

## CHAPTER 152: ZONING

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### 152.01 TITLE, PURPOSE, AND JURISDICTION.

(A) *Title.* This chapter may be known and may be cited and referred to as AThe Zoning Ordinance of the City of Parkston, South Dakota@, to the same effect as if the full title were stated.

(B) *Purpose.*

(1) This chapter is based upon the comprehensive plan for the city as adopted by the City Council and legally adopted, in conformance with SDCL Chs. 11-4 and 11-6.

(2) These regulations are designed to carry out the goals and objectives of the plan, with primary attention to the following:

- (a) Promoting the public health, safety, and general welfare;
- (b) Preserving the aesthetic quality of the city;

(c) Promoting the character and stability of residential, commercial, and industrial areas within the city, and promoting the orderly and beneficial development of such areas;

- (d) Protecting the value of land and buildings;
  - (e) Providing for the citizens of the city adequate light, pure air, and safety from fire, natural disaster, and other dangers; and
  - (f) Minimizing traffic congestion in the public streets.
- (3) To attain these objectives, this chapter is established to accomplish the following:
- (a) Create districts into which the city is divided;
  - (b) Establish requirements regarding the intensity of the use of land and buildings;
  - (c) Establish requirements regarding off-street parking facilities; and
  - (d) Establish the powers and duties of the Board of Appeals, Planning and Zoning Commission, and City Council, and the procedures by which they will operate regarding enforcement of this chapter.
- (4) Also included in this chapter are provisions for administration and enforcement of this chapter, and penalties for violation of this chapter.
- (C) *Jurisdiction.* The provisions of this chapter shall apply within the corporate limits of the city of the city (refer to official zoning map).
- (D) *Provisions of this chapter declared to be minimum requirements.* In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this chapter require a greater width or size of yards, courts, or other spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other ordinance, the provisions of this chapter shall govern.
- (E) *Planning and Zoning Commission.* A Planning and Zoning Commission is provided for in ' 30.50. (Ord. 265, passed 11-9-2004)

' **152.02 DEFINITIONS.**

- (A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (B) Words used in the present tense include the future, words in the singular number include the plural

number, and words in the plural number include the singular number. The word *shall* is mandatory and not directory. The word *may* is permissive. The word **PERSON** includes an individual, all partnerships, associations, and bodies political and corporate. The word **LOT** includes the word **PLOT** or **PARCEL** or **TRACT**. The word **USED** or **OCCUPIED** as applied to any land or building shall be construed to include the words **INTENDED**, **ARRANGED**, or **DESIGNED TO BE USED OR OCCUPIED**.

**ABUT.** Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement.

**ACCESSORY BUILDING, LARGE.** A structure of 144 square feet or larger, measured from the outermost points of the structure, on the same lot with, and by nature customarily incidental and subordinate to, the principal use or structure.

**ACCESSORY BUILDING, SMALL.** A structure of less than 144 square feet, measured from the outermost points of the structure, on the same lot with, and by nature customarily incidental and subordinate to, the principal use or structure.

**ACCESSORY USE.** A use on the same lot with, and of a nature customarily incidental and subordinate to, the principal uses.

**ACTUAL CONSTRUCTION.** The placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially commenced, preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be **ACTUAL CONSTRUCTION**; provided, that work shall be carried on diligently.

**ADDITION.** Any construction which increases the size of a building, such as a porch, attached garage or carport, or a new room.

**AGRICULTURE.** The tilling of the soil, the raising of crops, horticulture, and gardening, but not including keeping or raising of large domesticated animals, similar animals, or fowl, except household pets, and not including any agricultural product processing facility or similar uses. An animal feeding operation primarily for the growing and/or finishing of livestock is not considered an **AGRICULTURAL USE**. Grain elevators or agricultural product processing facilities shall not be considered an **AGRICULTURAL USE** if such use constitutes the main or principal use on a lot or parcel.

**AGRICULTURE PRODUCT PROCESSING FACILITY.** A business activity customarily designed to process raw agricultural products into value added products. **AGRICULTURAL PROCESSING FACILITIES** include, but are not limited to, feed mills, ethanol plants, soybean processing, packing plants, and rendering facilities.

**AIRPORT.** The Parkston Municipal Airport, located south of the city. For restrictions regarding development near the airport, including height restrictions for buildings and structures, please refer to Federal Aviation Administration guidelines.

**AIRPORT ELEVATION.** The established elevation of the highest point on the usable landing area, which is established to be 1,415 feet above mean sea level.

**AIRPORT HAZARD.** Any structure or tree or use of land that obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport. Any use of land that is hazardous to persons or property because of its proximity to the airport.

**ALLEY.** A way which affords only a secondary means of access to abutting property.

**ANIMAL FEEDING OPERATION.** A facility where more than 1,000 animal units are confined at an operation; or when more than 150 animal units are confined at an operation and pollutants are discharged into navigable waters through a human-made ditch, flushing system, or other similar human-made device or pollutants are discharged directly into waters of the United States.

**APARTMENT.** A portion of a multiple-family dwelling used as a separate housing unit and having cooking facilities and a private bath.

**APPLICANT.** A person shall be deemed to be an **APPLICANT** if they are the owner of the proposed facility; an officer or director of the owner thereof; or an owner of any interest, direct or indirect, in any company, except a publicly traded company, which is the owner of the proposed development.

**AUTOMOBILE BODY SHOP.** A building and premises primarily used for the commercial repair of damage to the chassis of an automobile, including major and minor collision damage, frame and panel straightening, repainting, and refinishing. This also includes the rebuilding or conversion of automotive engines or engine parts, but does not include activities carried out in an automobile service station. See also **AUTOMOBILE SERVICE STATION**.

**AUTOMOBILE SERVICE STATION.** Any area of land, including structures thereon, that is used for the sale of motor vehicle fuel and oil, and which also may be used for the repair, maintenance, or storage of motor vehicles. Such stations may include facilities used to polish, grease, wash, spray, dry clean, or otherwise clean motor vehicles. Such stations also may include facilities for the repair or replacement of parts in a motor vehicle, engine tuning, the installation of undercoating, lubrication, and engine conversion or replacement. See also **AUTOMOBILE BODY SHOP**.

**BAR.** A building or part thereof where liquor, beer, wine, or any combination thereof are served for consumption on the premises, with or without food.

**BASEMENT.** A portion of a building with the floor located below the mean grade level. For the purpose of this chapter, any such **BASEMENT** with more than four feet above grade level shall be

counted as a story. No dwelling unit shall be situated in a basement having less than four feet above grade level.

**BED AND BREAKFAST.** A dwelling that may or may not be occupied by a family that is used incidentally to provide accommodation and meals to guests for remuneration. This does not include boarding houses, residential care facilities, hotels, motels, or other similar uses.

**BILLBOARD.** See **SIGN, OFF-SITE.**

**BLOCK.** The property abutting on one side of a street and lying within the two nearest intercepting or intersecting streets or lying within the nearest intercepting streets and unsubdivided acreage or railroad right-of-way.

**BOARD OF ADJUSTMENT.** An officially constituted body whose principal duties are to hear appeals, and, where appropriate, grant variances from strict application of this chapter. The City Council shall serve as the **BOARD OF ADJUSTMENT.**

**BUILDABLE AREA.** The portions of a lot remaining after required yards and setbacks have been provided.

**BUILDING.** Any structure for the shelter, support, or enclosure of persons, animals, chattels, or property of any kind, and when separated by common, shared walls without openings, each portion of such building so separated shall be deemed a separate **BUILDING.**

**BUILDING, HEIGHT OF.** The vertical distance from the average elevation of the finished grade at the building line to the highest point of a flat roof, or the deck line of a mansard roof, or the average height of the highest gable or gambrel, hip, or pitch roof.

**BUILDING SETBACK LINES.** A line parallel or approximately parallel to the lot lines at a specified distance therefrom, marking the minimum distance from the lot line that the building may be erected.

**BUILDING LINE, FRONT.** A line parallel to the street, intersecting the foremost point of the building, excluding uncovered steps.

**CAMPER.** See **TRAVEL TRAILER.**

**CAMPGROUND.** Any premises where two or more camping units are parked/placed for camping purposes, or any premises used or set apart for supplying to the public camping space for two or more camping units for camping purposes, which include any building, structures, vehicles, or enclosures used or intended for use or intended wholly or in part for the accommodation of transient campers.

**CAMPING UNIT.** Any vehicle, tent, trailer, or other movable shelter used for camping purposes.

**CANTILEVER.** A projecting beam or other structure supported only at one end, or projecting beyond a fulcrum and supported by a balancing member. Also, a bracket or block supporting a balcony or cornice.

**CARPORT, DETACHED.** A roof with no side walls used as a shelter or storage of vehicles that is not attached to any structure.

**CEMETERY.** Land that is set apart or used as a place for the interment of the dead or in which human bodies have been buried. **CEMETERY** may include a structure for the purpose of the cremation of human remains and may include facilities for storing ashes of human remains that have been cremated or the interment of the dead in sealed crypts or compartments.

**CHURCH.** A building wherein persons regularly assemble for religious worship, and which is maintained and controlled by a religious body organized to sustain public worship.

**CLINIC.** A building or part of a building used solely for the purpose of consultation, diagnosis and treatment of patients by one or more legally qualified physicians, dentists, optometrists, podiatrists, chiropractors, or drugless practitioners, together with their qualified assistants, and without limiting the generality of the foregoing, the building may include administrative offices, waiting rooms, treatment rooms, laboratories, pharmacies, and dispensaries directly associate with the clinic, but shall not include accommodation for in-patient care or operating rooms for major surgery.

**CLUB.** A building owned, leased, or hired by a nonprofit association of persons the use of which is generally restricted to due-paying members and their guests. Such **CLUB** may periodically be rented or leased to non-members for gathering such as weddings, anniversaries, and dances, but no portion of the building shall continuously be used for business purposes.

**COMMERCIAL VEHICLE.** A vehicle in excess of 5,000 pounds gross weight (weight of vehicle plus load, and trailer plus load if included).

**COMPANY.** Includes, but is not limited to, any corporation, partnership, limited liability company, limited liability partnership, limited partnership, business trust, and any other business entity.

**COMPREHENSIVE PLAN.** Any legally adopted part or element of the city comprehensive plan or any subsequent amendment.

**CONDITIONAL USE.** A use that would not be appropriate, generally or without restriction, throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in said zoning district as conditional uses, if specific provision for such conditional use is made in this chapter. The term **CONDITIONAL USE** shall be synonymous with special exception, but shall not include the term Avariance@. Conditional use permits shall pass with the property, regardless of ownership, as long as

the use of the property is the same, or substantially the same, as when the permit was originally granted.

**CONGREGATE HOUSING.** A residential facility for a group of people within which are provided living and sleeping facilities, meal preparation, laundry services and room cleaning. Such facilities may also provide other services, such as transportation for routine social, medical, and counseling appointments.

**CONTIGUOUS.** Next to, abutting, or touching and having a boundary, or portion thereof, which is adjoining.

**CONTRACTOR.** The person who contracts with an individual or developer to construct a building or structure on a parcel of land prepared by an individual or developer.

**CONVENIENCE STORE.** A retail store in which articles for sale are restricted to a limited range of items such as milk, bread, soft drinks, malt beverages, include beer and wine coolers (on- and off-sale), ice cream, canned and bottled goods, snacks and candy, meat, and to complement such items may include the limited sale of magazines, books and records, house wares, toiletries, stationary, tobacco products, and motor fuel.

**COVENANT.** An agreement, convention, or promise of two or more parties, by deed in writing, signed and delivered, by which either of the parties pledges himself or herself to the other that something is either done, or shall be done, or shall not be done. The term is currently used primarily with respect to promises in conveyance or other instruments relating to real estate.

**DAY CARE.** The providing of care and supervision of children or adults as a supplement to regular parental or home care, without transfer of legal custody or placement for adoption, with or without compensation, on a regular basis for a part of a day.

**DAY CARE CENTER.** A facility for the care and supervision of 21 or more children on a regular basis for part of a day as a supplement to regular parental care. Any type of group day care programs including nurseries for children of working parents, nursery schools for children under minimum age for education in public schools, parent cooperative nursery schools, playgroups for pre-school children, programs covering after-school care for school children provided such establishment is licensed by the state and conducted in accordance with state requirements.

**DAY CARE, FAMILY.** The provision of regular care and supervision of no more than 12 children including the provider=s own children who are under the age of six years for part of a 24-hour period as a supplement to regular parental care.

**DAY CARE, GROUP FAMILY HOME.** The provision of regular care and supervision of 13 to 20 children either in the provider=s home or in a facility outside the provider=s home for part of a 24-hour period as a supplement to regular parental care.

**DECK.** A structure abutting a dwelling with no roof or walls except for visual partitions and railings, which is constructed on piers or a foundation six inches or greater above-grade. See also **PATIO** and **PORCH**.

**DEVELOPER.** The owner of property being platted or re-platted, or the person designated by the owner as being responsible for the development of the property. The terms **SUBDIVIDER** and **DEVELOPER** are synonymous and used interchangeably, and shall include any person, partnership, firm, association, corporation, and/or any officer, agent, employee, and trustee thereof who participates in any act toward the subdivision of land within the intent, scope, and purview of this chapter. The **DEVELOPER** also shall be defined as the builder or contractor if he or she is responsible for the construction of buildings and/or structures or permanent improvements.

**DORMITORY.** A building or part of a building operated by an institution and containing a room or rooms forming one or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

**DUE DILIGENCE.** Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.

**DWELLING.** A building or portion thereof used for, or intended to be used for, residential occupancy. A **DWELLING** must have its own sleeping, cooking, or toilet facilities.

**DWELLING, EFFICIENCY UNIT.** A dwelling unit having only one room, exclusive of bathroom, compartments, kitchen, laundry, pantry, foyer, communicating corridor, closets, or dining alcove. Such unit shall be permitted in a multiple-family dwelling.

**DWELLING, MULTIPLE-FAMILY.** A building, other than a manufactured home, mobile home, or modular home, designed for or occupied by three or more families living independently of each other, with separate sleeping, cooking, and toilet facilities. The number of families in residence cannot exceed the number of dwelling units provided.

**DWELLING, SINGLE-FAMILY.** A detached dwelling unit, other than a manufactured home, mobile home, or modular home designed for and occupied by one family.

**DWELLING, TWO-FAMILY.** A building, other than a manufactured home, mobile home, or modular home divided into two dwelling units. The number of families in residence cannot exceed the number of dwelling units provided.

**DWELLING UNIT.** Any room or group of rooms located within a dwelling that forms a single habitable unit and which is physically separated from any other rooms or dwelling units that may be in the same structure. Each unit must contain its own sleeping, cooking, or toilet facilities.



**EASEMENT.** Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his or her property. For the purposes of this chapter, the term shall be primarily used to describe utility access.

**EMPLOYEE(S).** In regard to off-street parking requirements, all who work in the enterprise, including owners.

**ESSENTIAL SERVICE.** See **UTILITY FACILITY**.

**FAHRENHEIT OR LESS.** Flammable liquid is any liquid having a flash point below 100°F and having vapor pressure not exceeding 40 pounds per square inch (absolute) at 100°F. Combustible liquid is any liquid having a flash point at or above 100°F. Hazardous material includes any flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hyperbolic materials, pyrophoric materials, and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition, or other means.

**FAMILY.** Any number of individuals living together as a single housekeeping unit, in which not more than five individuals are unrelated by blood, marriage, or adoption. This definition shall not include foster families as regulated by the state.

**FARM, RANCH, ORCHARD.** An area of not less than 20 acres of unplatted land, or part of a contiguous ownership of not less than 80 acres of unplatted land, which is used for growing usual farm products, vegetables, fruits, trees, or grain, and for the raising of the usual farm poultry and farm animals, such as horses, cattle, hogs and sheep, and including the necessary accessory uses for raising, treating, and storing products raised on the premises. Facilities that process or store raw agricultural products, such as grain elevators and ethanol plants, shall not be considered a **FARM, RANCH, or ORCHARD** if such constitutes the main or principal use on the lot or parcel.

**FARM, HOBBY.** An activity carried out in rural residential areas, which includes the planting, cultivating, harvesting and storage of grains, hay, plants, fruits, or vineyards. Such farm is not the principal source of family income.

**FARMSTEAD.** The area set aside from the remainder of the farming operation where the operator's dwelling and buildings normally involved in the operation are located.

**FARMSTEAD DWELLING.** A dwelling in an agricultural district that is occupied by a family that normally produces farm products accounting for at least 50% of their income from the land upon which it is located.

**FARMSTEAD OCCUPATION, AUXILIARY.** Operations that are not principal permitted uses and that are customarily found within farming operations; provided, that:

- (a) The activity has a direct relationship and benefit to agriculture; and
- (b) The use of the dwelling unit or accessory building for such occupations must be subordinate to the stated intent and principal permitted uses of agricultural zones.

**FEEDLOT.** Any parcel of land or premises on which the principal use is the concentrated feeding of livestock by human, mechanical, or other artificial means within an area too small for natural pasturage.

**FENCE.** An artificially constructed barrier of any material, combination of materials, or vegetation that is erected to enclose, screen, or separate areas.

**FINANCIAL INSTITUTIONS.** The premises of a bank, trust, finance, mortgage, or investment company.

**FLAMMABLE OR COMBUSTIBLE LIQUIDS or HAZARDOUS MATERIAL.** Flammable material is any material that will readily ignite from common sources of heat or that will ignite at a temperature of 600°F. or less. Flammable liquid is any liquid having a flash point below 100°F. and having vapor pressure not exceeding 40 pounds per square inch (absolute) at 100°F. Combustible liquid is any liquid having a flash point at or above 100°F. Hazardous material includes any flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hyperbolic materials, pyrophoric materials, and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

**FLOOD or FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of wetlands, lakes, streams, tributaries, or other water bodies; and/or the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM).** The official map issued by the Federal Insurance Administration where the areas of flood hazard are shown.

**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without an accumulative increase in the water surface. All land use matters involving the floodway, including construction in the floodway or other activities that may affect the floodway, are at the discretion of the Floodplain Administrator in the city.

**FLOOR AREA.** The square feet of floor space within the outside line of walls including the total of all space on all floors of a building. Floor area shall not include porches, garages, or space in a basement or cellar, which is used for storage or incidental use.

**FOOD PRODUCT PROCESSING FACILITY.** A commercial establishment in which food or

food-related products are processed, packaged, or otherwise prepared for human consumption but not consumed on the premises.

**FOUNDATION, FLOATING.** A foundation with footings at least 12 inches below grade line, but less than 42 inches.

**FOUNDATION, PERMANENT.** A foundation consisting of poured concrete or cement block placed at a minimum of 42 inches below grade line.

**GARAGE.** An accessory building or portion of a building including a carport which is designed or used for the sheltering of private motor vehicles and the storage of household equipment incidental to the residential occupancy and in which there are no facilities for repairing or servicing of such vehicles for remuneration or commercial use.

**GASOLINE STATION.** See **AUTOMOBILE SERVICE STATION**.

**GOLF COURSE.** An area maintained for the purpose of playing golf, which includes the Parkston Country Club, located south of the city.

**GRADE.** The average level of the finished surface of the ground adjacent to the exterior walls of the building except when any wall approximately parallels and is not more than five feet from a street line, then the elevation of the street at the center of the wall adjoining the street shall be **GRADE**.

**GRAIN ELEVATOR.** Grain storage facilities, which are the principal and primary use of the lot. Said facilities are generally equipped with devices for housing and discharging significant quantities of grain. This definition does not include normal farm product storage and warehousing facilities such as grain bins and where such storage is an accessory use to the parcel.

**GRANDFATHER CLAUSE.** Allowing a lawful structure or use that exists at the effective date of adoption of this chapter to continue operating or functioning even if it could not now be built where it is located under the terms of this chapter because of restrictions on area, lot coverage, height, setback requirements, or other regulations.

**GREENHOUSE, COMMERCIAL.** A building for the growing of flowers, plants, shrubs, trees and similar vegetation which are not necessarily transplanted outdoors on the same lot containing such greenhouse, but are sold directly from such lot at wholesale or retail. This includes plant nurseries.

**HEIGHT.** The vertical distance to a structure=s highest point from the grade line.

**HOME OCCUPATION.** A business activity customarily carried on in the home by a member of the occupant=s family, in accordance with ' 152.07(C).

**HORTICULTURE.** The science or art of cultivating fruits, vegetables, flowers, and plants.

**HOSPITAL.** An institution devoted primarily to the operation of facilities of the diagnosis, treatment, and cure of disease, illness, injury, or other abnormal physical conditions with provisions for keeping patients overnight.

**JUNKYARD.** A place where non-recyclable wastes having no economic value, or waste which is recyclable, but has no chance of being recycled is deposited. See also **SALVAGE YARD**.

**KENNEL.** Any place where two or more dogs, cats, or other domesticated animals of breeding age are for commercial purposes housed, groomed, bred, boarded, trained, harbored, kept, or sold.

**LOADING AREA.** A completely off-street space or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public street or alley.

**LOCKER.** A meat processing plant and any other facility where meat, poultry, or eggs are cooked, cured, smoked, or otherwise processed or packed; provided, that all activities are carried out indoors. This term shall not include a stockyard, slaughterhouse, tannery, poultry killing establishment, animal food factory, or animal by-products plant.

**LOT.** A parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as herein are required. Such **LOT** shall have frontage on an improved public street, or on an approved private street, and may consist of a single lot of record; a portion of a lot of record; a combination of complete lots of record of complete lots of record; a parcel of land described by metes and bounds; provided, that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this chapter.

**LOT AREA.** The area of a horizontal plane bounded by the front, side, and rear lot lines.

**LOT COVERAGE.** The percent of the area of a lot occupied by buildings or structures, including accessory building or structures.

**LOT DEPTH.** The horizontal distance between the midpoint of the front and rear lot lines.

**LOT FRONTAGE.** The portion of a lot nearest the street, or where addressed. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under  $\text{Ayards@}$  as defined herein.

**LOT FRONTAGE, PIE SHAPED.** A lot usually abutting a cul-de-sac. For the purpose of determining frontage, said distance shall be measured perpendicularly to the said lot lines at a point 30 feet from the front line.

**LOT LINE.** Any boundary line of a lot.

**LOT LINE, EXTERIOR.** The side lot line, which abuts the street on a corner lot.

**LOT LINE, FRONT.** The front lot line is customarily defined by the street right-of-way.

**LOT LINE, REAR.** The lot line or point of intersection of the side lot lines farthest from and opposite the front lot line.

**LOT LINE, SIDE.** A lot line other than a front, rear, or exterior lot line.

**LOT OF RECORD.** A lot that is part of a subdivision or that is otherwise legally approved and recorded in the office of the County Register of Deeds.

**LOT WIDTH.** The distance between side lot lines measured at right angles.

**LOT, CORNER.** A lot situated at the intersection of two streets, the interior angle of such intersection not exceeding 135 degrees.

**LOT, DOUBLE FRONTAGE.** A lot having frontage on two non-intersecting streets, as distinguished from a corner lot.

**LOT, INTERIOR.** A lot, other than a corner lot, with only frontage on a street.

**LOT, REVERSE FRONTAGE.** A through lot that is not accessible from one of the parallel or nonintersecting streets upon which it fronts.

**LOT, THROUGH.** A lot, other than a corner lot, with frontage on more than one street. **THROUGH LOTS** abutting two streets may be referred to as double frontage lots.

**MACHINE SHOP.** A shop where machine parts are worked on or repaired. This includes work done on automobile parts, such as engine blocks, camshafts, cylinders, and pistons.

**MAINTENANCE.** The work of keeping a dwelling, building, or structure in a state of good repair.

**MANUFACTURED HOME.**

(a) A moveable or portable dwelling which is eight feet or more in width and 32 feet or more in length, and is constructed on a permanent chassis. Such a home is designed to be towed; is designed for year-round occupancy; is to be used primarily without a permanent foundation, but which may sit on a permanent foundation; and is designed to be connected to utilities. It may consist of one or more units, separately transportable, but designed to be joined together into one integral unit. Manufactured homes are built according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, being 42 U.S.C. ' ' 5401 et seq., which became effective June 15, 1976. **MANUFACTURED HOMES** are not mobile homes.

(b) The following shall not be included in this definition:

1. Travel trailers, pickup coaches, motor homes, camping trailers, or other recreational vehicles; and
2. Modular housing which is designed to be set on a permanent foundation, and which uses standard sheathing, roofing, siding, and electrical, plumbing, and heating systems.

**MANUFACTURED/MOBILE HOME PARK.** Any premises where two or more **MANUFACTURED** or **MOBILE HOMES** are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public, parking space for two or more manufactured or mobile homes for living or sleeping purposes, and which include any buildings, structures, vehicles, or enclosures used or intended wholly or in part, for such homes. For the purposes of this chapter, this definition refers to the property at 203 East Maple Street (Block 12 of the Original Town, Lots 11, 12, 13, and 14), and the property at 306 North Lafayette Street (Block 3 of G & O First Addition, Lots 3, 4, 5, and 6).

**MANUFACTURING.** The use of land, buildings, or structures for the purpose of manufacturing, assembly, making, preparing, inspecting, finishing, treating altering, repairing, warehousing, or storing or adapting for sale of any good or service.

**MOBILE HOME.** A transportable, factory-built home, designed to be used as a year-round residential dwelling and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976.

**MODULAR HOME.** A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence; transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning, and electrical systems contained within the structure.

**MOTEL.** A building or group of buildings containing rooms which are offered for compensation for the temporary accommodation of transients.

**MUSEUM.** A building or buildings used, or to be used, for the preservation of a collection of paintings and/or other works of art, and/or of objects of natural history, and/or of mechanical, scientific and/or philosophical inventions, instruments, models, and/or designs and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories, and/or other offices and premises used or to be used in connection therewith.

**NONCONFORMING LOT.** A lot of record existing on the date of passage of this chapter which does not have the minimum width or contain the minimum area for the zone in which it is located.

**NONCONFORMING STRUCTURE.** A lawful structure that exists on the date of passage of this chapter, but which could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yard setbacks, or other characteristics of the structure.

**NONCONFORMING USE.** A lawful use of land that exists on the date of passage of this chapter, but which would not be lawful in the district in which it is situated under the terms of this chapter.

**NONPROFIT ENTITY.** An organizational entity not seeking profit. Such organization is not a governmental entity.

**NOXIOUS.** A use or activity that from its nature creates, or is liable to create, destructive gas or fumes; dust; objectionable odor; noise or vibration; or unsightly storage of goods, wares, merchandise, salvage, machinery parts, junk, waste or other material. **NOXIOUS** uses are liable to create conditions that may become hazardous or injurious to health or safety, that may negatively impact the character of the surrounding area, and that may disturb persons in proximity to the noxious use. Application of the term **NOXIOUS** shall be subject to the reasonable person standard.

**NUISANCE.** Unlawfully performing an act, or failing to perform a duty, which either:

- (a) Annoys, injures, or endangers the comfort, health, or safety of others;
- (b) Offends decency;
- (c) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any public park, square, road, or navigable waterway; or
- (d) In any way renders other persons insecure in life, or in the use of property.

**NURSERY SCHOOL.** see **DAYCARE.**

**NURSING HOME, REST HOME, CONVALESCENT HOME.** A place which undertakes through its ownership or management to provide maintenance, personal, or nursing care for three or more persons who by reason of illness, physical deformity, or old age are unable to care for themselves.

**OBSTRUCTION.** Any structure or vegetation that substantially blocks the vision of people.

**OBSTRUCTION IN A FLOODWAY.** Any object in, along, across, or projecting into any portion of the floodway that may impede or change the direction of the flow of water, either in itself or by catching or collecting water-borne debris, or that is placed where the flow of water would carry the same downstream to the damage or detriment of life or property.

**OFFICE.** A building or part thereof, designed, intended, or used for the practice of a profession, the carrying on of a business, the conduct of public administration, or, where not conducted on the site thereof, the administration of an industry. This does not include retail commercial use, industrial use, or

a clinic.

**OPEN SALES AREA.** Any open land or area used or occupied for the purpose of displaying for sale new or secondhand merchandise, including, but not limited to, passenger cars or trucks, farm machinery, construction machinery, motor scooters or motorcycles, boats, trailers, aircraft, and monuments. No repair work is done in such area except for incidental repair of items to be displayed and sold on the premises.

**OUTDOOR STORAGE AREA.** Any open land or area used for the purpose of storage of any product or part of a product either before, during, or after manufacture, servicing or repair and not displayed for retail sale. This does not include open sales areas.

**OVERHANG.** The part of a roof or wall that extends beyond the facade of the lower wall.

**OWNER.** The record owners of the fee or a vendee in possession, including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to, or sufficient proprietary interest in, a piece of property.

**PARK.** An area consisting largely of open space, which may include a recreational area, playground or similar use but shall not include a mobile home park, trailer park, or campground.

**PARKING LOT.** A parcel of land devoted to unenclosed parking spaces.

**PARKING SPACE.** An area for parking a motor vehicle. For the purposes of this chapter, one **PARKING SPACE** shall be considered to cover a minimum of 250 square feet.

**PATIO.** A platform without a roof that may or may not have a foundation to hold it erect, which is attached to or abutting one or more walls of a building or constructed separate from a building, with or without direct access to the ground, the floor of which is less than six inches above finished grade, which is designed and intended for use as a sundeck. See also **DECK** and **PORCH**.

**PERFORMANCE STANDARDS.** Criteria established for the purposes of:

- (a) Assigning proposed land uses to proper districts; and
- (b) Controlling noise, odor, glare, smoke, toxic matter, vibration, fire, or explosive hazards generated by, or inherent in, uses of land or buildings.

**PERMITTED USE.** A use by right that is specifically authorized in a particular zoning district.

**PLACES OF ASSEMBLY.** Places where people gather or congregate for amusement, worship, learning, and the like. This includes schools, churches, theaters, playgrounds, and the like.

**PLANNING AND ZONING COMMISSION.** The Planning and Zoning Commission of the city. The



term **PLANNING AND ZONING COMMISSION** shall be synonymous with **ZONING BOARD** and **COMMISSION**, but shall not include a Board of Adjustment. The **PLANNING AND ZONING COMMISSION** was created by ordinance with the responsibility to review and approve applications for development.

**PORCH.** A structure abutting a dwelling that has a roof, but with walls that are open and unenclosed to the extent of at least 50% thereof, except for removable screens and storm sashes or awnings, used as an outdoor living area. See also **DECK** and **PATIO**.

**PRINCIPAL BUILDING.** A building in which is conducted the main use of the lot on which said building is located. The building customarily is connected to public infrastructure, such as water and wastewater lines, gas lines, and electric lines.

**PRINCIPAL USE.** The main use of land or structures, as distinguished from a secondary or accessory use.

**PUBLIC BUILDING.** Any building which is owned, leased, primarily used, and/or primarily occupied by a school district or municipal, county, state, or federal government; or any subdivision or agency of the school district, municipal, county, state, or federal government.

**PUBLIC ENTITY.** A non-private entity that is supported by a tax base, and which provides a public service. Examples include municipal, state, and federal governments, public school districts, public utilities, and certain special-purpose districts, such as fire districts.

**RECREATIONAL BUILDING, COMMUNITY.** Publicly-owned or operated gymnasium or similar indoor facility, including swimming pools, basketball courts, tennis courts, and related uses.

**RECREATIONAL EQUIPMENT.** Equipment including boats and boat trailers; personal watercraft; snowmobiles; travel trailers, pick-up campers, or coaches designed to be mounted on automotive vehicles; motorized dwellings, tent trailers, and the like; and case or boxes used for transporting recreational equipment, whether occupied by such equipment or not. **RECREATIONAL EQUIPMENT** generally is not designed for street use.

**RECYCLING CENTER.** A building in which used material is separated and processed prior to shipment to others who will use those materials to manufacture new products.

**RESIDENCE.** A building or structure, or a part thereof, used as a dwelling.

**RESIDENTIAL CARE FACILITY.** A family home, group care facility, or similar facility for 24-hour non-medical care of persons in need of personal services, supervision, or daily living assistance, or for the protection of the individual.

**REST HOME.** See **NURSING HOME**.

**RESTAURANT.** A business establishment consisting of a kitchen, with or without a dining room, whose primary purpose is to prepare food to be eaten by customers seated in the dining room, within automobiles parked on the premises, or off-site.

**RETAIL SALES.** The sale of goods, wares, merchandise, substances, articles, or items to the general public.

**RETAIL STORE.** A building where goods, wares, merchandise, substances, articles, or items are offered or kept for sale at retail, including storage of limited quantities of such goods, wares, merchandise, substances, articles, or items sufficient only to service such store.

**RETAINING WALL.** A structure constructed to hold back or support an earthen bank.

**RIGHT-OF-WAY.** An area of land that is legally described for the provision of public access within which there is usually a street.

**RIGHT-OF-WAY LINE.** A dividing line between a lot, tract, or parcel of land and the public right-of-way.

**ROAD OR STREET LINE.** The dividing line between a lot, tract, or parcel of land and a contiguous road, street, or alley.

**ROADSIDE STAND.** A structure having a ground area of not more than 300 square feet, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed, and to be used solely for the sale of farm products.

**SALE YARD, LIVESTOCK.** Any premises used predominantly as a livestock auction facility, which also may include the auction of agriculturally related items on an incidental or accessory basis only. The term also may include a structure or land used for the storage of goods and materials which are to be sold on the premises by public auction, and for the sale of said goods and materials by public auction on an occasional basis.

**SALVAGE YARD.** The use of more than 250 square feet of open storage on any lot, portion of lot, or tract of land for the sale, storage, keeping, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

**SCHOOL.** An educational facility under the sponsorship of a private agency, corporation, religious entity, or public agency that has an elementary or secondary curriculum, and which is accredited by the state. This includes private trade and commercial schools.

**SCREENING.** A continuous fence, wall, compact evergreen hedge, or combination thereof, supplemented with landscape planting that would effectively screen the property which it encloses and

is broken only by access drives and walks.

***SELF-STORAGE WAREHOUSE.*** A building containing separate, individual self-storage units divided from the floor to the ceiling by a wall with an independent entrance from the exterior of the building, designed to be rented or leased on a short-term basis to the general public for private storage of personal goods, materials, and equipment.

***SERVICES.*** Establishments primarily engaged in providing services for individuals, business, and government establishments and other organizations. This includes hotels and other lodging places; establishments providing personal business, repair and amusement services; establishments providing warehousing and storage service; health, legal, engineering, and other professional services; educational institutions; and membership organizations.

***SETBACK.*** The minimum horizontal distance from a lot line to the outermost point of the structure on the lot, exclusive of permitted projections. Front entrance steps are considered part of the structure. The ***SETBACK*** shall be measured at right angles to such lot lines.

***SIGHT TRIANGLE.*** The triangular space formed by the street lines of a corner lot and a line drawn from a point in one street line to a point in the other street line. Where the two street lines do not intersect at a point, the point of intersection of the street lines shall be deemed to be the intersection of the projection of the street lines or the intersection of the tangents to the street lines.

***SIGN.*** Any device designed to inform or attract the attention of persons not on the premises on which the sign is located.

***SIGN, BANNER.*** A temporary sign composed of lightweight material either enclosed or not in a rigid frame, secured or mounted to allow movement of the sign by the wind (e.g., pennants, twirling signs, balloons or other gas-filled figures, ribbons, or other similar moving devices), and intended to be displayed for a limited period of time.

***SIGN, BULLETIN BOARD.*** An exterior sign used by public, charitable, or religious institutions for the purpose of informing the public about activities of their organization.

***SIGN, DIRECTIONAL OFF-SITE.*** An exterior sign that is generally informational, that has a purpose secondary to the primary use of the property on which it is located, and that is not located on the property to which it refers. Said signs include only those placed by a political subdivision and shall include those signs standardized by the State Department of Transportation.

***SIGN, DIRECTIONAL ON-SITE.*** An exterior sign that is generally informational, and that has a purpose secondary to the primary use of the property on which it is located, such as No parking@, Aentrance@, and Aloading only.@

***SIGN, EASEMENT AND UTILITY.*** An exterior sign used to identify the location of easements, property lines, utilities, or hazards, or otherwise providing notice of restrictions on public access.

***SIGN, FLAG.*** Any fabric or bunting containing distinctive colors, patterns, or symbols that is used as a symbol of government, political subdivision, or other entity.

***SIGN, GROUND AND MONUMENT.*** An exterior sign permanently attached to the ground to identify churches, schools, institutional, and public uses. Said sign may also identify a specific neighborhood by displaying the name of the tract.

***SIGN, HOME OCCUPATION.*** A sign that is affixed to the side of a residential structure informing the public as to the business being conducted in the residence.

***SIGN, MOUNTED WALL.*** A sign that is attached to or erected against a wall of a building and that extends no more than 12 inches beyond the surface of the building. These signs are intended to be read from directly in front of the face of the building.

***SIGN, NAMEPLATE.*** A sign that is affixed to the side of a building informing the public as to the residents, occupation, and/or street address of the building.

***SIGN, OFF-SITE.*** A sign, other than an exterior or interior on-site sign. Said signs are more conventionally known as billboards, regardless of size.

***SIGN, ON-SITE.*** An exterior sign relating in subject to the premises upon which it is located, or to products, accommodations, services, or activities on the premises. Such signs do not include signs erected by the outdoor advertising industry to advertise business, such as billboards, which are off-site signs.

***SIGN, PORTABLE.*** Any sign not permanently attached to the ground or other permanent structure, or any sign that is designed to be transported. Transported signs include those meant to be transported by wheel, signs converted to A or T-frames, and menu and sandwich board signs. Said signs are intended to be displayed for a limited period of time. Signs attached to, or painted on, vehicles parked and visible from the public right-of-way shall not be included in this definition and shall be prohibited unless said vehicle is used in normal day-to-day operations of the business.

***SIGN, PROJECTING.*** Any sign that is affixed to a building or wall in such a manner that its face is perpendicular to the face of the building, and that extends more than 12 inches beyond the surface of such building or wall.

***SIGN, REAL ESTATE.*** An exterior sign for the purpose of advertising the sale, rental, or lease of the property on which the sign is located.

***SIGN, ROOF.*** Any sign that is erected upon, against, or directly above a roof or on top of the parapet of a building.

***SIGN, TEMPORARY.*** Any sign designed to be in place for no more than six consecutive months. This

includes political signs.

**SLOPE.** An incline from the horizontal expressed in an arithmetic ratio of horizontal distance over vertical distance (also referred to as Rise over run@).

**STREET.** A right-of-way established by a recorded plat to provide the primary means of access to abutting property.

**STREET LINE.** The right-of-way line of a street.

**STREET, ARTERIAL.** A public street or highway intended to be used primarily for fast or heavy through traffic. In Parkston, the arterial streets are South Dakota Highway 37 and South Dakota Highway 44.

**STREET, COLLECTOR.** A roadway that functions primarily to collect traffic from local streets and channel it to arterial streets. In Parkston, the **COLLECTOR STREETS** are Main Street, Chapman Drive, Depot Street, First Street, and Glynn Drive.

**STREET, PUBLIC.** A public thoroughfare more than 20 feet in width.

**STRUCTURAL ALTERATION.** Any change or rearrangement of the supporting members (such as bearing walls, beams, columns, foundations, poles, or girders) of a building or addition to a building, or movement of a building from one location to another.

**STRUCTURE.** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. This includes buildings, dwellings, walls, fences, billboards, and poster panels, but excludes utility lines and their normal accessory equipment, sidewalks, and driveways.

**STRUCTURE, TEMPORARY.** A structure that is not on a permanent foundation and that is not designed to be in place for more than six months. This includes construction sheds, portable storage units, and hoop ports.

**SWIMMING POOL.** A water-filled enclosure, permanently constructed or portable, having a depth of more than twenty four inches below the level of the surrounding land, or an above ground pool, having a depth of more than 30 inches, designed, used, and maintained for swimming and bathing.

**TANK FARM.** A facility having two or more storage containers for the transfer of inorganic liquids or gases from which no retail sale of fuel to the public is or may be conducted.

**TEMPORARY.** Anything in place or meant to be used for not more than six consecutive months.

**TOWER.** A structure situated on a nonresidential site that is intended for transmitting or receiving television, radio, or telephone communications, including those used exclusively for governmental

dispatch communications.

**TRANSPORTATION PLAN.** The general plan for vehicular traffic movement on city streets, which is included as part of the adopted City of Parkston comprehensive plan.

**TRAVEL TRAILER.** An object designed for accommodation, intended and used exclusively for travel and recreation and which is capable of being drawn or propelled by a motor vehicle or is self-propelled. This includes tent trailers and similar transportable accommodation, but does not include manufactured homes and mobile homes.

**TRAVEL TRAILER PARK.** A place to park travel trailers. For the purposes of this chapter, this definition refers to an area behind the Rainbow Motel on South Dakota Highway 37.

**UNDUE HARDSHIP.** Suffering that is unjust or that exceeds what is normal and appropriate.

**UTILITY FACILITY.** Any above-ground structure or facility, other than a building, used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil, or electronic signals.

**VARIANCE.** A relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. As used in this chapter, a **VARIANCE** is authorized only for height, area, and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by **VARIANCE**, nor shall a **VARIANCE** be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district or because of conditions created by the landowner.

**VETERINARY CLINIC.** A building or part of a building used for the care, diagnosis, and treatment of sick, infirm, or injured animals, and those that are in need of medical or surgical attention. Such clinics may or may not provide long-term lodging for ill or unwanted animals, or lodging for healthy animals on a fee basis. No outside pens, runs, or facilities shall be permitted.

**VETERINARY SERVICE.** A veterinary clinic, except that outside pens and runs are allowed.

**WAREHOUSE.** A building or part of a building used for the storage and distribution of goods, wares, merchandise, substances, or articles. This definition may include facilities for a wholesale or retail commercial outlet, but shall not include facilities for a track or transport terminal or yard.

**WHOLESALE.** The sale of commodities to retailers or jobbers, including the sale of commodities for the purpose of carrying on any trade or business even if the said trade or business is the consumer or end user of the commodity.

**YARD.** An open space on the same lot with a structure, unoccupied and unobstructed from the ground upward, except for vegetation as permitted, and except for permitted accessory buildings in rear yards.

**YARD, FRONT.** A yard extending across the full width of a lot between the front lot line and the nearest portion of any structure serving or attached to any building or structure on the lot.

**YARD, REAR.** A yard extending across the rear of a lot from one side lot line to the other side lot line.

**YARD, SIDE.** A yard or open space on each side of the main building extending from the outermost point of the building, including overhangs and cantilevers, to the side lot line.

**ZONE.** An area within which, in accordance with the provisions of this chapter, certain uses of lands, buildings, and structures are permitted and certain others are prohibited; where yards and other open spaces are required; and where lot areas, building height limits, and other requirements are established. All of the foregoing requirements and standards are identical for the zone and district in which they apply.

**ZONING ADMINISTRATOR.** An official of the city appointed by the Mayor and confirmed by the City Council, charged with the responsibility of administering this chapter.

**ZONING COMPLIANCE, CERTIFICATE OF.** A permit issued by the Zoning Administrator upon completion of work described in the building permit, authorizing the use of land in the manner, and for the purpose specified in the application.

(Ord. 265, passed 11-9-2004)

### ' 152.03 OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION.

(A) *Generally.* The city is hereby divided into zones or districts, as shown on the official zoning map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter. The official zoning map shall be identified by the signature of the Mayor, attested by the City Finance Officer, and bearing the seal of the city under the following words: "This is to certify that this is the official zoning map of the City of Parkston, South Dakota referred to in ' 301 of Ord. 265, dated November 9, 2004@.

(B) *Zoning map changes.*

(1) If, in accordance with the provisions of this chapter, changes are made in the district boundaries or other matter portrayed on the official zoning map, then an entry on the official zoning map must be made promptly after the changes have been approved by the City Council. The entry should read as follows: "On (date), by official action of the City Council, the following change(s) was made in the official zoning map: (brief description of nature of change)@, which entry shall be signed by the Mayor and attested by the City Finance Officer. No amendment to this chapter which involves matter

portrayed on the official zoning map shall become effective until after such change and entry has been made on said map.

(2) No changes of any nature shall be made in the official zoning map or matter shown thereon in conformity with the procedures set forth in the ordinance.

(3) Any authorized change of whatever kind by any person or persons shall be considered a violation of this chapter and punishable as provided under ' 152.99.

(4) Regardless of the existence of purported copies of the official zoning map which may, from time to time, be made or published, the official zoning map which shall be located in the office of the City Finance Officer in City Hall shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the city or within its jurisdiction.

(C) *Zoning map replacement.* In the event that the official zoning map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the City Council may, by ordinance, adopt a new official zoning map that shall supersede the prior official zoning map. The new official zoning map may correct drafting errors or other errors or omissions in the prior official zoning map, but no such correction shall have the effect of amending the original official zoning map or any subsequent amendment thereof. Unless the prior official zoning map has been lost or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved together with all available records pertaining to its adoption or amendment.

(D) *Rules for interpretation of district boundaries.* Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed as following such centerlines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

(3) Boundaries indicated as approximately following city limits shall be construed as following such city limits;

(4) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;

(5) Boundaries indicated as approximately following the center line of creeks, streams, or rivers shall be construed as following such centerlines;

(6) Boundaries indicated as parallel to or extensions of features indicated divisions (D)(1) through (D)(5) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;



(7) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by divisions (D)(1) through (D)(5) above, the Board of Adjustment shall interpret the district boundaries; and

(8) Where a district boundary line divides a lot which was in single ownership at the time of passage of this chapter, the Board of Adjustment may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.

(Ord. 265, passed 11-9-2004) Penalty, see ' 152.99

#### **' 152.04 ESTABLISHMENT OF ZONING DISTRICTS.**

(A) *Planning and Zoning Commission recommendations.* It shall be a purpose of the Planning and Zoning Commission to recommend the boundaries of the various districts and appropriate regulations to be enforced therein. The Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the City Council shall not hold its public hearings or take action until it has received the final report of the Planning and Zoning Commission.

(B) *Districts created.*

(1) For the purpose of this chapter, there are hereby created six types of districts by which the jurisdictional area defined in ' 152.01(C) shall be divided:

(a) AG - Agricultural: ' 152.06;

(b) R - Residential: ' 152.07;

(c) C - Commercial: ' 152.08;

(d) HC - Highway Commercial: ' 152.09;

(e) I - Industrial: ' 152.10; and

(f) P-SP - Public/Semi-Public: ' 152.11.

(2) The purposes for the establishment of each district, and the regulations and requirements that pertain to each district are discussed in the following sections. First, however, general regulations that may pertain to any or all of the districts are discussed in ' 152.05.

(Ord. 265, passed 11-9-2004)

**152.05 GENERAL REGULATIONS.**

(A) *Intent.* The regulations set by this chapter within each district shall be minimum regulations and shall be applied uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided.

(B) *Chapter installment.* No building, other structure, or land shall hereinafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which the building, structure, or land is located.

(C) *Allowable activity.* Under no circumstances should the regulations governing the districts be construed to allow any activity other than those allowed as principal permitted uses, accessory uses, or conditional uses as described in each of the district regulations.

(D) *Annexation.* All territory which may hereafter be annexed to the city shall be zoned agricultural until otherwise classified.

(E) *Road or public way vacation.* Whenever any road, street, or other public way is vacated by the official action of the City Council, the zoning district(s) adjoining each side of such road or public way shall extend automatically to the center of such vacated area, and all area included in such vacated area shall be subject to all appropriate regulations of the extended district.

(F) *Yard and lot reduction.* No yard or lot existing at the time of passage of this chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established by this chapter.

(G) *Building conformity.* No building or other structure shall hereafter be erected or altered to:

- (1) Exceed the height or bulk;
- (2) Accommodate or house a greater number of families;
- (3) Occupy a greater percentage of lot area; or
- (4) Have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this chapter.

(H) *Accessory buildings.* No large accessory building (144 square feet in area or larger) shall be erected in any required yard (front, side, or rear), and no large accessory building shall be erected within five feet of any other building.

(I) *Construction materials.* No structure in any district shall hereafter be constructed with a

galvanized steel roof or siding. No structure in a residential district shall be constructed with tent-like material such as canvas or other fabric like material.

(J) *Yard, open space, parking, and loading space requirements.* No part of a yard, open space area, off-street parking area, or loading space required in connection with any building for the purpose of complying with this chapter shall be considered as part of a yard, open space area, off-street parking area, or loading space similarly required for any other building.

(K) *Yard construction and obstructions.*

(1) No structure above grade is permitted in any required yard (side, front, or rear). No obstruction is permitted in a front yard that will prohibit clear view through the yard between the heights of 36 inches and ten feet above the grade line.

(2) This division (K) does not apply to fences, which are covered below in division (M) below, or to home occupation signs, which are covered in division (R) below.

(L) *Sight triangle.* On corner lots in any district, nothing shall be erected, placed, planted, or allowed to grow in such a manner so as to impede vision between a height of 36 inches and ten feet above the centerline grades of the intersecting streets in the areas bounded by the street lines of such corner lots and a line joining points along said street lines 30 feet from the point of the intersection.

(M) *Fences, walls, and hedges.*

(1) The erection, relocation, or replacement of fences, walls, and hedges requires a building permit. Said permit shall require a site plan of the entire lot. A permit is not needed in the following cases:

(a) The fence or wall is located, or will be erected, within the build able area of a lot; and

(b) The fence or wall encloses, or will enclose, an area of less than 25 square feet.

(2) Fences shall be constructed with the most visibly pleasing side facing the right-of-way or adjacent property, and fencing materials must be approved by the Planning and Zoning Commission.

(3) Setback requirements for fences, walls, and hedges are as follows.

(a) Fences, walls, and hedges located along the side of a lot abutting an arterial or collector street shall be set back at least ten feet from the property line. The arterial and collector streets are Highway 37, Highway 44, Main Street, Chapman Drive, Depot Street, First Street, and Glynn Drive.

(b) Fences, walls, and hedges located along interior and rear lot lines shall be set back at least three feet from the property line. However, along interior lot lines, a signed maintenance easement between owners of adjoining properties may allow such fence, wall, or hedge to be located as close as one foot

from the property line.

(4) Height regulations for residential fences, walls, and hedges are as follows:

|   |           |
|---|-----------|
| Front yard  | Four feet |
| Rear and side yards   | Six feet  |
| An exception is made for residential fences, walls, and hedges on double frontage and corner lots. On such lots, a fence, wall, or hedge located within a front yard abutting an arterial or collector street may be a maximum of 6 feet in height; provided, it is not located in front of the house. The fence, wall, or hedge must be set back a minimum of 10 feet from the property line. All sight triangles must be maintained |           |
| In all districts, fences more than 30% solid shall have a maximum height of 3 feet if located within the sight triangle of any corner lot. Fences less than 30% solid shall have a maximum height of 4 feet if located within, the sight triangle of any corner lot   |           |
| Fences constructed for the purpose of screening bins or dumpsters shall not exceed 6 feet in height and shall be constructed of an opaque material or chain link with slats. Said fence shall comply with applicable yard requirements  |           |
| Outdoor storage areas shall be enclosed by an opaque fence or planted screen with a minimum height of 6 feet. Said fence or screening shall not exceed 8 feet in height as measured from the prevailing grade   |           |

(5) This division (M) shall not apply to those entities where safety or controlled access regulations require fencing exceeding these standards. However, said entities shall have written approval by the Zoning Administrator prior to construction.

(N) *Access to structures.* Every building hereafter erected or moved shall be sited on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be located on lots so as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

(O) *Parking requirements.* Minimum parking lot requirements shall include vehicular access to a street or alley, and 250 square feet of parking space per vehicle.

(P) *Flood hazard areas.*

(1) The flood hazard area identified by the Federal Insurance Administration on its flood insurance rate map is intended to preserve the flowing capacities of natural drainage courses and to limit land uses in such areas in order to promote the health and safety of the general public.

(2) The Board of Adjustment may permit construction in flood hazard area only after the city's Floodplain Administrator has reviewed and approved the plans and specifications. The approved uses or structures shall comply with the minimum lot area, minimum front, side, and rear yard, maximum height and off-street parking requirements as noted by the particular district in which such exception is allowed. The Board of Adjustment may issue a variance from regulations in the this chapter only if the conditions as noted in ' 152.15(E) are indicated and complied with. Refer also to Ch. 150.



| Sign Type   | Zoning Districts |    |             |    |            |    |                       |        |            |        |                        |    |
|---|------------------|----|-------------|----|------------|----|-----------------------|--------|------------|--------|------------------------|----|
|   | Agricultura<br>I |    | Residential |    | Commercial |    | Highway<br>Commercial |        | Industrial |        | Public/Semi-<br>Public |    |
|   | Area             | Ht | Area        | Ht | Area       | Ht | Area                  | H<br>t | Area       | H<br>t | Area                   | Ht |
| Utility   | 5                | 2  | 5           | 2  | 5          | 2  | 5                     | 2      | 5          | 2      | 5                      | 2  |
| Grounds and<br>Monuments (e)  | 100              | 20 | 100         | 20 | 100        | 20 | 100                   | 20     | 100        | 20     | 100                    | 20 |
| Flag (f)  | 50               | -  | 25          | -  | 50         | -  | 50                    | -      | 50         | -      | 50                     | -  |
| Portable  | 20               | 4  | 20          | 4  | 20         | 4  | 20                    | 4      | 20         | 4      | 20                     | 4  |
| <b>All measurements are in feet or square feet</b>  |                  |    |             |    |            |    |                       |        |            |        |                        |    |
| (a) Must be at least 10 feet from front lot line in all districts, except commercial. All other yard requirements must be met<br>(b) These signs are allowed in all districts and shall conform to standards adopted or approved by the regulating public agency<br>(c) May be placed in city right-of-way. Otherwise must be at least 1 foot from front lot line in all districts, except commercial. All other yard requirements must be met<br>(d) Must be at least 10 feet in height above grade<br>(e) The total area of all sides of these signs shall not exceed 200 square feet<br>(f) There are no specific height regulations for flags<br>(g) Must be at least 2 feet from front lot line. All other yard requirements must be met |                  |    |             |    |            |    |                       |        |            |        |                        |    |

(S) *Moving building.*

(1) *Generally.* No person shall move any building to any lot within the city unless said person shall have first obtained a building permit for such building on such lot.

(2) *Limitations for moving buildings.* Limitations for moving a building are as follows.

(a) No building shall be moved to a lot in the city for the purpose of storing such building on the lot. A building moved to a lot shall be permanently installed on its new foundation within 30 calendar days of the date moved onto the lot. A foundation is not necessary for buildings that are less than 144 square feet.

(b) No building shall be moved upon or through the streets of the city to a lot in the city if the appraised value of such building before moving is less than 50% of the value of a new building of the same type. The applicant is required to hire a licensed appraiser to determine the value of the building.

(c) If the applicant is intending to remodel or make improvements to a building that is valued at less than 50%, the applicant can apply for a conditional use permit which will require the applicant to make the improvements as deemed necessary by the Planning and Zoning Commission to ensure that the

building, after the improvements, will be valued at more than 50%.

(d) No building shall be moved in or through the streets of the city to a lot in the city if such building is in such deteriorated condition that, in the opinion of the Zoning Administrator, it is unsafe and constitutes a safety hazard.

(e) The Zoning Administrator cannot grant the moving of a building onto a lot in the city if no building permit has been issued for such building to be placed on such lot.

(f) No building being moved pursuant to this chapter shall be stored on any public street, alley, or park or any city-owned right-of-way or any other public property owned or controlled by the city.

(g) The current location of the proposed building to be moved must accompany the permit. If the proposed building to be moved is located outside city limits, a detailed description and photographs must accompany the permit. This information will allow the Zoning Administrator to determine if all requirements of this division (S) are met.

(h) Refer to ' ' 91.060 through 91.065 for deposit requirements for moving a building on public streets.

(T) *Wind Energy Conversion Systems (WECS)*. The purpose of this division is to establish standards and procedures by which the installation and operation of wind energy conversion systems shall be governed within the city.

(1) *Definition*. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

***WIND ENERGY CONVERSION SYSTEM (WECS)***. Any mechanism or device designed for the purpose of converting wind energy into electrical or mechanical power.

(2) *General*. Wind energy conversion systems shall be allowed only as a conditional accessory use to a permitted principal or approved conditional principal use in certain zoning districts.

(3) *Limited use*. Any wind energy conversion system shall be used only for the purpose of generating power for the property on which the wind energy conversion system is located, or for the purpose of transmitting power to the electrical grid of an electric utility company through an approved interconnection.

(4) *Utility interconnection*. Any wind energy conversion system shall be constructed and operated, and any interconnection between a wind energy conversion system and an electric utility company shall be allowed only in accordance with all local, state and federal regulations including regulations issued by the Public Utilities Commission and the Federal Aviation Administration. Additionally, electrical interconnections shall be allowed only in accordance with the applicable standards of the electric utility

company.

(5) *Setbacks.* A minimum setback of 1.5 times the height of the wind energy conversion system shall be maintained between the wind energy conversion system and any property line. Further, any WECS shall meet all applicable utility clearance setbacks in place by the electric utility service the property upon which the WECS is being placed.

(6) *Height.* In no event shall the height of a wind energy conversion system exceed 100 feet as measured from the ground to the top of the tower, excluding the wind turbine generator and blades. Further, the lowest portion of the blade shall be at least 30 feet above the ground. The height of a wind energy conversion system must also comply with Federal Aviation Administration Regulation Part 77 *Objects Affecting Navigable Air Space*.

(7) *Rotor size/operation.* The maximum size of the rotors of a wind energy conversion system shall be reviewed upon application for a conditional use. In determining the appropriate size for the rotors, the city shall consider such factors as noise, proximity to surrounding residences, safety and aesthetic issues. All systems shall be equipped with appropriate braking devices or similar protective devices to slow down or stop the rotors if the wind exceeds the capacity of the system.

(8) *Construction standards.* Any wind energy conversion system shall be constructed in accordance with all applicable life, safety, building and fire codes including but not limited to the following:

(a) An applicant for a building permit for a wind energy conversion system shall submit plans and specifications stamped by a registered engineer; and

(b) Lightning protection. Any wind energy conversion system shall have appropriate lightning protection to sufficiently protect all connected and adjacent equipment and structures from damage.

(9) *Manufacturer warranty.* At the time of application for a conditional use, the petitioner shall provide documentation or other evidence from the dealer or manufacturer that the wind energy conversion system has been successfully operated in atmospheric conditions similar to the conditions within the city. The wind energy conversion system shall be warranted against any system failures reasonably expected in severe weather operation conditions.

(10) *Tower access.* To prevent unauthorized climbing, wind energy conversion system towers must comply with one of the following provisions:

(a) Tower climbing apparatus shall not be located within 12 feet of the ground;

(b) A locked anti-climb device shall be installed on the tower; or

(c) Tower capable of being climbed shall be enclosed by a locked, protective fence at least six feet high.



(11)*Signs*. One sign, limited to four square feet, shall be posted at the base of the tower. The sign shall include a notice of no trespassing, a warning of high voltage and the phone number of the property owner/operator to call in case of emergency.

(12)*Lighting*. No lights shall be installed on the tower, unless required to meet Federal Aviation Administration, regulations.

(13)*Noise*. No wind energy conversion system shall produce more than 60 decibels of sound measured at the closest point on the closest property line from the base of the system. Information from the manufacturer of the wind energy conversion system shall be submitted at the time of the submittal of the conditional use, ensuring that this requirement can be met once the system is operational.

(14)*Electromagnetic interference*. No wind energy conversion system shall produce electromagnetic interference so as to disrupt transmissions such as those from radio, television or microwave towers. At the time of application for the conditional use, the petitioner must submit information from the manufacturer indicating that, once operational, the wind energy conversion system will not adversely affect the transmissions. If necessary, generators and alternators shall be filtered, shielded, or both so as to prevent the interruption and/or interference of radio and television signals.

(15)*Inspection*. The City hereby reserves the right upon issuing any wind energy conversion system conditional use permit to inspect the premises on which the wind energy conversion system is located. If a wind energy conversion system is not maintained in operational condition and poses a potential safety hazard, the owner shall take expeditious action to correct the situation.

(16)*Abandonment*. Any wind energy conversion system which has not been used for a period of six (6) months or more shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner.

(17)*Conditional use in certain zoning districts*. The term Wind Energy Conversion System, as defined by division (T)(1) above of this section, will be included as a conditional use in the following zoning districts of Parkston, South Dakota:

- (a) AG Agriculture
- (b) R Residential
- (c) C Commercial
- (d) HC Highway Commercial
- (e) I Industrial
- (f) P-SP Public/Semi-Public.

(Ord. 265, passed 11-9-2004; Ord. 278, passed 3-14-2006; Ord. 280, passed 3-14-2006; Ord. 290, passed 1-9-2007; Ord. 322, passed 7-10-2012)

**' 152.06 AGRICULTURE DISTRICT.**

(A) *Intent.* This District is intended to provide for general agricultural use. All land annexed into the city shall be zoned agricultural until a need to change the zoning is demonstrated to the Planning and Zoning Commission and an application for rezoning is filed in accordance with ' 152.15(G).

(B) *Principal permitted uses and structures.*

- (1) Any form of agriculture, including the raising of crops, horticulture, animal husbandry, and poultry husbandry, but excluding animal feeding operations;
- (2) Greenhouses and plant nurseries;
- (3) Farm buildings;
- (4) A family farmstead and its normal accessory buildings, including manufactured homes where such home is a farm residence;
- (5) Single-family dwellings; or
- (6) Railroad track right-of-ways.

(C) *Permitted accessory uses and structures.* Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District. Also included are the following:

- (1) Temporary roadside stands for retail sale of produce;
- (2) Farm drainage and irrigation systems, flood control, and watershed structures and erosion control devices meeting all county, state, and soil conservation district regulations; and
- (3) Signs (see ' 152.05(R) for the types of signs allowed).

(D) *Conditional uses.*

(1) Subject to ' 152.15(B) and to other requirements contained herein, the Planning and Zoning Commission may approve certain uses that are in general accordance and harmony with the regulations and intent of this District. Such conditional use permits shall pass with the property, regardless of ownership, as long as the use of the property is the same, or substantially the same, as when the permit was originally granted.

(2) Specific uses that may be permitted in this District include:

- (a) Temporary fairgrounds and amusement parks not closer than 500 feet to any residential district, with no structure or apparatus within 30 feet of any property line;
- (b) Amphitheatres, stadiums, drive-in movies, and arenas;
- (c) Campgrounds;
- (d) Golf courses or country clubs and driving ranges;
- (e) Cemeteries;
- (f) Utility facilities necessary to the functioning of the utility; provided, they are located in conformance with the yard requirements;
- (g) Towers, subject to airport height regulations;
- (h) Airports;
- (i) Livestock sale yards as defined by this chapter; provided, that no such conditional use permit shall be issued unless and until the proprietor of such facility has complied with current state regulations;
- (j) Grain storage facilities;
- (k) Churches and other places of worship;
- (l) Schools, private or public;
- (m) Nursery schools or day care centers operated as an accessory use to a private, single- family residence on lots of 12,000 square feet or more; and
- (n) Bed and breakfast establishments.

(E) *Minimum lot requirements.* The minimum lot area shall be 20 acres; and the minimum lot width at

the front building line shall be 200 feet.

(F) *Minimum yard requirements.*

(1) All yards shall meet the following setback requirements as measured from the lot lines to the outermost point of the nearest structure, including overhangs, cantilevers, and front entrance steps.

(2) This division (F) shall apply to all buildings and structures, including decks, patios, and carports.

(a) Front yard of not less than 40 feet deep:

(b) Side yard of not less than 40 feet depth; and

(c) Rear yard of not less than 50 feet deep.

(G) *Maximum height.* The height of any dwelling unit shall not exceed 35 feet. This does not apply to antennas, spires, belfries, cupolas, water tanks, ventilators, chimneys, or other structures usually required to be placed above the roof level and not intended for human occupancy. All structures must comply with airport clearance requirements.

(Ord. 265, passed 11-9-2004)

#### **152.07 RESIDENTIAL DISTRICT.**

(A) *Intent.* This District is intended to provide sufficient area for residential dwellings capable of being served by the existing range of municipal services, or where municipal services can be obtained or developed economically.

(B) *Principal permitted uses.*

(1) Single-family dwellings;

(2) Two-family dwellings and multiple-family dwellings;

(3) Modular homes;

(4) Manufactured homes and mobile homes, not in parks, subject to the following requirements:

(a) The home shall meet or exceed HUD Manufactured Home Construction and Safety Standards;

(b) Lot size and all yard requirements shall be the same as those for single-family dwellings;

(c) The home shall be placed parallel to the street on which it fronts;

(d) The home shall be placed on, and anchored to, a continuous, permanent foundation, which shall be

inspected and approved by the Zoning Administrator prior to placement of the home;

(e) The minimum dimensions of the main body of the manufactured home as assembled on the site shall be 20 feet in width and 32 feet in length;

(f) The roof shall be shingled with conventional roofing products;

(g) The pitch of the main roof shall be not less than one foot of rise for each three feet of horizontal run;

(h) The exterior walls shall be encased with conventional house siding, such as vinyl, aluminum, masonite, or concrete. Flat or corrugated sheet metal is prohibited;

(i) The running gear and hitch shall be removed;

(j) The home shall be connected to municipal or public water and sewer lines; and

(k) Off-street parking requirements shall be the same as those for single-family dwellings.

(5) Churches and other places of worship;

(6) Public and private schools;

(7) Public parks, playgrounds, and play fields;

(8) Public buildings;

(9) Nursing, convalescent, and retirement homes; and

(10) Clinics and hospitals.

(C) *Permitted accessory uses and structures.*

(1) Customary home occupations, subject to the following requirements.

(a) No more than two other persons, in addition to members of the family, residing on the premises shall be engaged in such occupation.

(b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 30% of the floor area of the dwelling shall be used in the conduct of the home occupation.

(c) There shall be no change in the outside appearance of the building or premises, or visible evidence of the conduct of such home occupation other than one home occupation sign, the regulations of which are shown in ' 152.05(R).

(d) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.

(e) No equipment or process shall be used in such home occupation that creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot if the occupation is conducted in a single-family residence. If the equipment or process is conducted in other than a single-family residence, the disturbance shall not be detectable outside the dwelling unit. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the premises, or causes fluctuations in line voltage off the premises.

(f) There shall be no installation or outside storage of any machinery, equipment, or material other than that customary to normal household operations.

(g) Garages with one vehicle space, not to exceed 350 square feet in area or 16 feet in height for each living unit/apartment within a multiple-family dwelling.

(2) Temporary structures, as defined in ' 152.02, incidental to construction other than for single-family dwellings, two-family dwellings, multiple-family dwellings, modular homes, manufactured and mobile homes. All such structures must meet setback requirements for accessory buildings;

(3) Small accessory buildings (less than 144 square feet in area);

(4) Large accessory buildings, whether or not physically attached to the main structure. On lots of 14,200 square feet or less, the maximum dimensions of such buildings shall be 1,200 square feet in area and 17 feet six inches in height. On lots greater than 14,200 square feet in area, the maximum size of such buildings is 10% of the lot size in area and 17 feet six inches in height; and

(5) Signs (see ' 152.05(R) for the types of signs allowed).

(D) *Conditional uses.*

(1) Subject to ' 152.15(B) and to other requirements contained herein, the Planning and Zoning Commission may approve certain uses that are in general accord and harmony with the regulations and intent of this District. Such conditional use permits shall pass with the property, regardless of ownership, as long as the use of the property is the same, or substantially the same, as when the permit was originally granted.

(2) Specific uses that may be permitted in this District include:

(a) Professional offices, on lots of 5,000 square feet or more, that provide one off-street parking space for each 300 square feet of floor area and that are in conformance with the yard requirements for dwellings;

(b) Funeral homes and mortuaries on lots of 12,000 square feet or more, that provide one parking space for each 50 square feet of parlor area and conform to the yard requirements for dwellings;

(c) Nursery schools or day care centers operated as an accessory use to a private, single- family residence on lots of 12,000 square feet or more;

(d) Residential care facilities;

(e) Bed and breakfast establishments;

(f) Utility facilities, but not including, maintenance yards and general administrative or sales offices. No outside storage of equipment is permitted;

(g) Accessory buildings by themselves, without a residential structure; and

(h) Parks for manufactured and mobile homes, subject to the following requirements.

1. All homes in the park shall meet or exceed HUD Manufactured Home Construction and Safety Standards.

2. The park complies with all licensing procedures, and all health, zoning, plumbing, electrical, building, fire prevention, and other applicable ordinance and regulations of the city.

3. The park has a minimum site area of three acres.

4. A distance of 25 feet shall be maintained between homes in all directions.

5. No home shall be located closer than 30 feet to an exterior property line.

6. The request for conditional use shall specify the location and legal description of such proposed park and a plan of the park to include property dimensions, interior roads, proposed home sites, sanitary utility lines, and other improvements.

7. The park is properly landscaped, in the opinion of the Planning and Zoning Commission, so as not to constitute a nuisance to other residents.

8. The manufactured home shall be placed on, and anchored to, a permanent foundation, which

shall be inspected and approved by the Zoning Administrator prior to placement of the home.

9. Homes shall be placed on a stand to provide adequate support for the placement of the home. The stand should not heave, shift, or settle unevenly under the weight of the home due to frost action, inadequate drainage, vibration, wind, or other forces acting on the structure.

10. Homes shall be skirted with a material that resembles the siding of the home. Skirting material shall be flame retardant. Skirting shall be maintained in a neat and presentable appearance.

11. This division (D)(2)(h) does not pertain to pre-existing parks for manufactured and mobile homes, except that they may not be enlarged or altered without conforming to the provisions of this chapter.

(i) Towers over 35 feet in height.

(E) *Minimum lot requirements.*

(1) Single-family residences: area - 7,500 square feet; width - 50 feet;

(2) Two-family residences: area - 7,500 square feet; width - 100 feet; and

(3) Multiple-family dwellings: area - 12,000 square feet; width - 100 feet.

(F) *Minimum yard requirements.*

(1) All yards shall meet the following setback requirements as measured from the lot lines to the outermost point of the nearest structure, including overhangs, cantilevers, and front entrance steps. This division (F) shall apply to all buildings and structures, including decks, patios, and carports, except as shown concerning rear lots.

|   |  |
|---|--|
| Front   | 25 feet  |
| Rear (dwellings)  | 20 feet  |
| Rear (large accessory buildings)  | 5 feet; 20 feet on garages having vehicle access to an alley or street |
| Rear (small accessory buildings)  | 3 feet; 5 feet if door opens towards and alley                         |
| Side (interior lots)  | 5 feet   |
| Side (corner lots*)   | 25 feet  |
| * A corner lot is considered to have two interior side yards and no rear yard |  |



(2) On residential blocks where at least 51% of the existing structures are not in compliance with the front yard setback requirements of this division (F), the Planning and Zoning Commission may permit construction on an existing structure that will extend the structure into the required front yard. The structure may be allowed to extend to a point no closer to the front lot line than already exists with at least 51% of the houses fronting the street in question on the block.

(G) *Maximum height.* No structure may exceed 35 feet in height. This does not apply to antennas, spires, belfries, cupolas, water tanks, ventilators, chimneys, or other structures usually required to be placed above the roof level and not intended for human occupancy. All structures must comply with airport clearance requirements.

(H) *Fences, walls, and hedges.* See ' 152.05(M) for regulations regarding fences, walls, and hedges.

(I) *Minimum footing and foundation requirements.*

(1) Dwellings, attached garages, attached accessory buildings, and all other attached additions except patios/decks shall be 42 inches below grade line, or in accordance with FmHA guidelines.

(2) Unattached large accessory buildings and garages, except patios/decks, shall have floating type foundations with footings at least 12 inches below grade line.

(3) Patios/decks attached with nails, screws, bolts, or the like, shall be placed on concrete piers or treated wooden pilings, 42 inches below grade line, placed on tamped coarse gravel or concrete.

(J) *Required off-street parking.*

(1) Single-family residences: at least two spaces; two-family residences and multi-family dwellings: one space per unit;

(2) Churches and places of worship: one space for each six seats in principal assembly area;

(3) Public and private schools: one space for each classroom plus one space for each six seats in auditorium or stadium;

(4) Public parks, playgrounds, or playfields: one space for each six seats in grandstand or stadium, eight spaces per acre if a family picnic area, 20 spaces per acre if a group picnic area, none required for playgrounds or play fields;

(5) Public buildings owned and/or occupied by public entities: one space for each 300 square feet floor area;

(6) Nursing, convalescent and retirement homes: one space for each four beds; and

(7) Hospitals: one space for each four beds.

(K) *Parking and storage of vehicles.* Commercial vehicles and trailers of all types, including those used for travel, boating, camping, and hauling, shall not be parked or stored on any lot occupied by a dwelling or on any lot in this District, except in accordance with the following provisions:

(1) Not more than one commercial vehicle or hauling vehicle per family living on the premises, which does not exceed one and one-half (one and one-half) tons rated capacity, shall be permitted; and

(2) Not more than a combination of three units of recreational equipment or hauling trailers per family living on the premises shall be permitted. Said equipment or trailers shall not be parked or stored for more than 48 hours, unless located behind the front yard building line. Recreational equipment and hauling trailers shall not be occupied longer than 30 days while parked or stored in any area except in a travel trailer park or campground.

(Ord. 265, passed 11-9-2004; Ord. 279, passed 3-14-2006; Ord. 290, passed 1-9-2007)

#### **152.08 COMMERCIAL DISTRICT.**

(A) *Intent.* The intent of the Commercial District (C) is to provide a commercial area for those establishments serving the general shopping needs of the trade area, and in particular, those establishments customarily oriented to the pedestrian shopper. The grouping of uses is intended to strengthen the central business area as the urban center of trade, service, governmental, and cultural activities, and to provide neighborhood commercial convenience areas. Businesses with a manufacturing component can function harmoniously in the commercial district, but they may be required to meet more stringent performance standards than manufacturers in the Industrial District.

(B) *Permitted principal uses and structures.*

(1) Retail sales;

(2) Service establishments;

(3) Offices;

(4) Hospitals, clinics, and other health care facilities;

(5) Clubs, including health and fitness clubs, gymnasiums, and community recreation centers;

(6) Restaurants and bars;

(7) Automobile service stations, but not including automobile body shops;

- (8) Churches and other places of worship;
  - (9) Nonprofit welfare and charitable services; business associations; professional membership organizations; labor unions and similar labor organizations; and civic, social, and fraternal associations;
  - (10) Utility facilities;
  - (11) Hotels and motels;
  - (12) Day care centers;
  - (13) Libraries; museums, art galleries; historic sites and monuments, motion picture theaters, auditoriums; exhibition halls; ice skating arenas; roller skating arenas; and bowling alleys;
  - (14) Veterinary clinics;
  - (15) Funeral homes;
  - (16) Parks; and
  - (17) Automobile parking.
- (C) *Permitted accessory uses and structures.*
- (1) Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District; and
  - (2) Signs (see ' 152.05(R) for the types of signs allowed).
- (D) *Conditional uses.*
- (1) Subject to ' 152.15(B) and to other requirements contained herein, the Planning and Zoning Commission may approve certain uses that are in general accord and harmony with the regulations and intent of this District. Such conditional use permits shall pass with the property, regardless of ownership, as long as the use of the property is the same, or substantially the same, as when the permit was originally granted.
  - (2) Specific uses that may be permitted in this District include:
    - (a) Structures containing both commercial and residential uses; provided, that the residential area is located above the commercial area;
    - (b) Existing single-family dwellings, two-family dwellings, and multi-family dwellings; Such dwellings may not be further divided into additional dwelling units;

- (c) Schools, public and private;
  - (d) Churches and other places of worship;
  - (e) Public buildings;
  - (f) Self-storage facilities;
  - (g) A business with a manufacturing component, subject to performance standards. The Planning and Zoning Commission may require the business to meet more stringent performance standards than those shown in ' 152.10(J);
  - (h) Campgrounds;
  - (i) Towers over 75 feet in height;
  - (j) Storage structures; and
  - (k) Self-storage warehouses; this shall only apply to the property legally described as Lot G, H and J, Railroad Subdivision; the portion of Lot F, Railroad Subdivision between Lots H and J; a portion of Lot F from Lot J south 186 feet, Railroad Subdivision; Balance of Government Lot 3, Neuheisel 2nd Addition (area 109 by 154 feet).
- (E) *Minimum lot requirements.* The minimum lot area shall be 3,500 square feet. The minimum lot width shall be 25 feet.
- (F) *Maximum lot coverage.* The maximum lot coverage for all buildings shall not be more than 90% of the total lot area.
- (G) *Minimum yard requirements.* All buildings and structures located on lots adjacent to a Residential District shall be located so as to conform on the adjacent side with the side yard requirements of the Residential District.
- (H) *Maximum height.* No structure may exceed 75 feet in height. This does not apply to antennas, spires, belfries, cupolas, water tanks, ventilators, chimneys, or other structures usually required to be placed above the roof level and not intended for human occupancy. All structures must comply with airport clearance requirements.
- (I) *Minimum footing and foundation requirements.*
- (1) All principal buildings that are 144 square feet in area or greater shall be 42 inches below grade line, or in accordance with FmHA guidelines;

(2) Unattached large accessory buildings and garages, except patios/decks, shall have floating type foundations with footings at least 12 inches below grade line; and

(3) Patios/decks attached with nails, screws, bolts, or the like, shall be placed on concrete piers or treated wooden pilings, 42 inches below grade line, placed on tamped coarse gravel or concrete.

(J) *Fire District.*

(1) A Fire District is established that encompasses Block 9 (Lots 7 through 18), Block 10 (lots 7 through 18), Block 15 (Lots 1 through 12), and Block 16 (Lots 1 through 12) in the Original Town of Parkston.

(2) The following regulations pertain to all buildings hereafter constructed in this area.

(a) All outside walls shall be constructed of fire-resistant material.

(b) All roofs shall be covered with fire-resistant roofing material.

(c) All building plans are subject to review by the City Council, and subject to approval by the State Fire Marshal.

(K) *Performance standards.* See ' 152.10(J) for the list of performance standards.  
(Ord. 265, passed 11-9-2004; Ord. 329, passed 12-13-2012)

**' 152.09 HIGHWAY COMMERCIAL DISTRICT.**

(A) *Intent.* The intent of the Highway Commercial District (HC) is to provide commercial areas for those establishments that can function most efficiently in areas of major vehicular activity due to:

(1) The nature of the merchandise handled and the display space required, particularly items requiring expansive display area, such as motor vehicles, trailers, and farm implements;

(2) The method of transport required for the purchase of the merchandise handled, particularly goods customarily traded in bulk, such as lumber or feed requiring access for the customer to the sales area;

(3) The establishment=s dependence upon vehicular access, as opposed to pedestrian access, such as is the case with drive-in facilities and automotive and farm implement services; and

(4) The clientele toward which the establishment primarily is oriented, particularly travelers on the highway.

(B) *Permitted principal uses and structures.*

- (1) Retail sales;
- (2) Wholesale sales;
- (3) Service establishments;
- (4) Warehousing and storage of farm products, but excluding livestock sales yards;
- (5) Lumberyards;
- (6) Construction services;
- (7) Funeral and crematory services;
- (8) Reupholstering and furniture repair services;
- (9) Automobile service stations, automobile body shops, and machine shops;
- (10) Automobile parking;
- (11) Restaurants and bars;
- (12) Hotels and motels;
- (13) Lockers;
- (14) Food product processing facilities;
- (15) Motor freight terminals, garaging, and equipment maintenance;
- (16) Libraries; museums, art galleries; historic sites and monuments, auditoriums, exhibition halls, and movie theaters;
- (17) Gymnasiums and athletic clubs, community recreation centers, tennis courts, bowling alleys, ice skating arenas, roller skating arenas, and miniature golf courses;
- (18) Parks;
- (19) Amphitheaters, stadiums, drive-in movies, arenas, race tracks, fairgrounds, amusement parks, golf courses and country clubs, golf driving ranges, go-cart tracks, riding stables, play fields, athletic fields, and swimming pools;

(20) Kennels;

(21) Open sales areas; and

(22) Utility facilities.

(C) *Permitted accessory uses and structures.*

(1) Accessory uses normally appurtenant to the permitted principal uses and structures when established in conformance within the space limits of this District; and

(2) Signs (see ' 152.05(R) for the types of signs allowed).

(D) *Conditional uses.*

(1) Subject to ' 152.15(B) and to other requirements contained herein, the Planning and Zoning Commission may approve certain uses that are in general accordance and harmony with the regulations and intent of this District. Such conditional use permits shall pass with the property, regardless of ownership, as long as the use of the property is the same, or substantially the same, as when the permit was originally granted.

(2) Specific uses that may be permitted in this District include:

(a) Schools, public and private;

(b) Churches and other places of worship;

(c) Day care facilities;

(d) A business with a manufacturing component, subject to performance standards. The Planning and Zoning Commission may require the business to meet more stringent performance standards than those shown in ' 152.10(J);

(e) Campgrounds;

(f) Towers over 75 feet in height;

(g) Storage structures; and

(h) Self-storage warehouses; this shall only apply to the property legally described as: Lot G, H and J, Railroad Subdivision; the portion of Lot F, Railroad Subdivision between Lots H and J; a portion of Lot F from Lot J south 186 feet, Railroad Subdivision; a portion of balance of Government Lot 3, Neuheisel 2nd Addition (area 109 by 154 feet).

(E) *Minimum lot requirements.* The minimum lot area shall be 10,000 square feet. The minimum lot width shall be 90 feet.

(F) *Maximum lot coverage.* The maximum lot coverage for all buildings shall not be more than 50% of the total area.

(G) *Minimum yard requirements.*

(1) All buildings and structures located on lots adjacent to a Residential District shall be located so as to conform on the adjacent side with the side yard requirements of the Residential District.

(2) Otherwise, minimum yard dimensions shall be:

(a) Front yard of not less than 40 feet deep;

(b) Side yard of not less than 40 feet deep if adjacent to an arterial street;

(c) Side yard of not less than 25 feet deep if adjacent in any street other than an arterial street;

(d) Side yard of not less than ten feet deep; and

(e) Rear yard of not less than 20 feet deep.

(H) *Maximum height.* No structure may exceed 75 feet in height. This does not apply to antennas, spires, belfries, cupolas, water tanks, ventilators, chimneys, or other structures usually required to be placed above the roof level and not intended for human occupancy. All structures must comply with airport clearance requirements.

(I) *Minimum footing and foundation requirements.*

(1) All principal buildings that are 144 square feet in area or greater shall be 42 inches below grade line, or in accordance with FmHA guidelines.

(2) Unattached large accessory buildings and garages, except patios/decks, shall have floating type foundations with footings at least 12 inches below grade line.

(3) Patios/decks attached with nails, screws, bolts, or the like, shall be placed on concrete piers or treated wooden pilings, 42 inches below grade line, placed on tamped coarse gravel or concrete.

(J) *Performance standards.* See ' 152.10(J) for the list of performance standards.

(Ord. 265, passed 11-9-2004; Ord. 281, passed 8-8-2006; Ord. 329, passed 12-13-2012)



**152.10 INDUSTRIAL DISTRICT.**

(A) *Intent.* The intent of the Industrial District (I) is to provide space for a wide range of industrial uses and structures, and certain commercial uses and structures that are able to meet certain performance standards designed to protect nearby non-commercial and non-industrial uses from undesirable environmental conditions. Residential and other similar uses are prohibited from this District in order to limit environmental effects associated with certain commercial and industrial uses, irrespective of their meeting performance standards.

(B) *Permitted principal uses and structures.*

(1) All permitted principal uses in the Highway Commercial District are permitted in the Industrial District.

(2) The following uses also are permitted:

(a) Any manufacturing use that can meet the performance standards for this District set forth below in division (J) below; provided, such use is not specifically prohibited;

(b) Wholesale and retail sales of agricultural machinery, equipment, and supplies, including fertilizer and chemicals;

(c) Agricultural product processing facilities;

(d) Grain elevators;

(e) Veterinary services and clinics;

(f) Concrete and asphalt plants;

(g) Tank farms;

(h) Outdoor storage areas;

(i) Junkyards and salvage yards;

(j) Recycling centers; and

(k) Railroad track right-of-way.

(C) *Permitted accessory uses and structures.*

(1) Accessory uses normally appurtenant to the permitted principal uses and structures when established in conformance within the space limits of this District. This includes caretaker and watchmen quarters; and

(2) Signs (see ' 152.05(R) for the types of signs allowed).

(D) *Conditional uses.*

(1) Subject to ' 152.15(B) and to other requirements contained herein, the Planning and Zoning Commission may approve certain uses that are in general accordance and harmony with the regulations and intent of this District. Such conditional use permits shall pass with the property, regardless of ownership, as long as the use of the property is the same, or substantially the same, as when the permit was originally granted.

(2) Specific uses that may be permitted in this District include.

(a) The storage above ground of liquid petroleum products or chemicals of a flammable or noxious nature when more than 150,000 gallons are stored on one acre in size or when more than 25,000 gallons are stored in one tank;

(b) The storage of flammable or noxious gasses above or below ground in excess of 5,000,000 cubic feet on any one lot of less than one acre or 2,000,000 cubic feet in any one tank;

(c) Livestock sale yards;

(d) Towers over 75 feet in height;

(e) Storage structures; and

(f) Self-storage warehouse; this shall apply to the property legally described as: Lot G, H and J, Railroad Subdivision; the portion of Lot F, Railroad Subdivision between Lots H and J; a portion of Lot F from Lot J south 186 feet, Railroad Subdivision; Balance of Government Lot 3, Neuheisel 2nd Addition.

(E) *Minimum lot requirements.* The minimum lot area shall be 10,000 square feet. The minimum lot width shall be 100 feet.

(F) *Maximum lot coverage.* The maximum lot coverage for all buildings shall not be more than 50% of the total lot area.

(G) *Minimum yard requirements.*

(1) On lots adjacent to a Residential District, all buildings and structures shall be located so as to provide a minimum side yard and rear yard of 25 feet along that portion of the lot adjacent to the residential district.

(2) Otherwise, minimum yard dimensions are:

(a) Front yard of not less than 25 feet deep;

(b) Side yard of not less than 25 feet deep if adjacent to a street;

(c) Side yard of not less than ten feet deep; and

(d) Rear yard of not less than 20 feet deep.

(H) *Maximum height.* No building or structure may exceed 75 feet in height. This does not apply to antennas, spires, belfries, cupolas, water tanks, ventilators, chimneys, or other structures usually required to be placed above the roof level and not intended for human occupancy. All structures must comply with airport clearance requirements.

(I) *Minimum footing and foundation requirements.*

(1) All principal buildings that are 144 square feet in area or greater shall be 42 inches below grade line, or in accordance with FmHA guidelines.

(2) Unattached large accessory buildings and garages, except patios/decks, shall have floating type foundations with footings at least 12 inches below grade line.

(3) Patios/decks attached with nails, screws, bolts, or the like, shall be placed on concrete piers or treated wooden pilings, 42 inches below grade line, placed on tamped coarse gravel or concrete.

(J) *Performance standards.* Any permitted use or conditional use in the Industrial District, or any other district, must meet the following performance standards.

(1) *Appearance.* Junk, salvage, auto wrecking, and similar operations shall be shielded from view from streets and from adjacent properties in another district by means of a sturdy, sight-obscuring fence in good repair, or two rows of alternately planted evergreen or red cedar trees. As defined by the state, all junkyards shall be in accordance with state statutes governing control of junkyards.

(2) *Fire hazard.* All flammable substances involved in any activity established in this District shall be handled in conformance with the latest edition of the National Fire Protection Association (NFPA) Fire Prevention Code published by the American Insurance Association and other city ordinances.

- (3) *Noise*. The State Department of Environment and Natural Resources (DENR) regulations and EPA standards must be met.
- (4) *Sewage and liquid waste*. The State Department of Environment and Natural Resources (DENR) regulations and EPA standards must be met.
- (5) *Air contaminants*. The State Department of Environment and Natural Resources (DENR) regulations and EPA standards must be met.
- (6) *Odor*. The State Department of Environment and Natural Resources (DENR) regulations and EPA standards must be met.
- (7) *Gases*. The State Department of Environment and Natural Resources (DENR) regulations and EPA standards must be met.
- (8) *Vibration*. The State Department of Environment and Natural Resources (DENR) regulations and EPA standards must be met.  
(Ord. 265, passed 11-9-2004; Ord. 329, passed 12-13-2012)

#### ' 152.11 PUBLIC/SEMI-PUBLIC DISTRICT.

- (A) *Intent*. This District is intended to provide for public and semi-public uses of land, to encourage their location and activity with other compatible uses of land, and to preserve land for future expansion of these areas.
- (B) *Principal permitted uses*. Any governmental or proprietary function conducted by any governmental agency that is authorized to conduct such functions, except such uses that would constitute a nuisance in the place where conducted.
- (C) *Permitted accessory uses and structures*.
  - (1) Uses and structures customarily incidental to the principal uses of the district; and
  - (2) Signs (see ' 152.05(R) for the types of signs allowed).
- (D) *Conditional uses*. Subject to ' 152.15(B) and to other requirements contained herein, the Planning and Zoning Commission may approve certain uses that are in general accordance and harmony with the regulations and intent of this District. Such conditional use permits shall pass with the property regardless of ownership as long as the use of the property is the same, or substantially the same, as when the permit was originally granted.

(E) *Minimum yard requirements.* Setback requirements will be at the discretion of the Planning and Zoning Commission, in the interest of public safety. However, all buildings and structures located on lots adjacent to another district shall be located so as to conform on the adjacent side with the requirements for the other district.

(F) *Minimum footing and foundation requirements.*

(1) All principal buildings that are 144 square feet in area or greater shall be 42 inches below grade line or in accordance with FmHA guidelines.

(2) Unattached large accessory buildings and garages, except patios/decks, shall have floating type foundations with footings at least 12 inches below grade line.

(3) Patios/decks attached with nails, screws, bolts, or the like shall be placed on concrete piers or treated wooden pilings, 42 inches below grade line, placed on tamped coarse gravel or concrete.

(Ord. 265, passed 11-9-2004)

#### **152.12 NONCONFORMANCE.**

(A) *Intent.*

(1) Within the districts established by this chapter or amendments that may be adopted later, there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this chapter was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival.

(2) It is further the intent of this chapter that the nonconforming portion or portions of a structure shall not be enlarged, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. An exception is made for construction that enlarges front entrance steps, as detailed below in division (G) below.

(3) Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved. A nonconforming use of structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this chapter by the attachment of additional signs intended to be seen from off the premises, or by the addition of other uses that would be prohibited generally in the district involved.

(4) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this chapter and upon which actual building construction has been carried on diligently.

(5) To avoid undue hardship, nothing in this chapter shall be deemed to require that a person who has obtained a building permit, in reliance upon a previous ordinance, but not actually begun construction prior to the adoption of the ordinance, shall have to bear the administrative expense of application, approval, and issuance of a building permit in conformance with this chapter.

(B) *Nonconforming lots of record.*

(1) In any district in which single-family dwellings are permitted, a single-family dwelling or complex and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this chapter, notwithstanding limitations imposed by other provisions of this chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided, that yard dimension and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

(2) If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this chapter.

(C) *Nonconforming uses of land or land with minor structures only.* Where, at the time of passage of this chapter, lawful use of land exists that would not be permitted by the regulations imposed by this chapter, and where such use involves no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

(1) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter;

(2) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this chapter;

(3) If any such nonconforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located; and

(4) No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

(D) *Nonconforming structures.* Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions.

(1) No such nonconforming structure may be enlarged or altered in a way that increases the nonconforming portion(s) of the structure, but any structure or portion thereof may be altered to decrease its nonconformity.

(2) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with provisions of this chapter.

(3) Should such structure be moved for any reason or distance, it shall thereafter conform to the regulations for the district in which it is located.

(E) *Nonconforming uses of structures or of structures and premises in combination.*

(1) If lawful use involving individual structures with a replacement cost of \$1,000 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions.

(a) No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

(b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(c) If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may, as an exception, be changed to another nonconforming use; provided, that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate to or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this chapter.

(d) Any structure or structure and land in combination in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.

(e) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for 12 consecutive months, or for 18 months during any three-year period, except when government action impedes access to the premises, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.

(f) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. **DESTRUCTION**, for the purposes of this division (E)(1), is defined as damage to an extent of more than 50% of the replacement cost at the time of destruction.

(2) All such nonconforming use of a structure or structure and premises shall be allowed to continue indefinitely at the option of the owner until such nonconformity is terminated as described in this division (E).

(F) *Uses under conditional use provisions are conforming uses.*

(1) Any use that is permitted as a conditional use in a district under the terms of this chapter shall be deemed a conforming use. A nonconforming use can never be allowed in a defined district without a change in the district definition or a change of district boundaries.

(2) The following table helps explain the difference between permitted uses, conditional uses, and nonconforming uses.

| <i>Permitted Principal Uses</i>   | <i>Conditional Uses</i>   | <i>Nonconforming Uses</i>  |
|-----------------------------------|---|--|
| Allowed within a defined district | Allowed within a defined district after Board grants permission | Never allowed in a defined district without a change in district definitions or boundaries |

(G) *Repairs and maintenance.*

(1) If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

(2) (a) An exception is made for construction that enlarges front entrance steps; however, the landing of such entrance shall be no larger than 48 inches by 48 inches, and a minimal number of steps shall be constructed to attain grade.



(b) No roof shall be permitted to be built over the entranceway. Cases involving handicapped accessibility are up to the discretion of the Planning and Zoning Commission.

(3) Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety upon order of such official.

(Ord. 265, passed 11-9-2004)

### ' 152.13 ADMINISTRATION.

(A) *Intent.* It is the intent of this section to explain the structure, duties, and authority of all bodies involved in the administration and enforcement of this chapter.

(B) *Interpretation and enforcement of this chapter.* All questions of interpretation and enforcement regarding this chapter shall be first presented to the Zoning Administrator, and such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator. Recourse from the decisions of the Board of Adjustment shall be to the courts as provided by law and particularly by SDCL Ch. 11-4.

(C) *Zoning Administrator.*

(1) *Generally.* A Zoning Administrator designated by the City Council shall administer and enforce this chapter. The individual is responsible for keeping minutes of Planning and Zoning Commission meetings. He or she may be provided with the assistance of such other persons as the City Council may direct.

(2) *Zoning Administrator; duties.*

(a) *Building permits.* The Zoning Administrator issues or denies building permits upon recommendation of the Planning and Zoning Commission.

(b) *Footing inspection.* The Zoning Administrator or an authorized representative has the right of entry to the property to inspect and approve footings before cement is poured.

(c) *Right of entry.* When necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Zoning Administrator or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises an ordinance violation, the Zoning Administrator or an authorized representative may enter such building or premises at all reasonable times to inspect it or to perform any duty imposed upon the Zoning Administrator by this chapter. If the building or premises is occupied, proper credentials shall be presented. If the building or premises is unoccupied, a reasonable effort to locate the owner or other person(s) having charge of the building or premises must be made, whereupon a request for entry shall be made. If entry is refused, the Zoning Administrator or authorized representative shall have recourse to every remedy provided by law to

secure entry.

(d) *Violations of this chapter.* If the Zoning Administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He or she shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal building or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.

(D) *Planning and Zoning Commission.*

(1) *Structure.* The Mayor of the city shall nominate and the City Council shall appoint a Planning and Zoning Commission, which shall consist of an uneven number of people. The term of each of the appointed members of the Planning and Zoning Commission shall be for a set period of time. When the Planning and Zoning Commission is first appointed, the lengths of the terms should be varied so that no more than three terms expire in the same year. Meetings shall be held regularly at least once each month and at such other times as the Planning and Zoning Commission may determine. The Chairperson, or in his or her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public, except as provided by SDCL ' 1-25-1 .

(2) *Proceedings.* The Planning and Zoning Commission shall keep a record of all proceedings, including minutes showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be filed with the City Finance Officer within two business days after the close of the meeting. The Planning and Zoning Commission shall adopt from time to time, subject to the approval of the City Council, rules and regulations as it may deem necessary for the conduct of its affairs and to carry the appropriate provisions of this chapter into effect. The Commission shall be compensated for their service as determined by the City Council.

(3) *Duties.*

(a) *Development plans.* The Planning and Zoning Commission shall have the power to review applications for development plans in all zoning districts within the city and make recommendations concerning the development plans to the City Council.

(b) *Annexation.* The Planning and Zoning Commission shall have the power to review all annexation of property into the city and make recommendations concerning the development plans to the City Council.

(c) *Changes in zoning district boundaries and regulations.* The Planning and Zoning Commission shall have the power to recommend to the City Council changes in zoning district boundaries and regulations.

(d) *Conditional uses.* The Planning and Zoning Commission shall have the power to review requests for conditional uses as specifically authorized by the terms of this chapter, and to approve conditional use permits with such conditions and safeguards as are appropriate under this chapter or deny conditional uses when not in harmony with the purpose and intent of this chapter. See ' 152.15(B) regarding the administrative steps required for the granting of conditional use permits.

(e) *Variances.* The Planning and Zoning Commission shall have the power to review requests for variances from the terms of this chapter in instances where, because of special conditions, a literal enforcement of the provisions of this chapter would result in undue hardship, and to make recommendations concerning the variance requests to the Board of Adjustment. See ' 152.15(E) regarding the administrative steps required for the granting of variances.

(4) *Appeals from the Planning and Zoning Commission.* Any person or persons or any board, taxpayer, department, board, or bureau of the city aggrieved by any decision of the Planning and Zoning Commission may seek review by the Board of Adjustment of such decision.

(E) *Board of Adjustment.*

(1) *Structure.* A Board of Adjustment which is the City Council has been established pursuant to SDCL ' 11-4-24. The City Council shall act as and perform the duties and exercise the powers contained in SDCL Ch. 11-4. The Mayor shall be Chairperson of the Board of Adjustment as so composed. The concurring vote of at least two-thirds of the members of such board as so composed shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or Planning and Zoning Commission members, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance or to affect any variation in such ordinance.

(2) *Proceedings.* The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this chapter. Meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson, or in his or her absence the acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(3) *Duties.*

(a) *Appeals.* The Board of Adjustment shall have the power to hear and decide appeals where it is alleged that an error has been made in any order, requirement, decision, or determination during the enforcement of this chapter.

(b) *Conditional use.* The Board of Adjustment shall have the power to hear appeals concerning conditional use requests and to grant conditional uses with such conditions and safeguards as are appropriate under this chapter, or to deny conditional uses when not in harmony with the purpose and

intent of this chapter. See ' 152.15(B) regarding the administrative steps required for the granting of conditional use permits.

(c) *Variances.*

1. The Board of Adjustment shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done. See ' 152.15(E) regarding the administrative steps required for the granting of variances.

2. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under ' 152.99.

3. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

(4) *Authority Over the Zoning Administrator and Planning and Zoning Commission.* In exercising the above mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or modify any order, requirement, decision, or determination of the Zoning Administrator or Planning and Zoning Commission, so long as such action is in conformity with the terms of this chapter. The Board of Adjustment may then make any order, requirement, decision, or determination that ought to be made, and to that end shall have the powers over the Zoning Administrator and Planning and Zoning Commission from whom appeal is taken. The concurring vote of two-thirds of the members of the Board of Adjustment shall be necessary to reverse or revise any order, requirement, decision, or determination of the Zoning Administrator and Planning and Zoning Commission, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter.

(5) *Appeals.* Any person or persons or any board, taxpayer, department, board, or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review by a court of record of such decision, in the manner provided by the laws of the state and particularly by SDCL Ch. 11-4.

(F) *City Council.* Regarding the administration and implementation of this chapter, the City Council, when not sitting as the Board of Adjustment, shall have only the following duties:

(1) Considering and adopting or rejecting proposed amendments to this chapter, including changes of zone, or repealing this chapter as provided by law;

(2) Approving applications for development plans in all zoning districts within the city;

- (3) Establishing a schedule of fees and charges as stated in ' 152.14(I);
- (4) Hearing of the vacating of streets and alleys; and
- (5) Approving and accepting the design and installation of utility systems.  
(Ord. 265, passed 11-9-2004)

#### ' 152.14 BUILDING PERMITS.

(A) *Intent.* It is the intent of this section to explain the procedures necessary for the granting of building permits.

(B) *Large accessory buildings require a building permit.* No such building or structure (144 square feet or larger in area) shall be erected, moved, added to, or structurally altered without a permit therefore issued by the Zoning Administrator, except when performing maintenance (as defined in ' ' 152.02 and 152.12(G)) or when performing interior structural alterations within existing exterior walls. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this chapter, unless he or she receives a written order from the Board of Adjustment in the form of an administrative review, conditional use, or variance as provided by this chapter.

(C) *Small accessory buildings require building registration.* Small accessory buildings (less than 144 square feet in area) require building registration and shall meet all setback requirements. Building registration will be provided upon the completion of a building permit application, but will be provided at no cost.

(D) *Application for building permit.*

(1) Applicants for building permits shall present to the Zoning Administrator, 72 hours in advance of the Planning and Zoning Commission meeting, plans in duplicate that show the actual dimensions and shape of the lot to be built upon; the exact sizes and locations of buildings already existing on the lot, if any; and the location and dimensions of the proposed building or alteration.

(2) The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this chapter.

(3) One copy of the plans shall be returned to the applicant by the Zoning Administrator after he or she shall have marked such copy either as approved or disapproved and attested to same by his or her signature on such copy. The original copy of the plans, similarly marked, shall be retained by the

Zoning Administrator.

(E) *Expiration of building permit.* If the work described in any building permit has not begun within one year from the date of the permit's issuance, said permit shall expire and be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected. If the work described in any building permit has not been completed within two years from the date of the permit's issuance, said permit shall expire and be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed until a new building permit has been obtained.

(F) *Repeated requests for building permit.* No applicant requesting a building permit whose application is the same, or substantially the same, as a permit that has been denied by the Planning and Zoning Commission, Board of Adjustment, or City Council shall be again considered by the Planning and Zoning Commission before the expiration date of six months from the date of the final action on the petition.

(G) *Certificates of zoning compliance for new, altered, or nonconforming uses.* It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefore by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this chapter.

(H) *Construction and use to be as provided in application, plans, permits, and certificates of zoning compliance.* Building permits or certificates of zoning compliance issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and any other use, arrangement, or construction at variance with that which is authorized shall be deemed a violation of this chapter, and punishable as provided by ' 152.99.

(I) *Schedule of fees, charges, and expenses.* The city Council shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals and other matters pertaining to this chapter. The schedule of fees shall be posted in the office of the City Finance Officer and may be altered or amended only by the City Council. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

(Ord. 265, passed 11-9-2004) Penalty, see ' 152.99

#### **' 152.15 CONDITIONAL USES, VARIANCES, AND REZONING.**

(A) *Intent.* It is the intent of this section to explain the procedures necessary for the granting of conditional use permits, variances, and change of zone requests.

(B) *Conditional uses.*

(1) Certain uses not identified as principle permitted uses in a given district may be permitted if they are in general accordance and harmony with the district=s regulations. Such conditional use permits shall pass with the property, regardless of ownership, as long as the use of the property is the same, or substantially the same, as when the permit was originally granted.

(2) A conditional use permit shall not be granted unless and until:

(a) A written application for a conditional use is submitted to the Zoning Administrator indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested;

(b) A public notice is given in a legal newspaper of the city at least 14 days in advance of the required public hearing before the Planning and Zoning Commission. The owner of the property for which conditional use is sought or his or her agent shall be notified by mail. Notice of such hearings shall be posted on the property for which conditional use is sought, at the City Hall, and in one other public place at least 14 days prior to the public hearing;

(c) A public hearing is held. Any party may appear in person, by agent, or by attorney;

(d) The Planning and Zoning Commission shall make a finding that it is empowered under this division (B) described in the application to approve, approve with conditions, or disapprove the conditional use, and that approval, or approval with conditions of the conditional use will not adversely affect the public interest;

(e) 1. The Planning and Zoning Commission shall make written findings certifying compliance with the specific rules governing individual conditional use and that satisfactory provision and arrangement has been made concerning the following, where applicable:

a. General compatibility with adjacent properties and other property in the district;

b. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

c. Off-street parking and loading areas where required, with particular attention to the items in the previous bullet and the economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

d. Refuse and service areas, with particular reference to the two previous bullets;

e. Utilities, with reference to location, availability, and compatibility;

- f. Screening and buffering, with reference to type, dimension, and character;
  - g. Signs and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district; and
  - h. Required yards and other open space.
2. Amendments shall be processed in the same manner as required for a separate conditional use permit.
- (3) (a) Upon the denial of the request of a conditional permit under ' 152.15(B)(2)(d) by the Planning and Zoning Commission, the applicant of the conditional use permit shall have the right to appeal the Planning and Zoning Commission decision to the Board of Adjustment pursuant to ' 152.13(D)(4), ' 152.13(E)(2), and ' 152.13(E)(3)(b).
- (b) All appeals to the Board of Adjustment pursuant to ' 152.15(B)(3) shall be administered as follows:
- 1. A written application for a conditional use is submitted to the Board of Adjustment indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested. In addition, it shall set forth the relief/variance requested from the Planning and Zoning Commission=s denial of the original conditional use permit.
  - 2. A public notice is given in the legal newspaper of the city at least 14 days in advance of the required public hearing before the Board of Adjustment. The owner of the property for which conditional use is sought or his or her agent shall be notified by mail. Notice of such hearings shall be posted on the property for which conditional use is sought, at the City Hall, and in one other public place at least 14 days prior to the public hearing. The notice shall set forth the requested relief/variance from the Planning and Zoning Commission=s denial of the original conditional use permit.
  - 3. A public hearing is held. Any party may appear in person, by agent, or by attorney.
  - 4. The Board of Adjustment shall make a finding concerning conditional use requested and to grant conditional uses with such conditions and safeguards as are appropriate under this chapter or to deny conditional uses when not in harmony with the purpose and intent of this chapter.
  - 5. The Planning and Zoning Commission shall make written findings certifying compliance with the specific rules governing individual conditional use as set forth in 152.15(2)(d).
- (C) *Expiration of conditional use permit.* Conditional use permits shall expire if the intended use of the land, or substantially the same use, has not been started within one year of the permit being granted and completed within two years of the permit being granted. The expiration date may be extended as part of



the conditional use permit approval process.

(D) *Repeated requests for conditional use permit.* No applicant requesting a conditional use permit whose application includes the same or substantially the same requirements for the same or substantially the same property as that which has been denied by the Planning and Zoning Commission, Board of Adjustment, or City Council shall be again considered by the Planning and Zoning Commission before the expiration date of six months from the date of the final action on the petition.

(E) *Variances.* A variance shall not be granted unless and until:

(1) The exact location of the lot pins has been found. It is the property owner's responsibility to find their location;

(2) All documents required for application for said request are satisfactorily completed, all required fees are paid in full, and a written application for a variance is submitted, demonstrating:

(a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district;

(b) That literal interpretation of the provisions of this chapter would deprive the applicant of lights commonly enjoyed by other properties in the same district under the terms of this chapter;

(c) That the special conditions and circumstances do not result from the actions of the applicant; and

(d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(3) The Planning and Zoning Commission reviews the variance application at an official meeting of the Commission. The Commission shall discuss each application and recommend an action. The recommendation should be in the form of a motion clearly stating the Commission's recommended action. The Commission shall forward its recommendation to the Board of Adjustment at least 14 days in advance of the Board of Adjustment meeting at which the application is being considered;

(4) A public notice is given at least 14 days in advance of the required public hearing in a legal city paper. The owner of the property for which conditional use is sought or his or her agent shall be notified by mail. Notice of such hearings shall be posted on the property for which the variance is sought, at the City Hall, and in one other public place at least 14 days prior to the public hearing;

(5) The required public hearing is held. Any party may appear in person, by agent, or by attorney;

(6) The Board of Adjustment makes a finding that the requirements of ' 152.15(B) have been met by the applicant for a variance;

(7) The Board of Adjustment further makes a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and

(8) The Board of Adjustment further makes a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(F) *Repeated requests for variance.* No applicant requesting a variance whose application includes the same or substantially the same requirements for the same or substantially the same property as that which has been denied by the Planning and Zoning Commission, Board of Adjustment, or City Council shall be again considered by the Planning and Zoning Commission before the expiration date of six months from the date of the final action on the petition.

(G) *Ordinance amendments/rezoning.*

(1) The provisions set forth in this chapter may be amended, supplemented, or repealed. Proposed changes in zoning district classifications or zoning district regulations may be initiated by the City Council, Planning and Zoning Commission, or by the owners of property within the area requested to be changed.

(2) If the change is initiated by landowners, the owners of 50% or more of the area of the lots in any district or part thereof must desire the change to the ordinance. A petition must be filed with the city requesting the City Council to make such amendment, supplement, or change. Said petition shall be accompanied by maps showing the area affected by the proposed amendment, supplement, or change, together with the boundaries of the said area and the names and addresses of all the owners of the lots therein that are recorded in the office of the County Register of Deeds. Said petition shall immediately be transmitted to the City Council for an investigation and report.

(3) The following are the steps necessary for amending the ordinance:

(a) *Written application.* A written application shall be filed with the Zoning Administrator requesting an amendment to the zoning map or ordinance. Such application shall be provided by the Zoning Administrator, and be completed in full by the applicant and submitted to the Zoning Administrator on or before the fifteenth day of the month preceding the regular Planning and Zoning Commission meeting in which the request is to be heard. Upon the filing of the application, the applicant shall pay a fee to the city, as designated in the schedule of fees.

(b) Planning and Zoning Commission hearing.

1. a. Upon the filing of an application for an amendment to the zoning map or ordinance, the Zoning Administrator shall set a date for a public hearing. This date shall be a day when the Planning and Zoning Commission is regularly scheduled to meet as determined by the rules, policies, and regulations as adopted by the Planning and Zoning Commission.

b. Upon the closing of the hearing, the Planning and Zoning Commission shall submit to the City Council its recommendations on the amendment(s) it has considered. Such recommendations shall be submitted no less than 14 days prior to the City Council hearing date. If no report is received from the Planning and Zoning Commission within 65 days of the submission of a complete application, it may be assumed that said Commission recommends approval of the amendment.

2. The following actions must be taken before the hearing.

a. *Public notice.* A public notice for the hearing describing the amendment to be considered shall be given at least 14 days in advance of the hearing in a legal city paper. The notice shall state that all persons interested shall be given a full, fair, and complete hearing.

b. *Signs.* If the proposed amendment affects a particular piece of property, notice of the public hearing shall be required to be given by posting signs on the property for a continuous period of 14 days immediately prior to the hearing. The signs shall be posted by the Zoning Administrator, and removed one day after the hearing.

c. *City Council hearing.* The City Council shall conduct a public hearing to act on all amendment requests that have been processed and forwarded to them for public hearing as provided in this division (G). During the hearing, the Council shall review the recommendations of the Planning and Zoning Commission. The City Council may approve, modify, or deny the recommendations of the Planning and Zoning Commission. Approval or denial of such amendments shall be by a simple majority of Council members present and voting. The following actions must be taken before the hearing.

i. *Public notice.* A public notice for the hearing describing the amendment to be considered shall be given at least 14 days in advance of the hearing in a legal newspaper of the city. The notice shall state that all persons interested shall be given a full, fair, and complete hearing.

ii. *Signs.* The proposed amendment affects a particular piece of property. Notice of the public hearing shall be required to be given by posting signs on the property for a continuous period of 14 days immediately prior to the hearing. The signs shall be posted by the Zoning Administrator, and removed one day after the hearing.

4. *Copy of amendment.* If the amendment is adopted, the Planning and Zoning Commission shall prepare a copy of the amended language or map revision(s), which the City Attorney shall review and forward to the City Finance Officer for publishing.

5. *Publishing.* The complete copy of changes shall be published once per week for successive weeks in a legal newspaper of the city and take effect 20 days after the second publication.

(4) (a) The decision of the City Council can be protested through a citizen referendum pursuant to SDCL ' 9-20 or by a written protest filed with the City Finance Officer as detailed in SDCL ' 11-4-5. The protest must be signed by at least 40% of the owners of equity in the lots included within the boundaries of the area proposed to be rezoned and the land within 250 feet from any part of said area.

(b) A corporation shall be construed to be a sole owner and if parcels of land are in the name of more than one person, ownership representation shall be in proportion to the number of signers who join in the petition in relation to the number of owners. In the event such a protest is filed, the ordinance shall not become effective unless the ordinance is approved by two-thirds of the City Council. The protest provisions of this division (G) do not apply to any ordinance regulating or establishing floodplain areas.

(5) When an application to rezone a parcel of land has been defeated by a written protest as described above, an application to rezone any part of that parcel alone or in combination with any other parcels shall not be resubmitted for one year from the date of the final action of the City Council. This provision, however, shall not prevent the City Council from acting on its own initiative in any case or at any time as provided in this division (G).

(H) *Expiration of ordinance amendment/rezoning.* On any property approved for rezoning, the rezoning request shall expire if the intended use of the land, or substantially the same use, has not been started within one year of the request having been approved by the City Council and completed within two years of the request having been approved. The property will then revert to its previous zoning classification.

(Ord. 265, passed 11-9-2004; Ord. 279, passed 3-14-2006)

#### **' 152.16 COMPLAINTS REGARDING VIOLATIONS.**

(A) Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record such complaint and forward it to the City Council or the Planning and Zoning Commission, as appropriate.

(B) If the Zoning Administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it. If no response has been received within seven days, a certified letter shall be sent to the person responsible for the violation. If there is no response within seven days of receipt of the letter, the party responsible for the violation shall be considered in violation of the ordinance, and subject to the penalties provided herein.

(Ord. 265, passed 11-9-2004)

**152.17 LEGAL STATUS PROVISIONS.**

(A) *Purpose of captions.* The captions appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purposes of any index and they shall be wholly disregarded by any person, officer, court, or other tribunal in construing the terms and provisions of this chapter.

(B) *Provisions of this chapter declared to be minimum requirements.* In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, and general welfare. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinance, deed restrictions, or covenants, the requirements imposing the highest standard shall govern.

(C) This chapter shall take effect and be in force after its passage and publication according to law.  
(Ord. 265, passed 11-9-2004)

**152.99 PENALTY.**

(A) The owner or agent of a building or premises upon which a violation of any provision of this chapter has been committed, or lessee or tenant of an entire building or entire premises in or upon which such violation exists, shall be subject to any or all of the following:

- (1) A fine, established by resolution of the City Council and may that be amended by the Council from time to time for each violation;
- (2) Imprisonment for a period not to exceed 30 days for each violation; or
- (3) Both a fine and imprisonment.

(B) In addition, all costs and expenses involved in the case shall be paid by the defendant. Each day such violation continues shall be considered a separate offense.

(C) Any architect, engineer, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the same penalties herein provided.

(D) Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. 265, passed 11-9-2004)