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§ 10.01 TITLE OF CODE; CITATION.

This code, in revision of the ordinances of the city, may be cited as "the 2025 Municipal Code of the City of Gary, South Dakota." When references to "this code," or "code," or "this ordinance," are made in this code, then it shall be interpreted to mean the 2025 Municipal Code of the City of Gary, South Dakota, unless the context clearly requires otherwise. (Prior Code, § 2-1-4)

§ 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 provision, or an 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; and 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.

CITY or **MUNICIPALITY.** The political subdivision of the State of South Dakota known as the City of Gary, a municipal corporation.

CODE. The 2025 Municipal Code of the City of Gary, South Dakota.

COUNTY. Deuel County. (SDCL § 9-1-1)

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.

COUNCIL or **GOVERNING BODY.** The City Council for the City of Gary.

LOT. A parcel or tract of real property.

MAY. A permissive term allowing discretion as to whether an act will either be performed or refraining from doing an act.

MONTH. A calendar month.

MUNICIPAL CORPORATION. Any city or town that is organized pursuant to SDCL Title 9. (SDCL § 9-1-1)

ORDINANCE. The 2025 Municipal Code of the City of Gary, South Dakota, in revision of ordinances of the City of Gary.

OWNER. 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 the heirs or successors to the grantee. (SDCL § 9-1-1)

PART-TIME, TEMPORARY AND SEASON POSITION. An employee who is employed by the municipality in a position to work less than 32 hours per week. This employee job classification is not eligible for benefits beyond those legally required. ~~An employee who works less than 40 hours per week.~~

PERSON. Any natural person or persons, or nonprofit or for-profit business, corporation, firm, venture, or any other legal entity.

POLICE. Any law enforcement officer required by law to enforce local ordinances and state statutes.

PUBLISH. Publication in an official newspaper of the municipality as designated by the governing body pursuant to SDCL § 9-12-6. (SDCL § 9-1-1)

RESOLUTION. Any determination, 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.

~~**SEASONAL OR TEMPORARY EMPLOYEE.** An employee who may work full time but for a period of nine months or less.~~

SHALL. A mandatory term requiring an act to be performed or to refrain from performing an act.

STATE. The State of South Dakota.

STREET. An alley, avenue, boulevard, or traveled road.

YEAR. A calendar year. (Prior Code, § 1-1-1)

§ 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 REFERENCE TO OFFICES.

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

§ 10.08 ERRORS AND OMISSIONS.

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

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

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

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 ORDINANCES.

(A) No suit, proceeding, 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.

§ 10.99 GENERAL PENALTY.

(A) Any person in violation of any of the provisions of this code or failing to comply with any of the provisions thereof shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not to exceed the sum of \$500 unless specifically set forth otherwise herein.

(1) Each and every violation of the provisions of this code shall constitute a separate offense, including but not limited to a daily basis.

(2) Furthermore, **ANY PERSON** shall include the agent, clerk, employee, or servant of any other person that violates any of the provisions of this code, and that person shall be deemed guilty as a principal and shall be punished as provided herein. (Prior Code, § 1-1-5)

(B) Any act which is declared to be unlawful, prohibited, or required to be done by this code, which is a violation of this or any other ordinance shall be a misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed the sum of \$500 for each occasion or day a violation occurs. (Prior Code, § 2-1-1)

CHAPTER 11: CITY STANDARDS

- 11.01 Municipal limits
- 11.02 Wards
- 11.03 Voting precincts
- 11.04 Voter ward map

§ 11.01 MUNICIPAL LIMITS.

The municipal limits for the city shall include all of that area included on the city map maintained at the office of the City Finance Officer. (Prior Code, § 1-2-1)

§ 11.02 WARDS.

The city shall be governed by a Mayor and six Alderpersons representing three wards with two Alderpersons representing each ward, and the city divided into the following three wards.

(A) *First Ward.* The First Ward of said city shall constitute all that portion of the city lying west of Lac Qui Parle Street, south of Oak Avenue, and north of Washington Avenue.

(B) *Second Ward.* The Second Ward of the city shall constitute all that portion of the city lying north of Washington Avenue, east of Lac Qui Parle Street, and west of Coteau Street; and all that portion of the city lying north of Oak Avenue, east of Herrick Street, and west of Coteau Street.

(C) *Third Ward.* The Third Ward of the city shall constitute all that portion of the city lying east of Coteau Street and all that portion of the city lying south of Washington Avenue. (Ord. 2021-339-375, passed 12-29-2021)

§ 11.03 VOTING PRECINCTS.

All of the territory of the city having been divided into continuous wards; now therefor, all of the wards are hereby consolidated into one voting precinct or polling precinct for polling and voting purposes at any and all elections. (Prior Code, § 1-2-3)

§ 11.04 VOTER WARD MAP.

TITLE III: ADMINISTRATION

CHAPTER 30: MAYOR AND CITY COUNCIL

- 30.01 Election and duties
- 30.02 Regular meetings
- 30.03 Special meetings
- 30.04 President and Vice President
- 30.05 Council procedure
- 30.06 Departments and supervision
- 30.07 Supervisor duties
- 30.08 Duties and term of office
- 30.09 Oath of office

§ 30.01 ELECTION AND DUTIES.

The city shall be governed by a Mayor and City Council who shall be elected and perform such duties as are prescribed by the laws of the state. (Prior Code, § 1-3-1)

§ 30.02 REGULAR MEETINGS.

(A) The regular meeting of the governing body of the city shall be held on the first Monday of each month at the city building, 1113 Summit Street, or at such place as the governing body may select within the said city except when such Monday is a legal holiday, and then the meeting shall be held on the next day that is not a legal holiday.

(B) Hours of said meeting will be at 7:30 p.m. during the months of April, May, June, July, August, September, and October; and at 6:30 p.m. during the months of November, December, January, February, and March.

(C) Any meeting may be adjourned from day to day and shall be open to the general public. (Prior Code, § 1-3-2) (Ord. 2021-339-376, passed 12-29-2021)

§ 30.03 SPECIAL MEETINGS.

(A) Special meetings of the City Council may be called at any time unless members of the Council are absent from the city and a quorum cannot be obtained by the Mayor. The Mayor or any two members may call a special meeting to consider any such matters as shall be mentioned in the notice for such meeting.

(B) Written notices stating the place and time of holding the special meeting and the matters to be considered shall be issued by the Finance Officer.

(1) The notices shall be served either verbally or in writing by the Finance Officer upon each member of the City Council who can be located at least ~~one~~ **twenty four (24) hours** before the time specified for such meeting.

(2) In the alternative, a waiver of notice signed by all Council members present reflecting a quorum at the special meeting shall be filed with the Finance Officer. (Prior Code, § 1-3-3)

§ 30.04 PRESIDENT AND VICE PRESIDENT.

At the first meeting of the City Council in ~~May~~ **December** of each year and after the qualification of the newly elected members, the Council shall elect from among its own members a President and Vice President of the Council, whose duties are prescribed by the laws of the state. (Prior Code, § 1-3-4)

§ 30.05 COUNCIL PROCEDURE.

"Robert's Rules of Order" as revised from time-to-time shall be the standard floor procedure by which all meetings of the City Council are governed. The Council may adopt procedures differing from "Robert's Rules of Order" by a majority vote of its membership. (Prior Code, § 1-3-5)

§ 30.06 DEPARTMENTS AND SUPERVISION.

The following committees are hereby established under the executive office of the Mayor:

(A) Alleys and Streets;

(B) Cemetery;

(C) Golf Course;

(D) Law Enforcement;

(E) Library;

(F) Liquor;

~~(G) Municipal Tree Board;~~

(H) Parks;

(I) Sanitary; and

(J) Sewer and Water. (Prior Code, § 1-3-6)

§ 30.07 SUPERVISOR DUTIES.

Each Council member or Mayor, in fulfillment of the provisions of § 30.06, shall:

(A) Act in a supervisory capacity for each department listed;

(B) Keep a careful and constant watch over the performance of all duties of all employees and officials and over all equipment and all activities of his or her respective departments; and

(C) Perform all other duties as may be specifically provided in this section, by the Mayor, or by the Council.
(Prior Code, § 1-3-7)

§ 30.08 DUTIES AND TERM OF OFFICE.

The duties and terms of office of the governing body and its members shall be in accordance with the statutes of the state and as prescribed by the ordinances of the city. (Prior Code, § 1-2-4)

§ 30.09 OATH OF OFFICE.

Any person elected as a member of the governing body at an annual or special city election shall:

(A) Be duly sworn in by an official of the city government before assuming his or her official duties as a member of the governing body; and

(B) Be required to subscribe and take an affirmation of office or oath of loyalty as required by the statutes of the state. (Prior Code, § 1-2-5)

CHAPTER 31: EMPLOYEES, OFFICERS, AND ORGANIZATIONS

General Provisions

31.01 Oaths and bonds

31.02 Salaries

31.03 Termination of employment

City Officers

31.15 Officers

31.16 Duties

31.17 Building Inspector

31.18 City Attorney

31.19 Finance Officer

31.20 City Planning and Development Officer

GENERAL PROVISIONS

§ 31.01 OATHS AND BONDS. All appointed officers shall take and subscribe an oath or affirmation in the form required by the constitution of the state before entering upon the discharge of their duties and shall file a bond as may be required by law. The premium of any such bond shall be paid for by the city. (Prior Code, § 1-4-7)

§ 31.02 SALARIES.

The salaries of all municipal employees and officers shall be fixed by a resolution of the City Council. The list of all salaries shall be on file with the Finance Officer and open to public inspection. (Prior Code, § 1-4-8)

§ 31.03 TERMINATION OF EMPLOYMENT.

All full-time employees who have worked continuously for the city for one full year or more may not be discharged from employment without having been given at least two weeks' notice before pay is terminated. However, this section shall not apply to any employee discharged for cause, malfeasance, or misfeasance. (Prior Code, § 1-4-9)

CITY OFFICERS

§ 31.15 OFFICERS.

The Mayor may appoint a Building Inspector, Finance Officer, Deputy Finance Officer, Chief of Police, City Engineer, Sewer and Water Superintendent, City Attorney, and such other committees and offices as may be provided by ordinance or state statute, including members of the Ambulance and Fire Departments; and all of which shall be ratified by the City Council on the first Monday of ~~May~~ **December** of each year, and all of whom shall hold office until the first Monday in ~~May~~ **December** of the year following their appointment and until their successors shall be appointed and qualified unless their terms are otherwise terminated by the Mayor with the consent of a majority of the City Council. (Prior Code, § 1-4-1)

§ 31.16 DUTIES.

Each appointed officer shall perform such duties as are prescribed by this code and state statutes plus such other duties as may from time-to-time be prescribed by the City Council and the Mayor. (Prior Code, § 1-4-2)

§ 31.17 BUILDING INSPECTOR.

(A) The Building Inspector shall be responsible for the following:

- (1) To enforce all ordinances of the city relating to the condition, construction, equipment, and management of all structures within the city;
- (2) To maintain records on all matters pertaining to the enforcement and regulation of all ordinances, and which records shall be at all times available for inspection by the City Council; and
- (3) To regulate and supervise all alteration, demolition, erection, moving, and repair of buildings within the city.

(B) In the event differences should arise between the Building Inspector and the owner of any building or any person engaged in any alteration, construction, demolition, moving, or repair of any buildings regarding the interpretation of any ordinances or the enforcement of ordinances, then an appeal may be made to the City Council. (Prior Code, § 1-4-3)

§ 31.18 CITY ATTORNEY.

The City Attorney shall have the special duty to make (or cause to be made) proper designations of any ordinance or amendment thereto and shall see that the organization and numbering of all ordinances is kept as uniform as is possible and in keeping with the organization of this code, together with those duties prescribed by state statute. Furthermore, in order to carry out his or her duties, the City Attorney shall have the power to change any of the numbering designations of any of the city's ordinances without having to pass an ordinance amending the prior ordinance, provided that the substance of any ordinance shall not be changed thereby. (Prior Code, § 1-4-4)

§ 31.19 FINANCE OFFICER.

(A) The Finance Officer shall be responsible for the following:

- (1) Shall have the custody of all official documents and records;
- (2) Shall attend all meetings of the City Council and keep a record of all official proceedings;
- (3) Shall keep an accurate account of the city's indebtedness and also an accurate record of all receipts and disbursements;
- (4) Shall audit and adjust all accounts presented to the City Council;
- (5) Shall prepare and certify all delinquent special-assessment payments to the County Auditor annually and keep an accurate record of all special-assessment payments;
- (6) Shall prepare a proposed budget and appropriation ordinance for the next fiscal year to be submitted to the City Council;
- (7) Shall supervise the accounting system or records for all departments and officers in accordance with the recommendations of the State Department of the Auditor General;
- (8) Shall prepare a report showing the financial condition of the city on January 1 each year;
- (9) Shall conduct and supervise all the city's annual and special elections;
- (10) Shall also keep the ordinance books current;

- (11) Shall issue all city licenses and permits as prescribed by city ordinances;
- (12) Shall keep the official seal of the city and perform as secretary for the various boards and commissions appointed by the Mayor;
- (13) Shall also prepare all official documents including notice of all public hearings, election notices and proceedings, ordinances and resolutions, and minutes of meetings; and
- (14) Shall perform such other administrative duties of the office as is prescribed by ordinance or by the direction of the City Council.

(B) The Finance Officer is authorized at his or her discretion to destroy canceled and paid warrants, duplicate receipts, duplicate special-assessment tax receipts, duplicate water bills, paid claim vouchers, poll books, voter registration lists, and miscellaneous petitions not pertaining to public improvements when any of these items are over 20 years old. Additionally, obsolete insurance policies, licenses and permit bonds, reports, requests, and miscellaneous items not required for permanent record purposes by the city may be destroyed within a reasonable time after having served their intent and purpose. (Prior Code, § 1-4-5)

§ 31.20 CITY PLANNING AND DEVELOPMENT OFFICER.

In the event such is desired, a City Planning and Development Officer may be employed by the City Council, and such Officer shall assist, coordinate, encourage, and promote the city's economic and planning developments and projects, plus assume such other duties as is directed by the City Council. (Prior Code, § 1-4-6)

CHAPTER 32: FIRE DEPARTMENT

- 32.01 Officers
- 32.02 Members
- 32.03 Board of Fire Officers
- 32.04 Retirement
- 32.05 Authorizing/adopting regulations
- 32.06 Inspection
- 32.07 Records
- 32.08 Election
- 32.09 Responding to fires
- 32.10 Chief responsibilities
- 32.11 Chain of command
- 32.12 Annual report
- 32.13 Officer authority
- 32.14 Hoses
- 32.15 Maintaining Fire Hall, equipment, and hydrants
- 32.16 Repairs and supplies
- 32.17 Drills
- 32.18 Prohibited conduct
- 32.19 Expulsion; suspension
- 32.20 Appeal
- 32.21 Department member powers; authority
- 32.22 Law enforcement

§ 32.01 OFFICERS.

The Fire Department shall consist of a Chief, one Assistant, and as many firefighters of the age of 18 years at the time of their membership and subsequent approval by the Council of the city. (Prior Code, § 10-1-1)

§ 32.02 MEMBERS.

- (A) (1) The names of all persons nominated for the appointment to membership shall be presented to the Board of Fire Officers in writing.
- (2) The Board of Fire Officers shall either confirm or deny the nominated person.
- (B) All resignations from the Department shall be delivered to and accepted by the Board of Fire Officers.
- (C) The Fire Chief or Assistant Chief may suspend any member until the Board of Fire Officers' next

meeting, where the Board of Fire Officers will decide to either dismiss the member, suspend the member for a period of time, or reinstate the member.

(D) The Board of Fire Officers will give the Council of the city a list of names of the active members yearly. (Prior Code, § 10-1-2) (Ord. 2017-363, passed 5-1-2017)

§ 32.03 BOARD OF FIRE OFFICERS.

The Chief and First Chief, Second Chief, Treasurer, Secretary, Training Officer, and Fire Reporter shall constitute a Board of Officers who shall meet monthly or more frequently for the transaction of all business of the Department, and which Board shall have absolute and entire control over and management of the Department and its government when such Department is not upon active duty, subject to the approval of the membership and the Council of the city. (Prior Code, § 10-1-3)

§ 32.04 RETIREMENT.

Any member of the Department who has arrived at the age of 50 years may be retired from service by the Board of Fire Officers by and with the consent of the Council of the city and, in like manner, any members who shall become physically unfit for active service. (Prior Code, § 10-1-4)

§ 32.05 AUTHORIZING/ADOPTING REGULATIONS.

The Board of Fire Officers is hereby authorized, empowered, and required from time-to-time to adopt a code of bylaws and rules for the control, government, and management of the Department and for regulating the business and proceedings of said Board, which code or codes of bylaws and rules after adoption by such Board shall not become effective and operative until presented to and approved by the membership of the Department and the Council of the city. (Prior Code, § 10-1-5)

§ 32.06 INSPECTION.

(A) The Board of Fire Officers is hereby authorized, empowered, and required to periodically inspect all buildings and premises where accumulations of combustible materials or other hazardous conditions are liable to exist and to order such changes or removals as, in its opinion, are necessary to safety from fire.

(B) For purposes of inspection, said Board is hereby empowered to enter any and all buildings and premises at any reasonable hour.
(Prior Code, § 10-1-6)

§ 32.07 RECORDS.

The Board of Fire Officers is required to devise forms or methods of keeping records and shall maintain records of all alarms of fire, fire losses, hoses of extinguishment, minor equipment, and the condition of hydrants.
(Prior Code, § 10-1-7)

§ 32.08 ELECTION.

(A) The Chief and Assistant Chief shall be elected from and by the membership of the Department for each year. They shall be removable only for cause after a hearing before the membership and City Council. No member of the Department shall be eligible for the appointment or election to Chief or First Chief or Second Chief who has not been a member of the Department for at least two years. (Prior Code, § 10-1-8)

(B) The members of the Department may choose from their number a Fire Chief in such manner and at such time or times as the Board of Fire Officers may provide in its code, bylaws, or rules to govern the Department.
(Prior Code, § 10-1-9)

§ 32.09 RESPONDING TO FIRES.

It shall be the duty of the members so often as any fire shall break out to report immediately upon the alarm thereof to the Fire House and to convey their apparatuses to the place where the fire shall happen unless otherwise directed by the Fire Chief or other officer who may be in charge and, upon such direction, they shall return their apparatuses well washed and cleaned to the Fire Hall. (Prior Code, § 10-1-9)

§ 32.10 CHIEF RESPONSIBILITIES.

The Chief shall have the general supervision of the Department, which supervision shall be subject to and

not in conflict with such code, bylaws, or rules to govern and manage the Department as may from time-to-time be adopted by the Board of Fire Officers. (Prior Code, § 10-2-1)

§ 32.11 CHAIN OF COMMAND.

(A) In all cases of fire, the Chief (or in his or her absence, the First Chief or Second Chief) shall have absolute control, command, and full power and thereby cause the several pieces of apparatus to work in the most advantageous manner. (Prior Code, § 10-2-2)

(B) Should the Chief and the First Chief and Second Chief be absent from a fire, then the person having charge of the apparatuses first arriving at the fire shall assume the duties of the Chief until the arrival of a superior officer. (Prior Code, § 10-2-3)

§ 32.12 ANNUAL REPORT.

It shall be the duty of the Chief to report annually to the Council of the city the following:

(A) The condition of the various pieces of apparatuses and appurtenances plus the number of hydrants and the condition of the same;

(B) The number of fires during the month, their locations and causes, and the dates of the same and the loss occasioned thereby; and

(C) The total number of active members in the Department and any expulsions and resignations passed upon by the Board of Fire Officers. (Prior Code, § 10-2-4)

§ 32.13 OFFICER AUTHORITY.

The Chief and the Assistant or officers in command at any fire are:

(A) Vested with full and complete police authority and are hereby authorized and directed to require and secure the removal of any and all obstructions from in front of and around fire hydrants; and

(B) For such purposes in division (A) above, are hereby authorized to call upon the head of any of the municipal departments for aid and assistance in securing such removal of obstructions. (Prior Code, § 10-2-5)

§ 32.14 HOSES.

(A) It shall be the duty of the Chief to see that officers have all hoses thoroughly washed and dried after use at drills and fires so that no dirty or wet hose is placed upon the apparatus.

(B) It shall also be the duty of the Chief to see that officers have all hoses on an apparatus changed every 30 days if not otherwise used and have water run through it every 60 days.

(C) It shall be the duty of the Chief to see that all new hoses are subjected to a test of 200 pounds of hydrostatic pressure and that all hoses are tested annually at a hydrostatic pressure of 150 pounds. (Prior Code, § 10-2-6)

§ 32.15 MAINTAINING FIRE HALL, EQUIPMENT, AND HYDRANTS.

(A) It shall be the duty of the Chief to see that the officers have the Fire Hall heated during the winter season.

(B) Also, it shall be the duty of the officer in charge of a drill or fire to report to the Chief all fire hydrants that are found frozen, leaky, out of order, or that are set in such a manner as to make it difficult to connect thereto.

(C) Furthermore, it shall be the duty of the Chief to make a permanent record of all reports of defective, inoperative, or improperly set fire hydrants, and an annual report shall be submitted to the Mayor and Council giving the location of the hydrant and a name of the maker with a specification of the problems. (Prior Code, § 10-2-7)

§ 32.16 REPAIRS AND SUPPLIES.

(A) No member of the Department shall be permitted to tamper with, fix, or repair any of the apparatuses unless so directed by the Chief, or in his or her absence, the First Chief or Second Chief. (Prior Code, § 10-2-8)

(B) All requests for repairs or supplies shall be presented to the Board of Fire Officers for the approval or recommendation of said Board, but in case any apparatus shall become so disabled that immediate repair is necessary, then the same shall be immediately reported to the Chief who is hereby empowered to have the same repaired at once. (Prior Code, § 10-2-9) Penalty, see § 10.99

§ 32.17 DRILLS.

It shall be the duty of the Training Officer to arrange the drills and training so that they will include the efficient and proper use of all apparatuses and appliances and the quick handling, laying, and raising of hoses, handling of streams, use of shut-off nozzles, forcible-entry tools, salvage work, ladder work, lifesaving, and modern methods of extinguishment. (Prior Code, § 10-3-3)

§ 32.18 PROHIBITED CONDUCT.

(A) Any officer or member of the Department who shall refuse or voluntarily neglect to obey or execute any orders from the officer in charge of any fire, or who shall violate or willfully neglect or refuse to be controlled, governed, or managed by any of the bylaws and rules of the Board of Fire Officers that may be adopted from time-to-time as herein provided, shall be subject to expulsion or suspension from the Department by the Board of Fire Officers in such manner and upon such hearing trial as may be provided by the bylaws and rules of the Board of Fire Officers.

(B) Additionally, no person shall be allowed to enter any Fire Hall or handle any apparatuses or implements belonging to the Department unless accompanied by an active member of the Department.

(C) Also, no fire apparatus during any fire or the report of any fire shall be moved or taken out of its encasement unless the Captain or at least one member of the Department shall be present and assent thereto.

(D) Furthermore, no apparatus shall be let out for hire or let out in any case except upon consent of the Chief, and then only in the case of a fire in an adjacent or neighboring municipality or other emergency. (Prior Code, § 10-3-1) Penalty, see § 10.99

§ 32.19 EXPULSION; SUSPENSION.

(A) If the Department shall vote for the expulsion or suspension of any of its members, then the result of such vote shall be reported to the Board of Fire Officers at its next meeting.

(B) The expelled or suspended member shall have the right to appear before the said Board of Fire Officers and membership and state cause (if any) why such penalty should not be confirmed, and in the case of nonappearance or in case an appeal is not sustained, then the Chief shall report the member's name to the Council of the city as expelled or suspended. (Prior Code, § 10-3-2)

§ 32.20 APPEAL.

(A) All charges for offenses or neglect of duty or insubordination while on duty at a fire that may be made against any member or officer of the Department shall be determined by the Board of Fire Officers, subject however to an appeal from such decision to the Council of the city, who shall either confirm the action of the Board of Fire Officers or refer the same back to the Board for reconsideration.

(B) In the event of a second hearing for reconsideration, the decision arrived at by the Board of Fire Officers at such retrial shall be final, conclusive, and not subject to appeal. (Prior Code, § 10-3-4)

§ 32.21 DEPARTMENT MEMBER POWERS; AUTHORITY.

All regularly appointed members of the Department are hereby given the necessary special police powers for the purpose of enforcing the provisions of this chapter. (Prior Code, § 10-4-4)

§ 32.22 LAW ENFORCEMENT.

It is hereby made the special duty of the fire Chief or law enforcement officers as are on duty at the time to respond to all fire alarms and assist the Fire Department in the protection of life and property of the citizens and property of the Fire Department, and in controlling and regulating traffic and maintaining order. (Prior Code, § 10-4-5)

CHAPTER 33: FINANCE AND REVENUE; FUNDS

33.01 Annual reports by boards

33.02 Council member/officer contracts

33.03 Sale of ~~personal~~ Municipal property

33.04. Claims

33.05 Supplies

§ 33.01 ANNUAL REPORTS BY BOARDS.

Each of the boards appointed and acting for the city in the administration of the city, including the Ambulance and Fire Departments, shall make an annual report of their activities, disbursements, and receipts to the Council as soon as practicable after the close of the fiscal year and file it with the City Finance Officer. (Prior Code, § 1-5-1)

§ 33.02 COUNCIL MEMBER/OFFICER CONTRACTS.

No officer or member of the Council shall enter into any contract, make any purchase, or create any indebtedness against the city unless otherwise provided by state law. (Prior Code, § 1-5-2) Penalty, see § 10.99

§ 33.03 SALE OF ~~PERSONAL~~ MUNICIPAL PROPERTY.

Whenever the Council deems it in the best interest of the city that ~~personal~~ property belonging to the city be sold, ~~which has been abandoned or is about to be abandoned for public use and is of the probable value of \$500 or more, then the personal property shall be sold to the highest bidder upon such terms as may be determined by the City Council.~~ The property shall be sold in accordance with state statute. (Prior Code, § 1-5-3)

§ 33.04 CLAIMS.

All claims against the city shall be in writing and upon forms provided by the City Finance Officer and in such form as required by state statute. All claims shall bear the approval of the Council member or person in charge of the department for which such services or supplies are furnished, prior to their approval or passage by the Council. (Prior Code, § 1-5-4)

§ 33.05 SUPPLIES

Department heads shall have the authority to purchase supplies subsequent to the final approval of the City Council. (Prior Code, § 1-5-5)

**CHAPTER 50:
SEWER**

Section

50.01 User Responsibility

50.02 ~~Permit~~ **Permission Required**

50.03 Reclamation

50.04 Rates

50.05 Revenue; funds

50.06 Tapping fee

50.07 Discharge; connections and crossings

§ 50.01 USER RESPONSIBILITY.

All cost of installation and connection by all business places or residences or users of the city sewer main to the dwellings and places of business and all expense of repair and maintenance thereof from such city mains shall be paid by such sewer users. (Prior Code, § 9-1-1)

§ 50.02 ~~PERMIT.~~ PERMISSION REQUIRED

(A) No digging is permitted without ~~a city permit and~~ contacting the ~~Street Superintendent Utilities Manager~~ Also, sewer connections and materials must be approved by the city.

(B) Each sewer connection shall serve no more than one building. (Prior Code, 9-1-2) ~~Penalty, see § 10.99~~

§ 50.03 RECLAMATION.

All sewer trenches associated with connection or repair and maintenance of such sewer connections shall be properly filled with gravel by such sewer users within the city street area. (Prior Code, § 9-1-3) Penalty, see § 10.99

§ 50.04 RATES.

(A) *Billing.* Sewer billing will be included with that of the water bills and be subject to the same collection and disconnection procedure.

(B) *Base rate.* Sewer rates within the city limits shall be a base rate of \$12 per month and \$4.50 per 1,000 gallons of water thereafter.

(C) *Rates based on the location/type of building.*

Locations/Building Types

~~Cost/Rates~~ **Base Rates and Other Costs**

Apartments having one meter rate	Base rate of \$12 per month plus \$1.50 for each unit, with the same per gallons of water used as division (B) above.
Buffalo Ridge Resort Hotel	Base rate of \$12 per month plus \$1.50 per unit, with the same rate gallons of water used as division (B) above. Laundromat, Sundance Ballroom, and Administration Building included.
Gate City Lodge	Base rate of \$12 per month plus \$1.50 per unit, with the same rate gallons of water used as division (B) above.
Talking Waters Campground per with bathhouse	Base rate of \$12 per month plus \$1.50 per unit, with the same rate gallons of water used as division (B) above.

(D) *New owner copy.* New property owners receiving water from the city shall receive a copy of the ordinance codified herein.

§ 50.05 REVENUE; FUNDS.

Monies collected from sewer rental will be deposited in the Sewer Fund of the city and will be solely for the repair, maintenance, and improvement of said system. (Prior Code, § 9-1-5)

§ 50.06 TAPPING FEE.

The fee for new consumers tapping the sewer main will be ~~\$150~~ established via resolution by city council.

(Prior Code, § 9-1-6)

§ 50.07 DISCHARGE; CONNECTIONS AND CROSSINGS.

(A) All users of the municipal sewer system are prohibited from discharging water from sump pumps or drain tile systems into the municipal sewer system between the dates of April 1 and November 1.

(B) All new connections to and repairs to sewer system mains will be done by a licensed plumber and include a boot or wye connection.

(C) The ~~City Superintendent~~ **Utilities Manager** must inspect all connections before being buried. Any underground tunneling or boring that crosses city sewer mains must be inspected by video camera, at the expense of the contractor doing the work, within 14 days of completion of the project. (Ord. 355, passed 3-12-2014) Penalty, see § 10.99

CHAPTER 51: WATER

51.01 Deposits

51.02 Rate schedule

51.03 Meter reading

51.04 Billing

~~51.05 Due date~~ **51.05 Disconnection for Late Payment**

~~51.06 Default~~

51.07 Late fees

51.08 Revenue; funds

51.09 Installation; new connections

51.10 Permission required

- 51.11 Reclamation
- 51.12 Tapping fee
- 51.13 Multi-meters
- 51.14 Surcharge

§ 51.01 DEPOSITS.

(A) Every property owner receiving municipal water service shall deposit ~~\$80~~ **an amount established via resolution by the city council**, with the Municipal Finance Officer ~~or Water Superintendent~~ prior to receiving water service.

(B) (1) In the event water service to any such customer is discontinued, then the balance due to the city for water service, together with penalties (if any), shall be deducted from the deposit and the balance of the deposit refunded to the consumer.

(2) If the consumer does not leave a forwarding address and the check (total deposit or balance of deposit) is returned to the city, that amount will automatically be deposited to the city water account. (Prior Code, § 9-2-1)

§ 51.02 RATE SCHEDULE.

(A) Occupants of premises connected with the municipal water system shall pay for water consumed thereon and for the availability of the municipal water service as follows:

- (1) *Base rate.* A maintenance and administrative fee of \$12 per month plus \$6 per 1,000 gallons of water used;
- (2) *Bulk water sales.* The bulk water sales rate shall be \$10 per 1,000 gallons or fraction thereof; and
- (3) *Rates based on the location/type of building.*

Locations/Building Types

Base Rates and Other Costs

Apartments having one meter rate	Base rate of \$12 per month plus \$1.50 for each unit, with the same per gallons of water used as division (A)(1) above.
Buffalo Ridge Resort Hotel per Sundance	Base rate of \$12 per month plus \$1.50 per unit, with the same rate gallons of water used as division (A)(1) above. Laundromat, Ballroom, and Administration Building included.
Gate City Lodge per	Base rate of \$12 per month plus \$1.50 per unit, with the same rate gallons of water used as division (A)(1) above.
Talking Waters Campground per with bathhouse	Base rate of \$12 per month plus \$1.50 per unit, with the same rate gallons of water used as division (A)(1) above.

(B) Owners of rental properties shall be ultimately liable to the city for any unpaid water bills.

(C) New property owners receiving water from the city shall receive a copy of the ordinance codified herein. (Prior Code, § 9-2-2) (Ord. 2025-339-19, passed 3-17-2025)

§ 51.03 METER READING.

The Utilities Manager or other person appointed by the City Council shall read the water meters on or around the fifteenth of each month. (Prior Code, § 9-2-3) (Ord. 2024-382, passed 7-1-2024)

§ 51.04 BILLING.

The Finance Officer shall send the water billing to each water consumer on the first day of each month. Those not mailed will be deposited at the DNB National Bank in Gary, South Dakota. (Prior Code, § 9-2-4) (Ord. 2024-382, passed 7-1-2024)

~~**§ 51.05 DUE DATE.**~~

~~(A) Payment will be due upon receipt of the billing and considered delinquent as of the thirteenth day of each month.~~

~~(B) A notice of delinquency on the consumer's bill plus a late fee charge will be mailed by the twentieth day of the month. The notice will also include the shut-off date, being the first day of the following month excluding Friday, Saturday, Sunday, and a holiday if it should fall on the weekend. (Prior Code, § 9-2-5)~~

§ 51.06 DEFAULT.

~~(A) The municipality may shut off the water when the water rental is not paid by the consumer in accordance with the rules of the Water Department or upon violation of any of the premises served. In the event the water is shut off, then it shall not be turned on again until proper arrangements have been made with the city for the payment of all arrears, together with the additional sum of \$40 to cover the expense of shutting off and turning on the water.~~

~~(B) No person shall tamper with the water to any premises from which the water has been turned off without authority from the Water Department. (Prior Code, § 9-2-6) Penalty, see § 10.99~~

§ 51.05 DISCONNECTION FOR LATE PAYMENT.

(A) It is policy of the city to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The City's form for application for utility service and all bills shall contain, in addition to the title, address, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

(1) That all bills are due and payable on or before the date set forth on the bill; and

(2) That if any bill is not paid by or before that date, a second bill will be mailed containing a cutoff notice stating that service may be disconnected if payment is not received by the last day of the month; and

(3) That any customer disputing the correctness of his bill shall have a right to a hearing at which time he may be represented in person and by counsel or any other person of his choosing and may present orally or in writing his complaint and contentions to the city official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.

(B) Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered. In the absence of payment of the bills rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified, but in no event until the charges have been due and unpaid for at least 30 days.

(C) When it becomes necessary for the city to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid, along with a reconnection fee established via resolution by the city council.

(D) No person shall tamper with the water to any premises from which the water has been turned off.

§ 51.07 LATE FEES.

Any municipal water customer who is delinquent on his or her bill will be charged a late fee of 10% of his or her bill (including sewer and garbage collection fees), ~~but not to exceed \$10~~. Late fees will be charged by the twentieth of each month. (Prior Code, § 9-2-7)

§ 51.08 REVENUE; FUNDS.

(A) All revenue received from the sale of water will be deposited in the Water Fund of the city. (Prior Code, § 9-2-8)

(B) The revenue is to be used for the repair, maintenance, and improvement of the municipal water system. (Prior Code, § 9-2-9)

(C) All claims for maintenance, improvement, and repair of the water system shall be paid from the Water Fund by the Finance Officer and countersigned by the Mayor or Council President. (Prior Code, § 9-2-10)

§ 51.09 INSTALLATION; NEW CONNECTIONS.

(A) All costs of new installations and connections by all users of the city water main to the user's building, and all repair/maintenance expenses from the city main to the user's building shall be paid by the water users within one

year of installation.

(B) After one year, the city will repair from the water main to the curb stop. The water user will remain responsible for repairs/maintenance from the curb stop to the respective building. (Prior Code, § 9-2-11) (Ord. 2024-382, passed 7-1-2024)

§ 51.10 PERMISSION REQUIRED.

No digging is permitted without contacting the ~~Street Superintendent.~~ **Utilities Manager** Also, water connections and materials must be approved by the city. (Prior Code, § 9-2-12) (Ord. 2024-382, passed 7-1-2024) Penalty, see § 10.99

§ 51.11 RECLAMATION.

All water trenches associated with connection or repair and maintenance of such water connections shall be properly filled with gravel by such water users within the city street area. Approved backfill material will be supplied by the city. (Prior Code, § 9-2-13) (Ord. 2024-382, passed 7-1-2024) Penalty, see § 10.99

§ 51.12 TAPPING FEE. The fee for new consumers tapping the water main will be ~~\$150.~~ **established via resolution by the city council.** (Prior Code, § 9-2-14) (Ord. 2024-382, passed 7-1-2024)

§ 51.13 MULTI-METERS.

(A) Multi-meters shall be charged to customers with meters plumbed solely for irrigation purposes. The current monthly water rate per 1,000 gallons will be charged. Owners shall be responsible for the cost of the meter and all the installation.

- (1) Installation shall include a separate valve for a complete household watering-system shutdown.
- (2) An isolation valve shall be installed on the upstream side of each water meter.
- (3) Backflow prevention shall be installed per state code.

(B) City personnel will inspect equipment and installations before an account can become active. All accounts **are** subject to inspection by city personnel at random. (Prior Code, § 9-2-15) (Ord. 2024-382, passed 7-1-2024) Penalty, see § 10.99

51.14 SURCHARGE

Surcharges imposed for the purpose of repaying principal and interest on loans or bonds issued for the construction, improvement, or expansion of the utility system shall be collected in addition to the regular service charge and shall remain in effect until such loans or bonds are paid in full. The surcharge shall be accounted for separately and used solely for debt service. The amount of the surcharge shall be determined by resolution of the City Council and may be adjusted as necessary to meet loan repayment requirements. Surcharges will be assessed monthly to all properties whether active or inactive. Exceptions may be made with City Council approval if a property becomes unlivable and proof is received that the service will be capped or until the structure has been rebuilt or replaced.

TITLE VII: TRAFFIC CODE

Chapter

~~70. General Provisions~~

~~71. Traffic and~~ Parking Regulations

72. Recreational Vehicles

~~73. Traffic and Parking Schedules~~

CHAPTER 70: GENERAL PROVISIONS

General Provisions

~~70.01 Obstructing right of way~~

~~70.02 Removal of obstructing vehicles~~

Unlicensed Motor Vehicles ~~MOVED TO CHAPTER 72~~

~~70.15 Short title; citation~~

~~70.16 Definitions~~

~~70.17 Unlawful operations~~

- 70.18 Permit
- 70.19 Equipment; operation after daylight hours
- 70.20 Traffic and safety laws
- 70.21 Towing; trailers
- 70.22 Liability insurance
- 70.23 Accidents; reports
- 70.24 Enforcement
- 70.99 Penalty

GENERAL PROVISIONS

§ 70.01 OBSTRUCTING RIGHT-OF-WAY.

No person shall leave or park unattended any motor vehicle upon the improved, paved, or main traveled portion of any highway, road, or street within the jurisdiction of the city when it is practical to leave or park such vehicle standing off the improved, paved, or main traveled portion of the highway, road, or street. However, under no circumstances shall any person leave or park unattended any motor vehicle, whether attended or unattended, upon any highway, road, or street within the jurisdiction of the city unless:

(A) A clear and unobstructed width of not less than 20 feet upon the main traveled portion of such highway, road, or street opposite such standing vehicle be left for free passage of other vehicles thereon; or

(B) A clear view of such vehicle may be obtained from a distance of 200 feet in each direction upon such highway, road, or street.

(Prior Code, § 8-2-1) Penalty, see § 70.99

§ 70.02 REMOVAL OF OBSTRUCTING VEHICLES.

When any law enforcement officer shall find a vehicle standing upon a highway, road, or street in violation of § 70.01, then the law enforcement officer is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under the provisions of § 70.01.

(Prior Code, § 8-2-2)

CHAPTER 71: TRAFFIC AND PARKING REGULATIONS

Traffic Regulations

- 71.01 Speed limits
- 71.02 Backing around corner; into intersection
- 71.03 Stealing rides; trailing bicycles or sleds
- 71.04 Authority to install devices
- 71.05 Obedience to traffic control devices
- 71.06 Through highways; night visibility
- 71.07 Stop required
- 71.08 Yield right-of-way
- 71.09 Pedestrians' right-of-way
- 71.10 Temporary traffic regulations
- 71.11 Driving over fire hose
- 71.12 Following emergency vehicles

Parking Regulations

- 71.25 Parking during snow removal
- 71.26 Fire hydrants; fire stations; active fires
- 71.27 No parking areas
- 71.28 Semitrucks and trailers
- 71.29 Maximum time limit; unlicensed/junk vehicles
- 71.30 Abatement
- 71.31 Emergency vehicles

TRAFFIC REGULATIONS

§ 71.01 SPEED LIMITS.

Any person operating a motor vehicle within the city shall drive at a reasonable and safe speed at all times and under no circumstances in excess of 25 mph within the municipality nor in excess of 15 mph in an alley or driveway unless otherwise posted.

(Prior Code, § 8-1-1) Penalty, see § 70.99

§ 71.02 BACKING AROUND CORNER; INTO INTERSECTION.

It shall be unlawful for the operator of any vehicle to back such vehicle around a corner at an intersection or into an intersection of public streets.

(Prior Code, § 8-1-2) Penalty, see § 70.99

§ 71.03 STEALING RIDES; TRAILING BICYCLES OR SLEDS.

It shall be unlawful for any person to cause to be attached or permit a bicycle or any sled of any kind occupied by anyone to be trailed behind any vehicle in the city limits, and no person shall ride, seize hold of, trespass upon, drag, slide, or in any manner trail behind any vehicle.

(Prior Code, § 8-1-3) Penalty, see § 70.99

§ 71.04 AUTHORITY TO INSTALL DEVICES.

The City Council:

(A) Shall maintain and place traffic control devices, signals, and signs when and as required under the traffic ordinances to make effective the provisions of these ordinances; and

(B) May maintain and place such additional traffic control devices as may be deemed necessary to guide, regulate, and warn traffic within the city.

(Prior Code, § 8-3-1)

§ 71.05 OBEDIENCE TO TRAFFIC CONTROL DEVICES.

The driver of any vehicle shall obey all traffic control devices, signals, and signs in accordance with the traffic ordinances of this city unless otherwise directed by a law enforcement officer, subject to the exception granted to the driver of an authorized emergency vehicle.

(Prior Code, § 8-3-2)

§ 71.06 THROUGH HIGHWAYS; NIGHT VISIBILITY.

The State Department of Transportation is hereby authorized to designate main traveled or through highways under its jurisdiction within the city by erecting, at the entrances thereto from intersecting highways, stop or yield signs. However, all such signs shall be illuminated at night or placed so as to be illuminated by the headlights of an approaching vehicle or by streetlights. (Prior Code, § 8-3-3)

§ 71.07 STOP REQUIRED.

The driver of a vehicle emerging from an alley, building, driveway, or private road within a business or residential district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, driveway, or road; or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic (Prior Code, § 8-3-4) Penalty, see § 70.99

§ 71.08 YIELD RIGHT OF WAY.

(A) The operator of a vehicle approaching an intersection at which there is posted a "yield right of way" sign shall bring the vehicle under complete control and shall yield the right of way to vehicles approaching or in the intersection from the left or right and proceeding in the opposite direction.

(B) The operator so yielding shall not proceed until the intersection is clear of traffic.

(C) This yield rule shall have precedence over the usual left and right approach rule. (Prior Code, § 8-3-5) Penalty, see § 70.99

§ 71.09 PEDESTRIANS' RIGHT OF WAY.

(A) The operator of any vehicle shall yield the right of way to a pedestrian crossing a roadway within any marked crosswalk or within any unmarked crosswalk at the end of a block or entrance to an alley, unless the movement of traffic is being regulated by a law enforcement officer.

(B) Whenever any vehicle has stopped at a crosswalk or intersection to permit a pedestrian to cross a roadway, the operator of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(Prior Code, § 8-3-6) Penalty, see § 70.99

§ 71.10 TEMPORARY TRAFFIC REGULATIONS.

The City Council shall have the right to establish temporary speed and traffic regulations for the convenience and safety of the public, and when such changes are made, then proper signals and signs shall be posted.

(Prior Code, § 8-3-7)

§ 71.11 DRIVING OVER FIRE HOSE.

No person shall drive any vehicle over a fire hose except upon specific orders from the Fire Chief, and then only with due caution.

(Prior Code, § 10-4-1) Penalty, see § 70.99

§ 71.12 FOLLOWING EMERGENCY VEHICLES.

No unauthorized person shall ride upon, race with, trail, or follow within 500 feet of any apparatus belonging to the Fire Department when actively responding to a fire alarm. (Prior Code, § 10-4-3) Penalty, see § 70.99

§ 71.25 PARKING DURING SNOW REMOVAL.

It shall be unlawful for any person to leave a motor vehicle parked on any alley or street within the city for any great length of time during the winter months in such a manner as to interfere with the clearing of alleys and streets of snow. (Prior Code, § 8-1-4) Penalty, see § 70.99

§ 71.26 FIRE HYDRANTS; FIRE STATIONS; ACTIVE FIRES.

(A) No vehicles shall be left, parked, or stopped within 15 feet of a fire hydrant.

(Prior Code, § 8-1-5)

(B) No person shall park any vehicle of any description or place any material or obstruction within 20 feet of the entrance to any fire station, nor within 15 feet of any fire hydrant or fire cistern, nor park any vehicle within 300 feet of a fire. (Prior Code, § 10-4-2) Penalty, see § 70.99

§ 71.27 NO PARKING AREAS.

(A) There shall be no parking at any space where the curb is marked with yellow or red paint and/or labeled "no parking" or between no parking signs.

(B) No parking signs shall have the words "no parking" painted thereon, with an arrow pointing from one sign to the other which shall designate the no parking space between such signs. (Prior Code, § 8-1-5) Penalty, see § 70.99

§ 71.28 SEMITRUCKS AND TRAILERS.

No semitrailer, semitruck, or trailer shall be parked on the avenue or street in a residential district for a period in excess of two hours. Such restrictions shall not apply:

(A) To trucks loading or unloading cargo, which may be parked on avenues or streets long enough to complete their loading or unloading operations; nor

(B) To any equipment or machinery in use on any construction, maintenance, or repair project on any alley, avenue, street, or public place. (Prior Code, § 8-1-5) Penalty, see § 70.99

~~§ 71.29 MAXIMUM TIME LIMIT; UNLICENSED/JUNK VEHICLES.~~

~~No motor vehicle or trailer shall be parked on any alley, avenue, public parking lot, street, or on municipal property for a period longer than 24 hours at one location. Nor shall any unlicensed motor vehicle, junked car, or trailer be parked or stored on any private property other than in a completely enclosed building.~~

~~(Prior Code, § 8-1-5) Penalty, see § 70.99~~

~~§ 71.30 ABATEMENT.~~

~~Any vehicle parked in violation of an ordinance may be removed at the direction of a public law enforcement officer and placed in public storage, and the owner thereof shall pay the charges for towing and storage of said vehicle, together with any fine and penalty which may be imposed for such violation. (Prior Code, § 8-1-5)~~

~~§ 71.31 EMERGENCY VEHICLES.~~

~~The provisions of §§ 71.01 through 71.03, 71.25 through 71.30, and Chapter 73 regulating the movement, parking, and standing of vehicles shall not apply to authorized emergency vehicles while the operator of such vehicle is operating the same in an emergency. However, this exemption shall not protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others. (Prior Code, § 8-1-5)~~

CHAPTER 72: RECREATIONAL VEHICLES

Snowmobiles and other Toy Vehicles

72.01 Definition

72.02 Operation of vehicles

72.03 Snowmobiles

Unlicensed Motor Vehicles

70.15 Short title; citation

70.16 Definitions

70.17 Unlawful operations

70.18 Permit

70.19 Equipment; operation after daylight hours

70.20 Traffic and safety laws

70.21 Towing; trailers

70.22 Liability insurance

70.23 Accidents; reports

70.24 Enforcement

70.99 Penalty

~~§ 72.01 DEFINITION.~~

~~For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.~~

~~**VEHICLE.** Any vehicle having two or more wheels operated on the alleys, highways, streets, and public places for the purpose of transporting persons or property, including bicycles, cars, go-carts, motorcycles, motor scooters, snowmobiles, tractors and trucks, and all other vehicles used or operated on the public roads.~~

~~(Prior Code, § 8-4-1)~~

~~§ 72.02 OPERATION OF VEHICLES.~~

~~All vehicles being operated upon the alleys, streets, and public grounds of the city shall be operated in a careful and prudent manner at all times, and the operator of such vehicle shall obey and be subject to the laws and rules of the road.~~

~~(Prior Code, § 8-4-2) Penalty, see § 70.99~~

§ 72.03 SNOWMOBILES.

(A) It shall be unlawful for any person to operate a snowmobile within the city unless such operation allows a resident to proceed directly outside the municipality from his or her residence and return in the same

manner.

(B) It shall be unlawful to operate a snowmobile in a manner so as to create loud, unnecessary, or unusual noise so as to disturb or interfere with the peace and quiet of residents within the city.

(C) It shall be unlawful to operate a snowmobile in a careless, negligent, or reckless manner so as to endanger the safety of any person or the property of any other person. (Prior Code, § 8-4-3) Penalty, see § 70.99

UNLICENSED MOTOR VEHICLES

§ 70.15 SHORT TITLE; CITATION.

This subchapter shall be known as the "Unlicensed Motor Vehicles Ordinance." (Ord. 2021-370, passed 7-6-2021)

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

DESIGNATED ROADWAYS. Any street or alley within the city limits.

OPERATOR. Every person who operates or is in actual physical control of the operation of an unlicensed motor vehicle.

OWNER. Every person holding record of title to an unlicensed motor vehicle and entitled to the use or possession thereof, other than a lien-holder or other person having a security interest only.

PERSON. An individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

SLOW-MOVING VEHICLE. Any vehicle which is ordinarily moved, operated, or driven at a speed less than 25 mph.

TRAILER. A vehicle without motive power being drawn by an unlicensed motor vehicle and so constructed that no significant part of its weight rests upon the unlicensed motor vehicle.

UNLICENSED MOTOR VEHICLE. Any motorized vehicle that is not required to obtain a license from the state. This includes but is not limited to golf carts, go-carts, and any other motorized vehicles used for recreation or transportation that are not required to obtain a license from the state.

UNLICENSED MOTOR VEHICLE does not include any farm implement or any military law enforcement vehicle.

§ 70.17 UNLAWFUL OPERATIONS.

It is a violation of this subchapter for any person to do any act forbidden or fail to perform any act required in this subchapter. (Ord. 2021-370, passed 7-6-2021) Penalty, see § 70.99

§ 70.18 PERMIT.

Unlicensed motor vehicles will be permitted upon the designated roadways of the city during daylight hours only after issuance of a permit for said operation from the City Finance Officer. The permit fee shall be \$10 set via resolution by the city council and shall be renewed annually. (Ord. 2021-370, passed 7-6-2021)

§ 70.19 EQUIPMENT; OPERATION AFTER DAYLIGHT HOURS.

(A) Unlicensed motor vehicle operation after daylight hours is permitted if the unlicensed motor vehicle is equipped with a functioning headlamp of at least a single beam type and functioning rear lamps.

(B) The headlamp of the unlicensed motor vehicle shall be of sufficient intensity to render clearly discernible a person or vehicle at a distance of not less than 100 feet.

(C) The rear lamps shall consist of at least two tail lamps mounted on the rear which, when lighted, shall emit a red light plainly visible from a distance of 500 feet to the rear. (Ord. 2021-370, passed 7-6-2021) Penalty, see § 70.99

§ 70.20 TRAFFIC AND SAFETY LAWS.

(A) The operator of an unlicensed motor vehicle, when operating on the designated roadways, shall do so in conformance with all traffic and safety laws of the state and the city.

(B) At no time shall unlicensed motor vehicles be operated upon sidewalks or in lawfully posted areas.

(C) The operator of an unlicensed motor vehicle emerging from an alley, driveway, or building, or upon

approaching a sidewalk or sidewalk area shall, before entering a roadway, yield the right-of-way to all vehicles and pedestrians approaching said roadway.

(D) Any person operating an unlicensed motor vehicle upon a designated roadway must possess a valid driver's license.

(E) Every unlicensed motor vehicle moved, operated, or driven upon a designated roadway shall display a "slow-moving vehicle" emblem or a flashing amber light in accordance with SDCL §§ 32-15-20 and 32-15-21.(Ord. 2021-370, passed 7-6-2021) Penalty, see § 70.99

§ 70.21 TOWING; TRAILERS.

(A) The unlicensed motor vehicle may tow a trailer.

(B) The operator of an unlicensed motor vehicle towing a trailer on the designated roadways shall do so in conformance with all traffic and safety laws of the state and the city.

(C) The operator of the unlicensed motor vehicle shall ensure that the trailer is equipped with:

(1) A "slow-moving vehicle" emblem or flashing amber light which shall be mounted on the rear of the trailer in accordance with SDCL §§ 32-15-20 and 32-15-21; and

(2) At least one tail lamp mounted on the rear which, when lighted, shall emit a red light plainly visible from a distance of 500 feet to the rear; and two red reflectors, one at each side. (Ord. 2021-370, passed 7-6-2021) Penalty, see § 70.99

§ 70.22 LIABILITY INSURANCE.

(A) The owner of an unlicensed motor vehicle that is operated upon the designated roadways for any duration or distance is required to have liability insurance. A certificate of insurance shall be carried in the unlicensed motor vehicle at all times and shall be presented by the operator of the unlicensed motor vehicle to any law enforcement officer requesting proof of such insurance in the course of his or her duties.

(B) The operator of an unlicensed motor vehicle shall ensure that such insurance coverage exists before operating an unlicensed motor vehicle upon any roadway. (Ord. 2021-370, passed 7-6-2021) Penalty, see § 70.99

§ 70.23 ACCIDENTS; REPORTS.

Any operator of an unlicensed motor vehicle involved in an accident on the city roadways resulting in injuries to any person, the death of any person, or resulting in damage to public or private property to the extent of \$250 or more, shall immediately notify ~~a city~~ law enforcement officer ~~or the City Police Department~~ of the accident and the facts in relation to the accident. (Ord. 2021-370, passed 7-6-2021) Penalty, see § 70.99

§ 70.24 ENFORCEMENT.

Law enforcement officers of the city, county, or state police displaying their badge of office have the authority to enforce the provisions of this subchapter within the city and may issue citations for any violations of the provisions of this subchapter. (Ord. 2021-370, passed 7-6-2021)

§ 70.99 PENALTY.

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

~~(B) A violation of any section of §§ 70.15 through 70.23 shall be a Class 2 misdemeanor and shall be punishable by fine, imprisonment, or both as follows:~~

~~(1) For any violations occurring upon the public highways or roadways, as provided by law for such violations applying to persons owning or operating motor vehicles according to state law; and~~

~~(2) In addition to the foregoing, for any violation of §§ 70.15 through 70.23, the violator shall be subject to 30 days' imprisonment in the county jail, a fine of not more than \$500, or both for each violation.~~

~~CHAPTER 73: TRAFFIC AND PARKING SCHEDULES~~

- ~~I. Parallel and diagonal parking~~
- ~~II. Overnight parking~~

~~SCHEDULE I. PARALLEL AND DIAGONAL PARKING.~~

~~(A) For the purpose of this schedule, the following definitions shall apply unless the context clearly indicates or requires a different meaning-~~

~~**DIAGONAL PARKING.** A motor vehicle shall be parked or stopped to the curb, gutter, sidewalk, or edge of the roadway at~~

~~an angle of 45 degrees and parked within six inches of the curb, gutter, or sidewalk on or along said street upon which said vehicles are parked, and such vehicles shall be parked no nearer than one foot to any other vehicle.~~

~~**PARALLEL PARKING.** Motor vehicles and motor vehicle trailers parked or stopped parallel to the curb, gutter, sidewalk, or edge of the roadway; and such vehicles shall be parked no nearer than three feet of the front or rear of any other vehicle.~~

~~(B) All persons parking vehicles upon the avenues and streets of this city are required to park the same as parallel parking, except that they shall park such vehicles as diagonal parking on First Avenue between Summit Street and Coteau Street, and elsewhere indicated by signs erected at the direction of the City Council.~~

~~(Prior Code, § 8-1-5) Penalty, see § 70.99.~~

~~**SCHEDULE II. OVERNIGHT PARKING.**~~

~~It shall be unlawful for any person to park overnight at any time on First Avenue between Laura Street and Herrick Street, and any person so parking a vehicle thereon overnight shall be deemed guilty of a misdemeanor and shall be fined accordingly.~~

~~(Prior Code, § 8-1-4) Penalty, see § 70.99.~~

TITLE IX: GENERAL REGULATIONS

CHAPTER 90: HEALTH AND SANITATION; NUISANCES

General Provisions

- 90.01 Nuisances defined; prohibited
- 90.02 Specific nuisances; additional remedies
- 90.03 Abatement
- 90.04 Public nuisances defined; remedies

Garbage

- 90.15 Definition
- 90.16 Leaving garbage exposed
- 90.17 Receptacles
- 90.18 Ashes
- 90.19 Municipal garbage collector
- 90.20 Duty of garbage collector
- 90.21 Cleaning parks
- 90.22 Littering prohibited
- 90.23 Municipal rubble site **Restricted Use Site**

Noxious Weeds

- 90.35 Owner responsibility
- 90.36 Notice to destroy
- 90.37 Noncompliance
- 90.38 Removal costs; assessment
- 90.39 Recovery by city

GENERAL PROVISIONS

§ 90.01 NUISANCES DEFINED; PROHIBITED.

(A) Whatever is dangerous to human health or whatever renders the air, food, ground, or water a hazard or an injury to human health; and the following specific acts, conditions, and things in § 90.02 are each and all of them hereby declared to constitute a **NUISANCE**.

(B) No person shall commit, create, maintain, or permit to be committed, created, or maintained any nuisance as defined herein within the city ~~or within one mile of the~~ boundaries thereof. (Prior Code, § 4-3-1) Penalty, see § 10.99

§ 90.02 SPECIFIC NUISANCES; ADDITIONAL REMEDIES.

The penalty for nuisances is as defined in § 10.99. Such a penalty shall be in addition to any other remedies

authorized by this code or state statute. The maintenance of such conditions as defined in the following divisions shall each be deemed to constitute a **NUISANCE**: (Prior Code, § 4-3-2)

(A) Depositing, maintaining, or permitting to be maintained or to accumulate upon any private or public property, any household:

- (1) Garbage, excrement, sewage, tin cans, wastewater;
- (2) Any decaying bones, fish, fruit, meat, or vegetable; or
- (3) Any foul, putrid, or obnoxious liquid substances. (Prior Code, § 4-3-3)

(B) Any well or other supply of water used for drinking or household purposes which is polluted or which is so constructed or situated that it may become polluted; (Prior Code, § 4-3-4)

(C) Undressed hides kept longer than 24 hours except at a place where they are to be manufactured or in a storeroom basement approved by the State Health Department; (Prior Code, § 4-3-5)

(D) The accumulation of manure unless it be in a properly constructed fly-proof bin, box, or pit; (Prior Code, § 4-3-6)

(E) The accumulation of garbage, manure, or anything whatsoever in which flies breed; (Prior Code, § 4-3-7)

(F) Any excavation in which stagnant water is permitted to collect; (Prior Code, § 4-3-8)

(G) Permitting weeds or other noxious matter to grow to maturity on any private property, including vacant lots; (Prior Code, § 4-3-9)

(H) Permitting any species or varieties of elm trees which are dead or substantially dead; (Prior Code, § 4-3-10)

(I) For the owner of a dead animal to permit it to remain undisposed of longer than 24 hours after its death; (Prior Code, § 4-3-11)

(J) Erecting or maintaining any cesspool or privy; (Prior Code, § 4-3-12)

(K) Throwing, letting fall on, or permitting to remain on any alley, street, or other ground any garbage, filth, fuel, manure, rubbish, or wood while engaged in handling or removing any such substance; (Prior Code, § 4-3-13)

(L) Accumulation of junk, old iron, automobiles or parts thereof, and anything whatever in which rodents may accumulate, breed, or live.

(1) ~~JUNK is defined to mean old ferrous or nonferrous metals; old cordage, ropes, or fabrics; old rubber or old bottles; or other glass, bones, wastepaper, and other waste or discarded materials which may be prepared to use again in some other form.~~ Any discarded, abandoned, dismantled, or inoperable materials or items, including but not limited to scrap metal, machinery, appliances, automobile bodies or parts, building materials, containers, debris, or other waste materials, which are stored, deposited, or allowed to accumulate in such a manner as to create a nuisance or provide a harbor for rodents.

(2) ~~But~~ Exception **JUNK** shall not include materials or objects accumulated by a person as byproducts, waste, or scraps from the lawful operation of a business, or materials held or objects held and used by a manufacturer as an integral part of the manufacturing or commercial process, provided such materials are stored in a lawful and orderly manner. process. (Prior Code, § 4-3-14)

(M) The burning of leaves will not be allowed. It is the finding of the City Council that for the immediate preservation of the public health, peace, and safety and the support of the municipal government and its existing public institutions, that the ordinance codified herein shall take effect upon publication; (Prior Code, § 4-3-15)

(N) Parking or permitting livestock trailers or trucks to remain on any area, public ground, or street in a residential district is prohibited when such trailer or truck gives off an offensive odor or is contaminated with manure or other filth; (Prior Code, § 4-3-16)

~~(O) Discarded or abandoned appliances, including refrigerators, freezers, or similar containers capable of trapping a person inside, shall not be stored outdoors unless the door has been removed or the unit is otherwise rendered safe. It shall be unlawful for any person to leave or permit to remain outside of any building, dwelling, or other structure, or within any abandoned or unoccupied building, dwelling, or other structure under his or her control, in a place accessible to children, any abandoned or discarded container, icebox, or refrigerator which has an airtight door or lid, snap lock, or other locking device which may not be released from the inside without first removing said door or lid, snap lock, or other locking device from said container, icebox, or refrigerator; and (Prior Code, § 4-3-17)~~

~~(P) The keeping of any discarded container, icebox, or refrigerator as set forth in division (O) above shall be, and the same is hereby declared to constitute, a public nuisance; and the same shall be abated as provided under SDCL § 21-10-6 or acts amendatory thereto, and the abatement of such nuisance shall not in any manner affect the penalty provisions of this chapter. (Prior Code, § 4-3-18) Penalty, see § 10.99~~

§ 90.03 ABATEMENT.

(A) The Mayor or Finance Officer shall give written notice to any person creating, maintaining, or permitting any nuisance to abate such nuisance forthwith, and if such person shall neglect or refuse to do so within a reasonable time after such notice and not file an appeal with the Finance Officer within three days of being notified, then that party shall be deemed guilty of a violation of this subchapter.

(B) (1) The Mayor or Finance Officer shall cause to be abated or removed any such nuisance upon the expiration of four days after the serving of such notice, and the city may recover the expense so incurred from the person maintaining such nuisance in a civil suit instituted for such purpose.

(2) In the alternative, the Finance Office shall certify the amount of the expense incurred and the description of the property and the owner thereof to the County Assessor, who shall thereupon add such assessment to the general assessment, together with the regular assessment, to be collected as a municipal tax for general purposes.

(3) Said assessment shall be subject to review and equalization the same as assessments or taxes for general purposes. (Prior Code, § 4-3-19) Penalty, see § 10.99

§ 90.04 PUBLIC NUISANCES DEFINED; REMEDIES.

(A) A **PUBLIC NUISANCE** consists of unlawfully doing an act or omitting to perform a duty within the jurisdiction of the city which either:

(1) Annoys, endangers, or injures the comfort, health, repose, or safety of others;

~~(2) Offends decency;~~

(3) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any lake, navigable river or stream, public park, road, street, or highway; or

(4) It in anyway renders other persons insecure in life or the use of property affecting at the same time the entire community, or a neighborhood, or any other considerable number of people. The extent of the annoyance or damage inflicted upon the individuals may be unequal.

(B) In addition to or in lieu of any penalty, plus the recovery of any expenses incurred, the city may remedy a public nuisance by abatement or by commencement of a civil action.

(1) Abatement shall consist of removing or, if necessary, destroying the thing which constitutes a nuisance without committing a breach of the peace or doing any unnecessary injury.

(2) For a public nuisance which results from a mere omission of the wrongdoer which cannot be abated without entering upon his or her premises, then reasonable notice must be given to that party before entering upon the premises to abate the nuisance. (Prior Code, § 4-3-20)

GARBAGE

§ 90.15 DEFINITION.

The term **GARBAGE** is defined to be any accumulation of animal, fruit, or vegetable matter, refuse, or any other substance used in the preparation, cooking, dealing in, or storing meats, fowls, fruits, or vegetables. (Prior Code, § 4-2-1)

§ 90.16 LEAVING GARBAGE EXPOSED.

It shall be unlawful for any occupant or owner of any lot within the city to throw or leave exposed upon any lot or within any alley or street adjoining said premises any animal matter, fruits, vegetables, or any filth or slop whatsoever, liquid or solid. (Prior Code, § 4-2-2) Penalty, see § 10.99

§ 90.17 RECEPTACLES.

(A) It shall be the duty of every occupant, owner, or tenant of any building or premises within the city to provide and keep in good condition, for the exclusive use of such building or premises, separate receptacles for receiving and holding without leakage the garbage that may accumulate from the building or premises. Each apartment building must have one receptacle per four units and a second receptacle in the event an apartment building has more than four units. (Prior Code, § 4-2-3)

(B) It shall be unlawful for anyone to place or cause to be placed in any receptacle any refuse, substance, or thing other than garbage as defined in § 90.15. All garbage shall be drained of all liquids and wrapped in paper or plastic before being placed in such receptacle, provided that the City Council may adopt regulations and rules

dispensing with the wrapping of garbage and paper when the receptacles are emptied so frequently it deems such wrappings unnecessary. (Prior Code, § 4-2-4)

~~(C) Every receptacle intended to be used or provided to receive and hold garbage shall be watertight and made of galvanized iron or other suitable material or metal with a watertight fitting cover, which shall be maintained in a place so as to prevent the ingress and egress of flies. (Prior Code, § 4-2-5)~~

(D) Such garbage receptacle shall be kept outside of the building but within the lot line, and it shall be unlawful to place or keep such garbage receptacle in an alley, street, or public place. (Prior Code, § 4-2-6) Penalty, see § 10.99

§ 90.18 ASHES.

It shall be unlawful for any corporation, firm, person, or other entity to deposit ashes upon the public streets within the city. (Prior Code, § 4-2-7) Penalty, see § 10.99

§ 90.19 MUNICIPAL GARBAGE COLLECTOR.

(A) The City Council may enter into an annual or multi-year contract with automatic annual renewals with some responsible person to collect and haul garbage.

(B) The garbage collector shall have exclusive rights to collect and haul such garbage in the city during the term of the contract. However, a garbage collector may be required to make a showing to the City Council that he or she is properly equipped and capable of performing the contract.

(C) The City Council may appropriate and provide such compensation as may be required to obtain a fair and reasonable contract. (Prior Code, § 4-2-8)

§ 90.20 DUTY OF GARBAGE COLLECTOR.

It shall be the duty of the garbage collector to:

(A) Thoroughly clean up all the garbage in the immediate vicinity of the place from which said garbage is removed;

(B) See that none of the garbage is dropped or liquid matter permitted to escape from the receptacle in which it is being hauled on to the alleys or streets within the city; and

(C) Keep all garbage receptacles emptied at whatever regular intervals may be deemed necessary. (Prior Code, § 4-2-9)

§ 90.21 CLEANING PARKS.

Any person or group of persons using any public picnic or playground areas in city parks shall be responsible for cleaning all garbage and litter caused by their occupancy before leaving the area. (Prior Code, § 4-2-10) Penalty, see § 10.99

§ 90.22 LITTERING PROHIBITED.

No person shall ~~throw, deposit, place any litter upon any street, alley, sidewalk, public property, or private property within the city except in a lawful receptacle or in a manner authorized by the property owner. Litter means garbage, refuse, rubbish, waste material, or any discarded substance. cast, deposit, drop, or throw any bottles, cans, paper, paper containers, rubbish, trash, or any filth of any kind or any other form of litter or waste upon any alley, premises, sidewalk, street, or yard whether private or public.~~ (Prior Code, § 4-2-11) Penalty, see § 10.99

§ 90.23 MUNICIPAL RUBBLE SITE. RESTRICTED USE SITE

(A) (1) A municipal ~~rubble~~ **restricted use** site has been established on the east one-half of the southeast one-fourth of Section Four, Township 115 North, Range 47 West of the 5th PM, County of Deuel, State of South Dakota.

(2) The municipal ~~rubble~~ **restricted use** site may only be used by the residents of the city unless otherwise decided by the City Council, and no one may enter upon the premises of the municipal ~~rubble~~ **restricted use** site at any time other than the hours established by the City Council.

(B) (1) The only items which may be deposited at the municipal ~~rubble~~ **restricted use** site are those items permitted by federal and state regulations and statutes. No party may deposit any item in the municipal ~~rubble~~ **restricted use** site which violates any federal or state regulation or statute.

(2) Furthermore, no one may remove or cause to be removed any article or material of any kind from the municipal ~~rubble~~ **restricted use** site after the article or material has been deposited therein, except that metal

articles for immediate use may be removed upon receiving written permission from either the Mayor or City Finance Officer. (Prior Code, § 4-2-12) Penalty, see § 10.99

NOXIOUS WEEDS

§ 90.35 OWNER RESPONSIBILITY.

No owner of any area, lot, or place within the city, or the agent of such owner or the occupant of such area, lot, or place shall permit on such area, lot, or place (or upon any sidewalk abutting the same), any grass, weeds, or deleterious or unhealthful growths or other noxious matter that may be growing, lying, or located thereon; and the growing of such weeds or other noxious or unhealthful vegetation is hereby declared to be a nuisance. (Prior Code, § 4-4-1) Penalty, see § 10.99

§ 90.36 NOTICE TO DESTROY.

(A) The City Attorney or the Finance Officer is hereby authorized and empowered to notify in writing the owner of any such area, lot, or place within the city, or the agent of such owner or the occupant of such premises to cut, destroy, or remove any such grass, weeds, deleterious or unhealthful growths, or other noxious matter found growing, located, or lying on such property or upon the sidewalk abutting the same.

(B) Such notice shall be by certified mail-return receipt requested to the agent, occupant, or owner at his or her last known address. (Prior Code, § 4-4-2)

§ 90.37 NONCOMPLIANCE.

Upon failure, neglect, or refusal of any agent, occupant, or owner so notified to comply with said notice within 72 hours after the mailing thereof, the Finance Officer is hereby authorized and empowered to provide for the cutting, destroying, or removal of such grass, weeds, deleterious or unhealthful growths, or other noxious matter and to defray the cost of the destruction thereof by special assessment against the property as provided in this subchapter. (Prior Code, § 4-4-3)

§ 90.38 REMOVAL COSTS; ASSESSMENT.

(A) (1) If the occupant or owner of the land fails to cut the weeds as provided for in § 90.37, then the city shall cut the weeds.

(2) The cost to the landowner shall be **\$100 charged** for the first hour of cutting, plus **\$75 for** each additional hour of cutting thereafter, with a **\$100** minimum charge. **All charges being set via resolution by city council.** (Prior Code, § 4-4-4)

(B) (1) The Finance Officer shall cause an account to be kept against each lot for the destruction of noxious weeds upon said lot as herein provided; and upon the completion of the work in destroying such weeds and abating said nuisance, the Finance Officer shall thereupon certify said account showing the amount and description of the property and the owner thereof to the County Assessor, who shall thereupon add such assessment to the general assessment, together with the regular assessment, to be collected as a municipal tax for general purposes.

(2) Said assessment shall be subject to review and equalization the same as assessments or taxes for general purposes. (Prior Code, § 4-4-5)

§ 90.39 RECOVERY BY CITY.

In lieu of spreading the cost of the destruction of such noxious weeds and other deleterious matter against said property, in the discretion of the City Council, said amount may be recovered in a civil action against the occupant or owner of such property. (Prior Code, § 4-4-6)

CHAPTER 91: FIRE PREVENTION AND PROTECTION

91.01 Hazardous structures

91.02 Combustibles

91.03 Industrial restrictions

91.04 Disposal sites

91.05 False fire alarm

91.06 Tampering with fire hydrants

~~91.07 Removing debris after fire~~

91.08 Burning waste

§ 91.01 HAZARDOUS STRUCTURES.

Any building or part of a building hereafter built, constructed, erected, or placed or maintained upon any of the lots or premises described in § 150.19 that is contrary to the provisions herein, or any building, structure, or part of a building or structure heretofore constructed, built, or erected upon any of the said premises and which shall be damaged by decay, fire, flood, or other casualty to the extent of 50% or more of its value, shall be deemed and the same is hereby declared to be a public nuisance, and the same may be abated, prevented, and removed by the city by an action instituted in the proper court for that purpose; or the same may be summarily abated or removed by the City Council with the aid of such help as may be necessary, provided that the city shall not abate or remove any such nuisance without first giving 24 hours' notice in writing to the person in possession or in charge of said structure (if any), and provided further that the City Council shall be the sole judge to determine the amount of damage done to any building or structure and giving grounds for the same. (Prior Code, § 3-6-1)

§ 91.02 COMBUSTIBLES.

(A) It shall be unlawful for any entity or person to keep anywhere within the platted alleys, streets, or public places of the city more than five barrels of kerosene, coal oil, or gasoline, except in above-ground tanks which meet established U.S. Environmental Protection Agency standards, without special permission of the City Council by an ordinance duly enacted.

(B) It shall be unlawful for any entity or person to keep anywhere within the city more than one pound of dynamite, and it shall be kept in a safe place under lock and key and in a place where the same will not likely explode. (Prior Code, § 3-6-2) Penalty, see § 10.99

§ 91.03 INDUSTRIAL RESTRICTIONS.

No industry shall produce explosive products containing one pound or more of TNT normal type or the equivalent of one pound or more of TNT. Additionally, there shall be no nuclear or radioactive devices produced on any industrial premises, except that testing shall not preclude the use of X-ray or other radioactive factors. Furthermore, there shall be no biological or chemical warfare materials used or stored on any industrial premises. (Prior Code, § 3-6-3) Penalty, see § 10.99

~~§ 91.04 DISPOSAL SITES.~~

~~(A) There shall be no toxic waste disposal sites or other permanent waste disposal facilities except a properly regulated sanitary sewage disposal as approved by the state's Environmental Protection Agency.~~

~~(B) All burn sites shall consist of steel containers located in a permanent concrete structure which shall be designed, constructed, and maintained in accordance with all state and United States requirements, and said burning structure shall be established to not allow refuse ash to leak from the structure.~~

~~(1) No refuse ash or residue from the burn site shall be disposed of other than being transported to a sanitary landfill or to a toxic waste disposal facility, neither of which shall be located on the said premises.~~

~~(2) A permit shall be obtained from the Finance Officer for the city prior to the closing or disposal of the materials of any burn site. (Prior Code, § 3-6-3) Penalty, see § 10.99~~

§ 91.05 FALSE FIRE ALARM.

It shall be unlawful to intentionally cause, give, or make any false alarm of fire. (Prior Code, § 3-7-1) Penalty, see § 10.99

§ 91.06 TAMPERING WITH FIRE HYDRANTS.

It shall be unlawful for any person to interfere with or open any fire hydrant connected with the water mains without the permission of the city's maintenance officials. (Prior Code, § 3-7-2) Penalty, see § 10.99

~~§ 91.07 REMOVING DEBRIS AFTER FIRE.~~

~~Whenever any building within the city shall be damaged by fire to the extent of more than 50% of its value, and no permit for the repair of the same or the construction of a new building has been obtained, and there shall remain upon the premises where such fire occurred any ashes or debris from such fire, then the owner of the lot or lots upon which the same is located shall, within 30 days after such fire, remove all ashes and debris from such lot or lots. The owner's failure to do so shall be a misdemeanor, and the city may remove the debris and hold a lien against the premises for all necessary expenses. (Prior Code, § 3-7-3) Penalty, see § 10.99~~

§ 91.08 BURNING WASTE.

1.No person shall burn any boxes, hay, leaves, paper, refuse, straw, or rubbish of any kind within the city limits unless said material is burned in an approved furnace and incinerator located in a building within the business or industrial districts and not prohibited by any other ordinance. However, fire pits are permitted on residential property, provided the fire pits are used outdoors and do not interfere in any way with the residents living nearby.

2. The burning of tree branches or brush shall be permitted only by permit issued by the City Office. Such permit must be obtained prior to burning and the burning shall be conducted in accordance with conditions stated on the permit and any applicable fire restrictions.

CHAPTER 92: ANIMALS

General Provisions

92.01 Documenting/reporting dogs and cats

92.02 Limit on number of pets

92.03 License fee

92.04 License issued

~~92.05 Dog and cat tags~~

92.06 Pet license revenue

92.07 Annual report

92.08 Running at large

~~92.09 Capturing cats and dogs~~

~~92.10 Notice to owner; redemption~~

~~92.11 Animals destroyed~~

92.12 Vicious animals

~~92.13 Cruelty to animals~~

~~92.14 Disturbance~~ Barking limitations on dogs

~~92.15 Dog and cat fighting~~

92.16 Pigeons and bees

92.17 Cows, goats, horses, and sheep

92.18 Picketing animals

92.19 Animal waste

Cattle Drive

92.30 Application

92.31 Permit

92.32 Notification

92.33 Cleaning

92.99 Penalty

GENERAL PROVISIONS

§ 92.01 DOCUMENTING/REPORTING DOGS AND CATS.

Every person who keeps or owns any cat or dog within the limits of the city shall report to the City Finance Officer, within 30 days of bringing a cat or dog within the city limits, the description, kind, and number of cats and dogs kept or owned by such person, and shall continue on or before ~~January~~ **March** 31 each year hereafter to report to the City Finance Officer the description, kind, and number of cats or dogs kept or owned.

(Prior Code, § 4-1-1) Penalty, see § 92.99

§ 92.02 LIMIT ON NUMBER OF PETS.

It is unlawful to have, harbor, keep, own, or possess more than three domestic pets in any combination over the age of six months in any apartment, dwelling, household, single residence, or on any lot or premises in the city unless a person residing on the lot or premises has a valid kennel permit issued by the city. The animal shelter, veterinary offices, and birds and fish are exempt from the provisions of this section.

(Prior Code, § 4-1-2) (Ord. 2009-339-1, passed 6-16-2009) Penalty, see § 92.99

§ 92.03 LICENSE FEE.

~~(A) The keeper or owner of any cat or dog shall pay unto the City Finance Officer the an annual sum of \$10, and an annual fee of \$25 shall be paid for any cat or dog over the age of six months that has not been neutered or spayed. All fees will be set via resolution by the city council.~~ **The keeper or owner of any cat or dog shall pay to the City Finance Officer an annual fee for each animal over the age of six (6) months. The amount of the fee shall be established via resolution by the City Council.**

(B) A prerequisite to the licensing of any cat or dog shall be the display to the City Finance Officer, by the keeper or owner thereof, a certificate or letter from a licensed veterinarian showing that such cat or dog has had a current inoculation or vaccination for rabies and that said inoculation or vaccination is sufficient to protect said cat or dog against rabies for the ensuing year following the application for such license.

(C) It shall thereupon be the duty of the City Finance Officer to ~~number and~~ register every cat or dog so reported upon receipt of the license fee. The City Finance Officer shall also ~~register~~ **record** a description of such cat or dog, the name of the keeper or owner of such cat or dog, and the keeper or owner's street address.

(Prior Code, § 4-1-3) (Ord. 2009-339-2, passed 6-16-2009) Penalty, see § 92.99

§ 92.04 LICENSE ISSUED.

The City Finance Officer shall issue all cat and dog licenses. The license shall state the registered description, kind, **type** and number of such cats or dogs and the year when licensed. ~~A tag for each cat or dog so registered and licensed as provided herein shall be provided to the cat or dog keeper or owner. The tag shall be engraved or stamped with the registered number of the cat or dog and the year when registered.~~

(Prior Code, § 4-1-4)

~~§ 92.05 DOG AND CAT TAGS.~~

~~Every keeper or owner of any cat or dog shall place a collar around the neck of such cat or dog kept or owned by him or her to which shall be securely fastened the tag described in § 92.04 above, not later than the expiration time for annually registering and licensing the cat or dog. In the event any tag is lost, then a new license must be purchased.~~

~~(Prior Code, § 4-1-5) Penalty, see § 92.99~~

§ 92.06 PET LICENSE REVENUE.

The funds received for the registration and licensing of cats and dogs shall be credited by the City Finance Officer to the general fund of the city. (Prior Code, § 4-1-6)

§ 92.07 ANNUAL REPORT.

It shall be the duty of the City Finance Officer to make a full report of the number of dogs and cats registered and licensed under this subchapter at least once every year, together with a statement of the amount of money collected. (Prior Code, § 4-1-7)

§ 92.08 RUNNING AT LARGE.

No person shall allow any cat or dog to run at large other than on the keeper's or owner's premises. The term **AT LARGE** shall mean off the premises of the keeper or owner and not under control. (Prior Code, § 4-1-8) Penalty, see § 92.99

~~§ 92.09 CAPTURING CATS AND DOGS.~~

~~(A) (1) An agent or employee of the city, or a law enforcement officer, or any person may capture or cause to be captured and conveyed to a dog pound (which shall be provided by the city) all cats or dogs that are found to be at large or found not to be properly registered, licensed, and tagged in compliance with this subchapter prior to the expiration date provided herein.~~

~~(2) The city shall then keep such cats or dogs there with kind treatment and supply them with sufficient food and water for a period of at least five days unless reclaimed sooner by the keeper or owner.~~

~~(B) The keeper or owner of such cat or dog shall display to any law enforcement officer the tag on the cat or dog whenever the law enforcement officer demands to see the same.~~

~~(Prior Code, § 4-1-9) Penalty, see § 92.99~~

~~§ 92.10 NOTICE TO OWNER: REDEMPTION.~~

~~(A) The keeper or owner of any cat or dog shall be notified within three days after the impounding of the cat or dog; or if the keeper or owner is unknown, then written notice shall be posted for three days at two or more conspicuous places within the city describing the cat or~~

~~dog and the place and time of capture.~~

~~(B) The keeper or owner of any such cat or dog impounded may reclaim such cat or dog upon payment of the license fee (if unregistered) and upon paying for all charges and costs incurred by the city for the impoundment and maintenance of such cat or dog, plus \$15 per day (or any part of a day) for keeping the cat or dog. (Prior Code, § 4-1-10)~~

~~§ 92.11 ANIMALS DESTROYED.~~

~~(A) If the cat or dog remains unclaimed or if the keeper or owner fails or refuses to comply with the provisions of this subchapter at the expiration of three days from the date of notice, then it shall be the duty of a city employee to cause such cat or dog to be destroyed and the body thereof to be removed and properly buried, subject to any person willing to pay the sum due the city as provided herein, and if so, then the impounded cat or dog may be sold by the city by a private sale.~~

~~(B) Additionally, any cat or dog found to be infected with rabies shall be killed forthwith. (Prior Code, § 4-1-11)~~

§ 92.12 VICIOUS ANIMALS.

(A) A **VICIOUS CAT OR DOG** means:

(1) Any cat or dog with a known propensity, disposition, or tendency to attack unprovoked, or to cause injury to, or otherwise threaten the safety of human beings or domestic animals;

(2) Any cat or dog which, because of its size, physical nature, or vicious propensity, is capable of inflicting serious physical harm or death to humans and which would constitute a danger to human life or property if it were not kept in the manner required by this section or ordinances; or

(3) Any cat or dog which, without provocation, attacks or bites or has attacked or bitten a human being or domestic animal. (Prior Code, § 4-1-12)

(B) The keeper or owner of a vicious cat or dog shall not permit the cat or dog to go unconfined unless it is on the keeper's or owner's premises.

(1) A vicious cat or dog is **UNCONFINED** if the cat or dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the keeper or owner.

(2) The pen or structure shall have secured sides and a secured top attached to the sides. If the pen or structure has no bottom secured to the sides, then the sides must be embedded into the ground no less than one foot.

(3) All such pens or structures must be adequately lighted and kept in a clean and sanitary condition. (Prior Code, § 4-1-13)

(C) The keeper or owner of a vicious cat or dog shall not permit the cat or dog to go beyond the premises of the keeper or owner unless the cat or dog is securely muzzled and restrained by a chain or leash and under the physical restraint of an adult.

(1) The muzzle shall be made in such a manner that it will not cause injury to the cat or dog or interfere with its respiration or vision but shall prevent it from biting any animal or human.

~~(2) No vicious cat or dog shall be allowed off the premises of its keeper or owner unless in charge of the keeper or owner or a member of the keeper or owner's immediate family over 16 years of age.~~

(3) (a) If a vicious cat or dog is found off the premises of its keeper or owner, then it may be seized by any person, and upon delivery of the cat or dog to the proper authorities, may be killed upon establishing the vicious character of the cat or dog.

~~(b) However, if it is necessary, then an agent or employee of the city, a law enforcement officer, or any person may destroy any cat or dog without having to catch or impound the animal. (Prior Code, § 4-1-14)~~

(D) The keeper or owner of a vicious cat or dog shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious cat or dog on the premises. A similar sign is required to be posted on the kennel or pen of the cat or dog.

(Prior Code, § 4-1-15)

(E) All keepers or owners of a vicious cat or dog must, within 14 days of the effective date of the ordinance codified herein, provide proof to the City Finance Officer of public liability insurance in the amount of at least \$10,000, which insures the keeper or owner for any personal injuries inflicted by his or her vicious cat or dog. (Prior Code, § 4-1-16)
Penalty, see § 92.99

~~§ 92.13 CRUELTY TO ANIMALS~~

~~No person shall cruelly beat, injure, or torture any cat or dog. Nor shall any person negligently or willfully abuse, mistreat, or neglect in a cruel manner any cat or dog, including but not limited to the failure to provide adequate food, shelter, and water. (Prior Code, § 4-1-17) Penalty, see § 92.99~~

~~§ 92.14 DISTURBANCE. BARKING LIMITATIONS ON DOGS~~

~~It shall be unlawful for any person to keep or own a cat or dog, or a dog run within 20 feet of the house of a neighbor, or to keep within the limits of this city any cat or dog which causes a disturbance by barking or making noises to the annoyance or disturbance of the public. (Prior Code, § 4-1-18) Penalty, see § 92.99~~

~~(A) No person shall own, harbor or keep in custody a dog which disturbs the peace by barking, yelping, howling or making loud noises to the annoyance and/or discomfort of any person. Continuous barking, yelping, howling and/or making other loud noises for 15 consecutive minutes by such dog, whether confined inside a residence or building or to the outside area, shall be deemed to have disturbed the peace and to have caused the annoyance and discomfort of persons; provided, that at the time of the complaints, no person or persons were trespassing or threatening upon the private property of the owner, and provided that the dog was not being teased or provoked in any manner.~~

~~(B) Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure owned or occupied by such person shall be considered as harboring or keeping such dog.~~

~~(C) Upon an initial complaint, an enforcement officer shall warn the person in writing of the violation. Upon a second such complaint within 30 days, the enforcement officer shall charge the person with a violation of this section.~~

~~(D) Division (A) of this section does not apply to blind, deaf, or hearing impaired, or mobility impaired persons when the dog serves as an assistance dog.~~

~~(E) Whoever violates this section is subject to section 92.99, Penalty.~~

~~**§ 92.15 DOG AND CAT FIGHTING.**~~

~~No person shall maintain or possess any cat or dog for the purpose of fighting, or badger, bait, train or torment any cat or dog for the purpose of causing or encouraging the cat or dog to attack domestic animals or human beings. (Prior Code, § 4-1-19) Penalty, see § 92.99~~

§ 92.16 PIGEONS AND BEES.

(A) No person having in his or her charge or owning any pigeons shall allow, permit, or suffer the same or any of them to roam or fly at large within the city.

(B) No one shall keep, maintain, or possess any bees, hives, or swarms of bees within the city. (Prior Code, § 4-1-20) Penalty, see § 92.99

§ 92.17 COWS, GOATS, HORSES, AND SHEEP.

(A) No person shall keep any cow, goat, horse, or sheep, or erect or maintain any building or enclosure for use in keeping any such animals within 150 feet of any dwelling, house, or building used for human habitation other than that of the keeper or owner of such animals, because such shall constitute a nuisance.

(B) No person shall keep or maintain any building or enclosure where livestock is kept unless the same be at all times kept in a clean and sanitary condition and in accordance with the regulations and rules of the county or State Board of Health.

(C) No person shall keep, maintain, or place any hogs within the city. (Prior Code, §4-1-22) Penalty, see § 92.99

§ 92.18 PICKETING ANIMALS.

No person shall stake out any domestic animals within the city in such a manner as to permit them to approach within 100 feet of any dwelling house or building used for human habitation other than that of the keeper or owner of such animal. (Prior Code, § 4-1-23) Penalty, see § 92.99

§ 92.19 ANIMAL WASTE.

(A) No keeper or owner of any cat or dog shall allow the animal to defecate on private or public property other than his or her own.

(B) If a cat or dog does defecate upon private or public property, then the keeper or owner of the cat or dog must immediately and thoroughly clean the fecal material from such property. (Prior Code, § 4-1-24) Penalty, see § 92.99

CATTLE DRIVE

~~**§ 92.30 APPLICATION.**~~

~~Any person desiring to drive or move cattle or other livestock upon the public streets through the city other than by trucking shall first make written application to the city not less than three days before the proposed date of such driving of cattle or other livestock through the city, which application shall specify the proposed date of such proposed movement of cattle or other livestock and the approximate hour of such proposed date of moving, together with the approximate number of cattle or such other livestock proposed to be so driven through the city.~~

~~(Prior Code, § 7-6-1) Penalty, see § 92.99~~

~~§ 92.31 PERMIT.~~

~~(A) If any such application for moving cattle or other livestock shall be approved by the city, the Finance Officer shall thereupon issue a permit to the applicant, specifying the date and approximate hour for such proposed moving of cattle or other livestock and the route to be followed by such applicant in so driving such cattle or other livestock through the city.~~

~~(B) Before the issuance of such permit, any applicant shall first establish that he or she has liability insurance to protect against any injury which might result from such moving of livestock. (Prior Code, § 7-6-2)~~

~~§ 92.32 NOTIFICATION.~~

~~On the issuance of any such permit for so moving of cattle or other livestock, the city shall immediately advise the County Sheriff's office of such proposed driving of cattle or other livestock, and by agreement with the County Sheriff's office, the movement of such cattle or other livestock through the city will then be supervised by the Sheriff's staff to avoid possible damage or injuries to property. (Prior Code, § 7-6-3)~~

~~§ 92.33 CLEANING.~~

~~Immediately following the completed movement of such cattle or other livestock through the city, the person so driving such cattle or other livestock through the city shall promptly proceed to properly clean the sidewalks and streets of refuse resulting from such movement of cattle or other livestock. (Prior Code, § 7-6-4) Penalty, see § 92.99~~

§ 92.99 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 violating any provision of §§ 92.01 through 92.19 shall be subject to a penalty of not more than \$500 for each occasion or day a violation occurs.

(Prior Code, § 4-1-25)

~~(C) Any person attempting to move or moving cattle or other livestock through the city without full compliance with the foregoing requirements in §§ 92.30 through 92.33 shall be fined in any sum not more than \$500. (Prior Code, § 7-6-5)~~

CHAPTER 93: CEMETERIES

Section

- 93.01 Municipal cemeteries
- 93.02 Definitions
- 93.03 Appointment of Sexton
- 93.04 Sale of lots
- 93.05 Fees
- 93.06 Burial/interment requirements
- 93.07 Markers; monuments
- 93.08 Maintenance
- 93.09 Decorations
- 93.10 Records
- 93.99 Penalty

§ 93.01 MUNICIPAL CEMETERIES.

The policies and regulations for the Grandview and East Grandview Cemeteries shall be established by the City Council. (Prior Code, § 4-2-13)

§ 93.02 DEFINITIONS.

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

GRAVESITE. One burial unit.

LOT. A parcel of land which may be subdivided to include one or more individual gravesites.

§ 93.03 APPOINTMENT OF SEXTON.

It shall be the duty of the City Council to appoint the Sexton.

§ 93.04 SALE OF LOTS.

(A) Each gravesite shall be sold for the sum ~~of \$100 set via resolution by the city council~~. Lots shall be sold by quarters, halves, or the whole parcel. A single lot shall also be available as platted.

(B) The arrangements for the purchase of a gravesite or lot shall be made through the Sexton.

(C) The City Finance Officer shall tender a deed to the gravesite or lot or portion thereof upon receiving payment.

§ 93.05 FEES.

An additional sum ~~of \$100- set via resolution by the city council~~ shall be paid to the city for perpetual care upon each burial or interment. This fee of ~~\$100~~ shall be paid at the time of burial or interment of each casket or cremated remains.

§ 93.06 BURIAL/INTERMENT REQUIREMENTS.

(A) Burial or interment in each gravesite shall not exceed one full-size casket and one cremated remains; or if the space is adequate, then one full-size casket and the casket of an infant which is 25 inches or less in length may be buried or interred in each gravesite; or two cremated remains may be buried in one gravesite.

(B) A full-size casket shall be buried in a concrete grave liner or vault.

(C) The Sexton is to be notified at least 24 hours prior to the time of burial or interment. ~~Penalty, see § 93.99~~

§ 93.07 MARKERS; MONUMENTS.

(A) All lot cornerstones set with or without concrete must be ground level and placed inside of the lot stake placed by the Sexton.

(B) No monuments or stones may be placed without contacting the Sexton prior to placement.

(C) The footings of concrete for markers and monuments must be at ground level and must be at least six inches from the base of the monument.

(D) If more than one marker or monument is to be placed on a gravesite, then only one may be placed above ground level, and any other marker or monument must be placed flush with the ground.

(E) It shall be the duty of all gravesite owners to keep markers and monuments placed in the correct position at all times. An owner is to be notified if the marker or monument is displaced and not in accordance with the requirements set forth herein this chapter and shall be corrected at the gravesite owner's expense.

~~Penalty, see § 93.99~~

§ 93.08 MAINTENANCE.

(A) The City Council and the Sexton reserve the right to remove shrubbery and any other items deemed a nuisance in the care and maintenance of the cemeteries.

(B) No evergreens, shrubs, or trees are to be planted without the written permission of the Sexton, and all unauthorized plantings will be removed.

(C) All graves are to be kept level with the cemetery grounds, or the Sexton shall have the right to level the graves.

(D) It shall be the responsibility of the Sexton to mow the cemetery grass and maintain the premises.

(E) Snow removal shall be the responsibility of the city. ~~Penalty, see § 93.99~~

§ 93.09 DECORATIONS.

(A) A grave may be decorated for Memorial Day after 6:00 p.m. on the Thursday before Memorial Day each year. Any decorations must be removed within two weeks thereafter.

(B) Grave decorations may be removed by the Sexton when faded or worn or if the decorations interfere with the maintenance of the cemeteries. ~~Penalty, see § 93.99~~

§ 93.10 RECORDS.

(A) The City Finance Officer shall keep detailed records regarding the sale of all gravesites and any other financial transactions involving the cemeteries. The Sexton shall maintain detailed written records of the owners of each gravesite, and such records shall be maintained on acid-free paper of not less than 100% rag content.

(B) The records maintained by both the City Finance Officer and the Sexton shall be open to the public during the regular business hours of the municipality.

~~§ 93.99 PENALTY. Any person violating any of the provisions of this chapter shall be punished by a fine not to exceed the sum of \$500.~~

TITLE XI: BUSINESS REGULATIONS
110. LICENSING; PERMITS; TAXES
111. ALCOHOLIC BEVERAGES
112. CANNABIS PRODUCTS
113. FRANCHISES

CHAPTER 110: LICENSING; PERMITS; TAXES
General Provisions

110.01 Sales and service tax
110.02 Gross receipts tax

Temporary Businesses

110.15 License required
110.16 Peddling; soliciting
110.17 Bond
110.18 Display of license/permit

Sales and Services

110.30 Mobile food vendors
110.99 Penalty

GENERAL PROVISIONS

§ 110.01 SALES AND SERVICE TAX.

(A) *Effective date and enactment of tax.* From and after July 1, 2022, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business, a tax measured by 2% on the gross receipts of all persons engaged in business within the jurisdiction of the city who are subject to the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(B) *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 items purchased from and after July 1, 2022 at the same rate as the municipal sales and service tax upon all transactions or use, storage, and consumption, which are subject to the State Use Tax, SDCL § 10-46 and acts amendatory thereto.

(C) *Collection.* Such tax is levied pursuant to the authorization granted by SDCL § 10-52 and acts amendatory thereto and shall be collected by the State Department of Revenue 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 or the state shall lawfully prescribe.

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

(Prior Code, § 5-2-1) (Ord. 2021-339-377, passed 2-7-2022)

§ 110.02 GROSS RECEIPTS TAX.

(A) *Effective date and enactment of tax.*

(1) From and after July 1, 2022, there is hereby imposed a municipal gross receipts tax of 1% upon the gross receipts from:

(a) The sale of leases of rentals of hotels, motels, campsites, or other lodging accommodations within

the municipality for periods of less than 28 consecutive days;

(b) The sale of alcoholic beverages as defined in SDCL § 35-1-1;

(c) Establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption; and

(d) Ticket sales or admissions to places of amusement, athletics, and cultural events.

(2) The tax applies to the gross receipts of all persons engaged in business with the jurisdiction of the city who are subject to the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(B) *Collection.* Such tax is levied pursuant to authorization granted by SDCL § 10-52A and acts amendatory thereto, and shall be collected by the State Department of Revenue 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.

(C) *Interpretation.* It is declared to be the intention of the ordinance codified herein and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to the tax.

(D) *Use of revenue.* Any revenue received under this section may be used only for the purpose of:

(1) Land acquisition, architectural fees, construction costs;

(2) Payment for civic centers, auditoriums, or athletic facility buildings including the maintenance, staffing, and operations of such facilities; and

(3) The promotion and advertising of the municipality, its facilities, attractions, and activities. (Prior Code, § 5-2-1) (Ord. 378, passed 2-7-2022)

TEMPORARY BUSINESSES

§ 110.15 LICENSE REQUIRED.

(A) It shall be unlawful for any entity or person to engage in any temporary business, occupation, or trade within the city without first obtaining a license from the City Finance Officer for a fee of ~~\$10~~ **established via resolution by the city council** unless the temporary business, occupation, or trade is by a charitable, educational, or religious organization which has its principal place of activity within the limits of the city.

(B) The license shall expire ten days after the date it is issued unless it is revoked for a violation of any municipal ordinance or federal or state statute.

(C) A **TEMPORARY BUSINESS, OCCUPATION, OR TRADE** is one which will last for ten days or less within the limits of the city. (Prior Code, § 6-3-1) Penalty, see § 110.99

§ 110.16 PEDDLING; SOLICITING.

(A) It shall be unlawful for any peddler, solicitor, or transient merchant to peddle or solicit within the limits of the city unless a permit shall have been obtained from the City Finance Officer for a fee of ~~\$10~~ **established via resolution by the city council** per day unless the items being peddled or solicited are made by either a charitable, educational, or religious organization which has its principal place of activity within the limits of the city.

(B) Any authorized entity or person with a license or permit shall peddle or solicit within the limits of the city between 9:00 a.m. and 6:00 p.m. (Prior Code, § 6-3-2) Penalty, see § 110.99

§ 110.17 BOND.

A bond in such amount as is deemed necessary and reasonable may be required by the City Finance Officer before any license or permit is issued. (Prior Code, § 6-3-3)

§ 110.18 DISPLAY OF LICENSE/PERMIT.

Each authorized entity or person with a license or permit shall display the license or permit upon the request of any person; and should the person fail to display the necessary license or permit, then such shall be deemed a violation of this subchapter. (Prior Code, § 6-3-4) Penalty, see § 110.99

SALES AND SERVICES

§ 110.30 MOBILE FOOD VENDORS.

(A) Mobile food vendors wishing to work in the city must obtain a permit to do so. Permits issued under this section shall be nontransferable.

(B) The application for a permit required by the provisions of this section shall contain:

- (1) The applicant's name, permanent address, phone number, and government issued ID;
- (2) The business name, permanent address, and business phone number;
- (3) A description of the goods or services the applicant wishes to sell;
- (4) The location/site where the mobile food vendor will be set up;
- (5) The dates the applicant will be working in this jurisdiction; and
- (6) Provide a copy of:
 - (a) An applicable state sales tax license;
 - (b) A certificate of liability insurance; and
 - (c) A copy of license issued by the State Department of Health for food-related establishments.

(C) Prior to any permits issued to mobile food vendors under the provisions of this section, the applicant shall pay a fee tendered at the time of application pursuant to the fees established via resolution by the City Council.

(D) The vendor shall not conduct any vending in a way that causes congestion or blocking of vehicle or pedestrian traffic or fire lanes.

(E) A mobile food-vending establishment cannot be permanently located on any property and cannot function as a permanent structure.

(F) Every mobile food-vendor operator licensed under this section shall display, in a conspicuous place, the license provided by the city.

(G) All mobile food-vendor businesses must abide by and follow all federal, state, and local laws, rules, and regulations.

(H) Licenses shall be subject to revocation by the city for violation of any provisions of this section.

(I) The following are exempt from license fees due to the city but still must make application:

- (1) Any city nonprofit organization, including schools and school-related fundraisers and churches and church-related fundraisers; and
- (2) Businesses located within the city limits that use additional locations or spaces as extensions of their primary operations. (Ord. 385, passed 7-7-2025)

§ 110.99 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 failing or refusing to make reports or payments prescribed by § 110.01 and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$2,000 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL § 10-45 and acts amendatory thereto and SDCL § 10-46 and acts amendatory thereto are hereby 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 § 110.02 and the rules

and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$2,000 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL § 10-45 and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue. (Prior Code, § 5-2-1) (Ord. 378, passed 2-7-2022; Ord. 2021-339-377, passed 2-7-2022)

CHAPTER 111: ALCOHOLIC BEVERAGES

111.01 Alcohol license required.

~~111.02 Non-intoxicating liquor~~

111.03 Sales

111.04 Fee for license

111.05 Procedure for revocation of license

~~111.06 Dances; spiking permit~~

§ 111.01 ALCOHOL LICENSE REQUIRED.

No person shall blend, bottle, distill, exchange, keep for sale, manufacture, offer for sale, produce, or sell any alcoholic beverage as defined by statute within the city or within one mile of its territorial limits without having a license therefor as required by state statute. (Prior Code, § 5-1-1) Penalty, see § 10.99

~~§ 111.02 NON-INTOXICATING LIQUOR.~~

~~(A) Every licensee authorized to keep for sale or offer or sell non-intoxicating beer or wine within the city shall keep the premises upon which such business is conducted in such condition that the view through the windows of such premises shall be completely unobstructed either by advertising, curtains, window glazing, or any other obstruction whatsoever.~~

~~(B) No non-intoxicating beer or wine shall be served in any booth on such premises wherein all of the occupants are not within view of every other occupant in the room and observable from any and all points within the room.~~

~~(C) Additionally, such premises shall be adequately lighted at all times with sufficient bright lights so that the occupants of such room may be easily observable from any and all points within the room, and no licensee shall allow any game of chance or skill or athletic contest on said premises or permit any slot machine or other like device in or about the licensed premises.~~

~~(Prior Code, § 5-1-2) Penalty, see § 10.99~~

§ 111.03 SALES.

(A) Any party intending to operate a business selling alcoholic beverages either off sale or on sale shall enter into an annual alcoholic beverages operating agreement with the city in the manner and method provided by law.

(B) All alcoholic beverages, including malt beverages, may be purchased by a licensee directly from the distributor and subsequently delivered by the distributor directly to the licensee provided each licensee maintains a complete and detailed record of all beverages purchased and submits a copy of all invoices from the distributor which reflects the actual cost, brand, date, quantity, and transportation charges, and each such invoice shall reflect the signature of the licensee or an authorized representative.

(C) The purchase price of all malt beverages shall include a minimum markup percentage of 10% (of actual cost) which shall be paid by the licensee unto the city. All alcoholic beverages may be sold only on those dates and during such times of the day as are permitted by state statute. (Prior Code, § 5-1-3)

§ 111.04 FEE FOR LICENSE.

The city shall charge and collect from each licensee such amount or sums as it believes necessary and reasonable under the circumstances and is permitted by state statute. In the event such amount or sum is not timely satisfied in full, then the failure to do so shall be grounds for revocation of a license. (Prior Code, § 5-1-4)

§ 111.05 PROCEDURE FOR REVOCATION OF LICENSE.

A licensee shall be given ten days' advance notice of a hearing before any license granted earlier is revoked by the Council. A majority vote of all the City Council is required for the revocation of a license. (Prior Code, § 5-1-5)

~~§ 111.06 DANCES; SPIKING PERMIT.~~

~~(A) It shall be unlawful for any party to conduct, maintain, or operate any dance (other than for religious purposes) within the city or within one mile of the corporate limits unless a permit has been issued by the Finance Officer. The fee for a dance permit shall be \$25, and the permit shall specify the specific hours for which it is valid.~~

~~(B) The party to whom the permit is issued shall attend and be responsible for the activities and conduct of the individuals attending the dance and also that no ordinance, regulation, or statute is being violated. In the event there is any violation of an ordinance, regulation, or statute (specifically including disorderly conduct), then law enforcement officers may vacate the premises immediately.~~

~~(C) Furthermore, a spiking permit to blend or consume alcoholic beverages as provided by state statute may only be issued by the City Council prior to any dance on property which is publicly owned or owned by a nonprofit corporation. (Prior Code, § 5-1-6) Penalty, see § 10.99~~

CHAPTER 112: CANNABIS PRODUCTS

Section

- 112.01 Purpose and intent
- 112.02 Definitions
- 112.03 License required
- 112.04 License application
- 112.05 Issuance of license
- 112.06 City neutrality
- 112.07 Limit on dispensaries
- 112.08 License expiration; renewal
- 112.09 Suspension
- 112.10 Revocation
- 112.11 Suspension and revocation process
- 112.12 Appeal
- 112.13 License nontransferable
- 112.14 Hours of operation
- 112.15 Liability
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§ 112.01 PURPOSE AND INTENT.

The City Council enacts the following licensing chapter in order to ensure that cannabis establishments within the municipal boundaries of the city operate in a manner which complies with state laws and regulations; protects the health, safety, and welfare of the general public; prevents potential conflicts and issues arising from ownership and employees; recognizes certain safety and security considerations; and minimizes risk of unauthorized use or access of cannabis by the general public. (Ord. 373, passed 9-20-2021)

§ 112.02 DEFINITIONS.

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL § 34-20G-1.

CANNABIS or **MARIJUANA**. All parts of any plant of the genus Cannabis, whether growing or not, in its natural and unaltered state except for drying or curing and crushing or crumbling.

(1) The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant or oil or cake made from the seeds of such plant.

(2) The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry-weight basis.

CANNABIS CULTIVATION FACILITY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

CANNABIS DISPENSARY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

CANNABIS ESTABLISHMENT. A cannabis cultivation facility, cannabis testing facility, cannabis product manufacturing facility, or cannabis dispensary.

CANNABIS PRODUCT MANUFACTURING FACILITY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

CANNABIS PRODUCTS. Any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

CANNABIS TESTING FACILITY. In addition to the definition in SDCL § 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

DEPARTMENT. The South Dakota Department of Health. (Ord. 373, passed 9-20-2021)

§ 112.03 LICENSE REQUIRED.

(A) No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment license issued by the city pursuant to this chapter. A violation of this provision is subject to the general penalty provision in § 112.99. Each day of the violation constitutes a separate offense.

(B) No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL § 34-20G. A violation of this provision is subject to the general penalty provision in § 112.99. Each day of the violation constitutes a separate offense. (Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.04 LICENSE APPLICATION.

(A) An application for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered.

(B) The applicant must submit the following:

(1) A minimum application fee of \$5,000, with the highest bidder being granted a license. The city will reimburse \$0 for applicants who fail to obtain a registration certificate from the State Department of Health; and

(2) An application that will include, but is not limited to, the following:

(a) The legal name of the prospective cannabis establishment;

(b) The physical address of the prospective cannabis establishment that meets the zoning ordinance requirements in Article II as well as any location requirements pursuant to SDCL § 34-20G and the administrative rules promulgated thereunder;

(c) The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment;

(d) A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten years in any jurisdiction; and

(e) Any additional information requested by the city. (Ord. 373, passed 9-20-2021)

§ 112.05 ISSUANCE OF LICENSE.

(A) The city will issue a license unless:

- (1) The applicant has made a false statement on the application or submits false records or documentation; years;
 - (2) Any owners, principal officer, or board member of the applicant is under the age of 21
 - (3) Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten years in any jurisdiction;
 - (4) The proposed location does not meet the applicable zoning requirements under Article II;
 - (5) The proposed location does not meet all location requirements under SDCL § 34-20G and the administrative rules promulgated thereunder;
 - (6) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation;
 - (7) Any owner, principal officer, or board member of the applicant has had a cannabis. establishment license revoked by the city or a registration certificate revoked by the state;
 - (8) An applicant or an owner, principal officer, or board member thereof, is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
 - (9) The applicant will not be operating the business for which the license would be issued.
- (B) In the case of an application for a cannabis dispensary license, the city will reject the application if the limit on the number of cannabis dispensaries has been reached.
- (C) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time. (Ord. 373, passed 9-20-2021)

§ 112.06 CITY NEUTRALITY.

- (A) Upon request from the Department as to the city's preference of applicants, the city will neither support nor oppose any registration certificate application under consideration by the Department.
- (B) Likewise, if inquiry is made by the Department, the city will abstain from endorsing any application as beneficial to the community. (Ord. 373, passed 9-20-2021)

§ 112.07 LIMIT ON DISPENSARIES.

No more than one cannabis dispensary shall be allowed to operate in the city at any time. (Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.08 LICENSE EXPIRATION; RENEWAL.

- (A) Each license expires one year from the date of issuance and may be renewed only by making application as provided in § 112.04. Application for renewal must be submitted at least 30 days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (B) The renewal fee is \$5,000. The city will reimburse \$0 for applicants who fail to obtain a renewal of their registration certificate from the Department.
- (C) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the city may order closure of the cannabis establishment.
- (D) If a license holder has not operated an establishment for which he or she holds a license in the preceding 12 months, the license will not be renewed. (Ord. 373, passed 9-20-2021)

§ 112.09 SUSPENSION.

(A) A license may be suspended if the license holder or an employee or agent of the license holder:

(1) Violates or is otherwise not in compliance with any section of this chapter;

(2) Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment; and/or

(3) Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.

(B) A license may be suspended if the license holder has his or her Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.

(C) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment. (Ord. 373, passed 9-20-2021)

§ 112.10 REVOCATION.

(A) A license may be revoked if the license is suspended under § 112.09 and the cause for the suspension is not remedied.

(B) A license may be revoked if the license is subject to suspension under § 112.09 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.

(C) A license is subject to revocation if a license holder or employee of a license holder: process;

(1) Gave false or misleading information in the material submitted during the application

(2) Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;

(3) Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this chapter while the license was suspended;

(4) Repeated violations of any section of this chapter;

(5) Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);

(6) A license holder or an owner, principal officer, or board member thereof is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;

(7) A license holder or an owner, principal officer, or board member thereof has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL § 34-20G;

(8) The license holder has his or her Department-issued registration certificate suspended, revoked, or not renewed, or the registration certificate is expired; or

(9) The license holder allows a public nuisance to continue after notice from the city. (Ord. 373, passed 9-20-2021)

§ 112.11 SUSPENSION AND REVOCATION PROCESS.

(A) (1) The license holder will receive a notice of intent to suspend or notice of intent to revoke, informing the license holder of the violation and the city's intention to suspend or revoke the license.

(2) The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested, to the physical address of the cannabis establishment.

(B) (1) If the license holder disputes the suspension or revocation, the license holder has ten days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Mayor, Finance Officer, and the full Council.

(2) The license holder will be responsible for paying the Council fees for a special meeting.

(C) A suspension will be for 30 days and begins ten days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises his or her rights to process and appeal, in which

case the suspension takes effect upon the final determination of suspension.

(D) A revocation will be for one year and begins ten days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.

(E) The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective. (Ord. 373, passed 9-20-2021)

§ 112.12 APPEAL.

(A) An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this chapter may appeal to the City Council by submitting a written appeal within ten days of the postmark on the notice of denial, nonrenewal, suspension, or revocation.

(B) The written appeal must be submitted to the City of Gary, 1113 Summit Street, PO Box 127, Gary, South Dakota, 57237. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal. (Ord. 373, passed 9-20-2021)

§ 112.13 LICENSE NONTRANSFERABLE.

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application. (Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.14 HOURS OF OPERATION.

No cannabis dispensary may operate between the hours of 5:01 p.m. and 7:59 a.m., Monday through Friday. Cannabis dispensaries must be closed Saturday and Sunday along with all federal holidays. (Ord. 373, passed 9-20-2021) Penalty, see § 112.99

§ 112.15 LIABILITY.

Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation only if an officer, director, or general partner or a person who managed, supervised, or controlled the operation of the cannabis establishment knowingly allowed such act to occur on the premises. (Ord. 373, passed 9-20-2021)

§ 112.99 PENALTY.

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this chapter is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of \$500. Each day a cannabis establishment so operates is a separate offense or violation.

(Ord. 373, passed 9-20-2021)

CHAPTER 113: FRANCHISES

General Provisions

113.01 Authority to franchise

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GENERAL PROVISIONS

§ 113.01 AUTHORITY TO FRANCHISE.

The City Council is granted the authority to authorize a franchise to any entity or individual for services deemed necessary for the residents of the municipality. (Prior Code, § 5-4-1)

INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.

§ 113.15 CITATION.

This subchapter shall be known and may be cited as the "ITC Cable Television Ordinance." (Prior Code, § 5-3-1)

§ 113.16 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates

or requires a different meaning.

BASIC CABLE SERVICE. The service tier which includes the retransmission of local television broadcast signals.

CABLE TELEVISION RECEPTION SERVICE. The delivery by the grantee to television receivers or any other suitable type of electronic receiver or terminal of the electronic signals and other communications services carried over said system.

CABLE TELEVISION SYSTEM or **CABLE SYSTEM.** A system utilizing certain electronic and other components which delivers, to subscribing members of the public, various communications services.

CITY. The City of Gary, South Dakota.

COUNCIL. The City Council of Gary, South Dakota.

FCC. The Federal Communications Commission.

GRANTEE. Interstate Telecommunications Cooperative, Inc., in accordance with the provisions of this subchapter.

ITC. Interstate Telecommunications Cooperative, Inc.

PERSON. Any person, firm, partnership, association, corporation, or organization of any kind and any other legally recognized entity.

SHALL. Always mandatory and not merely directory.

SUBSCRIBERS. Persons contracting to receive cable television reception services furnished under this subchapter by the grantee. (Prior Code, § 5-3-1)

§ 113.17 GRANTED PERMISSION/RIGHTS.

(A) The ordinance codified herein grants Interstate Telecommunications Cooperative, Inc., in its nonexclusive right set forth in Ordinance 306, to have continued for five additional years commencing February 2, 2008.

(B) Furthermore, the rights granted herein shall continue indefinitely to renew for additional five- year periods hereafter upon the expiration of each five-year period unless either party notifies the other party to the contrary in writing at least 90 days prior to the expiration date. (Ord. 2007-340, passed 12-28-2007)

OTTERTAIL POWER COMPANY

§ 113.30 GRANTED PERMISSION/RIGHTS.

(A) There is hereby granted to Ottertail Power Company, a Minnesota Corporation, its successors and assigns, hereinafter called the **GRANTEE**, for five years from and after the passage and approval of this subchapter and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to:

- (1) Construct, install, and maintain an electric light and power system and transmission line, and operate and maintain the same within and through the city;
- (2) Transmit electricity to and from the other towns or cities for the purposes of light, power, and heat; and
- (3) Erect, construct, install, and maintain conduits, poles, wires, pipes, and other necessary fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of said city for the purpose of furnishing and selling electricity for light, heat, and power, and such other purposes for which electricity may be used by the inhabitants of said city.

(B) Said permission and franchise to become operative and continue under the conditions hereinafter set forth, and provided further that this franchise shall be effective for an additional five years if the municipality does not elect to terminate said franchise within 60 days prior to the commencement of the second five-year period.

(Prior Code, § 5-3-2)

§ 113.31 POLE PLACEMENT; OBSTRUCTIONS.

(A) All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances as shall be directed by the city from the property line of the abutting owner, and

shall be placed as not to interfere with the construction or placing of any waterpipes, sewers, or drains or the flow of water therefrom which has been or may be placed by authority of said city.

(B) In the event that said grantee shall make any unnecessary obstructions of said streets, alleys, public grounds, or places not designated by the governing body, the city may cause the removal of such obstructions and charge and collect from such grantee the actual cost of such removals. (Prior Code, § 5-3-2)

§ 113.32 RESERVED CITY RIGHTS.

The city reserves the right for itself and its agents to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the city, but the city will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the grantee carrying on its business in accordance with the franchise hereby granted.

(Prior Code, § 5-3-2)

§ 113.33 MOVING BUILDINGS.

(A) It is further provided that, in case any person shall desire to remove a building along the streets occupied by said wires or pole lines and it becomes necessary to have said wires temporarily removed, said grantee shall be entitled to 48 hours' notice in writing to that effect and when such notice is given.

(B) It shall be the duty of said grantee to remove such wires and without cost to said city, but the person desiring the same removed shall deposit with said city the reasonable cost of the same, and after the work has been completed, the grantee shall render a bill in full for such expense and shall collect from the amount so deposited the cost of doing said work. If the expense is less than the estimated cost, the balance shall be returned to the person who moved such building.

(C) It is further provided that the said grantee shall not be required to make such removal except at a reasonable time of the day.

(D) No person, other than an authorized agent of the grantee, shall interfere with the property of the grantee within the corporate limits of said city. (Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.34 DUE DILIGENCE.

The grantee shall use due diligence and care in furnishing electric service as herein provided. (Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.35 CITY VOTE.

(A) The proposition of issuing the franchise provided for in this subchapter shall be submitted to a vote of the electors of the city at a special election to be held not sooner than 30 days after the publication thereof in full compliance with § 45.1006 of the South Dakota Code of 1939, and this franchise ordinance codified herein shall not be effective unless the proposal to grant the same be approved at such election by a majority vote of the electors of the city voting thereon.

(B) The said grantee shall specify its acceptance of this franchise in writing to be filed with the City Clerk, and in no event shall this subchapter be binding on said grantee until the filing of such acceptance. (Prior Code, § 5-3-2)

§ 113.36 GRANT OF NONEXCLUSIVE AUTHORITY.

There is hereby granted by the city to the grantee and to its assigns, designees, or successors the nonexclusive right to erect, maintain, and operate across, along, in, over, under, and upon the present and future alleys, avenues, bridges, highways, lanes, sidewalks, streets, easements dedicated for compatible uses, and other public places in the city and subsequent additions thereto: cables, lines, manholes, poles, towers, wires, and all other

equipment and fixtures necessary for the maintenance and operation in the city of a cable television system for the purpose of distribution and transmission of audio, visual electric, and electronic impulses in order to furnish digital audio, radio, and television programs and various other communications services to the public for a period of five years commencing from and after March 1, 2003. (Prior Code, § 5-3-2)

§ 113.37 COMPLIANCE.

The grantee shall be subject to all lawful exercise of the police and regulating powers of the city during the term hereof except in those areas which have been preempted by the Federal Cable Communications Policy Act of 1984 as amended, or which are regulated by the FCC. (Prior Code, § 5-3-2)

§ 113.38 TERRITORIAL AREA.

This subchapter relates to the present territorial limits of the city and to any area annexed thereto during the term of this subchapter. The grantee shall not be required to service residents of newly annexed areas of the city or to extend service to new subscribers in areas within the city limits unless the area has a population density of 50 or more homes per linear mile of cable system, except upon payment by such residents of the capital costs incurred by the grantee in bringing service to such areas or individual homes adjoining but outside the city limits that may be served from its existing facilities. The grantee may negotiate directly with such subscribers the amount to be charged for the bringing of the service to the subscriber. (Prior Code, § 5-3-2)

§ 113.39 LIABILITY; INDEMNIFICATION.

(A) The grantee shall keep in effect the following types of insurance coverage at all times:

(1) Workers' compensation upon its employees engaged in any manner in the installation or servicing of its equipment and plant within the city; and

(2) Property damage liability insurance to the extent of \$500,000 as to any person and \$500,000 as to any one accident, and personal injury liability insurance to the extent of \$500,000 as to any one person and \$500,000 as to any one accident.

(B) (1) The grantee shall indemnify, protect, and save harmless the city from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any workers' compensation law which may arise out of its erection, maintenance, removal, or use of any of its attachments, poles, or other undertakings within the city; or by any other act of the grantee, its agents, or employees.

(2) The grantee shall carry insurance in the described amounts in division (A)(2) above to protect the parties hereto from and against all actions, claims, costs, demands, expenses, judgments, and liabilities which may arise or result, directly or indirectly, from or by reason of such damage, injury or loss. The grantee shall also carry such insurance as it deems necessary to protect it from all claims under the workers' compensation laws in effect that may be applicable to the grantee.

(3) The city shall give the grantee prompt written notice of any such actions, claims, costs, demands, expenses, judgments, liabilities, or suits. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be approved by the City Attorney and deposited with and kept on file by the city.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.40 SYSTEM SPECIFICATIONS; TECHNICAL STANDARDS.

(A) The facilities used by the grantee shall have a minimum capacity of 115 video channels and 45 digital audio channels, which will be offered to the public via various packages at various costs.

(B) The grantee shall be governed by technical standards established by the FCC. (Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.41 MAINTENANCE AND OPERATION.

(A) The grantee shall render efficient and safe service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded by notice insofar as possible and shall occur during periods of minimum use of the system.

(B) The grantee shall maintain a force of sufficient personnel to provide an adequate, prompt, and safe service for the facilities. (Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.42 SCHOOLS AND CITY BUILDINGS.

The grantee shall provide two junction terminals without charge to two city-owned buildings other than an apartment, or building at the airport, or hospital or nursing home, to be selected by the Council; and the grantee shall also furnish the basic service to all sets connected within such buildings to the terminal junctions without charge.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.43 EMERGENCY USE.

In the case of any disaster or emergency, the grantee shall make available its facilities to the city for emergency use during the disaster or emergency upon request of the City Council.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.44 SAFETY REQUIREMENTS.

The grantee shall employ ordinary care and shall maintain and use commonly accepted devices and methods for preventing accidents and failures which are likely to cause damages, injuries, or nuisances to the public at all times.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.45 NEW DEVELOPMENTS.

It shall be the policy of the city to liberally amend this franchise upon application of the grantee when necessary to enable the grantee to take advantage of any developments in the field of transmission of digital audio, radio, and television signals which will afford it an opportunity to more economically, effectively, or efficiently serve its subscribers. However, this section shall not be construed to require the city to make any amendment or to prohibit it from unilaterally changing its policy stated herein. (Prior Code, § 5-3-2)

§ 113.46 LIMITATIONS ON GRANTED RIGHTS.

(A) All distribution and transmission equipment, lines, and structures erected by the grantee within the city shall be so located as to cause minimum interference with the proper use of alleys, streets, and other public places and ways; and to cause minimum interference with the reasonable convenience and rights of property owners who adjoin any of the said alleys, streets, or other public places and ways; and said poles or towers shall be removed by the grantee whenever the City Maintenance Supervisor reasonably finds that the same obstructs or restricts the location or operation of any future streets or public places in the city.

(B) Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code prepared by the National Bureau of Standards, and the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of the city affecting electrical installation which may be presently in effect or changed by future ordinances.

(C) In case of disturbance of any alley, paved areas, public way, sidewalk, or street, the grantee shall barricade, replace, and restore such alley, paved areas, public way, sidewalk, or street in as good a condition as before the work involving such disturbance was done at its own cost and expense and in a manner approved by the City Maintenance Supervisor. The grantee shall not be required to pay a fee for street openings.

(D) (1) All work in any way necessitated by the business of the grantee which may involve the breaking up

or opening of a portion of a sidewalk, street, or other part of any city-owned or city-controlled property shall, at the option of the city, be done by the city at the expense of the grantee. In such instances, the grantee shall save the city harmless against all damage or loss to any person or property in accordance with the provisions of § 113.39.

(2) In the event the city does not exercise its option, then the grantee shall, at its own expense and in a manner approved by the City Maintenance Supervisor, replace and restore such alley, paved area, public walk, sidewalk, or street in as good as condition as before the work involving such disturbance was done.

(E) If at any time during the period of the ordinance codified herein the city shall lawfully elect to alter or change the grade of any alley, sidewalk, street, or other public way, then the grantee shall relay, relocate, and remove its cables, manholes, underground conduits, wires, and other fixtures at its own expense upon reasonable notice by the city.

(F) All installations of equipment shall be of a permanent nature, durable, and installed in accordance with good engineering practices and comply with all existing city ordinances, regulations, and state laws so as not to interfere in any manner with the right of the individual property owner or public, and any equipment installed in a public place or public way shall not interfere with the usual travel on such public way or the usual use of such public place by the public, and during the construction, removal, or repair thereof shall not unduly impede or obstruct traffic.

(G) The grantee shall, at its expense: protect, support, or temporarily disconnect; relocate on the same alley, or public place, or street; or remove from the alley, public place, or street any property of the grantee when required by the city by reason of traffic conditions, public safety, street construction or vacated; or change or establishment of street grade, installation of drains, power lines, signal lines, sewers, water pipes, and tracks, or any other types of improvements or structures by governmental agencies when acting in a governmental or proprietary capacity; provided however, that the grantee shall in all cases have the privilege to abandon any property of the grantee in place as hereinafter provided.

(H) The grantee shall place its cables and wires underground on the same conditions and time schedule that are applicable to the providers of other ground services in those sections of the city where the city designates an area where all presently above ground services are to be placed underground.

(1) (1) In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months; or in the event such property or system has been installed in any public place or street without complying with the requirements of this subchapter; or the rights granted hereunder have been canceled, expired or terminated, then the grantee shall promptly remove all above ground facilities, wires, and the like from the public places and streets other than any which the city may permit to be abandoned in place, subject to the rights of the city to acquire or transfer the system as specified in § 113.50.

(2) In the event of such removal, then the grantee shall promptly restore the other area or street from which such property has been removed to a condition satisfactory to the city.

(J) The grantee shall submit to the city an instrument to be approved by the city which transfers the ownership of any such permanently abandoned property in place to the city. (Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.47 OWNERSHIP; REMOVAL OF FACILITIES.

(A) All cable and passive equipment for cable television reception service installed by the grantee at a subscriber's location shall remain the property of the grantee, and the grantee shall have the right to remove said cable and equipment except as otherwise agreed in writing at the time of installation.

(B) The grantee shall have the right at any time to disclaim any further ownership rights to the interior wiring and specified equipment and fittings at a subscriber's residence or other building by giving written notice to the subscriber.

(1) The interior wiring and any equipment or fitting specified in the notice shall become the property of the subscriber upon such a notice being given without any payment obligations on the part of the subscriber.

(2) However, the grantee shall have the right to use said interior wiring and specified equipment

without charge when it is providing service to the premises.

(C) The grantee shall promptly remove all its above ground equipment and facilities from the premises of such subscriber upon the subscriber's request to terminate service, and all of which is subject to FCC regulations. (Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.48 ASSIGNMENT.

The grantee shall not assign the ordinance codified herein to another person without prior approval of the City Council and which approval shall not be unreasonably withheld.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.49 CITY COMPENSATION.

(A) The grantee shall pay 3% of the annual gross subscriber revenues, as defined in division (A)(1) below, annually unto the city as compensation for the said franchise as long as the grantee operates its cable system for audio and video services within the city.

(1) **GROSS SUBSCRIBER REVENUES** shall include those revenues derived from the monthly service charge paid by subscribers unto the grantee. **GROSS SUBSCRIBER REVENUES** shall not include any federal or state taxes relating to services provided by or fees charged by the grantee, nor revenues received as installation charges and fees for reconnections, inspections, modifications, or repairs of any installations.

(2) The grantee shall pay the amount due for the past calendar year unto the city within 90 days after the conclusion of the calendar year.

(B) The annual payments by the grantee unto the city shall be in lieu of any license tax, occupation tax, or similar levy. However, nothing contained herein shall in any way relieve the grantee from the obligation of paying property taxes unto the city or any other governmental subdivision of the state or any other taxes lawfully levied by the state on the grantee's cable system. Furthermore, such payments do not affect the responsibility of the grantee to collect state and local sales tax on the services provided. (Prior Code, § 5-3-2) (Ord. 2007-340, passed 12-28-2007) Penalty, see § 10.99

§ 113.50 ANNUAL FINANCE REPORT; BOND.

The grantee shall provide a copy of its latest audited annual financial report to the city upon request by the city. The grantee shall not be required to post a bond or a cashier's check for the faithful performance of its obligations under this subchapter. (Prior Code, § 5-3-2) (Ord. 2007-340, passed 12-28-2007) Penalty, see § 10.99

§ 113.51 DURATION; RENEWAL.

(A) The rights granted to the grantee herein terminated on February 29, 2008, subject to the provisions of this section.

(B) This subchapter shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984 as amended, applicable to new ordinances that are in the nature of a franchise.

(C) The ordinance codified herein shall remain in effect even if the original five-year term has expired pending final completion of renewal proceedings. If the ordinance codified herein is not renewed or if it is revoked for cause by the city, then the transfer of the grantee's system shall be governed by § 627 of the Cable Communications Policy Act of 1984 as amended. (Prior Code, § 5-3-2)

§ 113.52 USE OF POLES; ERECTION; REMOVAL.

(A) (1) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the City Maintenance Supervisor with regard to height, locations, or type or any other pertinent aspect, which approval shall not be unreasonably withheld.

(2) However, no locations of any pole or wire-holding structure of the grantee shall be a vested interest,

and such poles or structures shall be modified or removed by the grantee at its own expense whenever the City Maintenance Supervisor determines that the public convenience would be enhanced thereby.

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

(C) (1) The grantee shall grant joint use of any and all poles owned by it to the city, free of expense, for any proper municipal purpose acceptable to the grantee insofar as it may be done without interfering with the enjoyment and free use of the grantee's own fixtures and wires, and the city shall hold the grantee harmless from any and all actions, causes of actions, or damages caused by the placing of the city's appurtenances or wires upon the poles of the grantee.

(2) Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction.

(3) If, in accommodating the city's joint use of its poles, the grantee is required to change or replace poles or install new poles, then the city shall compensate the grantee for such additional expense.

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

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.53 RATES.

(A) Rates to be charged by the Ottertail Power Company, its successors, and assigns for the electric energy sold within the said city shall be reasonable and shall not exceed the company's standard schedule of rates and minimum charges effective for and in communities of like-size adjoining territory which are similarly served and situated.

(B) The grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all charges and rates to be made to subscribers for basic cable service, including installation charges.

(1) The grantee shall file in writing with the City Finance Officer any changes in the rates or charges for basic service unless exempted by FCC regulations at least 30 days in advance of the effective date of the rate change.

(2) The grantee shall comply with the rate regulation rules of the FCC during the term hereof.

(3) The monthly rate set forth in the schedule filed pursuant to this division (B) shall be payable in advance.

(4) The grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 as amended and FCC regulations.

(Prior Code, § 5-3-2) Penalty, see § 10.99

§ 113.54 MISCELLANEOUS.

Complaints regarding the quality of service, equipment malfunctions, and similar matters shall first be directed to the grantee's office: 312 Fourth Street West, Clear Lake, South Dakota 57226, or call 611 or 1-800-417-8667 or 605-874-2181 for resolution. (Prior Code, § 5-3-2)

§ 113.55 MODIFICATION OF OBLIGATIONS.

In addition to any other remedies provided by law or regulation, the grantee's obligations under this

subchapter may be modified at its request in accordance with § 625 of the Cable Communications Policy Act of 1984 as it now exists or as hereafter amended. (Prior Code, § 5-3-2)

§ 113.56 SEVERABILITY.

If any clause, phrase, portion, section, sentence, or division of this subchapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is preempted or superceded by FCC regulation, then such portion shall be deemed a distinct, independent, and separate provision, and such holding shall not affect the validity of the remaining portions thereof. (Prior Code, § 5-3-2)

§ 113.57 PUBLICATION.

The grantee shall pay to the city a sum of money sufficient to reimburse it for all expenses incurred by it in connection with the publication of this subchapter. Such payment to be made to the city by the grantee within 30 days after the city shall furnish the grantee with a written statement of such expense. (Prior Code, § 5-3-2) Penalty, see § 10.99

TITLE XIII: GENERAL OFFENSES

130. OFFENSES AGAINST PUBLIC WELFARE

131. OFFENSES AGAINST PROPERTY

132. MINORS

CHAPTER 130: OFFENSES AGAINST PUBLIC WELFARE

130.01 Vagrancy

~~**130.02 Disturbing the peace**~~

130.03 False emergencies/alarms

130.04 Discharge of firearms

130.05 Firecrackers; fireworks

130.06 Public indecency

130.07 Dynamic braking

130.99 Penalty

§ 130.01 VAGRANCY.

(A) It shall be unlawful for any vagrant to remain within the city limits. A **VAGRANT** is an idle person having no legitimate means of support who does not desire or seek lawful employment and who subsists through the charity of others or by unlawful means. If any of the acts in division (B) below are done, then it shall constitute a prima facie presumption that such person is a **VAGRANT** as defined in this section.

(B) Whenever it shall, in a prosecution under this section, be shown that any person who is able to work: support;

- (1) Wanders about in idleness or lives in idleness without property sufficient for his or her
- (2) Leads an idle, immoral, or profligate life and does not work;
- (3) Loafs, loiters, or idles in the city, upon a public highway, or about any public place without any regular employment and without sufficient property for his or her support;
- (4) Barters or trades stolen property;
- (5) Unlawfully barters or sells any malt, spirituous, vinous, or other intoxicating liquors;
- (6) Attends or operates any gambling apparatus or device;
- (7) Engages in practicing any device or trick to procure money or other things of value;
- (8) Engages in any unlawful calling;
- (9) An able-bodied married person neglects or refuses, without lawful excuse, to provide support for his or

her family;and/or purpose.

(10) Beggings in any public place or from house-to-house, or induces children or others to do so;

(11) Falsely represents himself or herself as a collector of alms for a charitable institution or

(Prior Code, § 6-1-1) Penalty, see § 130.99

~~§ 130.02 DISTURBING THE PEACE.~~

~~No person shall use any obscene, profane, or vulgar language which tends to incite the person to whom it is directed to physical violence upon any street or other public place. (Prior Code, § 6-1-2) Penalty, see § 130.99~~

§ 130.03 FALSE EMERGENCIES/ALARMS.

No person shall knowingly give or make any false alarm of fire or other emergency by calling or causing to be called the Fire Department or any authorized emergency vehicle. (Prior Code, § 6-1-3) Penalty, see § 130.99

§ 130.04 DISCHARGE OF FIREARMS.

It shall be unlawful for any person except a public law enforcement officer, in the performance of his or her duty, to discharge or fire any air rifle, gun, slingshot, bow and arrow, or other dangerous weapon within the limits of the city unless prior approval is obtained from a law enforcement officer. (Prior Code, § 6-1-4) Penalty, see § 130.99

§ 130.05 FIRECRACKERS; FIREWORKS.

(A) No entity or person may discharge any form of fireworks within the limits of the city. (Prior Code, § 6-1-5)

(B) It shall be unlawful for any person to deliver, give, or sell any blank cartridges, firecrackers, Roman candles, torpedoes, skyrockets; or other explosives, fireworks, or other materials from which such items may be manufactured, anywhere within the limits of the city, except caps for toy cap pistols. (Prior Code, § 6-1-6) Penalty, see § 130.99

§ 130.06 PUBLIC INDECENCY.

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

NUDITY. The showing of the human male or female genitalia, pubic area, or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region, or pubic-hair region; or the exposure of any device worn as a cover over the nipples and/or areolas of the female breast, which device simulates and gives the realistic appearance of nipples and/or areolas.

PUBLIC INDECENCY. A person who knowingly or intentionally in a public place either engages in sexual intercourse; appears in a state of nudity; or fondles the genitals of himself, herself, or another person, commits the offense of **PUBLIC INDECENCY**.

PUBLIC PLACE. Includes all outdoor places owned by or open to the general public and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, banquet halls, clubs, dance halls, restaurants, taverns, theaters, party rooms; or halls limited to specific members, restricted to adults, or to patrons invited to attend, whether or not an admission charge is levied.

~~(B) The prohibition set forth hereinbefore shall not apply to:~~

~~(1) Any child under ten years of age; or~~

~~(2) Any female exposing a breast in the process of breast feeding an infant under two years of age.~~

(C) In addition to the specific penalties provided in § 130.99, it is hereby declared that any building, portion of a building, or enclosed place regularly used for the prohibited display of public nudity is a public nuisance; subjecting the owner, proprietor, or other operator thereof to any and all actions authorized by the city for the abatement of public nuisances. ~~including but not limited to the procedures set forth in §§ 90.02(O) and 90.04.~~

(D) It is the intention of the city that the provisions of this section be construed, enforced, and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection, or other fundamental rights consistent with the purposes of this section. (Prior Code, § 6-1-7) Penalty, see § 130.99

§ 130.07 DYNAMIC BRAKING.

The operation of any motor vehicles with a dynamic braking device engaged is prohibited within the limits of the city. **DYNAMIC BRAKING DEVICE** (commonly referred to as Jacob's Brake or Jake Brakes) means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of real brakes. (Prior Code, § 6-1-8) Penalty, see § 130.99

§ 130.99 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 violation of § 130.06 either by commission of a public indecency or by the maintenance or promotion of public indecency as a property owner, proprietor, or manager of a business shall be punishable by a fine not to exceed the sum of \$500 for each occasion or day that a violation occurs. (Prior Code, § 6-1-7)

CHAPTER 131: OFFENSES AGAINST PROPERTY

131.01 Injuring signs

131.02 Traffic signs

131.03 Electric/light posts and apparatuses

131.04 Unauthorized utility connections

131.05 Interference with city property

131.06 Destroying property

§ 131.01 INJURING SIGNS.

No person shall change, deface, mar, remove, or in any way interfere with or obliterate either wholly or in part any card, sign, or signboard erected, extended, placed, or posted by the city. (Prior Code, § 6-2-1) Penalty, see § 10.99

§ 131.02 TRAFFIC SIGNS.

(A) No person shall deface, injure, move, obstruct, or interfere with any official traffic sign or signal or street sign. Furthermore, no person shall display, maintain, or place upon or in view of any street an unofficial device, sign, or signal which purports to be, is an imitation of, or resembles an official traffic sign or signal, or which attempts to direct the movement of traffic.

(B) Every such prohibited device, sign, or signal is hereby declared to be a public nuisance, and any law enforcement officer is hereby empowered to remove the same or cause the same to be removed without notice. (Prior Code, § 6-2-2) Penalty, see § 10.99

§ 131.03 ELECTRIC/LIGHT POSTS AND APPARATUSES.

No person shall:

(A) Break, injure, jar, or interfere with any electric light, telephone, telegraph, or fire-alarm system, pole,

post, or apparatus in any manner; or

(B) Climb any telegraph, telephone, electric light, or fire-alarm pole without being properly authorized so to do. (Prior Code, § 6-2-3) Penalty, see § 10.99

§ 131.04 UNAUTHORIZED UTILITY CONNECTIONS.

No person shall, without lawful authority, connect or cause to be connected with any main service pipe, wire, or other conductor of any gas, water, or electrical energy, any pipe, wire, or other device for the purpose of obtaining gas, water, or electrical current therefrom; nor shall he or she, with intent to defraud, connect or cause to be connected with any meter installed for the purpose of registering the amount of gas, water, or electricity supplied to any customer any pipe, wire, or other device; or disconnect, change, or in any manner so interfere with any such meter or any pipe, wire, or appliance connected therewith that such meter will not measure or register the full amount of gas, water, or electricity supplied to any customer. (Prior Code, § 6-2-4) Penalty, see § 10.99

§ 131.05 INTERFERENCE WITH CITY PROPERTY.

No person shall climb on or in any manner interfere with any bridge, building, structure, or water tower belonging to the city without being authorized so to do by the city, and no person shall in any manner deface or injure any such structure. (Prior Code, § 6-2-5) Penalty, see § 10.99

§ 131.06 DESTROYING PROPERTY.

No person shall willfully break, damage, deface, destroy, or interfere with the property of the city or of any other person

CHAPTER 132: MINORS

132.01 Curfew

§ 132.01 CURFEW.

~~(A) (1) No minor under the age of 18 years shall be or remain in or upon the public alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, streets, vacant lots, or other unsupervised public places within the city between the hours of 12:30 a.m. and 5:30 a.m. on a weekday or between the hours of 1:30 a.m. and 5:30 a.m. on a Saturday or Sunday.~~

~~(2) The provisions of this section imposing a curfew on minors shall not apply to a minor accompanied by his or her parent, guardian, or other adult person having the care and custody of the minor; or where the minor is upon an emergency errand or legitimate business authorized or directed by his or her parent, guardian, or such other adult person having the care and custody of the minor.~~

~~(B) (1) It shall be unlawful for the parents, guardian, or other adult person having the care and custody of a minor under the age of 18 years to knowingly permit such minor to be or remain in or upon the public alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, streets, vacant lots, or other unsupervised public places within the city between the hours of 12:30 a.m. and 5:30 a.m. on any weekday or between the hours of 1:30 a.m. and 5:30 a.m. on any Saturday or Sunday, except when the minor is accompanied by his or her parent, guardian, or other adult person having the care and custody of the minor; or when the minor is upon an emergency errand or legitimate business authorized or directed by his or her parent, guardian, or other adult person having the care and custody of the minor.~~

~~(2) It shall be the right of any authorized officer or person to arrest and detain any minor violating the curfew and to keep the minor detained until the parent, guardian, or custodian is notified.~~

~~(3) The minor may be released upon the giving of a promise by the minor and his or her parent, guardian, or custodian that such minor, together with his or her parent, guardian, or custodian, will appear at a stated time before the proper authority to answer to the charges. (Prior Code, § 6-1-9) Penalty, see § 10.99~~

TITLE XV: LAND USAGE

150. BUILDING AND FIRE REGULATIONS

151. STREETS AND SIDEWALKS

152. TREES

CHAPTER 150: BUILDING AND FIRE REGULATIONS

Codes Adopted

150.01 Property Maintenance Code

~~150.02 Electric Code~~

~~150.03 Plumbing Code~~

General Building Regulations

150.15 Removal of decayed/burned buildings

150.16 Hearing for decayed/burned buildings

~~150.17 Signs; outdoor advertising~~

150.18 Refilling excavations

150.19 Numbering buildings

CODES ADOPTED

§ 150.01 PROPERTY MAINTENANCE CODE.

(A) *Adopted.*

(1) A certain document, one of which is on file in the City Finance Office at the city, being marked and designated as the International Property Maintenance Code 2018 Edition, as published by the International Code Council, be and is hereby adopted as the "Property Maintenance Code" of the city for regulating and governing the conditions and maintenance of all property, buildings, and structures by:

(a) Providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use and the demolition of such existing structures as herein provided; and

(b) Providing for the issuance of permits and collection of fees therefor.

(2) Each and all of the regulations, provisions, penalties, conditions, and terms of said Property Maintenance Code on file in the City Finance Office are hereby referred to, adopted, and made a part hereof as if fully set out in this code with the additions, insertions, deletions, and changes (if any) prescribed in division (B) below.

(B) *Additions, insertions, and changes.* The following sections are hereby revised:

(1) Add to § 101.1: "City of Gary";

(2) Revise § 103.5:

The fees for building permits, activities and services performed by the department in carrying out its responsibilities under this code shall be as established by ordinance of the City Council. In addition, an administrative fee of \$250 may be assessed for the preparation of bids and contracts to correct or abate a violation.

(3) Revise § 111.2:

The board of appeals shall consist of not less than three members of the Gary City Council.

(4) Add to § 302.4: "six (6) inches";

(5) Remove §304.14;

(6) Revise § 602.3: change specific dates to "when necessary"; and

(7) Revise § 602.4: change specific dates to "when necessary."

(C) *On file.* The ordinance codified herein will be in addition to any ordinances currently on file in the City Finance Office.

(D) *Effects.* Nothing in this section or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court; or any rights acquired, liability incurred, or any cause or causes of action acquired or existing under any act or ordinance hereby repealed as cited in division (C) above; nor shall any just or legal right or remedy or any character be lost, impaired, or affected by this section.

(Ord. 368, passed 8-3-2020)

~~§ 150.02 ELECTRIC CODE.~~

~~(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~(1) Wherever the term **CORPORATION COUNSEL** is used in the National Electrical Code, it shall be defined to mean the City Attorney for the City of Gary, South Dakota.~~

~~(2) Wherever the word **MUNICIPALITY** is used in the National Electrical Code, it shall be defined to mean the City of Gary, South Dakota. (Prior Code, § 3-3-1)~~

~~(B) (1) The National Electrical Code as adopted by the National Fire Protection Association (most recent edition) is hereby adopted by the city for the purpose of establishing regulations and rules for all installations of electrical equipment, and all electrical equipment installed or used shall be in conformity with this section, state statutes, and any orders, regulations, or rules issued by the authority set forth therein.~~

~~(2) A copy of the National Electrical Code has been filed in the office of the Finance Officer and is hereby adopted and incorporated herein as fully as if set out at length herein and shall take effect from the date of the ordinance codified herein.~~

~~(Prior Code, § 3-3-2)~~

~~(C) (1) The provisions of this code shall govern **ELECTRICAL WORK** as defined by the National Electrical Code (NEC). This includes the fixtures, materials, and practices used in all new installations, electrical conductors, fittings, devices, and fixtures for lights, heat, and power service equipment and all equipment used for power supply to radio and television receiving systems, amateur radio transmission systems, and buildings and structures. All alterations or extensions to existing wiring systems and within or adjacent to any buildings, structures, conveyances, or any premises within the city are also included.~~

~~(2) No electrical work pertaining to heat, light, or power from other sources shall be installed, nor an alteration or extension of any existing electrical systems made until a permit has been issued therefor as required in this section, except for any installations made for buildings or premises used exclusively by an electricity generating and/or communications agency. (Prior Code, § 3-3-3)~~

~~(D) It shall be unlawful for any person to construct, install, lay, or cause to be constructed, installed, or laid any electrical apparatus or wiring unless said person shall have complied with the provisions of this section. However, a person may complete his or her own electrical wiring on his or her property without obtaining a license. (Prior Code, § 3-3-4)~~

~~(E) The Building Inspector shall have the authority to go upon any premises and enter any building or structure at any reasonable hour for inspection purposes and thereby complete his or her duties. (Prior Code, § 3-3-5)~~

~~(F) In the event of a conflict between any provision of the National Electrical Code and this municipal code, then the latter shall prevail. If any of the provisions of this section are in conflict hereafter with the National Electrical Code adopted herein, then the provisions of this section shall take precedence, and the National Electrical Code shall be considered amended and modified.~~

~~(Prior Code, § 3-3-6) Penalty, see § 10.99~~

§ 150.03 PLUMBING CODE.

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

~~(1) Wherever the term **CORPORATION COUNSEL** is used in the National Plumbing Code, it shall be defined to mean the City Attorney for the City of Gary, South Dakota.~~

~~(2) Wherever the word **MUNICIPALITY** is used in the National Plumbing Code, it shall be defined to mean the City of Gary, South Dakota. (Prior Code, § 3-4-1)~~

~~(B) (1) The National Plumbing Code as adopted by the American Standards Association (most recent edition) is hereby adopted by the city for the purpose of establishing regulations and rules for the installation and safety of plumbing and related fixtures, and all plumbing installed or used shall be in conformity with this section, state statutes, and any orders, regulations, or rules issued by authority set forth therein.~~

~~(2) A copy of the National Plumbing Code has been filed in the office of the Finance Officer and is hereby adopted and incorporated herein as fully as if set out at length herein and shall take effect from the date of the ordinance codified herein. (Prior Code, § 3-4-2)~~

~~(C) The provisions of this code shall govern **PLUMBING WORK** as defined by the National Plumbing Code (NPC). This includes the fixtures, materials, and practices used in all alterations, extensions, installation, and maintenance of all appliances, fixtures, piping, and appurtenances in connection with any of the following:~~

~~(1) Sanitary drainage and private water supply systems within or adjacent to any building or structure; and~~

~~(2) The materials and practices used for the alteration, extension, installation, or maintenance of a storm sewer or sewage system of any premises to its connection with any point of the public disposal or other terminal. (Prior Code, § 3-4-3)~~

~~(D) The Building Inspector shall have the authority to go upon any premises and enter any building or structure at any reasonable hour for inspection purposes and thereby complete his or her duties. (Prior Code, § 3-4-4)~~

~~(E) In the event of a conflict between any provision of the National Plumbing Code and this municipal code, then the latter shall prevail. If any of the provisions of this section are in conflict hereafter with the National Plumbing Code adopted herein, then the provisions of this section shall take precedence and the National Plumbing Code shall be considered amended and modified. (Prior Code, § 3-4-5) Penalty, see § 10.99~~

GENERAL BUILDING REGULATIONS

§ 150.15 REMOVAL OF DECAYED/BURNED BUILDINGS.

~~(A) The Building Inspector~~ Any person shall report to the City Council any building within the limits of this city which shall have been damaged by fire, building collapse, decay, or otherwise to the extent of 50% of the value thereof, and ~~the written report~~ shall describe the said building, its location, and the name of the owner if known.

(B) (1) The Finance Officer shall then issue a notice to be served upon the owner requiring the said owner to appear before the City Council at a place and time specified in said notice to show cause why said building shall not be removed or torn down.

(2) In the event the owner cannot be found within the state and there is no agent present, then the notice shall be published in the official newspaper of the city once each week for four successive weeks.

(3) The proof of such service shall be deemed valid upon the completion of such publication and due proof thereof being filed with the Finance Officer. (Prior Code, § 3-2-1)

§ 150.16 HEARING FOR DECAYED/BURNED BUILDINGS.

(A) The City Council shall accept evidence pertaining to the condition of any building which shall have been damaged and the extent thereof. If, in the judgment of the City Council, such building has been damaged by fire, decay, or otherwise to the extent of 50% of its value, then an order shall be made and entered on record condemning such building to be removed within the time as therein specified under the direction of the City Council.

(B) Any disregard of said order shall be deemed a violation of this section, and the city may prosecute the offender. Additionally, the city may remove the building and hold a lien against the property for all necessary expenses. (Prior Code, § 3-2-2) Penalty, see § 10.99

~~§ 150.17 SIGNS; OUTDOOR ADVERTISING.~~

~~(A) No awnings, displays, or signs shall be hanged, placed, or suspended so that the same shall hang over any part of a sidewalk or street used for pedestrian or vehicular travel unless a written application for a permit is made to the City Council and a permit is granted therefor. However, this provision shall not be applicable to holiday decorations or utility fixtures.~~

~~(B) The City Council shall take into consideration factors that would make the proposed structure likely to endanger the personal safety or property of passersby traveling the sidewalks or streets in question and whether or not such structure complies with the National Building Code relating to outdoor advertising. (Prior Code, § 3-2-3) Penalty, see § 10.99~~

§ 150.18 REFILLING EXCAVATIONS.

(A) Whenever any excavation is made, then the earth and pavement shall be replaced by the party responsible for same, and the contractor or owner making such excavation shall be liable to the city of the cost of such replacement.

(B) Additionally, it shall be unlawful for any contractor or owner of property to make or cause to be made any excavation on any property adjacent to any alley, public area, or street unless the excavation is securely guarded so as to prevent the injury of any person passing along or upon the excavation.

(C) Furthermore, the contractor shall leave the project site clear of all excess soil and any debris as a result of the excavation. (Prior Code, § 3-2-4) Penalty, see § 10.99

§ 150.19 NUMBERING BUILDINGS.

(A) The buildings located on all avenues and streets within the city shall be numbered, and the owners thereof shall place upon such buildings the proper numbers. (Prior Code, § 3-5-1)

(B) The streets running north starting from Outlot No. 3 shall be numbered even on the east side starting with 612 and odd on the west side starting with 605. (Prior Code, § 3-5-2)

(C) The avenues running east starting from Laura Street shall be numbered even on the south side starting with 106 and odd on the north side starting with 105. (Prior Code, § 3-5-3)

(D) The Finance Officer shall designate upon each application the proper number for each building or structure. (Prior Code, § 3-5-4)

(E) The numbers to be placed upon the building or structure shall be legible and of such sufficient size as to be easily read from the street in front of the building or structure. The numbers may be put above, to the right, or to the left of the front entrance of the building or structure, whichever area is the most feasible.

(Prior Code, § 3-5-5) ~~Penalty, see 10.99~~

CHAPTER 151: STREETS AND SIDEWALKS

Streets

151.01 Grades; widths

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Sidewalks

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STREETS

§ 151.01 GRADES; WIDTHS.

The grades and widths of all streets, curbs, and gutters in the city shall be established by the City Council before any construction thereof commences. (Prior Code, § 7-1-1) Penalty, see § 10.99

§ 151.02 HINDERING IMPROVEMENTS.

No person shall hinder, interfere with, or obstruct any person lawfully constructing, grading, improving, or paving any curb and gutter. Nor shall any person break, injure, or tear up any curb, pavement, or street unless authorized to do so by the City Council. (Prior Code, § 7-1-2) Penalty, see § 10.99

§ 151.03 DESIGNATION OF AVENUES AND STREETS.

When any thoroughfare shall hereafter be laid out within the limits of the city, then the following criteria shall be used in determining whether the same shall be designated an avenue or street.

(A) If the primary orientation of such thoroughfare is north and south, then the same shall be designated as a street.

(B) If the primary orientation of said thoroughfare is east and west, then the same shall be designated as an avenue. (Prior Code, § 7-1-3)

§ 151.04 EXCAVATIONS; APPLICATION AND BOND; EXEMPTIONS; REGULATIONS.

(A) (1) Any person desiring to make any excavation in any of the public alleys, streets, or other public places of this city shall first make application to the Building Inspector. The application shall state where such excavation is to be made and the extent thereof, which lot or lots adjoin the same, and for what purpose the excavation is to be made.

(2) The applicant shall post a good and sufficient bond to be approved by the Finance Officer in the sum of \$1,000 before such a permit is issued unto any person. The bond shall be conditioned upon the requirement that the applicant shall fulfill all obligations provided herein. Only one bond is necessary as long as the bond is in full force and effect.

(3) If the Building Inspector finds the application in proper order and in conformity with the provisions herein after careful examination, and the said bond has been properly posted, then a permit may be issued unto the applicant by the City Council. (Prior Code, § 7-2-1)

(B) (1) No utility company which has been, by contract or franchise, granted a right to use the alleys, streets, or other public ground shall be required to furnish a bond for making excavations in any public place or right-of-way.

(2) However, all other sections of this subchapter relating to excavations and public rights-of-way shall be binding upon such companies. (Prior Code, § 7-2-2)

(C) It shall be unlawful for any person to make or cause to be made any excavation across, in, on, or under any alley, sidewalk, street, or other public ground; or to remove any concrete, earth, gravel, paving, soil, or other material therefrom without first having obtained a permit from the City Council. (Prior Code, § 7-2-3)

(D) It shall be unlawful for any occupant, owner, or person of any lot or parcel of land within the city limits to make or cause to be made any excavation of said lot or parcel of land unless the site is securely guarded so as to prevent the injury of any person or animals passing along alleys, sidewalks, streets, or other public grounds. (Prior

Code, § 7-2-4)

(E) No sewer pipes or manholes which are a part of the municipal sewer system shall be damaged in any manner during the process of making an excavation. Any damage caused by excavations shall be fully compensated for by the person to whom the permit was granted to make the excavation. (Prior Code, § 7-2-5)

(F) Any person receiving a permit to make an excavation adjoining or upon any alley, sidewalk, street, thoroughfare, or public ground, or any person making an excavation on either private or public ground shall during the progress and continuance of the work erect, keep, and maintain by day and night suitable barricades, guards, lights, and signals so as to prevent injury of any animal, person, or vehicles as a result of such excavation. (Prior Code, § 7-2-6)

(G) (1) The owner of any building in the city having a stairway leading from an adjacent sidewalk to the basement or cellar of such building shall guard the stairway with a substantial railing not less than three feet high.

(2) The entrance to the stairway shall be at right angles to the street from which such entry is made, and any person who shall have any permanent opening in any sidewalk for the purpose of letting light into any basement or cellar or for any other purpose shall guard the same with a substantial cover. (Prior Code, § 7-2-7)

(H) (1) The person to whom the permit was granted to make the excavation shall promptly restore the excavation by properly refilling it and maintaining it from time-to-time if the excavation settles in such a manner as to afford free and unencumbered passage for the public.

(2) Additionally, the person to whom the permit was granted shall completely restore the alley, sidewalk, street, or other public place to the same condition as the same was before the making of such excavation as soon as possible and in no case longer than 30 days after the start of the excavation.

(3) Furthermore, the earth shall be thoroughly settled by compaction with water- and machine- compacting equipment in refilling any excavation that has been authorized. The refilling is to be made in such a manner that the surface when refilled shall not be any higher or lower than the original surface when the excavation was made, and the settling (if any) will be at a minimum. (Prior Code, § 7-2-8)

(I) If at any time, after the issuance of any permit for the making of an excavation as provided for herein, the Building Inspector shall find that the work for which the said bond was given and posted does not stand a satisfactory test or has not been properly or timely refilled, maintained, and restored to its original condition, then the Building Inspector shall have authority to replace the excavation in satisfactory condition, and the person to whom the permit was granted or his or her bondsperson shall be required to make full restitution for the cost thereof unto the city. (Prior Code, § 7-2-9) Penalty, see § 10.99

SIDEWALKS

§ 151.15 GRADES; WIDTHS.

The sidewalk grades are established and fixed to be three inches above the curb grade. If no curb grade has been established, then the sidewalk shall be at least three inches above the natural level of the ground and in all cases sufficiently above the level of the ground to drain well. Additionally, the width of all sidewalks shall be established by the City Council before any construction commences. (Prior Code, § 7-3-1)

§ 151.16 CONSTRUCTION LIMITATIONS; MATERIALS.

The building of wooden sidewalks in the city is hereby prohibited. All sidewalks built hereafter in the city shall be built of cement as specified hereinafter, except that a sidewalk may be built of brick or stone when specifically authorized by a resolution passed by the City Council. The specifications for the use of cement are as follows.

(A) The concrete used in the construction of alleys, gutters, sidewalks, and street crossings shall conform in all respects to the State Department of Transportation's (SDDOT) standard specifications for roads and bridges. The concrete shall conform to SDDOT Class M6 except as modified herein.

(B) The concrete aggregate mixture shall contain a minimum of 50% coarse aggregate by weight. The mixture shall contain at least six bags of cement per cubic yard. The minimum 28-day compressive strength shall be 4,000 psi. The concrete shall contain between 5% and 8% entrained air with a maximum slump of four inches.

(C) The concrete shall be a minimum of four inches thick. Concrete subjected to vehicular traffic shall be reinforced with No. 4 (half-inch) reinforcing bars, 12 inches on center, both ways.

(D) (1) The concrete shall be placed on a prepared base course. The base course shall conform to SDDOT base course aggregate.

(2) The base course shall be a minimum of two inches thick under sidewalks that are not subject to vehicular traffic and six inches thick under alleys, gutters, and sidewalks subjected to vehicular traffic. (Prior Code, § 7-3-2)

Penalty, see § 10.99

§ 151.17 CITY AUTHORITY.

(A) The City Council shall have authority to order the construction or repair of any alley, gutter, sidewalk, or street crossing when the need for such construction or repair exists in its discretion or opinion; and when not constructed or repaired within the time fixed by law, then the city may construct or repair the same, and the cost thereof shall be charged to the owner of the property as provided by law.

(B) Furthermore, the City Council shall have authority to supervise the construction of all alleys, sidewalks, and street crossings by the appointment of an engineer or superintendent for that purpose, and when such appointment is made, then such engineer or superintendent shall have the authority to test all materials used in the construction thereof and must approve such construction both as to materials and workmanship. (Prior Code, § 7-3-3)

§ 151.18 PAYMENT.

The city shall pay for the construction of a new sidewalk in all cases where the city orders the construction of new sidewalks for the reason that the curb grade or street grade of the city was changed after the sidewalk was constructed provided the curb or street was constructed according to the original required grade or before there was any established grade, but the owner of the adjoining property shall pay for the construction or repair of any sidewalk if required for any other reason. (Prior Code, § 7-3-4)

§ 151.19 DEFECTIVE SIDEWALKS.

Any curb, driveway, parkway, or sidewalk which has been deemed defective, hazardous, or unsafe by the City Council is hereby declared a nuisance. It shall be the duty of the owner of the property abutting on any curb, driveway, or sidewalk to make all improvements stated in the notice by the city within 30 days from the receipt of said notice. (Prior Code, § 7-3-5) Penalty, see § 10.99

§ 151.20 CONSTRUCTION, REBUILDING, AND REPAIRING.

(A) Whenever the City Council shall deem it necessary to construct, rebuild, or repair any sidewalk or driveway, then it shall notify all owners of lots abutting and adjoining such sidewalk or driveway to construct, rebuild, or repair the same at their own expense within the time designated.

(1) Such notice shall be in writing and either be served personally on each said owner or by publication once each week for two consecutive weeks in the official newspaper for the city.

(2) The notice shall set forth the character of the work and the time within which it shall be completed.

(3) The notice may be general as to the owners but must be specific as to the description of such lots, parts of lots, or parcels of land.

(B) The failure of any owner to construct, reconstruct, or repair any such sidewalk or driveway shall be deemed a misdemeanor and permits the city to proceed with a resolution of necessity for sidewalk improvements in accordance with state statutes. (Prior Code, § 7-3-6) Penalty, see § 10.99

§ 151.21 ICE AND SNOW REMOVAL.

(A) It shall be the duty of every occupant or owner of the premises within the city to remove all ice and snow from the sidewalk abutting said premises as soon after same has accumulated as can reasonably be removed.

(B) (1) In case of failure of the occupant or owner (or either of them) to remove such ice and snow as soon as it can reasonably be removed, the Mayor of the city may hire the same to be removed at the expense of the city, and the costs so incurred by the city for removing such ice and snow shall be charged to the owner of the abutting property and shall be certified by the City Finance Officer as a special assessment levied and taxed against the lot or parcel on which the sidewalk abuts.

(2) The special assessment shall be collected by the County Treasurer as other assessments and taxes made by the city for the benefit of the city, provided that the Mayor shall not hire anyone to remove such ice or snow from the sidewalk without first giving notice at least three hours beforehand to the occupant or owner of the premises (if it is occupied or if the owner resides in the city) of his or her intention to hire said ice and snow removal from said sidewalk.

(3) In the alternative, the city may recover any expense incurred in a civil action against either the occupant or owner of such property, or both parties. (Prior Code, § 7-4-1) Penalty, see § 10.99

§ 151.22 RIDING BICYCLES.

It shall be unlawful for any person or persons to ride any bicycle upon any of the sidewalks within the limits of the city. (Prior Code, § 7-4-2) Penalty, see § 10.99

~~§ 151.23 SIGNS PROJECTING OVER SIDEWALKS.~~

~~It shall be unlawful for any person or persons to place or suspend any showboard or sign of any description whatsoever from any structure so that the same shall project from the front or wall of said structure more than four feet over any sidewalk or onto the adjoining street, except municipal lights. (Prior Code, § 7-4-3) Penalty, see § 10.99~~

§ 151.24 AWNINGS.

It shall be unlawful for any person to erect any awning over any sidewalk or public street within the limits of the city unless such awnings be elevated at least seven feet at the lowest part thereof above the top of the sidewalk or street, and said awnings shall not project over the sidewalk to exceed three-fourths of the width thereof, and said awnings shall be supported without posts by iron brackets, by iron framework, or by an iron and wood framework attached firmly to the building so as to leave the sidewalk wholly unobstructed thereby. (Prior Code, § 7-4-4) Penalty, see § 10.99

CHAPTER 152: TREES

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GENERAL PROVISIONS

§ 152.01 DEFINITIONS.

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

COMMUNITY FOREST MANAGER. The official public-employee representative of the Tree Board, and as such is responsible for administration of the Community Forestry Program.

PARK TREES. Trees, shrubs, bushes, and all other woody vegetation in public parks including municipal cemeteries and golf courses.

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

PRIVATE COMMUNITY FOREST. All trees within municipal boundaries but not owned by the city.

PUBLIC COMMUNITY FOREST. All street and park trees, and other trees owned by the city as a total resource.

STREET TREES. Trees, shrubs, bushes, and all other woody vegetation on land lying between the property lines on either side of all streets and avenues within the city. (Prior Code, § 7-5-1)

§ 152.02 MINIMUM DISTANCE; CLEARANCE.

(A) Street trees may be planted in the tree lawn where there is more than six feet between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than three feet from a sidewalk, driveway, or street.

(B) No street tree shall be planted closer than 30 feet from any street corner, measured from the point of the nearest intersection of curbs or curblines.

(C) No street tree shall be planted closer than ten feet from any fire hydrant.

(D) Special permission must be obtained from the Community Forest Manager when planting street trees within ten feet of any point on a line on the ground immediately below any overhead utility wire. (Prior Code, § 7-5-8) Penalty, see § 10.99

§ 152.03 PUBLIC TREE CARE.

(A) The city shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs within the rights-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to ensure the public safety.

(B) The city may remove, cause, or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to electric power lines or other public improvements, or is seriously affected with any fatal disease.

(C) The abutting property owners shall have the right to perform normal tree care on all street trees. (Prior Code, § 7-5-9)

§ 152.04 PERMITS.

No person shall plant a street tree without first ~~obtaining a permit from~~ **contacting** the Community Forest Manager. There will be no fee for such permit. (Prior Code, § 7-5-10) Penalty, see § 10.99

§ 152.05 COMPENSATION FOR TREE REMOVAL.

(A) (1) No person shall remove any public tree without replacing such tree with a tree or trees of equivalent dollar value in the vicinity of the removed tree.

(2) The value of trees shall be determined by the Community Forest Manager in accordance with regulations considering the species, location, size, and condition of trees adopted by the Tree Board.

(B) (1) If no suitable location exists in the vicinity of the tree removed or if the replacement tree is of lesser value, the person causing the tree to be removed shall make a compensatory payment to the city equal to the difference in value between the tree removed and any replacement tree.

(2) Such compensatory payment shall be paid into a fund established by the City Finance Officer and used solely for the purpose of enhancing the community forest. (Prior Code, § 7-5-11) Penalty, see § 10.99

§ 152.06 TREE TOPPING.

It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Property owners are responsible for trees on their own property as well as trees on the public ways that abut their property. (Prior Code, § 7-5-12) Penalty, see § 10.99

§ 152.07 CLEARANCE OVER STREETS AND WALKWAYS.

Clearance over streets and walkways shall be the responsibility of the abutting property owner. A clearance of eight feet must be maintained over walkways, and a clearance of 12 feet must be maintained over streets and alleys. Trees not maintained according to these standards may be brought into compliance by the Community Forest

Manager. (Prior Code, § 7-5-13) Penalty, see § 10.99

§ 152.08 DEAD/HAZARD TREE REMOVAL.

The city shall have the right to cause to be removed any tree within the city limits that is dead or has been declared a hazard. **HAZARD TREES** are defined as trees with severe structural defects or splits. The city will notify in writing the owners of such trees. Removal is the responsibility of the owners of such trees and shall be accomplished within time limits set by the Community Forest Manager. (Prior Code, § 7-5-14) Penalty, see § 10.99

§ 152.09 STUMP REMOVAL.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground. The city shall only be responsible for the removal of those stumps of trees the city removes. (Prior Code, § 7-5-15) ~~Penalty, see § 10.99~~

§ 152.10 ABATEMENT OF NUISANCE.

The failure of persons to comply with planting, spacing, minimum distances, utilities, trimming, and tree-removal provisions of this chapter shall constitute a nuisance, and the city shall have the authority to abate the nuisance and assess the cost associated with the abatement to the property owner by special assessment. (Prior Code, §

§ 152.11 PROPERTY ACCESS.

It shall be unlawful for any person to prevent, delay, or interfere with access to private property by the city or its representatives in the legal performance of any section of this chapter. (Prior Code, § 7-5-18) Penalty, see § 10.99

§ 152.12 ARBORIST CERTIFICATION; INSURANCE.

(A) Persons or firms engaged in the business or occupation of pruning, treating, or removing any street tree, park tree, or other privately owned tree must be recognized by the State Arborists Association as a certified arborist or tree technician.

(B) Tree technicians must carry evidence of liability insurance and workers' compensation. No certification shall be required by any public employee doing such work in the pursuit of his or her public service endeavors. (Prior Code, § 7-5-19) Penalty, see § 10.99

CITY TREE BOARD

§ 152.25 ESTABLISHMENT; MEMBERSHIP.

(A) There is hereby created and established a City Tree Board, which shall consist of five members, property owners, or residents of the city who shall be appointed by the Mayor with the approval of the City Council.

(B) The Community Forest Manager shall be an ex officio member of the City Tree Board. (Prior Code, § 7-5-2)

§ 152.26 TERM OF OFFICE.

The term of the five persons to be appointed by the Mayor shall be three years, except that the term of two of the members appointed to the first Board shall be for only one year, and the term of two members of the first Board shall be for two years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed to complete the term. (Prior Code, § 7-5-3)

§152.27 COMPENSATION.

Members of the Tree Board shall serve without compensation. (Prior Code, § 7-5-4)

§ 152.28 DUTIES AND RESPONSIBILITIES.

(A) It shall be the responsibility of the Tree Board to study, investigate, counsel, and develop and/or update annually and administer written plans, both annual and long range, for the maintenance, replacement, and removal or disposition of trees and shrubs in parks, along streets, and in other public areas. Such plans will be presented annually to the City Council at the first meeting in March, and upon its acceptance and approval, shall constitute the

official comprehensive City Tree Plan.

(B) The Tree Board, when requested by the City Council, shall consider, investigate, make findings, report, and recommend upon any special matter or question relating to trees. (Prior Code, § 7-5-5)

§ 152.29 TREE BOARD OPERATION.

The Tree Board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. The business, meetings, and records of the Tree Board shall be open to the public for inspection at the city offices during normal business hours. (Prior Code, § 7-5-6)

§ 152.30 RECOMMENDED TREE SPECIES.

The city shall maintain a list of not less than 12 recommended tree species for planting in public areas. The purpose of this listing will be to maintain diversity in the total tree population. This list shall be available to residents of the city upon request to aid in the selection of trees for private and public properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest.

(Prior Code, § 7-5-7)

§ 152.31 INTERFERING WITH BOARD.

It shall be unlawful for any person to prevent, delay, or interfere with the Tree Board or any of its representatives or agents while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any trees within the public community forest. (Prior Code, § 7-5-17) Penalty, see § 10.99

§ 152.32 REVIEW BY CITY COUNCIL.

The City Council shall have the right to review the conduct, acts, and decisions of the City Tree Board. Any person may appeal from any ruling or order of the City Tree Board to the City Council, who may hear the matter and make a final decision within 30 days. (Prior Code, § 7-5-20)