, picketing, speechmaking, march, vigil, religious service, or similar gathering that primarily involves the communication or expression of opinions, grievances, or personal views.

§ 97.03 PERMIT; ISSUANCE.

(A) *Special event and parade permit considerations.* The municipal officials reviewing all permit applications shall evaluate the following considerations in deciding on each application:

(1) Whether the event promotes the community as a whole;

(2) Whether the event provides positive civic and economic benefit;

(3) The impact upon neighboring business and properties;

(4) The frequency of closures of streets/public spaces for parades and special events;

(5) Other events or activities that are permitted at the same time and/or location;

(6) The applicant's conduct and compliance in sponsoring prior events;

(7) The health, safety, and public welfare of event participants and the impact of the event on the health, safety, and public welfare of all citizens;

(8) If applicable, whether the applicant conformed to all permit requirements and the provisions in this chapter in holding any previous parades or special events; and

(9) The financial and practical ability of the applicant to conduct the proposed parade or special event in conformance with the provisions of the permit and this chapter.

(B) *Parade permit.*

(1) The municipality or its designee may issue a parade permit after evaluating the application, such other information as may otherwise be obtained, and the considerations in division (A) above.

(2) No parade permit shall be issued if:

- (a) The proposed activity will substantially interrupt the safe and orderly movement of traffic;
- (b) The proposed activity will require the diversion of so great a number of police officers of the municipality to properly police the activity and the areas contiguous thereto as to prevent normal police protection to the municipality;
- (c) The proposed activity will require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the municipality other than that to be occupied by the activity and other areas contiguous thereto;
- (d) Any concentration of persons, animals, units, floats, or vehicles at assembly points of the proposed activity will unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to the assembly areas;
- (e) There is reason to believe that the proposed activity will not move from its point of origin to its point of termination, expeditiously, and without unreasonable delay;
- (f) Other similar scheduled activities for which permits have been issued will conflict with the activity proposed in the permit application;
- (g) Applicant supervision for the proposed activity is inadequate, or volunteer/staff support for the parade is insufficient;
- (h) The parade does not follow the standard parade route designated by the municipality, unless the municipality finds that a deviation from this route is substantially justified;
- (i) The parade will adversely affect adjacent or neighboring properties by causing excessive noise or creating a nuisance;
- (j) The parade will be conducted primarily for the purpose of private monetary gain or commercial advertisement; or
- (k) The parade will fail to comply in any respect with the provisions of this chapter or any other applicable law.

(C) *Special event permit.*

(1) The municipality or its designee may issue a special event permit after evaluating consideration of the application, such other information as may be otherwise obtained, and the considerations in division (A) above.

(2) No special event permit shall be issued if:

- (a) The proposed activity will substantially interrupt the normal and customary use of the public space;
- (b) The proposed activity will impose an unreasonable burden upon the Police Department, Fire Department, or ambulance service;
- (c) The proposed activity is scheduled to be held at an inappropriate time and or in an inappropriate location;
- (d) Other similar scheduled activities for which permits have been issued will conflict with the special event proposed in the permit application;
- (e) Applicant supervision for the proposed activity is inadequate or insufficient volunteer/staff support for the proposed event is insufficient;
- (f) The special event will cause unreasonable injury or damage to the public space requested;
- (g) The event will involve such a number of persons or activities as will exceed the reasonable capacity of the public space requested;
- (h) The special event will cause unreasonable adverse effects on adjacent or neighboring properties by causing excessive noise or creating a nuisance;
- (i) The special event will be conducted primarily for the purpose of private monetary gain or commercial advertisement; or
- (j) The special event will fail to comply in any respect with the provisions of this chapter or any other applicable law.

(D) *Board action.* The Board of Trustees shall act upon the permit application at its next meeting following the receipt of the notice contingent upon the filing requirements in the notification requirement.

(Prior Code, § 6-3-6)

§ 97.04 PERMIT; CONTENTS.

(A) The permits provided in this chapter shall include all information in the application and shall be signed by the municipal official, as appropriate, or their designees with a signed copy kept with the application on file in the municipal office issuing the permit. The

permit may include any terms or conditions necessary for the preservation of the public health, safety, and welfare and for the protection of the public space to be utilized.

(B) No permit shall be issued until the insurance required under this chapter has been filed with the municipality.

(C) Issuance of a permit shall not constitute municipal endorsement or sponsorship of the parade or special event. No permittee shall represent, advertise, promote, or otherwise publish any claim of municipal endorsement or sponsorship of the parade or event unless the municipality authorizes such a claim by explicitly endorsing or sponsoring the parade or special event.

§ 97.05 PERMIT; DENIAL; APPEAL PROCEDURE.

If the permit is denied, the Finance Office shall mail to the applicant within three days of the Board of Trustees's decision a notice of the denial and the reasoning. The applicant shall have the right to appeal the denial to the Board of Trustees. A notice of the appeal shall be filed with the Town Finance Office within seven days after the mailing of the notice of denial. The Board of Trustees shall act upon the appeal at its next meeting following receipt of the notice of appeal.

(Prior Code, § 6-3-6)

§ 97.06 DEVIATION FROM PERMIT.

No person organizing, conducting, coordinating, or participating in any activity for which a permit has been granted under the provisions of this chapter shall deviate from or alter any of the terms, conditions, or contents of the permit without the express permission of the municipal official issuing the permit or its designee.

§ 97.07 PERMIT; REVOCATION.

Any member of the Sheriff's Department may revoke any permit issued hereunder, or under the direction of the Board President or Board, any member of the Sheriff's Department may be requested to revoke any permit hereunder upon the failure of the permittee to comply with the terms and conditions of the permit or if the event, because of the nature or manner in which it is being conducted, is jeopardizing those elements of the public safety or welfare set forth in § 97.12.

(Prior Code, § 6-3-8)

§ 97.08 USE OF SIRENS BY EMERGENCY VEHICLES PARTICIPATING IN PARADE.

Emergency vehicles participating in any parade or special event shall not sound sirens except when and if any emergency should arise and the vehicle must clear the area.

§ 97.09 INSURANCE REQUIREMENTS.

Special event and parade organizers shall provide adequate insurance coverage with designated limits as required by the municipal official issuing the permit. However, the municipal official issuing the permit may waive this requirement with the approval of the municipal attorney or other designated officer. The insurance policy shall name the municipality and its representatives as an additional insured.

§ 97.10 EXCEPTIONS.

This chapter shall not apply to any of the following:

(A) Funeral or wedding processions;

(B) A governmental agency acting within the scope of its functions; or

(C) Students going to and from school classes or participating in educational activities, provided such activity is authorized by the school district and is under the immediate direction and supervision of the school authorities authorized by the school district to approve and supervise such activity.

(Prior Code, § 6-3-2)

§ 97.11 NOTIFICATION REQUIREMENT.

Notice must be provided to the Town Finance Office not less than 45 days prior to the proposed activity, providing the following information:

(A) (1) Name, address, and phone number of the person requesting the permit; and/or

(2) If the activity is proposed to be conducted for, on behalf of, or by any organization, the name, address, and telephone number of the organization's headquarters and leader shall be provided.

(B) Name, address, and telephone number of the person(s) who will be directly in charge of and responsible for the event;

(C) The purpose of the event;

(D) The date, time, and location of the event, including a specific list of event activities;

(E) The approximate number of persons who will participate and/or attend the event;

(F) Plans for the assembly and the dispersal of the event; and

(G) Such other reasonably relevant information as the Board President, Board of Trustees, or Sheriff's Department may request for investigation of the application.

(Prior Code, § 6-3-3)

§ 97.12 FINDINGS REQUIRED.

The Board of Trustees shall issue a permit as provided hereunder when, from a consideration of the application and from such other information as may otherwise be obtained:

(A) The concentration of such activity will not unduly interfere with proper fire and police protections of, or ambulance service to, areas where the activity will take place or areas contiguous to such areas;

(B) The conduct of such activity will not unduly interfere with the movement of firefighting equipment en route to a fire, or the movement of other emergency equipment;

(C) The conduct of such activity is not reasonably likely to cause injury to person(s) or property;

(D) There will be adequacy of applicant supervision for the proposed activity; and

(E) Such activity is not to be held for the sole purpose of advertising the goods, wares, or merchandise of a particular business establishment or vendor.

(Prior Code, § 6-3-4)

§ 97.13 CONDITIONS TO PERMIT.

The Board of Trustees shall have the authority to impose such conditions as are necessary to ensure that § 97.12 shall exist during the continuation of the event.

(Prior Code, § 6-3-5)

§ 97.14 DUTY OF PERMITTEE.

A permittee hereunder shall comply with all the terms and conditions of the permit and with all applicable laws and ordinances.

(Prior Code, § 6-3-7)

§ 97.15 PUBLIC CONDUCT DURING A PARADE, ASSEMBLY, OR PUBLIC EVENT.

It is unlawful for any person to unreasonably obstruct, impede, or interfere with a public meeting or assembly or special event or with any person, vehicle, or animal participating in such meeting, assembly, or special event for which a permit has been granted in accordance with the herein provisions.

(Prior Code, § 6-3-9) Penalty, see § 97.99

§ 97.16 HOLD HARMLESS CLAUSE AND INSURANCE.

Any permittee shall, with his, her, or their application, acknowledge a hold harmless clause where the permittee using the public property agrees to hold the town harmless from loss. Any activity in this chapter where alcohol is permitted to be consumed, sold, and/or served shall also show proof of general liability insurance in the amount of not less than \$1,000,000.

(Prior Code, § 6-3-10)

§ 97.17 SPECIAL EVENT ALCOHOLIC BEVERAGE LICENSE.

(A) The town regulates and restricts permits for special alcohol beverage licenses issued in conjunction with special events.

(B) In addition to the terms and conditions in § 113.27, the following terms and conditions shall apply:

(1) Any license issued shall be issued for a period of time established within the sole discretion of the Town Board;

(2) The licensee must comply with the regulations set forth on the application and all applicable state laws set forth concerning alcoholic beverages;

(3) The fee for the license(s) issued shall be as provided in the town fee schedule per event which must be paid prior to the event;

(4) A public hearing is required before approval and issuance of any license;

(5) A valid copy of certificate of insurance or letter from insurer confirming the policy is in place naming the town as an additional insured for the activities described in the special event application; and

(6) Applicant must provide security guards to help police the area where alcoholic beverages are sold and served.

(Prior Code, § 6-3-11)

§ 97.99 PENALTY.

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

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. TRADE REGULATION AND LICENSING
- 111. AUCTION SALES
- 112. PAWNBROKERS
- 113. LIQUOR OPERATIONS
- 114. MARIJUANA OPERATIONS
- 115. MOVING OF BUILDINGS

CHAPTER 110: TRADE REGULATION AND LICENSING

Section

Peddlers and Transient Merchants

- 110.01 Definitions
- 110.02 License requirement
- 110.03 Application procedure
- 110.04 Standards for issuance
- 110.05 Revocation procedure
- 110.06 Standards for revocation
- 110.07 Appeal procedure
- 110.08 Exhibition of identification
- 110.09 Municipal policy on soliciting
- 110.10 Notice regulating soliciting
- 110.11 Duty of solicitors to ascertain notice
- 110.12 Prohibited solicitation

Miscellaneous Regulations

- 110.25 Soliciting telecommunication services; exemption
- 110.26 Secondhand and junk stores
- 110.27 Delivery persons, taxi drivers, and porters
- 110.28 Tattooing and body piercing
- 110.29 Exhibitions, shows, and amusements

Statutory reference:

Family day care homes; regulation and standards of care, see SDCL § 9-29-26

PEDDLERS AND TRANSIENT MERCHANTS

§ 110.01 DEFINITIONS.

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

BUSINESS. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

GOODS. Merchandise of any description whatsoever, and includes, but is not restricted to, wares, and foodstuffs.

ITINERANT MERCHANT. Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the municipality and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the municipality.

PEDDLER. Any person, not an itinerant merchant, who:

- (1) Travels from place to place by any means carrying goods for sale or making sales or making deliveries; or
- (2) Without traveling from place to place, sells or offers goods for sale from any public place within the municipality.

SOLICITOR. Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a **SOLICITOR** is not a peddler.

§ 110.02 LICENSE REQUIREMENT.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the municipality.

(B) The fee for the license required by this subchapter shall be as set from time to time by the governing body.

(C) No license issued under this subchapter shall be transferable.

(D) All licenses issued under this subchapter shall expire 90 days after the date of issuance thereof.

Penalty, see § 10.99

§ 110.03 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this subchapter shall file an application with the Town Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

(1) The name and address of the applicant;

(2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the municipality;

(b) The local address of such individual;

(c) The permanent address of such individual; and

(d) The capacity in which such individual will act.

(3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;

(4) The time period or periods during which it is proposed to carry on applicant's business;

(5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;

(b) If goods, their invoice value and whether they are to be sold by sample as well as from stock; and

(c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application.

(6) The nature of the advertising proposed to be done for the business; and

(7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in division (A)(3) above, has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above.

(1) A description of the applicant; and

(2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

(C) All applicants for licenses required by this subchapter shall attach to their application, if required by the municipality, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C) above, a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

Penalty, see § 10.99

§ 110.04 STANDARDS FOR ISSUANCE.

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's

business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant has done any of the following will constitute valid reasons for disapproval of an application:

- (1) Has been convicted of a crime of moral turpitude;
- (2) Has made willful misstatements in the application;
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like;
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts.

§ 110.05 REVOCATION PROCEDURE.

Any license or permit granted under this subchapter may be revoked by the Town Clerk after notice and hearing, pursuant to the standards in § 110.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his or her last known address, at least ten days prior to the date set for the hearing.

§ 110.06 STANDARDS FOR REVOCATION.

A license granted under this subchapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application;
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license;
- (C) Any violation of this subchapter;
- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

§ 110.07 APPEAL PROCEDURE.

(A) Any person aggrieved by a decision under §§ 110.04 or 110.06 shall have the right to appeal to the governing body. The appeal shall be taken by filing with the governing body, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The governing body shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 110.05.

(B) The order of the governing body after the hearing shall be final.

§ 110.08 EXHIBITION OF IDENTIFICATION.

(A) Any license issued to an itinerant merchant under this subchapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the municipality shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) (1) The Town Clerk shall issue a license to each peddler or solicitor licensed under this subchapter. The license shall contain the words "licensed peddler" or "licensed solicitor," the expiration date of the license, and the number of the license.

(2) The license shall be kept with the licensee during such time as he or she is engaged in the business licensed.

Penalty, see § 10.99

§ 110.09 MUNICIPAL POLICY ON SOLICITING.

It is hereby declared to be the policy of the municipality that the occupants of the residences in the municipality shall make the determination of whether solicitors shall be or shall not be invited to their respective residences.

§ 110.10 NOTICE REGULATING SOLICITING.

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

NO SOLICITORS INVITED

(B) The letters shall be at least one-third of an inch in height. For the purpose of uniformity, the cards shall be provided by the Chief of Police to persons requesting, at the cost thereof.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

§ 110.11 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.

(A) (1) It shall be the duty of every solicitor upon going onto any premises in the municipality upon which a residence is located to first examine the notice provided for in § 110.10 if any is attached, and be governed by the statement contained on the notice.

(2) If the notice states “NO SOLICITORS INVITED,” then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

Penalty, see § 10.99

§ 110.12 PROHIBITED SOLICITATION.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 110.10 above.

Penalty, see § 10.99

Statutory reference:

Authority to regulate and license transient merchants, peddlers, see SDCL § 9-34-7

MISCELLANEOUS REGULATIONS

§ 110.25 SOLICITING TELECOMMUNICATION SERVICES; EXEMPTION.

(A) It shall be unlawful for hawkers, peddlers, solicitors, pawnbrokers, ticket scalpers, and employment agencies to conduct business without first applying for and receiving a license to conduct such business.

(B) This section does not apply to the peddling or soliciting of telecommunications services subject to the provisions of SDCL §§ 49-13-1 et seq. or 49-31-1 et seq.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see SDCL § 9-34-18

§ 110.26 SECONDHAND AND JUNK STORES.

(A) It shall be unlawful to operate a secondhand store or junk store without first applying for and receiving a license from the municipality.

(B) It shall be unlawful for secondhand or junk stores to purchase and/or receive from a minor any article without the written consent of the minor’s parents or guardians.

(SDCL § 9-34-9) Penalty, see § 10.99

§ 110.27 DELIVERY PERSONS, TAXI DRIVERS, AND PORTERS.

It shall be unlawful for any parcel delivery person, bus drivers, cab drivers, taxi drivers, porters, and others in similar occupations to engage in such occupations without first applying for and receiving a license from the municipality.

(SDCL § 9-34-10) Penalty, see § 10.99

§ 110.28 TATTOOING AND BODY PIERCING.

(A) Any municipality may regulate the practice of tattooing, saline tattoo removal, and body piercing by licensing practitioners of tattooing, saline tattoo removal, or body piercing; inspecting tattoo, saline tattoo removal, and body piercing establishments; and establishing standards for sanitation that are at least as stringent as those adopted by the Department of Health under SDCL § 34-1-17.

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

BODY PIERCING. To place a permanent or temporary foreign object in a person’s body for a decorative or other nonmedical purpose by a person not directly under the supervision of a licensed physician as defined by SDCL § 36-4-11.

SALINE TATTOO REMOVAL. Inserting a saline solution in skin to lighten or remove an existing tattoo. The term does not include the use of other acids or of lasers as described in SDCL § 36-4-8.2.

TATTOOING. To make marks or designs into the skin by puncturing it and inserting indelible colors. The term includes microblading and similar techniques used to partially or fully simulate natural hair.

(SDCL § 9-34-17) Penalty, see § 10.99

§ 110.29 EXHIBITIONS, SHOWS, AND AMUSEMENTS.

It shall be unlawful for anyone to conduct in exhibitions, shows, and amusements without first applying for and obtaining a license from the municipality.

Penalty, see § 10.99

CHAPTER 111: AUCTION SALES

Section

- 111.01 Definitions
- 111.02 Requirements
- 111.03 Exempt sales
- 111.04 Auction receipts

§ 111.01 DEFINITIONS.

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

AUCTION SALE. The offering for sale or selling of personal property to the highest bidder or offering for sale or selling of personal property at a high price and then offering the personal property at successive lower prices until a buyer is secured.

(SDCL § 37-14-2)

§ 111.02 REQUIREMENTS.

The requirements of this chapter are in addition to and not in lieu of any other state or local license.

(SDCL § 37-14-5)

§ 111.03 EXEMPT SALES.

The provisions of this chapter do not extend to the sale at public auction of livestock, farm machinery, or farm produce or any other item commonly sold at farm sale; to any auction sale held under authority of or under the supervision and direction of any court of this state; or to any person, firm, or corporation who has been engaged in business in this state for a period of at least one year, conducting a closing out or stock reduction sale of the business.

(SDCL § 37-14-4)

§ 111.04 AUCTION RECEIPTS.

(A) Any money that an auction cashier receives on behalf of a client from an auction sale shall be deposited in a separate account maintained for auction sale proceeds only.

(SDCL § 37-14-18)

(B) Any money that an auction cashier receives on behalf of a client from an auction sale shall be given to the client within 20 working days of the auction sale. This section does not apply to any bad check or if there is a prior written agreement between the client and the cashier.

(SDCL § 37-14-19)

(C) Divisions (A) and (B) above do not apply to any livestock auction agency licensed pursuant to SDCL Chapter 40-15 or to any real estate sale.

(SDCL § 37-14-20)

CHAPTER 112: PAWNBROKERS

Section

- 112.01 Excessive interest
- 112.02 Sale of pledge during time for redemption
- 112.03 Conduct of business without license
- 112.04 Refusal to disclose purchaser and price of article sold
- 112.05 Refusal to exhibit stolen goods

§ 112.01 EXCESSIVE INTEREST.

No pawnbroker who receives goods in pledge for loans shall charge any rate of interest above that allowed by law.

(SDCL § 37-16-1) Penalty, see § 10.99

§ 112.02 SALE OF PLEDGE DURING TIME FOR REDEMPTION.

No pawnbroker shall sell any article received by him or her in pledge before the time to redeem the same has expired.

(SDCL § 37-16-2) Penalty, see § 10.99

§ 112.03 CONDUCT OF BUSINESS WITHOUT LICENSE.

All pawnbrokers in this municipality shall apply for and receive a license to carry on the business of a pawnbroker pursuant to SDCL § 9-34-8.

(SDCL § 37-16-3) Penalty, see § 10.99

§ 112.04 REFUSAL TO DISCLOSE PURCHASER AND PRICE OF ARTICLE SOLD.

Any pawnbroker shall not refuse to disclose the purchaser and price received by him or her for any article received by him or her in pledge and subsequently sold.

(SDCL § 37-16-4) Penalty, see § 10.99

§ 112.05 REFUSAL TO EXHIBIT STOLEN GOODS.

Any pawnbroker and junk dealer who, having received any goods which have been stolen, shall not refuse to exhibit them upon demand during usual business hours to the owner of such goods or his or her agents authorized to demand an inspection.

(SDCL § 37-16-5) Penalty, see § 10.99

CHAPTER 113: LIQUOR OPERATIONS

Section

General Provisions

- 113.01 Definitions
- 113.02 License required
- 113.03 Times when sales are prohibited
- 113.04 Sale to prohibited persons
- 113.05 Minors on premises

Licenses; Application Process and Requirements

- 113.20 On-sale licenses
- 113.21 Off-sale licenses to operate within municipality
- 113.22 Malt beverage licenses
- 113.23 Application process
- 113.24 Renewal of license
- 113.25 Transfer of license
- 113.26 Operating agreements
- 113.27 Temporary licenses
- 113.28 Temporary license days and hours of operation
- 113.29 Adequate notice for issuance of temporary license
- 113.30 Legal fees

Statutory reference:

Licensing policies and procedures, see SDCL §§ 35-2-1 et seq.

GENERAL PROVISIONS

§ 113.01 DEFINITIONS.

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

ALCOHOLIC BEVERAGE. Any distilled spirits, wine, and malt beverages as defined in SDCL Title 35.

BULK CONTAINER. Any package or any container within which container are one or more packages.

CARRIER. A person who, for hire, transports passengers and who sells or furnishes to passengers for consumption alcoholic beverages aboard any means of conveyance or allows passengers to consume the passenger's own alcoholic beverages aboard the conveyance.

CIDER. Any alcoholic beverage obtained by the fermentation of the juice of apples or pears that contains not less than 0.5% of alcohol by volume and not more than 10% of alcohol by weight, including flavored, sparkling, or carbonated cider.

CONTROLLING INTEREST IN. An ownership interest in the licensee of 10% or more.

DEPARTMENT. Department of Revenue of the state.

DISPENSER. A duly licensed physician, dentist, veterinarian, osteopath, podiatrist, chiropractor, or pharmacist; or a druggist, sanitarium, hospital, clinic, educational institution, industrial company, or industrial corporation who purchases alcohol for scientific and medicinal purposes only.

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.

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, or any other similar product, 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.

MANUFACTURER. Any person who owns, has a controlling interest in, operates, or aids in operating any establishment for the brewing, production, bottling, or blending of any alcoholic beverage, whether occurring within or without this state.

MINIBAR. Any closed container, either refrigerated or nonrefrigerated, having restricted access to the interior by means of a locking device that requires the use of a key, magnetic card, or similar device, or controlled by the licensee at all times.

MUNICIPALITY. The Town of Langford, South Dakota.

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.

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

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

POPULATION. Number of inhabitants as determined by the last preceding federal census.

POWDERED, CONDENSED, or CONCENTRATED ALCOHOL. An alcoholic product that is created using a process that reduces the alcohol to a concentrated form and that allows the alcohol to be reconstituted with water or other liquid.

RELATIVE. Any person who is a husband, wife, son, daughter, brother, sister, father, or mother.

RETAIL LICENSE. An on-sale or off-sale license issued under the provisions of SDCL Title 35.

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

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

SECRETARY. The Secretary of Revenue of the state.

SERVE. The taking of an order for an alcoholic beverage and intentionally delivering the alcoholic beverage to a customer for the purpose of consumption on the licensed premises and the customer takes physical possession of the alcoholic beverage.

TRANSPORTATION COMPANY or TRANSPORTER. Any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverages, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside of the state.

WHOLESALE. Any person who sells alcoholic beverages to retailers for resale.

WINE. Any beverage made from the fermentation of grapes, grape juice, other fruit bases, or honey, with or without adding alcoholic

beverages; without rectification, except for the purpose of fortification; and contains not less than 0.5% and not more than 24% alcohol by volume.

(SDCL § 35-1-1)

§ 113.02 LICENSE REQUIRED.

No person shall sell, offer for sale, keep for sale, exchange, distill, manufacture, produce, bottle, blend, or otherwise concoct within the town any alcoholic beverages or malt beverages as defined by state statute without having a license therefor as required by the SDCL or as amended.

(Prior Code, § 6-1-1) Penalty, see § 10.99

§ 113.03 TIMES WHEN SALES ARE PROHIBITED.

(A) No on-sale or off-sale licensee may sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. or on Sunday after 2:00 a.m., on Memorial Day after 2:00 a.m., or at any time on Christmas Day. However, this municipality may, by ordinance, allow the sale, service, and consumption of alcoholic beverages on Sundays, Christmas Day, and/or Memorial Day.

(SDCL § 35-4-81)

(B) No on-sale or off-sale licensee may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m.

(SDCL § 35-4-81.2)

Penalty, see § 10.99

§ 113.04 SALE TO PROHIBITED PERSONS.

(A) No licensee may sell or serve any alcoholic beverage to any person who is obviously intoxicated.

(B) However, no licensee is civilly liable to any injured person or the injured person's estate for any injury suffered, including any action for wrongful death, or property damage suffered because of the intoxication of any person due to the sale or consumption of any alcoholic beverage in violation of the provisions of this section.

(SDCL § 35-4-78)

§ 113.05 MINORS ON PREMISES

(A) No on-sale or off-sale licensee may permit any person less than 21 years old to loiter on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on the licensed premises.

(SDCL § 35-4-79)

(B) Notwithstanding division (A) above, any on-sale or off-sale licensee may permit persons 18 years old or older to sell or serve alcoholic beverages if less than 50% of the gross business transacted by the establishment is from the sale of alcoholic beverages, or the licensee or an employee that is at least 21 years of age is on the premises when the alcoholic beverage is sold or served. For the purposes of this section, the term **TO SELL OR SERVE ALCOHOLIC BEVERAGES** does not include tending bar or drawing, pouring, or mixing alcoholic beverages.

(SDCL § 35-4-79-4)

LICENSES; APPLICATION PROCESS AND REQUIREMENTS

§ 113.20 ON-SALE LICENSES.

(A) Pursuant to SDCL § 35-4-11, if not fixed by ordinance, the governing board of the municipality may, on or before September 1 of each year, by resolution, determine the number of on-sale and off-sale licenses it will approve for the ensuing calendar year, and the fees to be charged for the various classifications of licenses.

(B) The number of on-sale licenses issued may not exceed three each for the first 1,000 of population or fraction thereof and not exceed one each of such licenses for each additional 1,500 of population or fraction thereof. The number of licenses allowable may not be less than the total number of licenses allowable or issued as of July 1, 1981. The municipal governing board shall, at such meeting, establish the fee for on-sale licenses pursuant to SDCL § 35-4-2(A)(4) and (13). Such fee shall apply to all such on-sale licenses issued in the ensuing calendar year. The quotas established in this section do not apply to licenses issued pursuant to SDCL § 35-4-2(A)(12), (16), (17), and (17)(A).

(D) For the purposes of this section, population is equal to 90% of the population estimates published by the United States Census Bureau for each even-numbered year, except for the decennial year. For a decennial year, population is equal to the amount determined by the decennial federal census. No license issued pursuant to this section which exceeds the number of licenses that would have been issued upon the decennial federal census may be denied solely by reason that the license exceeds the number of licenses authorized by the decennial federal census.

(SDCL § 35-4-11)

§ 113.21 OFF-SALE LICENSES TO OPERATE WITHIN MUNICIPALITY.

(A) Except as provided in SDCL § 35-4-2(12) and (16), off-sale licenses may only be issued under this chapter to operate within a municipality or an improvement district created pursuant to SDCL Chapter 7-25A.

(SDCL § 35-4-6)

(B) No more than two off-sale licenses issued pursuant to SDCL § 35-4-2(3) and (5) may be issued under SDCL Title 35 to operate in a municipality of 1,000 or less and not exceeding one license for every additional 1,500 of population or fraction thereof. The number of off-sale licenses may not be less than the total number of licenses allowable as of July 1, 1981, and that have never been revoked or not reissued.

(SDCL § 35-4-10)

§ 113.22 MALT BEVERAGE LICENSES.

The municipality may issue as many malt beverage licenses as it deems necessary.

§ 113.23 APPLICATION PROCESS.

(A) (1) An application for any license shall be on the form prescribed by the Department of Revenue. All applications for retail licenses, except those cited in SDCL § 35-2-1.1, shall be submitted to the governing body. The municipality shall approve or disapprove the application based on the grounds that the applicant is a suitable person and that the proposed location is suitable.

(2) The governing body may disapprove an application for a new retail license or the transfer of an existing license issued under SDCL § 35-4-2(4), (6), or (13) if:

(a) The approval of the application permits a person, corporation or business entity to possess more than one-third of the licenses available to be issued in the jurisdiction; and

(b) The governing body determines that possession of more than one-third of the licenses available is not in the public interest.

(B) The municipality shall hold a hearing on the application for a license. Notice of hearing must be published one time, at least one week prior to the hearing, in the official newspaper. Any resident who requests written notice of the hearing must be notified accordingly.

(C) If the application for an on-sale and/or off-sale license is denied after the hearing, the fee is returned to the applicant. If the application is approved after the hearing, the fee is deposited in the General Fund and the application is forwarded to the Department, who may accept or reject the application.

(D) If the application for a malt beverage license is denied after the hearing, the fee is returned to the applicant. If the application is approved after the hearing, one-half of the fee is deposited in the General Fund and one-half is forwarded to the Department, along with the application, who may accept or reject the application.

(E) A license cannot be reissued to the same applicant for a one-year period if the license has not been actively used by the applicant during the previous two years.

(SDCL § 42-7A-64)

§ 113.24 RENEWAL OF LICENSE.

(A) If the applicant already holds a license and is applying for the same class of license at the same location for the next license year, then only the approval of the governing body is necessary to issue the license for the new year.

(B) One copy of the application is forwarded to the Department and a new card will be issued by the Department with an appropriate expiration date. The Board President shall sign the new card in the lower right hand corner to validate the card.

(C) Any application for the reissuance of a retail license may be approved by the governing board without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to criminal penalty for violation of the alcoholic beverage control law or the license has been suspended.

(SDCL § 35-2-1.2)

§ 113.25 TRANSFER OF LICENSE.

(A) The procedure for transfer of license is the same as application for a new license. The fee of \$150 for a transfer is forward to the Department along with the application. An affidavit of bulk sale may be required, and the existing license card must be submitted with the application for transfer. The town shall charge a fee of \$300; \$150 to be forwarded with the application and \$150 to be retained by the town.

(B) The application to transfer the license shall only be permitted if all municipal and state sales and use taxes incurred by the licensee as a result of the operation have been paid, and all property taxes, which are the liability of the licensee are paid or are not delinquent.

(C) A public hearing is required for the transfer of a license, using the same process as an application for a new license.

§ 113.26 OPERATING AGREEMENTS.

Applicants for on-sale, off-sale, and/or malt beverage licenses are required by the Board of Trustees to enter into an operating agreement with the town, and are required to adhere to all terms and conditions of the operating agreement. A new operating agreement shall be entered into upon each annual renewal of an existing license.

§ 113.27 TEMPORARY LICENSES.

(A) Upon application made to the Town Board, a temporary permit may be granted for a specific time and public place when and where possession of an unsealed can, bottle, pitcher, container, or package containing alcohol or malt beverages may be temporarily permitted as a special occurrence may require.

(B) Temporary liquor licenses may be issued to a civic, charitable, educational, or fraternal organization in conjunction with a special event.

(C) Application shall be in writing and in such form as the Town Board may establish, and must be received by the Finance Officer granting ample time for the publication process to be completed. If ample time is not provided, and a special session of the Board of Trustees is required, applicant shall pay the amount subscribed within the town's fee schedule.

(D) Fees as established by the Town Board must be received before the special event.

(E) Applicant must provide a certificate or other proof of liability insurance in the amount(s) and coverage(s) required by the governing board.

(F) Applicant may be required to provide a security, damage, cleanup, or reimbursement deposit in the form of a bond in favor of the municipality or a cashier's check or money order payable to the municipality or cash an amount required by the governing board.

(G) Applicant must adhere to all terms and conditions as set forth on the application. Failure to comply results in denial of future applications, and may result in fines as subscribed by the Town Board.

§ 113.28 TEMPORARY LICENSE DAYS AND HOURS OF OPERATION.

(A) Applicant shall operate the event(s) only on the day(s) and during the hours approved by the appropriate municipal authorities.

(B) Unless otherwise specifically approved by the municipality, no outdoor dances, concerts, or similar entertainment events at which alcoholic beverages will be sold, served, consumed, provided, or otherwise present shall not be held on the following days nor during or after the following hours:

(1) Christmas Day;

(2) If exception is granted for an event on Christmas Day, not after 12:00 midnight;

(3) Memorial Day, except if the event is held the day or evening before Memorial Day, the event shall not run beyond 1:00 a.m. of Memorial Day;

(4) Sundays, except if the event is held on a Saturday or Saturday evening, the event shall not run beyond 1:00 a.m. of the Sunday following the Saturday event;

(5) If on a Monday, Tuesday, Wednesday, or Thursday, the event shall not run beyond 1:00 a.m. of the following morning;

(6) If on a Friday, the event shall not run beyond 1:00 a.m. of the following morning;

(7) If on a Saturday, the event shall not run beyond 1:00 a.m. of the following morning; and

(8) Outdoor dances, concerts, or similar entertainments are generally discouraged on all nights except Friday and Saturday, if the event shall run past 11:00 p.m.

§ 113.29 ADEQUATE NOTICE FOR ISSUANCE OF TEMPORARY LICENSES.

(A) In instances where the Finance Officer has not been given adequate notice to complete the process for issuing temporary liquor license(s), and a special meeting is required to provide issuance of temporary liquor license(s), the applicant is required to pay special meeting fees in a minimum cost of \$500. Payment must be received prior to issuance of the temporary license(s).

(B) In instances where the Finance Officer or town employees have not completed the process in a timely manner to issue temporary liquor license(s), and a special meeting is required to provide issuance of temporary liquor license(s), the applicant is not required to pay special meeting fees.

§ 113.30 LEGAL FEES.

In instances where the town is required to secure the legal services of an attorney to resolve issues between a liquor license applicant/party granted use of town's liquor license(s) and the town, the town may pass on 100% of the attorney fees to the liquor license applicant/party granted use of the town's liquor license(s).

CHAPTER 114: MARIJUANA OPERATIONS

114.01 Definitions

114.02 Temporary ordinance regarding issuance of local medical cannabis establishment permits and/or licenses

§ 114.01 DEFINITIONS.

[RESERVED]

§ 114.02 TEMPORARY ORDINANCE REGARDING ISSUANCE OF LOCAL MEDICAL CANNABIS ESTABLISHMENT PERMITS AND/OR LICENSES.

(A) A medical cannabis establishment desiring to operate in the municipality shall be required to apply for a permit and/or license from the municipality. Applications for a local permit and/or license to operate a medical cannabis establishment, as defined by SDCL 34-20G-1, shall not be accepted until the state's Department of Health has promulgated regulations as required by SDCL 30-20G-72. Any application received prior to such regulations being promulgated shall be denied.

(B) The ordinance incorporated in this section is necessary to protect and immediately preserve the public health, safety, welfare, peace, and support of the municipal government and its existing public institutions pursuant to SDCL 11-4-3.1 and SDCL 9-19-13.

(Ord. passed - -)

CHAPTER 115: MOVING OF BUILDINGS

Section

115.01 Moving of buildings

115.99 Penalty

§ 115.01 MOVING OF BUILDINGS.

No person or corporation shall move any building within the town limits without first obtaining permission of the Board President.

(Prior Code, § 10-3-5) Penalty, see § 115.99

§ 115.99 PENALTY.

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

TITLE XIII: GENERAL OFFENSES

Chapter

130. WEAPONS

131. OFFENSES INVOLVING INJURY OR DANGER TO THE PERSON

132. FIREWORKS AND EXPLOSIVES

CHAPTER 130: WEAPONS

Section

130.01 Carrying concealed weapon

130.02 Reckless discharge of firearm or shooting of bow and arrow

130.03 Discharge of firearms or air rifles

130.04 Possession of pistols by minors prohibited

130.05 Minors prohibited from carrying concealed pistol except with parent or guardian

130.99 Penalty

§ 130.01 CARRYING CONCEALED WEAPON.

(A) (1) No person shall carry any concealed weapon such as, but not limited to, slingshot, brass knuckle, or knuckle or other material or any sandbag, dagger, Bowie knife, dirk knife, or other dangerous or deadly weapon or any instrument or device, when used is likely to produce death or great bodily harm unless he or she shall have a valid permit for the same pursuant to SDCL Chapter 23-7.

(2) No person shall carry any weapon concealed in a vehicle while operating the vehicle unless he or she shall have a valid permit for the same pursuant to SDCL Chapter 23-7.

(B) Any police officer or parole officer may wear or carry weapons necessary for him or her to carry out his or her official duties.

Penalty, see § 130.99

Statutory reference:

Carrying concealed pistol in malt or alcoholic beverage establishment prohibited, see SDCL § 23-7-70

Concealment of weapon with intent to commit felony, see SDCL § 22-14-8

Permit to carry concealed pistol, see SDCL § 23-7-7

§ 130.02 RECKLESS DISCHARGE OF FIREARM OR SHOOTING OF BOW AND ARROW.

It shall be unlawful to:

(A) Recklessly discharge a firearm or recklessly shoot a bow and arrow;

(B) Set a device designed to activate a weapon upon being tripped or approached, and leave it unmarked or unattended by a competent person; or

(C) Have in his or her possession a loaded firearm while he or she is intoxicated.

Penalty, see § 130.99

§ 130.03 DISCHARGE OF FIREARMS OR AIR RIFLES.

It shall be unlawful for any person, except a police officer in the performance of an official act, to discharge or fire any gun, air rifle, sling shot, or other dangerous weapon within the town limits of the town. Maintenance personnel are allowed to destroy animals that are intruders.

(Prior Code, § 7-5-1) Penalty, see § 130.99

§ 130.04 POSSESSION OF PISTOLS BY MINORS PROHIBITED.

(A) *Prohibited.* No person under the age of 18 years may knowingly possess a pistol.

(SDCL § 23-7-44)

(B) *Exceptions.* The provisions of division (A) above are not applicable to a minor and a criminal prosecution for possession of a pistol brought after transfer pursuant to SDCL Chapter 26-11 is not applicable to a minor if the minor had the prior written consent of the minor's parent or guardian to possess the pistol, and:

(1) The minor was on premises owned or leased by the minor or the minor's parent, guardian, or immediate family member;

(2) The minor was in the presence of a licensed or accredited gun safety instructor; or

(3) The pistol was being used for farming, ranching, hunting, trapping, target shooting, or gun safety instruction.

(SDCL § 23-7-45)

(C) *Age of minority; calculation of age.* Minors are natural male persons and natural female persons under 18 years of age. The periods thus specified must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

(SDCL § 26-1-1)

(D) *Penalty.* Any person who violates this section is subject to the penalties set forth in SDCL § 23-7-44.

Statutory reference:

Proceedings on offense for which child not subject to delinquency, SDCL § 26-11-1

§ 130.05 MINORS PROHIBITED FROM CARRYING CONCEALED PISTOL EXCEPT WITH PARENT OR GUARDIAN.

A person who is under the age of 18 years of age may not carry a concealed pistol except in the presence of a parent or legal guardian.

(SDCL § 23-7-71) Penalty, see § 130.99

§ 130.99 PENALTY.

Any violation of this chapter shall result in a fine not to exceed \$500 or imprisonment not exceeding 30 days or by both such fine and

imprisonment.

CHAPTER 131: OFFENSES INVOLVING INJURY OR DANGER TO THE PERSON

Section

131.01 Threatening or harassing phone calls

131.99 Penalty

§ 131.01 THREATENING OR HARASSING PHONE CALLS.

It is unlawful for a person to use a telephone for any of the following purposes:

- (A) To call another person with intent to terrorize, intimidate, threaten, harass, or annoy such person by using obscene or lewd language or by suggesting a lewd or lascivious act;
- (B) To call another person with intent to threaten to inflict physical harm or injury to any person or property;
- (C) To call another person with intent to extort money or other things of value; and/or
- (D) To call another person with intent to disturb him or her by repeated anonymous telephone calls or intentionally failing to replace the receiver or disengage the telephone connection.

Penalty, see § 131.99

§ 131.99 PENALTY.

Any violation of this chapter shall result in a fine not to exceed \$500 or imprisonment not exceeding 30 days or by both such fine and imprisonment.

CHAPTER 132: FIREWORKS AND EXPLOSIVES

Section

132.01 Definition

132.02 Sale and use prohibited

132.03 Discharge of fireworks

132.04 Transporting explosive substances

132.99 Penalty

§ 132.01 DEFINITION.

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

FIREWORKS. Those fireworks classified by the U.S. Department of Transportation as Class C (common) fireworks (49 C.F.R. part 173.100) effective on January 1, 1983, including, but not limited to, those fireworks designed primarily to produce visible effects by combustion, that must comply with the construction, chemical composition, and label regulations promulgated by the U.S. Consumers Products Safety Commission (16 C.F.R. part 1507) effective on January 1, 1983.

(Prior Code, § 7-5-2)

§ 132.02 SALE AND USE PROHIBITED.

It shall be unlawful for any person to sell, keep for sale, or offer for sale to any person within the limits of the town any firecrackers, fireworks cartridges, roman candles, rockets, or other fireworks or explosives from which firecrackers, blank cartridges, or other fireworks may be made or manufactured.

(Prior Code, § 7-5-2) Penalty, see § 132.99

§ 132.03 DISCHARGE OF FIREWORKS.

(A) No person shall in the town discharge or shoot off any fireworks or firecrackers of any kind, or light or throw any fire balls or crackers of any kind at any time.

(B) Public display of fireworks are permitted at any time with the written consent of the Board of Trustees.

(Prior Code, § 7-5-2) Penalty, see § 132.99

§ 132.04 TRANSPORTING EXPLOSIVE SUBSTANCES.

No person shall transport on the streets or in public places any quantity of explosive substances or blasting powder so as to endanger the safety of the public.

Penalty, see § 132.99

§ 132.99 PENALTY.

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

TITLE XV: LAND USAGE

Chapter

150. BUILDING REGULATIONS

151. MOBILE HOMES

CHAPTER 150: BUILDING REGULATIONS

Section

General Provisions

- 150.01 Authority for zoning and planning
- 150.02 Planning Commission
- 150.03 Building Code adopted
- 150.04 Disclosure of information of energy efficiency of residential building to buyer; alternative disclosure
- 150.05 Violations
- 150.06 Building permits required
- 150.07 Fire limits
- 150.08 Permissible wooden structure in fire limits
- 150.09 Town’s responsibility in numbering buildings
- 150.10 Owner’s responsibility in displaying building numbers

Contractors

- 150.25 Requirements of contractors

Excavations in Public Places

- 150.40 Permit required
- 150.41 Guarding excavations
- 150.42 Refilling excavations
- 150.43 Excavations under sidewalks
- 150.44 Excavations near street

- 150.99 Penalty

Statutory reference:

Authority to adopt codes, see SDCL § 9-33-4.1

Fire protection and safety regulations, see SDCL Chapter 9-33

GENERAL PROVISIONS

§ 150.01 AUTHORITY FOR ZONING AND PLANNING.

(A) The municipality shall have the power to regulate zoning and planning pursuant to SDCL § 11-4-1 and therein for the purpose of promoting health, safety, or the general welfare of the community, the governing body may regulate and restrict the height, number of stories, and size of building and other structures; the percentage of lot that may be occupied; the size of the yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.

(SDCL § 11-4-1)

(B) For violations of SDCL Chapter 11-4, see § 150.06.

§ 150.02 PLANNING COMMISSION.

Pursuant to SDCL § 11-6-2, the municipality shall create a Planning and Zoning Commission to develop and implement a comprehensive plan and the zoning regulations in each of the municipality's districts. The municipality shall appropriate a fund for the expenditures of the commission and further set out the qualifications of the members, mode of appointment, tenure of office, compensation, powers, duties, and rules governing such board.

§ 150.03 BUILDING CODE ADOPTED.

There is hereby adopted by the town, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location, and maintenance of buildings and structures, including permits and penalties, a certain building code known as the "International Building Code." A copy is on file in the office of the Utilities Manager and/or Finance Officer and incorporated as fully as if set out at length herein; the provisions thereof shall be controlling in the construction of all buildings and other structures within the corporate limits of the town.

(Prior Code, § 3-1-1)

§ 150.04 DISCLOSURE OF INFORMATION OF ENERGY EFFICIENCY OF RESIDENTIAL BUILDING TO BUYER; ALTERNATIVE DISCLOSURE.

(A) Except as provided by division (B) below, any person building or selling a previously unoccupied new residential building, which is a single-family or multi-family unit of four units or less, shall disclose to the buyer or prospective buyer information regarding the energy efficiency of the residential building. The completed disclosure form shall be provided prior to the signing of the contract to purchase and prior to closing if changes have occurred or are requested, and at any other time upon request. For new residential buildings that are completed and suitable for occupancy but unsold, the completed disclosure form shall be made available to the buyer or prospective buyer by the builder or seller when the residence is shown and at any other time upon request. The disclosure shall be made on a form prepared and disseminated by the state's Real Estate Commission.

(SDCL § 11-10-8)

(B) If the new residential building is subject to both the National Manufactured Housing Construction and the Safety Standards Act pursuant to the 42 U.S.C. § 5403 and the Federal Trade Commission regulation on labeling and advertising of home insulation pursuant to 16 C.F.R. § 460.16, both as in effect on January 1, 2009, the builder or seller may disclose, instead of the information required by division (A) above, the information regarding the new residential building that is required to be disclosed pursuant to the federal act and regulation.

(SDCL § 11-10-9)

Statutory reference:

Disclosure statement, see SDCL § 11-10-10

§ 150.05 VIOLATIONS.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of SDCL Chapter 11-10 or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(SDCL § 11-4-7) Penalty, see § 150.99

§ 150.06 BUILDING PERMITS REQUIRED.

(A) Building permits are required in the following instances:

(1) For any new construction of a structure/building; or for moving an existing structure/building into town limits (for storage buildings, see division (A)(4) below);

(2) For any improvement on or to any structure/building, whether inside or outside of the structure/building, in which the market value of the improvement(s) exceeds \$3,000;

(3) For any structure/building, regardless of the cost in which the existing measurements (footprint) are altered;

(4) For all storage structures:

(a) Building permits for storage structures less than eight inches by ten inches do not require a dollar amount, but must meet setback requirements; and

(b) Building permits for storage structures larger than eight inches by ten inches require a dollar amount and must meet setback requirements.

(5) For any concrete, asphalt, paved, or graveled driveway erected, partially erected, moved, added to, or structurally altered in which the market value of the improvement(s) exceeds \$3,000;

(6) For the removal of any structure/building; and

(7) For any change of occupancy status within a building (for example: converting from residential to commercial and the like), no building permit shall be issued by the Board of Trustees except in conformity to the provisions set forth in this section.

(B) Building permits must be acquired and approved before the commencement of construction.

(Prior Code, § 3-1-3) (Ord. passed 12-3-2018) Penalty, see § 150.99

§ 150.07 FIRE LIMITS.

The fire limits of the town are hereby established as follows:

(A) All of the south half of Block 22;

(B) The south half of Block 21;

(C) The north half of Block 28; and

(D) The north half of Block 27.

(Prior Code, § 3-1-4)

§ 150.08 PERMISSIBLE WOODEN STRUCTURES IN FIRE LIMITS.

No frame or wooden structure shall hereafter be built within the fire limits as defined herein, or as they may be hereafter established, except the following:

(A) Temporary one story frame buildings for use of builders; and

(B) Structures built by a retail lumberperson upon his or her premises and which building must be removed from the premises within three days after completion.

(Prior Code, § 3-1-5) Penalty, see § 150.99

§ 150.09 TOWN'S RESPONSIBILITY IN NUMBERING BUILDINGS.

It shall be the responsibility of the Finance Officer to assign house (or other building) numbers. In the case where a house (or other building) is incorrectly numbered, the Finance Officer and/or the Town Board may require the owner or agent thereof to correctly number the same; and it shall be unlawful for such owner or agent to refuse to comply.

§ 150.10 OWNER'S RESPONSIBILITY IN DISPLAYING BUILDING NUMBERS.

It shall be the responsibility of the owner or agent in control of any house or building to have said house or building neatly, clearly, and properly numbers so as to be clearly visible from the street fronting the lot.

(Ord passed 1-21-2021) Penalty, see § 150.99

CONTRACTORS

§ 150.25 REQUIREMENTS OF CONTRACTORS.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

CONTRACTORS. Any individual being hired to construct any structure or remodel any structure, install, or repair any sewer or water lines, to do any excavating or landscaping or construct or repair any item such as a fence, road, drive, and the like.

(B) Contractors doing work in or for the municipality are required to do the following prior to starting work.

(1) The contractor shall be aware of the building permit process and file one or make sure the individual he or she is working for has done so. Building permits can be filed at the Municipal Finance Office and are at no cost by either the contractor or a private individual.

(2) If doing any digging, excavating, landscaping, or trenching, the contractor shall call the "SD One Call" 48 hours prior to work or, if an emergency, call and identify it as such to be able to start work immediately, as per SDCL Chapter 49-7A.

(3) The contractor shall file proof of insurance with the Municipal Finance Officer if working on any public land (county, town, school, state, water district, and the like) or if working in any right-of-way along municipal streets.

EXCAVATIONS IN PUBLIC PLACES

§ 150.40 PERMIT REQUIRED.

Any person, company, or corporation intending to make excavations in any street, alley, sidewalk, or public ground in the town for any purpose whatsoever shall file in the office of the Finance Officer a statement in writing of the place where such excavation is to be made and the estimated time of its completion, together with a written agreement executed by such person, company, or corporation, stating that such person, company, or corporation will pay to the town any and all damages which may be sustained by said town due to the failure of such person, company, and corporation to observe this section. Upon completion of these requirements, the Town President and Finance Officer shall issue a permit in writing for such excavation.

(Prior Code, § 10-5-1)

§ 150.41 GUARDING EXCAVATIONS.

Any person, company, or corporation receiving a permit to make excavation in any street, alley, sidewalk, or public ground shall during the progress and continuance of the work, erect, and maintain around the same both day and night suitable guards, fences, flares, and signals so as to prevent injury to person, animals, or vehicles on account of such excavation. Such flares shall be kept lighted from sundown to sunrise.

(Prior Code, § 10-5-2) Penalty, see § 150.99

§ 150.42 REFILLING EXCAVATIONS.

When excavation is completed, the person, company, or corporation making such excavation shall promptly and without delay refill the same in the manner herein provided. The dirt shall be carefully replaced and tamped in hard layers of not more than six inches in depth. Where water supply is convenient, the layers of dirt should be well saturated with water so as to make the surface of the ground, when completely filled, level and as firm as before such excavation occurred.

(Prior Code, § 10-5-3) Penalty, see § 150.99

§ 150.43 EXCAVATIONS UNDER SIDEWALKS.

(A) Any person, company, or corporation having or erecting any building abutting upon any street, alley, or sidewalk in the town may excavate under any sidewalk to the curb for the purposes of constructing a cellar or basement in front of or adjoining said building; provided, however, that said excavation shall be surrounded on the outer sides and end with substantial brick, stone, or cement wall, sufficient to maintain the said sidewalk.

(B) Permission to make said excavation must first be obtained from the Town President and Finance Officer as provided for in § 150.40 and also said excavation shall be securely guarded as provided for in § 150.41.

(Prior Code, § 10-5-4)

§ 150.44 EXCAVATIONS NEAR STREET.

It shall be unlawful for any person, owner, or occupant of any lot or parcel of land within the town, to make or cause to be made, any excavation on said lot or parcel of land, unless the same be securely guarded so as to prevent the injury of any person or persons or animals passing upon or along said streets, alleys, public grounds, or traveled path.

(Prior Code, § 10-5-5) Penalty, see § 150.99

§ 150.99 PENALTY.

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

CHAPTER 151: MOBILE HOMES

Section

151.01 New mobile homes

151.02 Existing mobile homes

151.99 Penalty

§ 151.01 NEW MOBILE HOMES.

Any mobile home, which is placed within the corporate town limits, either temporarily or permanently, shall be subject to the following requirements.

(A) Each mobile home shall meet a minimum width of 16 feet and 40 or more feet in length.

(B) Each mobile home must be fully and completely skirted within 30 days of being located within the corporate town limits.

(C) Any mobile home that is more than ten years of age from the date of manufacture shall not be allowed, unless a special permit is granted by the town.

(D) Only one mobile home unit shall be allowed on a lot or adjoining lots owned by the same individual or entity unless a special permit is granted by the town.

(E) No mobile home shall enter the town without the previous approval of a building permit application which meets all of the aforementioned requirements.

(F) All mobile homes shall be connected to water, sewer, electric, and garbage services prior to and during occupancy.

(Prior Code, § 3-2-1) (Ord. passed 3-12-2019) Penalty, see § 151.99

§ 151.02 EXISTING MOBILE HOMES.

(A) Existing mobile homes located within the town on the effective date of this section may be declared a public nuisance upon finding by the Town Board of Trustees following a hearing that determines that conditions within the mobile home are hazardous to human health and sanitation.

(B) Any person, persons, or corporation desiring to move an existing mobile home from its current location within the boundaries of the town to another location within the boundaries of the town must first acquire approval from the Board of Trustees through the building permit application process. If approval is granted, the following conditions must also be met.

(1) The mobile home in its new location must be fully and completed skirted within 30 days of being located at its new location within the corporate town limits.

(2) Only one mobile home unit shall be allowed on a lot or adjoining lots owned by the same individual or entity, unless a special permit is granted by the town.

(3) The mobile home in its new location shall be connected to water, sewer, electric, and garbage services prior to and during occupancy.

(C) Under no circumstances shall a mobile home be moved from one location within the boundaries of the town to another location within the boundaries of the town without prior approval from the Board of Trustees.

(Prior Code, § 3-2-2) (Ord. passed 3-12-2019) Penalty, see § 151.99

§ 151.99 PENALTY.

Any person, persons, firm, or corporation violating any of the provisions in this chapter shall be punished by a fine of not less than \$100 or nor more than \$200 per day of infraction or by imprisonment not exceeding 30 days or by both such fine and imprisonment.

(Prior Code, § 3-2-3) (Ord. passed 3-12-2019)

TABLE OF SPECIAL ORDINANCES

Table

I. WASTE REDUCTION TARGETS

TABLE I: WASTE REDUCTION TARGETS

<i>Ord./Res. No.</i>	<i>Date Passed</i>	<i>Description</i>
110	1-1-1997	Opting out of recycling paper products and corrugated paper because the cost will exceed the cost of unsubsidized landfilling of these materials.
111	7-1-1997	Opting out of recycling glass, plastic, aluminum, or steel containers because the cost will exceed the cost of unsubsidized landfilling of these materials.

PARALLEL REFERENCES

References to South Dakota Code of Laws

References to Prior Code

References to Resolutions

References to Ordinances

REFERENCES TO SOUTH DAKOTA CODE OF LAWS

<i>SDCL Cites</i>	<i>Code Section</i>
<i>SDCL Cites</i>	<i>Code Section</i>
Chapter 1-16A	34.048
Chapter 1-16B	34.048
Chapter 1-16G	34.048
Chapter 1-16H	34.048
Chapter 1-16J	34.048
Chapter 1-25	30.41
1-25-1	Chapter 30
1-25-1.1	30.24
1-25-1.3	30.24
1-27-1.1	31.14
1-27-1.2	31.14
1-27-1.16	31.14
1-27-19	31.03
3-4-8	31.34
3-4-9	31.32
3-17-6	31.30
3-19-2	30.05
Chapter 5-12	34.048
Chapter 5-18A	Chapter 34, 34.039, 34.042, 34.048, 34.049, 34.050, 34.051
5-18A-1	Chapter 34
5-18A-3	34.038
5-18A-4	34.039
5-18A-5	34.038, 34.039
5-18A-6	34.038, 34.040
5-18A-7	34.038, 34.040
5-18A-8	34.038, 34.041
5-18A-9	34.038, 34.042
5-18A-10	34.041, 34.042
5-18A-11	34.038, 34.043
5-18A-12	34.044
5-18A-13	Chapter 34
5-18A-14	34.039, 34.040, 34.045, 34.048
5-18A-15	34.046
5-18A-16	34.047
5-18A-22	34.048
5-18A-37	34.040

Chapter 5-18B	Chapter 34, 34.039, 34.042, 34.048, 34.049, 34.050, 34.051
Chapter 5-18C	Chapter 34, 34.039, 34.042, 34.048, 34.049, 34.050, 34.051
5-18C-3	34.049
5-18C-6	34.051
5-18C-8	34.050
Chapter 5-18D	Chapter 34, 34.039, 34.042, 34.048, 34.049, 34.050, 34.051
5-18D-6	34.050
5-18D-17 to 5-18D-24	34.040
5-21-1	34.037, 34.049
5-21-1.1	34.037
5-21-3	34.037
5-21-4	34.037
6-1-1	34.036
6-1-17	30.04
Chapter 6-13	35.01
6-13-1	35.01
6-5-5	35.02
Chapter 6-8B	34.080
6-8B-4	32.03
Chapter 7-8	90.52
Chapter 7-25A	113.21
9-1-1	10.02, 10.04
9-1-5	34.035
9-2-1	30.02
9-2-2	30.02
9-2-3	30.01
9-7-3	30.22
9-7-5	30.23
9-7-7	30.25
Chapter 9-11	30.20
9-11-10	30.44
Chapter 9-12	Chapter 30
9-12-2	Chapter 34
9-12-3	31.09
9-12-3.1	31.09
9-12-6	32.02
Chapter 9-13	32.01, 32.04
9-13-6	32.02
9-13-7	30.03, 32.04
9-13-9	30.03
9-13-13	10.04, 30.03, 32.02
9-13-14	30.03, 30.22, 32.03
9-13-14.1	30.03
9-13-14.2	30.03, 30.22, 32.03
9-13-21	32.01
9-13-24	32.05
9-13-28	32.05
9-14-3	31.01
9-14-4	31.02

9-14-5	31.33
9-14-10	31.31
9-14-16	31.08
9-14-16.1	31.08
9-14-17	31.03
9-14-18	31.03
9-14-19	31.03
9-14-20	31.03
9-14-22	31.05
9-14-24	31.06
9-14-27	31.07
9-14-28	31.09
9-14-30	31.09
9-14-30 to 9-14-35	31.09
9-14-31	31.09
9-14-33	31.09
9-14-34	31.09
9-14-35	31.09
9-14-42	31.50
Chapter 9-18	Chapter 31
9-19-1	10.04
9-19-3	70.99, 90.99, 92.99, 93.41, 93.99
9-19-7	30.41
9-19-7.1	30.41
9-19-8	30.41
9-19-9	30.41
9-19-13	30.42, 93.41, 93.99, 114.02
9-19-14.1	30.43
9-19-15	30.43
9-19-16	30.43
9-19-17	30.43
9-21-2	34.002
9-21-7	34.004
9-21-15	34.004
9-21-19	34.020
9-21-32	34.066
9-22-1 et seq.	31.04
9-22-2	31.04
9-22-21	34.006
9-23-1	34.005
9-23-2	34.005
9-25-12	34.080
9-25-13	34.080
9-25-13 to 9-25-16	34.080
9-29-12	93.01
9-29-13	90.01
9-29-26	Ch. 110
9-30-1	94.001
9-30-2	94.001
9-30-3	94.001
9-30-4	94.001
9-30-5	94.001

Chapter 9-33	Ch. 150
9-33-4.1	Ch. 150
9-34-7	110.12
9-34-8	112.03
9-34-9	110.26
9-34-10	110.27
9-34-17	110.28
9-34-18	110.25
9-35-7	94.021
9-35-8	94.021
Chapter 9-38	95.02
9-38-1 et seq.	95.01
9-38-42	95.01
9-38-44	95.01
Chapter 9-43	94.050
9-43-82	94.050
9-45-1	94.020
9-46-1	94.047
9-46-1.3	94.047
9-46-2	94.049
9-46-2.1	94.046
9-46-2.2	94.046
9-46-2.3	94.046
9-46-4	94.049
9-46-4.1	94.050
9-46-4.2	94.045
9-46-11	94.057
9-46-12	94.045
Chapter 9-55	34.065
9-55-2	34.065
9-55-3	34.065
10-4-42 to 10-4-45	54.16
10-12-7	34.003
Chapter 10-45	34.021, 34.022, 34.999
Chapter 10-46	34.021, 34.037, 34.999
Chapter 10-46A	34.037
Chapter 10-46B	34.037
Chapter 10-52	34.021
Chapter 10-52A	34.022
Title 11	94.045
Chapter 11-4	150.01
11-4-1	150.01
11-4-3.1	114.02
11-4-7	150.05
11-4-8	30.41
11-6-2	150.02
Chapter 11-10	150.05
11-10-8	150.04
11-10-9	150.04
11-10-10	150.04
Chapter 11-11	34.048
12-4-5.2	32.02

Chapter 12-6	32.04
Chapter 12-19	32.01
Chapter 12-27	Chapter 32
Chapter 21-10	93.99
21-10-1	90.02
21-10-2	90.02
21-10-3	90.02
21-10-4	90.13
21-10-6	90.53, 94.049
21-10-8	90.14
21-10-28 through 21-10-34	95.16
21-10-28	95.16
21-10-28.1	95.16
21-10-29	95.16
21-10-30	95.16
21-10-31	95.16
21-10-33	95.15
22-6-2(2)	70.99, 90.99, 92.99, 93.41, 93.99
22-14-8	130.01
22-25-14	90.05
Chapter 23-7	130.01
23-7-44	130.04
23-7-45	130.04
23-7-7	130.01
23-7-70	130.01
23-7-71	130.05
26-1-1	130.04
Chapter 26-11	130.04
26-11-1	130.04
30-20G-72	114.02
31-30-1	90.11
Title 32	70.02
32-15-17	70.34
32-20A-2	70.34
34-1-17	110.28
34-16-19	90.50, 90.51, 90.52
34-16-20	90.51
34-16-21	90.52
34-20G-1	114.02
34A-6-63.1	53.20
Title 35	113.01, 113.21
35-1-1	113.01
35-1-1 et seq.	34.022
35-2-1 et seq.	Chapter 113
35-2-1.1	113.23
35-2-1.2	113.24
35-4-2(3)	113.21
35-4-2(4)	113.23
35-4-2(5)	113.21
35-4-2(6)	113.23
35-4-2(12)	113.21

35-4-2(13)	113.23
35-4-2(16)	113.21
35-4-2(A)(4)	113.20
35-4-2(A)(12)	113.20
35-4-2(A)(13)	113.20
35-4-2(A)(16)	113.20
35-4-2(A)(17)	113.20
35-4-2(A)(17)(A)	113.20
35-4-6	113.21
35-4-10	113.21
35-4-11	113.20
35-4-78	113.04
35-4-79	113.05
35-4-79-4	113.05
35-4-81	113.03
35-4-81.2	113.03
36-4-11	110.28
36-4-8.2	110.28
Chapter 36-18A	31.06
37-14-2	111.01
37-14-4	111.03
37-14-5	111.02
37-14-18	111.04
37-14-19	111.04
37-14-20	111.04
37-16-1	112.01
37-16-2	112.02
37-16-3	112.03
37-16-4	112.04
37-16-5	112.05
40-1-2.3	93.57
40-12-4	93.02
40-12-6	93.42
Chapter 40-15	111.04
42-7A-64	113.23
Chapter 49-7A	150.25
49-13-1 et seq.	110.25
49-31-1 et seq.	110.25

REFERENCES TO PRIOR CODE

<i>Prior Code Section</i>	<i>2021 Code Section</i>
<i>Prior Code Section</i>	<i>2021 Code Section</i>
1-1-1	30.24
1-2-1	30.24, 31.10
1-2-2	30.22
1-2-3	31.11
1-2-4	31.12

1-2-5	30.22
1-2-6	30.21
1-2-7	34.081
1-2-8	31.13
1-2-9	31.31
1-2-10	31.30
1-2-11	31.35
1-2-12	31.14
1-2-13	31.15
1-3-1	30.24
1-4-1	30.45
1-4-2	30.40, 30.41, 30.43, 30.46
1-4-3	30.47
1-4-6	30.48
1-5-1	30.24
2-1-1	11.01
3-1-1	150.03
3-1-3	150.06
3-1-4	150.07
3-1-5	150.08
3-2-1	151.01
3-2-2	151.02
3-2-3	151.99
4-1-1	33.02
4-1-2	33.01
4-1-3	33.03
4-1-5	33.05
4-1-6	33.06
5-1-1	51.36
5-1-2	53.01
5-1-3	53.02
5-2-1	90.02, 90.06, 90.07, 90.10, 90.15, 90.16, 90.17, 90.18, 90.19, 90.20, 90.21, 90.22, 92.10
5-2-2	90.50
6-1-1	113.02
6-2-2	93.16, 93.17
6-2-3	93.16, 93.17
6-2-4	93.56, 93.63, 96.02
6-2-7	93.56
6-2-8	93.25, 93.26, 93.41
6-2-9	93.21, 93.22, 93.24
6-2-10	93.99
6-2-11	93.99
6-3-1	97.01
6-3-2	97.10
6-3-3	97.11
6-3-4	97.12
6-3-5	97.13
6-3-6	97.03, 97.05
6-3-7	97.14
6-3-8	97.07
6-3-9	97.15

6-3-10	97.16
6-3-11	97.17
7-2-1	35.04
7-2-2	35.04
7-2-3	33.09, 35.05, 52.08, 94.097
7-2-5	50.02
7-2-6	50.15
7-2-7	94.029, 94.060
7-3-1	90.35
7-3-2	90.36
7-3-3	90.37
7-4-1	91.02
7-4-2	90.03
7-4-3	92.09
7-4-4	91.99, 92.99
7-4-5	91.03
7-5-1	130.03
7-5-2	132.01, 132.02, 132.03
7-6-1	93.59
7-6-4	93.19
7-6-5	93.19
8-1-1	51.03
8-1-2	51.04
8-1-3	51.05
9-1-2	50.03
9-1-3	50.04
9-1-6	50.05
9-1-7	50.06
9-1-8	50.07
9-1-9	50.08
9-1-10	50.09
9-1-11	50.10
9-1-12	50.11
9-1-13	50.13
9-1-14	50.14
9-2-2	51.07
9-2-3	51.08
9-2-6	50.99, 51.10, 51.99, 53.99
9-3-1	51.12
9-3-2	51.26
9-3-3	51.27
9-3-4	51.28
9-3-5	51.29
9-3-6	51.30
9-3-7	51.31
9-3-8	51.32
9-3-9	51.33
9-4-1	52.01
9-4-2	52.04
9-4-4	52.07, 94.090
9-4-5	94.092

9-5-1	53.15
9-5-2	53.16
9-5-3	53.17
9-5-4	53.18
9-5-5	53.19
10-1-1	94.002
10-1-2	94.003
10-1-3	94.004
10-2-1	94.047
10-2-2	94.048
10-2-3	94.047
10-2-4	94.055
10-2-5	94.051
10-3-1	94.022
10-3-2	94.023
10-3-3	94.024
10-3-4	94.025
10-3-5	115.01
10-3-6	94.026
10-3-7	94.056
10-3-8	94.052
10-3-9	94.053
10-4-1	94.054
10-4-2	94.027
10-5-1	150.40
10-5-2	150.41
10-5-3	150.42
10-5-4	94.030, 150.43
10-5-5	94.030, 150.44
10-6-1	94.075
10-6-3	94.077
10-7-1	94.091
10-7-2	94.093
10-7-3	94.094
10-7-4	94.095

REFERENCES TO RESOLUTIONS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
-	7-1-2003	91.99
14-01	5-15-2014	53.20

REFERENCES TO ORDINANCES

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
-	-	114.02
110	1-1-1997	TSO Table I
111	7-1-1997	TSO Table I
150	6-9-2009	10.15
6-2	7-14-2009	93.23, 93.27
114	-	34.021
-	12-8-2010	50.03, 50.04
2012-01	4-10-2012	70.32, 70.33, 70.99
-	4-13-2015	93.63
2016-01	4-12-2016	51.02
2016-02	5-10-2016	51.01, 51.25
-	3-13-2018	50.04
-	11-6-2018	51.06
-	12-3-2018	150.06
-	1-8-2019	52.02
2018-02	2-6-2019	70.15, 96.02
-	3-12-2019	151.01, 151.02, 151.99
-	3-10-2020	50.99, 51.09, 51.10, 51.35, 51.99, 53.99
-	1-12-2021	94.005, 94.006
9-4-6	1-12-2021	52.05
-	1-21-2021	150.10
-	8-10-2021	10.99
-	8-10-2021	54.01 - 54.18