

**TITLE XV: LAND USAGE**

Chapter

**150. FLOOD**

**151. SUBDIVISIONS**

**152. ZONING**



## CHAPTER 150: FLOOD

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**GENERAL PROVISIONS****' 150.01 STATUTORY AUTHORIZATION.**

(A) The legislature of the state has in SDCL ' ' 9-29-1, 9-36-15, and 9-36-16 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.

(B) Therefore, the City Council does ordain as follows.

(1) The city/town elects to comply with the requirements of the National Flood Insurance Act of 1968 (Pub. Law No. 90-488, as amended), being 42 U.S.C. ' ' 400 through 4029;

(2) The National Flood Insurance Program, being 42 U.S.C. ' ' 4001 through 4128, established in the aforesaid act, provides that areas of the town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas;

(3) The National Disaster Protection Act of 1973, being 42 U.S.C. ' ' 4001 et seq. and other legislative measures. It was further modified by the National Flood Insurance Reform Act of 1994, being Title V of Pub. Law No. 103-325; and

(4) The National Flood Insurance Program being 42 U.S.C. ' ' 4001 through 4128, is administered by the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security.

(1985 Code, ' 15.0101) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.02 FINDINGS OF FACT.**

(A) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed, or otherwise protected from flood damage.

(1985 Code, ' 15.0102) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed

1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.03 STATEMENT OF PURPOSE.**

It is the purpose of this chapter is to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in floodplains;

(F) Help maintain a stable tax base by providing for the sound use and development of areas of flood-prone areas in such a manner as to minimize future flood areas; and

(G) Ensure that potential buyers are notified that property is in an area of special flood hazard.

(1985 Code, ' 15.0103) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.04 METHODS OF REDUCING FLOOD LOSSES.**

In order to accomplish its purpose, this chapter uses the following methods:

(A) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(D) Control filling, grading, dredging, and other development, which may increase flood damage; and

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other lands.

(1985 Code, ' 15.0104) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 306, passed

8-11-2009)

' **150.05 DEFINITIONS.**

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

**AREA OF FUTURE-CONDITIONS FLOOD HAZARD.** The land area that would be inundated by the 1% annual-chance (100-year) flood based on future-conditions hydrology.

**AREA OF SHALLOW FLOODING.** A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's flood insurance rate map (FIRM) with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD-RELATED EROSION HAZARD.** The land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the flood hazard boundary map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area, in preparation for publication of the FIRM, Zone E may be further refined.

**AREA OF SPECIAL FLOOD HAZARD.** The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term **SPECIAL FLOOD HAZARD AREA** is synonymous in meaning with the phrase **AREA OF SPECIAL FLOOD HAZARD**.

**AREA OF SPECIAL MUDSLIDE (i.e., MUDFLOW) HAZARD.** The land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM after the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE).** The water surface elevation of the 1% annual chance flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

**BASEMENT.** Any area of the building having its floor subgrade (below ground level) on all sides.

**BREAKAWAY WALL.** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without

causing damage to the elevated portion of the building or supporting foundation system.

***BUILDING.*** See ***STRUCTURE.***

***COASTAL HIGH HAZARD AREA.*** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

***DEVELOPMENT.*** Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

***EROSION.*** The process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

***EXISTING CONSTRUCTION.*** For the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. ***EXISTING CONSTRUCTION*** may also be referred to as ***EXISTING STRUCTURES.***

***EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.*** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

***EXISTING STRUCTURES.*** See ***EXISTING CONSTRUCTION.***

***EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.*** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

***FLOOD*** or ***FLOODING*** means:

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters;

(b) The unusual and rapid accumulation or runoff of surface waters from any source; and

(c) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in division (1)(b) above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in division (1)(a) above.

**FLOOD ELEVATION DETERMINATION.** A determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a 1% or greater chance of occurrence in any given year.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map of a community on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** or **FLOOD ELEVATION STUDY.** An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**FLOODPLAIN** or **FLOOD-PRONE AREA.** Any land area susceptible to being inundated by water from any source (see definition of Flooding@).

**FLOOD-PROOFING.** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water, and sanitary facilities, structures, and their contents.

**FLOODWAY.** See **REGULATORY FLOODWAY.**

**FLOODWAY ENCROACHMENT LINES.** The lines marking the limits of floodways on federal, state, and local floodplain maps.

**FREEBOARD.** A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. **FREEBOARD** tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE.** A use which cannot perform its intended purpose unless it is located or earned out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surface prior to



construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE.** Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed at the State Historic Preservation office; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior; or

(b) Directly by the Secretary of the Interior in states without approved programs.

**LEVEE.** A human-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM.** A flood protection system which consists of a levee, levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building=s **LOWEST FLOOR**; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 C.F.R. ' 60.3.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term **MANUFACTURED HOME** does not include a **RECREATIONAL VEHICLE**.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MAP.** The flood hazard boundary map (FHBM) or the flood insurance rate map (FIRM) for a community issued by FEMA.

**MEAN SEA LEVEL.** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's flood insurance rate map are referenced.

**NEW CONSTRUCTION.** For the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, **NEW CONSTRUCTION** means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REGULATORY 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 cumulatively increasing the water surface elevation more than a designated height.

**SPECIAL FLOOD HAZARD AREA.** See **AREA OF SPECIAL FLOOD HAZARD.**

**SPECIAL HAZARD AREA.** An area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

**START OF CONSTRUCTION.** (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. Law No. 97-348), being 16 U.S.C. ' ' 3501 et seq.), includes substantial improvement and means the date the building permit was issued; provided, the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual **START** means either the first

placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

### ***STRUCTURE.***

(1) For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(2) ***STRUCTURE***, for insurance purposes, means:

(a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

(b) A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

(c) A travel trailer without wheels built on a chassis and affixed to a permanent foundation that is regulated under the community's floodplain management and building ordinances or laws.

(3) For the latter purpose, ***STRUCTURE*** does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in division (2)(c) above or a gas or liquid storage tank.

***SUBSTANTIAL DAMAGE.*** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

### ***SUBSTANTIAL IMPROVEMENT.***

(1) Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

(2) The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a historic structure; provided, that the alteration will not preclude the structure's continued designation as a historic structure.

**VARIANCE.** A grant of relief by a community from the terms of a floodplain management regulation.

**VIOLATION.** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 C.F.R. ' 60.3(b)(5), 60.3(c)(4), 60.3(c)(10), 60.3(d)(3), 60.3(e)(2), 60.3(e)(4), or 60.3(e)(5) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION.** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. (1985 Code, ' 15.0105) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 306, passed 8-11-2009)

#### ' 150.06 LANDS TO WHICH THIS CHAPTER APPLIES.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city. (1985 Code, ' 15.0201) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

#### ' 150.07 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific engineering report entitled, "Flood Insurance Study for Hutchinson County, South Dakota and Incorporated Areas" dated September 2, 2009, with accompanying flood insurance rate maps and flood boundary flood maps (FIRM and FBFM), and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.

(1985 Code, ' 15.0202) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

#### ' 150.08 ESTABLISHMENT OF DEVELOPMENT PERMIT.

A development permit shall be required to ensure conformance with the provisions of this chapter. (1985 Code, ' 15.0203) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.09 COMPLIANCE.**

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations. (1985 Code, ' 15.0204) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.10 ABROGATION AND GREATER RESTRICTIONS.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (1985 Code, ' 15.0205) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.11 INTERPRETATION.**

In the interpretation and application of this chapter, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.

(1985 Code, ' 15.0206) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.12 WARNING AND DISCLAIMER OF LIABILITY.**

(A) The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by human-made or natural causes.

(B) This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the community or any officer or employee thereof for any flood damages that

result from reliance on this chapter or any administrative decision lawfully made thereunder. (1985 Code, ' 15.0207) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.13 CERTIFICATION.**

(A) It is hereby found and declared by the city that severe flooding has occurred in the past within its jurisdiction and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this chapter become effective immediately.

(B) Therefore, an emergency is hereby declared to exist, and this chapter, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

(1985 Code, ' 15.0407) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

***ADMINISTRATION***

**' 150.25 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.**

The City Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this chapter and other appropriate sections of Title 44 of the C.F.R. (National Flood Insurance Program regulations) pertaining to floodplain management.

(1985 Code, ' 15.0301) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.26 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

Duties of the Floodplain Administrator shall include, but not be limited to, the following:

(A) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter;

(B) Review permit application to determine whether the proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;

(C) Review, approve, or deny all applications for development permits required by adoption of this chapter;

(D) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including ' 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. ' 1334) from which prior approval is required;

(E) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;

(F) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the State Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;

(G) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;

(H) When base flood elevation data has not been provided in accordance with ' 150.07, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source, in order to administer the provisions of ' ' 150.45 to 150.49;

(I) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community=s FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and

(J) Under the provisions of 44 C.F.R. ' 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH on the community=s FIRM which increases the water surface elevation of the base flood by more than one foot; provided, that the community first applies for a conditional FIRM revision through FEMA (conditional letter of map revision).

(1985 Code, ' 15.0302) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009; Ord. 317, passed 9-20-2011)

#### ' 150.27 PERMIT PROCEDURES.

(A) Application for a development permit shall be presented to the Floodplain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations; existing and proposed structures, including the placement of manufactured homes; and the location of the foregoing

in relation to areas of special flood hazard.

(B) Additionally, the following information is required:

(1) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;

(2) Elevation in relation to mean sea level to which any nonresidential structure shall be flood-proofed;

(3) A certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure shall meet the flood-proofing criteria of ' 150.46(B);

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

(5) Maintain a record of all such information in accordance with division (B)(1) above.

(C) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;

(7) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable;

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and/or

(10) The relationship of the proposed use to the comprehensive plan for that area.



(1985 Code, ' 15.0303) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.28 VARIANCE PROCEDURES.**

(A) The Appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this chapter.

(B) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(C) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

(D) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency and the State Office of Emergency Management upon issuing a variance.

(E) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this chapter.

(F) (1) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level; provided, the relevant factors in division (B) above have been fully considered.

(2) As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(G) Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (' 150.03).

(H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(I) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(J) Prerequisites for granting variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

(a) Showing a good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(b) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(K) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that:

(1) The criteria outlined in divisions (A) through (I) above are met; and

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(1985 Code, ' 15.0304) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

#### **' 150.29 INFORMATION TO BE OBTAINED AND MAINTAINED.**

(A) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and whether or not the structure contains a basement;

(B) For all new or substantially improved flood-proofed structures:

(1) Verify and record the actual elevation (in relation to mean sea level) to which the structure has been flood-proofed; and

(2) Maintain the flood-proofing certifications required in this subchapter.

(C) Maintain for public inspection all records pertaining to the provisions of this chapter.

(1985 Code, ' 15.0305) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.30 ALTERATION OF WATERCOURSES.**

(A) Notify adjacent communities and the State Office of Emergency Management prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency; and

(B) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(1985 Code, ' 15.0306) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009; Ord. 317, passed 9-20-2011)

**' 150.31 INTERPRETATION OF FIRM BOUNDARIES.**

Make interpretations where needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).

(1985 Code, ' 15.0307) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

***PROVISIONS FOR FLOOD HAZARD REDUCTION***

**' 150.45 GENERAL STANDARDS.**

In all areas of special flood hazards, the following standards are required for all new construction and substantial improvements.

(A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(C) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.

(D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.

(G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(1985 Code, ' 15.0401) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

#### ' 150.46 SPECIFIC STANDARDS.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in ' ' 150.07, 150.27(C)(8), 150.47(C), the following provisions are required.

(A) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this division (A) as proposed in ' 150.13 is satisfied.

(B) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot above the base flood level, or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this division (B). A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood-proofed shall be maintained by the Floodplain Administrator.

(C) *Enclosures.*

(1) New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(2) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria.

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than one foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

(D) *Manufactured homes.*

(1) Require that all manufactured homes to be placed within Zone A on a community=s FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;

(2) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community=s FIRM on sites:

(a) Outside of a manufactured home park or subdivision;

(b) In a new manufactured home park or subdivision;

(c) In an expansion to an existing manufactured home park or subdivision; or

(d) In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage@ as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(3) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH, and AE on the community=s FIRM that are not subject to the provisions of this division (D) be elevated so that either:

(a) The lowest floor of the manufactured home is at or above the base flood elevation; or

(b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral

movement.

(E) *Recreational vehicles.*

(1) Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community=s FIRM either:

(a) Be on the site for fewer than 180 consecutive days;

(b) Be fully licensed and ready for highway use; or

(c) Meet the permit requirements of ' 150.27(B)(1) and the elevation and anchoring requirements for Amanufactured homes@ in division (D) above.

(2) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(1985 Code, ' 15.0402) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.47 STANDARDS FOR SUBDIVISION PROPOSALS.**

(A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with ' ' 150.02 through 150.04.

(B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet development permit requirements of ' ' 150.07, 150.27, and the provisions of this subchapter.

(C) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to ' 150.07 or ' 150.26(H).

(D) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(E) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

(1985 Code, ' 15.0403) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.48 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES).**

(A) Located within the areas of special flood hazard established in ' 150.07, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident.

(B) Such flooding is characterized by ponding or sheet flow; therefor, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community=s FIRM (at least two feet if no depth number is specified);

(2) All new construction and substantial improvements of nonresidential structures:

(a) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community=s FIRM (at least two feet if no depth number is specified); or

(b) Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in ' 150.27(B)(1) are satisfied; and

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.  
(1985 Code, ' 15.0404) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

**' 150.49 FLOODWAYS.**

(A) Floodways located within areas of special flood hazard established in ' 150.07 are areas designated as floodways.

(B) Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements,

and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If division (B)(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this subchapter.

(3) Under the provisions of 44 C.F.R. ' 65.12, of the National Flood Insurance regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations; provided, that the community first applies for a conditional FIRM and floodway revision through FEMA.

(4) Designate a regulatory floodway which will not increase the base flood level more than one foot (44 C.F.R. ' 60.3(d)(2)).  
(1985 Code, ' 15.0405) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)

#### **' 150.99 PENALTY.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined, set by resolution of the City Council and may be amended by the Council from time to time, or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(1985 Code, ' 15.0406) (Ord. 136, passed 4-11-1989; Ord. 288, passed 1-9-2007; Ord. 289, passed 1-9-2007; Ord. 306, passed 8-11-2009)



## CHAPTER 151: SUBDIVISIONS

### Section

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### ***GENERAL PROVISIONS***

#### **‘ 151.01 TITLE.**

These regulations shall be referred to as *The 2013 Revised Subdivision Ordinance for the City of Parkston, South Dakota*, to the same effect as if the full title were stated.  
(Ord. 331, passed 8-13-2013)

#### **‘ 151.02 PURPOSE.**

It is the purpose of these regulations to govern the subdivision of land to provide for coordination of streets in other subdivisions and transportation plans; to set aside adequate areas for public uses, water and sewer facilities, drainage, and flood control; to foster efficient and orderly growth compatible with the natural environment; to protect and provide for the public health, safety, and general welfare; and to conform with other plans and regulations.  
(Ord. 331, passed 8-13-2013)

#### **‘ 151.03 JURISDICTION.**

These subdivision regulations shall apply to all subdivisions of land located within the city and within the unincorporated area identified by the major street plan in accordance with platting jurisdiction statute of SDCL ‘ 11-6-26.  
(Ord. 331, passed 8-13-2013)

#### **‘ 151.04 INTERPRETATION.**

These regulations are the minimum requirements for the promotion of public safety, health, and general welfare. It is not the intent of these regulations to repeal, abrogate, or impair any existing easement, covenant, or deed restriction, where these provisions conflict or overlap. Whichever imposes the more stringent restrictions shall prevail.  
(Ord. 331, passed 8-13-2013)

**151.05 DEFINITIONS.**

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

**ALLEY.** A public or private right-of-way which affords only a secondary means of access to abutting property.

**ARTERIAL.** A main traffic artery, more or less continuous across the city, which acts as a principal connecting street with state and federal highways and includes each street designated as an arterial street on the major street plan.

**ASSURANCE AGREEMENT.** A contract entered into by the developer and the city by which the developer promises to complete the required public improvements within the subdivision within a specified time period following final subdivision plat approval.

**BASEMENT.** Any story located below the main floor.

**BLOCK.** A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways, or boundary lines of municipalities.

**BUILDING.** Any structure having a roof, supported by columns or walls, for shelter or enclosure of persons or property.

**CITY.** The City of Parkston, South Dakota.

**COLLECTOR.** A street which carries traffic from local streets/roads to arterial streets or highways, including the principal entrance streets of a residential development and streets for circulation in such development.

**COMMON AREAS.** **COMMON AREAS**, as used in this chapter, unless the context otherwise requires and unless otherwise provided in the master deed or lease, includes:

- (1) The land whether fee simple or leased on which the building or buildings stand;
- (2) The land which is used to access the building or buildings;
- (3) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exits and communication ways;
- (4) The basements, flat roofs, yards, gardens, recreation facilities, and parking areas, unless otherwise provided or stipulated;
- (5) The premises for the lodging of janitors or persons in charge of the building or buildings, except as otherwise provided or stipulated;

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(6) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks, pumps, and the like;

(7) The elevators, garbage incinerators, and in general all devices or installations existing for common use; and

(8) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety (SDCL ' 43-15A-5).

**COMPREHENSIVE DEVELOPMENT PLAN.** Any legally adopted part or element of the comprehensive plan of the city.

**CONDOMINIUM.** Includes separate interest in common areas and other portions of real property.

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

**CUL-DE-SAC.** A local street with only one outlet having an appropriate terminal for safe and convenient reversal of traffic movement.

**DEDICATED.** A grant of land to the public for their perpetual use.

**DEVELOPER.** The owner of land proposed to be subdivided or its authorized agent who shall have express written authority to act on behalf of the owner. Consent shall be required from the legal owner of the premises.

**DEVELOPMENT ENGINEERING PLAN.** The development engineering plan shall address the engineering aspects of topography and infrastructure.

**DOUBLE FRONTAGE.** A lot which abuts a road on two opposite sides (not a corner lot).

**EASEMENT.** Authorization by a property owner for the use by another and for a specified purpose of any designated part of the property. An **EASEMENT** is also a means to acquire a legal right for a specific use of land owned by others.

**ENGINEERING DESIGN STANDARDS.** The engineering design standards for public improvements of the city.

**EXPRESSWAY.** A principal traffic artery serving the major centers of activity, the highest traffic volume corridors, and the longest trip desired, with partially or fully controlled access.

**FRONTAGE ROAD.** A street used only for access to abutting property where there will be constructed an expressway or arterial street.

**HOMEOWNER=S ASSOCIATION.** An association or organization, whether or not incorporated, which operates under and pursuant to recorded covenants or deed restrictions through which each owner or a portion of a subdivision, be it a lot, parcel site, unit plot, condominium, or any other interest, is automatically a member or assessment for a prorated share of expense of the association which may become a lien against the lot, parcel, unit, condominium, or other interest or member.

**INITIAL DEVELOPMENT PLAN.** An initial development plan is a basic plan that is preparatory to the preliminary plan.

**LOCAL STREET.** A street intended to provide access to other streets from individual properties and to provide right-of-way beneath it for various utilities but not intended to be used for through traffic.

**LOT.** A tract, plot, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for building development.

**LOT OF RECORD.** A plat that has been recorded in the office of the Register of Deeds prior to the effective date of this chapter.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement), but not including an unfinished crawl space used for access.

**MAIN FLOOR.** The lowest story in which more than six feet lies above grade for more than 50% of the perimeter or in which any point is more than 12 feet above grade.

**MAJOR DRAINAGEWAY.** The main corridor for stormwater flow through developments. **MAJOR DRAINAGEWAYS** are identified as intermittent streams on USGS quadrangle maps, or as otherwise approved by the City Engineer.

**MAJOR STREET PLAN.** The street plan adopted as part of the comprehensive plan.

**MINOR PLAT.** Any plat containing not more than three lots fronting on an existing street that meets all standards of ' 151.06(D).

**MUTUAL ACCESS EASEMENT.** An easement granting the perpetual right of abutting property owners to use a designated portion of property for common ingress and/or egress purposes. The easement area shall be maintained by the abutting property owners. The easement is not to be considered required frontage.

**OWNER.** The record owners of real property in fee simple including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to the land sought to be subdivided.

**PARCEL.** Any contiguous quantity of land in the possession of, owned by, or recorded as the

property of the same claimant, person, or company.

**PLAT.** A map or representation on paper or transferable to paper (e.g., electronic) of a piece of land subdivided into lots, parcels, tracts, or blocks, including streets/roads, common and public grounds, if any, all drawn to scale and complete with all irrevocable offers of dedication.

**PRELIMINARY SUBDIVISION PLAN.** The preliminary subdivision plan shall address the preliminary subdivision plan=s internal street network and associated lot and block layout and the relationship of proposed zoning and land use.

**PRIVATE STREET/ROAD.** A roadway that has not been dedicated for public use, but rather reserved by platting of a lot or by a private easement. The **PRIVATE STREET** or **ROAD** shall be owned and maintained by the property owners which it serves. The plat shall have the owner=s certificate regarding the lot=s private maintenance of facilities@.

**RE-PLATS.** The adjustment and/or vacation of property lines which reallocates or consolidates land area of contiguous lots or parcels; provided, that the adjustment or vacation of property lines, sites, or other divisions of land under stated conditions of this chapter.

**RIGHT-OF-WAY.** A strip of land occupied by a street, railroad, pedestrian walkways, or other special use. The use of the term **RIGHT-OF-WAY** for platting purposes shall mean that every right-of-way hereafter established and shown on a plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or area of such lots or parcels.

**SETBACK.** That line that is the required minimum distance from any lot line that establishes the area within which the principal structure must be created or placed.

**STRUCTURES.** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, walls, fences, and signs.

**SUBDIVISION.** The division or redivision of land into two or more lots, tracts, parcels, sites, condominiums, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in ' 151.06(D) and (E).

**SUBSTANTIAL BUILD-OUT.** A subdivision in which at least 90% of the individual lots or 90% of the real property within the approved subdivision has been developed by the completion of planned vertical and horizontal construction and the remaining property has been permanently stabilized.  
(Ord. 331, passed 8-13-2013)

## ' 151.06 SUBDIVISION PLANS AND APPROVAL PROCESS.

(A) *Applicability.* Subdivision of land shall be required before the division of land (for any purpose) into two or more parcels.

(B) *Overall of approval process.* Proposed subdivision development plans must be approved by the city in accordance with the following procedures which include four principal steps.

<b>Step 1:</b>		Initial development plan (with an annexation petition or in preparation for preliminary subdivision plan) See sample pre-annexation agreement
	Review by	Planning and Zoning Administrator, Utilities Superintendents, City Engineer, Planning and Zoning Commission, City Council
	Approval by	None

<b>Step 2:</b>		Preliminary plan (in coordination with rezoning)
	Review by	Planning and Zoning Administrator, Utilities Superintendents and City Engineer, Planning and Zoning Commission
	Approval by	Planning and Zoning Commission, City Council

<b>Step 3:</b>		Development=s engineering plans (in preparation for engineering construction plans) See sample developers agreement
	Review by	City Engineer, Planning and Zoning Commission

<b>Step 4:</b>		Plat (before a building permit is approved)
	Review by	Planning and Zoning Administrator, City Engineer/registered Land Surveyor, City Council
	Approval by	Plat (before a building permit is approved)

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(C) *Filing fee.* A filing fee shall be deposited with the city for all preliminary subdivision plans, development engineering plans, and plats. The amount of fees charged shall be set forth by resolution of the City Council. Fees established in accordance with this division (C) shall be paid upon submission of a signed application.

(D) *Subdivision plan exemptions - minor plat/re-plat.*

(1) *Generally.* The purpose of this division (D) is to provide for the timely review of minor plats and re-plats (including plats for transfer of ownership) that do not discernibly impact surrounding properties, environmental resources, or public facilities. No initial development plan, preliminary plan, or development engineering plans are required. Minor plats and re-plats are administratively approved by the Planning and Zoning Administrator and City Engineer and must comply with all requirements of a plat in ' 151.09(B). Any request for new or additional public infrastructure or facility services after the land has platted may be required to comply with ' 151.09(B) at the request of the City Engineer.

(2) *Minor plats/re-plats requirements.*

(a) *Minor plat.* A minor plat is a plat containing not more than three proposed lots fronting on an existing street and meet all of the following requirements: (Exception: When deemed appropriate, more than three lots needs to be submitted for review by the Planning and Zoning Commission and City Council):

1. Does not require the dedication of right-of-way or construction of new streets, except that arterial roadways identified on the major street plan will be required to dedicate the necessary right-of- way;
2. Does not require the creation of easements or has existing services that do not require additional easement size;
3. Does not create a lot or tract eligible for any public or private improvements other than sidewalks;
4. Does not landlock or otherwise impair convenient ingress or egress to or from the rear side of the subject tract or any adjacent property;
5. Does not change the grades from the grading plan which was submitted and approved with the original plat or, if the grades are going to be changed, then a grading plan shall be submitted and approved for the minor plat or re-plat;
6. Does not significantly change any plans that have been prepared for the placement of any other utilities in the subdivision;
7. Does not adversely affect the remainder of the parcel or adjoining property; and



8. Does not conflict with any provision or portion of the comprehensive plan, official map, zoning ordinance, or these regulations.

(b) *Re-plat*. A re-plat includes all the requirements of a minor plat and shall also include the minor vacation of existing platted lines to achieve either a reconfiguration of the existing recorded plat or change the number of recorded lots in the subdivision only where the perimeter of the tract being re-platted is not altered by the re-plat. Also, a re-plat shall certify that the platting vacates the existing plat. Twin home plats are based off existing foundation property walls.

(E) *Plat exemptions*. The purpose of this division (E) is to exempt the city platting rules and regulations from the following situations; however, the exemption of the city platting rules and regulations does not exempt the platting requirements of the Register of Deeds, title company, and state law.

(1) *Cemetery gravesite plats*. Cemetery gravesite plats or plots do not have to meet any requirements of this chapter as long as land is surveyed, mapped, or diagramed, and subdivided into sections, blocks, lots, individual grave spaces, avenues, walks, and streets, thereby platting or making a map which shall be filed and maintained as a permanent cemetery record; however, all platting requirements of the County Register of Deeds and state law are still applicable.

(2) *Government-owned parcels*. In order to facilitate the transfer of ownership from one owner to a government entity for the use of a public land or facility (e.g., school, park, drainageway), plats may be exempted by the Planning and Zoning Administrator and City Engineer.  
(Ord. 331, passed 8-13-2013)

#### **151.07 INITIAL DEVELOPMENT PLAN.**

(A) The initial development plan is a process designed to help a developer save time and expense in preparing a preliminary plan and a plat. The advantage of an initial development plan is that city staff will provide important information up front that may significantly affect lot and block layout and utility plans. It is recommended that at least some preliminary drainage engineering be completed during the initial development plan stage. The process works best when guided by a landscape architect or physical planner, collaborating with a civil engineer. The city encourages conservation subdivision planning as designated on the future land use plan and master park plan. All initial development plans for review shall be submitted to the City Finance Officer and given to the Planning and Zoning Administrator.

(B) (1) Prior to the submission of the preliminary subdivision plan and, if needed, rezoning to the Planning and Zoning Commission, the developer shall submit an initial development plan to the Finance Officer who will give it to the Planning and Zoning Administrator and the City Engineer.

(2) City staff comments on the initial development plan shall be sent to the developer within 45 working days. The requirement for an initial development plan may be waived by the Planning and Zoning Administrator and City Engineer if access permits have been approved and it is a residential

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subdivision with less than two acres or a nonresidential subdivision with less than two acres.

(3) A developer may choose to submit an initial development plan for comments that has all elements of a preliminary subdivision plan.

(C) The initial development plan shall contain the following information:

(1) The general layout of streets and access points to adjacent street systems; location of major drainageways, approximate flow paths, and detention ponds; water line locations; nearest existing sanitary sewer line locations; natural features and amenities and preservation of public land and proposed zoning districts; pedestrian connectivity; and agreement with the city=s comprehensive plan goals and policies;

(2) The owner and developer addresses and telephone numbers; and

(3) Context map to scale, showing locations of the initial development plan, aerial photographs, U.S. Geological Survey Topographic sheets, FEMA floodplain, U.S. Fish and Wildlife Service wetland maps, Natural Resources Conservation Service soil maps, and other property for at least one-half mile in every direction. Scale inch equals 400 feet.

(D) Additional requirements for a planned development district:

(1) The proposed land uses, including the number and type of proposed residential buildings, the proposed number of dwelling units per building, the number and type of any proposed nonresidential buildings, and their square footage;

(2) The proposed maximum density of the development;

(3) The proposed minimum setbacks;

(4) The proposed maximum height;

(5) Proposed design features illustrating compatibility to the surrounding environment and neighborhood; and

(6) Anticipated subarea development sequence.

(E) (1) Comments from city staff in regard to the initial development plan should include future land use amendments, zoning transitions, street right-of-way width, and type of street (minor or major collector), pedestrian circulation, lot and block layout, street access points, and water and sanitary sewer locations.

(2) Staff shall track consistency of comments between initial development plan and preliminary subdivision plan.

(Ord. 331, passed 8-13-2013)

**151.08 PRELIMINARY SUBDIVISION PLAN.***(A) Submission.*

(1) A preliminary subdivision plan is a process designed to assist the developer and the city with the efficient and timely development of utilities to and throughout a development. Plans will be evaluated for compliance with the city's comprehensive plan goals and policy framework, adopted master plans, and the capital improvement program.

(2) Based on the initial development plan, the developer shall submit the preliminary subdivision plan to the City Finance Officer. The application may be submitted five working days before the Planning and Zoning Commission submittal deadline.

(a) Within five working days of receipt of a subdivision application and fee, the Planning and Zoning Administrator will review the application to determine whether it contains all elements required by division (A)(3)(b) below.

(b) If the Planning and Zoning Administrator determines that the application does not contain all elements as required by division (A)(3)(b) below, then the applicant shall be notified in writing of the specific deficiencies; and that the application shall not be scheduled for a public hearing until all elements of the application are submitted. The applicant has until the submittal deadline to submit all elements.

(c) When the Planning and Zoning Administrator determines that the application does contain all elements as required by division (A)(3)(b) below, the application shall be scheduled for a Planning and Zoning Commission public hearing by the Planning and Zoning Administrator on a day when the Planning and Zoning Commission is regularly scheduled to meet as determined by the rules, policies, and regulations as adopted or which may hereafter be adopted by the Planning and Zoning Commission for holding public hearings on such requests.

(d) The Planning and Zoning Administrator will review within 30 days to determine compliance with all approval criteria of division (A)(3)(b) below.

(e) If the Planning and Zoning Administrator determines that the preliminary subdivision plans do not meet the criteria, a one-month or next meeting deferral of the plan may occur and the Planning and Zoning Administrator shall identify specific required information in its notification to the applicant at the end of the 30-day review period. After the one-month deferral and a resubmitted preliminary subdivision plan, the Planning and Zoning Administrator may schedule the preliminary plan for a Planning and Zoning Commission public hearing.

(f) If the Planning and Zoning Administrator determines that the preliminary subdivision application is in sufficient compliance with division (A)(3)(b) below, but there are specific design, improvement, or other compliance deficiencies, the Planning and Zoning Administrator may list conditions to the approval of the subdivision application to the Planning and Zoning Commission.

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(3) (a) *Generally.* The City Council, in taking action on a preliminary plan, shall consider the recommendations of the Planning and Zoning Commission and shall hold a public hearing. It shall then approve, disapprove, or approve with conditions based upon the criteria within division (A)(3)(b) below. Approval of the preliminary plan shall indicate Council=s approval of the general location of the lots, blocks, and streets including the interrelationship to proposed zoning districts or land uses; all which shall be so noted on the preliminary subdivision plan=s certificate of approval. The approved plan shall be kept on file in the office of the Finance Officer and City Engineer. Any conditions included by the City Council shall be resolved on a revised preliminary plan which would be submitted to the Planning and Zoning Administrator for administrative approval before any development engineering plans and plats are submitted.

(b) *Element and approval criteria for preliminary subdivision plans.*

<i>Elements</i>	<i>Approval Criteria</i>
Submitted by a licensed civil engineer. The city also encourages use of a landscape architect or land use planner	The earmark that distinguishes a licensed/registered professional engineer is the authority to sign and seal or Astamp@ engineering documents for a design or analysis, thus taking legal responsibility for it
Initial development plan	Consistency with initial development plan
Proposed name of subdivision	The name shall not duplicate, be the same in spelling, or alike in pronunciation with the name of any other recorded subdivision, unless it is an extension of or adjoining to an existing subdivision
The names of all adjoining subdivisions with adjoining unplatted property shall be labeled as such	Showing connectivity with lot and block lines, easements, and rights-of-way
Lot and block layout	Consistent with ' 151.10 (preliminary plan criteria)
Vicinity map to scale showing location of preliminary subdivision plan	Includes other property between 660 through 1,320 feet in every direction
The owner, developer landscape architect, or land use planner and engineer=s names, addresses, and telephone numbers	Use as contact for the project for comments and notifications
Proposed zoning districts	Sufficient to allow for staff review of residential densities and nonresidential structure size
Area, legal description, and notations stating acreage, scale, and north arrow	Determine if plan boundaries meet stated ownership; adjacent property notification, if required; measurement and review of plans
The location and size of all public facilities, schools, libraries, fire stations, parks, tree masses, and other significant natural features	Consistent with the parks/open space needs identified within the growth management plan and ' 151.14
Existing contours referenced to North American Vertical	Utility coordination and consistency with water, sewage,

<i>Elements</i>	<i>Approval Criteria</i>
Datum (NAVD 88) with intervals sufficient to determine the character and topography of the land to be subdivided	and grading/drainage plans
Phasing and timelines	Per annexation resolution and for purposes of identifying final utility plan parcels (based on watershed boundaries); construction planning for private and public entities
Proposed city reimbursements	Coordination with CIP and city disbursements
Other data consistent with or required within the developers/pre-annexation agreement	Only data as required within an annexation, pre-annexation
Certificates of approval for endorsement by the Planning and Zoning Commission, Planning and Zoning Administrator, City Engineer, Finance Officer, and the City Council	Signed and executed
Preliminary street plan	Consistent with engineering design standards (SDCL Chs. 6 and 8)
Preliminary sanitary sewer plan	Consistent with engineering design standards (SDCL Ch. 9)
Preliminary water plan	Consistent with engineering design standards (SDCL Ch. 10)
Preliminary drainage plan	Consistent with engineering design standards (SDCL Ch. 11)

*(B) Effective period of preliminary subdivision plan approval.*

(1) Any preliminary subdivision plan which has not received development engineering plan approval for all or a portion of the preliminary subdivision plan area within a period of three years would require re-submittal of a new plan for approval subject to any new subdivision regulations unless a waiver from the Planning and Zoning Administrator is approved.

(2) Upon written request to the Planning and Zoning Administrator and prior to the preliminary plan expiration date, a one-year time extension for the preliminary plan may be granted by the Planning and Zoning Administrator, subject to the following condition: the land uses for land within the preliminary subdivision plan area have not significantly been altered since the original approval date for the preliminary subdivision plan.

*(C) Revisions to preliminary plan.*

(1) Amendments to an approved preliminary subdivision plan may be requested by the developer. The Planning and Zoning Administrator may request an updated preliminary subdivision plan for review and approval when changes to the plan are proposed.

(2) Amendments to a preliminary plan shall consist of external impacts, including changes in

major (collectors) street pattern, change of zones, drainage facility location, other public open space location, or perimeter boundaries.

(a) Amendments to an approved preliminary subdivision plan shall follow the procedures for approval of a preliminary subdivision plan as required in this division (C).

(b) The approved plan (and any amendments) shall be kept on file with the Planning and Zoning Administrator.

(c) Preliminary plan approvals shall be approved based on the current subdivision ordinance.

(Ord. 331, passed 8-13-2013)

#### **151.09 DEVELOPMENT ENGINEERING PLANS AND THE PLAT.**

##### *(A) Development engineering plans.*

(1) (a) The development engineering plan is a process designed to assist the developer and the city with the efficient and timely development of utilities and final lot and block layout to and throughout a development. Plans will be evaluated for compliance with the engineering design standards and the capital improvement program.

(b) The development engineering plan approval will be based upon the engineering feasibility of the development including the determination of more precise locations of all lots, blocks, and streets.

(2) (a) Following the approval of the preliminary subdivision plan, if the developer wishes to proceed, development engineering plans shall be submitted at the City Office for review and acceptance by the City Engineer.

(b) The development engineering plans shall encompass all land on the preliminary subdivision plan, be in compliance with conditions and approval requirements of the preliminary subdivision plan, and existing and proposed easements shown and dimensioned from property lines and utilities.

(3) (a) 1. The development engineering plans shall comply with the respective chapters within the adopted engineering design standards.

2. The final grading and drainage plan, the final utility plan, and the groundwater control plan shall be approved or disapproved within 45 working days after submittal to the city.

3. In addition, a final lot and block layout shall be approved by the City Engineer and Planning and Zoning Administrator as required by the table below.

(b) If these plans are approved, the developer may then submit the plat(s) for approval.

<i>Development Engineering Plan and Block Layout</i>	
<i>Elements</i>	<i>Criteria</i>
Boundary lines of floodways and 100-year flood zones delineated on the flood insurance rate maps (FIRM)	To ensure building lots
Lots and blocks including a systematic lot and block numbering pattern, lot lines	Ability to reference areas and review plans; consistent with ' 151.10 (preliminary plan criteria) and ' ' 151.35 through 151.43 (development engineering plan criteria) and applicable zoning districts
Location and widths of all existing and proposed easements	Utility coordination; consistent with ' 151.10 (preliminary plan criteria) and ' ' 151.35 through 151.43 (development engineering plan criteria)
Location of all street right-of-way including width and street names	Consistency with major street plan and ' 151.10 (preliminary plan criteria) and ' ' 151.35 through 151.43 (development engineering plan criteria)
The location and size of all public facilities, schools, libraries, fire stations, parks, tree masses, and other significant natural features	Consistent with the needs identified within the comprehensive plan and ' 151.14 (preservation of natural features and amenities)

(4) Amendments to development engineering plan lot and block layout.

(a) The City Engineer and Planning and Zoning Administrator may request an updated development engineering plan for review and approval when changes to the plan are proposed or when a proposed plat is not consistent with the development engineering plan. The proposed amendment may include the submission of an updated preliminary subdivision plan to the Planning and Zoning Administrator.

(b) Amendments shall be done administratively with signed approval by Planning and Zoning Administrator and City Engineer and coincide with the development engineering plans.

(B) *The plat.*

(1) Platting is a process designed to assist the developer and the city to approve the appropriate features of a proposed subdivision and place them on file with the County Register of Deeds. Platting is required when land is divided into tracts for purpose of sale, transfer of ownership, or in creating a new building site prior to issuance of a building permit or connecting to city utilities.

(2) One signed Mylar plat, two paper copies, one reduced eight inches and one-half by 11 inches copy, and an electronic PDF and DWG shall be submitted to the city office for review and approval. All copies shall be signed, sealed, and notarized.

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(3) The plat should be drawn at a range of 1:20 to 1:400 from an accurate survey and on one or more sheets whose dimensions are as required by state law. If more than two sheets are required, an index sheet of the same dimension shall be attached and filed. The plat shall show the following information:

(a) The proposed name of the subdivision. The name shall not duplicate, be the same in spelling, or alike in pronunciation with the name of any other recorded subdivision, unless it is an extension of or adjacent to said subdivision;

(b) Scale and north arrow. All lot and block lines, type of easements, and rights-of-way such as drainage facilities, pedestrian, and utilities should be consistent with the development engineer plan. Adjoining unplatted property shall be labeled as such;

(c) A systematic lot and block numbering pattern, lot lines, and street names, and the square footage of all lots;

(d) The location and width of all proposed and existing rights-of-way, alleys, and easements;

(e) The boundary lines of the area being subdivided with accurate angles or bearings and distances tying the perimeter boundaries to the nearest established street line, section corner, other previously described subdivision, or other recognized permanent monuments which shall be accurately described on the plat as required by SDCL ' ' 43-18, 43-20, and 43-21;

(f) Location of all monuments and permanent control points, and all survey pins, either set or located as required by SDCL ' ' 43-18, 43-20, and 43-21;

(g) The identification and delineations of any portions of the property intended to be dedicated or granted for public use such as drainage facilities, schools, or park land;

(h) All dimensions, both linear and angular, necessary for locating the boundaries of the subdivision lots, streets/roads, alleys, easements, and other areas for public or private use. Linear dimensions are to be given to the nearest 1/100 of a foot;

(i) The radii, chords, length of curve, point of tangency, and central angles for all curvilinear streets/roads and radii for rounded corners;

(j) The boundary lines of the floodway and 100-year flood zones, along with the base flood elevation on each lot as delineated on the flood insurance rate maps (FIRM);

(k) Acknowledgment of the owner or owners of the plat of any restrictions, including dedication to public use of all streets/roads, alleys, parks, or other open spaces shown thereon and the granting of easements required; as well as the use of any required common areas;

(l) All formal irrevocable offers of dedication for all streets/roads, alleys, parks, drainage facilities, pedestrian paths, and other uses as required;



(m) Approved assurance agreement(s);

(n) The certificate of the Surveyor attesting to the accuracy of the survey and the correct location of all pins and monuments shown as required by SDCL ' ' 43-18, 43-20, and 43-21;

(o) Certificates of approval for endorsement by the Planning and Zoning Administrator; and

(p) Existing building outlines to verify setbacks and lot area requirements and ensure current and proposed easements are clear of obstructions.

*(C) Approval of the plat.*

(1) The plat shall provide the information indicated in division (B) above and shall require the review and approval of the Planning and Zoning Administrator. The plat shall be in conformance with an approved final lot and block layout of the development engineering plan. Either all or a portion of the final lot and block layout of the development engineering plan may be platted.

(2) The plat shall be considered for approval only after the City Engineer has approved assurances as required by ' 151.16 from the developer fixing responsibility for the required improvements, or any revision thereof. If the plat is not approved by the Planning and Zoning Administrator within 30 days of submittal, the plat shall be presented to the City Council for action. A plat shall be considered submitted when it has been filed with the Planning and Zoning Administrator. Approval of any plat shall be contingent upon the plat being recorded within 120 days after the certificate of approval is signed by the Finance Officer.  
(Ord. 331, passed 8-13-2013)

**' 151.10 PRELIMINARY PLAN CRITERIA.**

(A) *Intent.* When applications are submitted for a preliminary plan, developers shall comply with the following criteria.

(B) *Blocks.*

(1) The lengths, widths, and shapes of blocks shall be determined with regard to provision of adequate building sites suitable to the special needs of the type of use contemplated; the need for convenient access, circulation, control, and safety of traffic and utilities; and limitations and opportunities of topography.

(2) Blocks shall normally be wide enough to allow two tiers of residential lots of an appropriate depth; however, if conservation subdivision design is utilized, homes and lots are laid out to maximize visual and physical access to the open space by the residents. Homes are clustered together on smaller lots, usually in a few areas or blocks. Block lengths shall not exceed 1,200 feet or be less than 300 feet, except as the City Council considers necessary to secure efficient use of land or desired features of street layout.

(C) *Lots.*

(1) Lots should be in compliance with Ch. 152.

(2) Corner lots for residential use shall have extra width to permit appropriate building setbacks.

(3) Each lot shall abut a dedicated right-of-way.

(D) *Street system.*

(1) *Arrangement and extension.*

(a) The arrangement of streets in new subdivisions shall conform to the major street plan and shall make provisions for the continuation of existing streets in adjoining areas or their proper projection where adjoining land is not subdivided.

(b) The arrangement of all streets and alleys shall be such as not to cause a hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access.

(2) *Circulation plan.* In general, streets within subdivisions shall be designed to incorporate and tie into existing or proposed pedestrian pathways and roadways, and to take into account design restrictions on abutting parcels caused by the surrounding topography, parcel lines, or other features. Other criteria in the street circulation plan shall include the following.

(a) Provisions should be made for a collector street every half mile and there should be a street connecting adjacent subdivisions at intervals not less than one-quarter mile where environmental constraints and land use considerations permit.

(b) Streets should be designed to convey residents conveniently throughout the neighborhood; to the parks, schools, and shopping areas of the neighborhood; and to adjacent neighborhoods. When a subdivision is designed or constructed in conjunction with another use (such as retail, office, apartments, park, or school) of a neighborhood scale, the local and/or collector road system should be designed to provide roadway connections between the various uses.

(3) *Arterial streets.* In order to maintain the traffic carrying capacity of the arterial streets by limiting access to it from individual lots, and in order to protect the residents of property adjacent to arterial streets from the high traffic volumes associated with the street, property along such arterials

shall be subdivided in the manner set forth below.

(a) *Double frontage lots.* Where double frontage lots are used for residential development, additional lot depth or width consistent with the zoning ordinance for rear yard setback shall be required to provide for an extra setback to offset the impact of high traffic volume. When double frontage lots are proposed, the developer shall be required to sign an assurance agreement prior to plat approval.

(b) *Tracts onto arterial streets.* In order to avoid private access from individual lots onto arterial streets, lots should be arranged on blocks so that their side or rear yards are adjacent to the arterial street.

(c) *Access roads.* Access roads may be used as the city grows into the areas in the county where they have been required. Under some circumstances, they would also be appropriate for commercial and industrial development. Access roads shall be constructed to city standards with a right-of-way width of 29 to 50 feet.

(d) *Rear access roads.* Rear access roads are recommended for commercial developments. In this way, the access can serve two tiers of lots and alleviate the dangerous turning movements onto and off of arterial streets.

(e) *Nonresidential land uses.* Nonresidential land uses and higher density residential land uses including multiple-family units and townhouses are particularly suitable for the intersection of two arterial streets. Any development of this type should have limited access to the arterial street.

(f) *Lots adjacent to railroad right-of-way.* Lots for residential development adjacent to functioning railroad rights-of-way shall provide extra lot depth or width consistent with Ch. 152 for rear yard setback to provide for an extra setback to offset the impact of the railroad traffic.

(4) *Collector streets.*

(a) Collectors shall be used to collect traffic from other local roads and collectors to arterial roadways. They should generally run two miles in length.

(b) Based upon increased speeds and volumes, lot sizes and land uses may be increased along collectors to be consistent with the proposed zoning and transitions.

(c) Collectors shall be developed along or between property lines so that both land owners can share in the cost as well as having access to the collector.

(d) In agricultural and transitional areas, collector streets shall be identified and located through the engineering design standards.

(E) *Suitability of the land for subdivision development.*

(1) If the City Council finds that land proposed to be subdivided is unsuitable for subdivision development due to flooding, bad drainage, steep slopes, rock formations, and other such conditions as may increase the danger of health, life, or property or aggravate erosion or flood hazards; and, if from adequate investigations, conducted by all the public agencies concerned, it has been determined that in the best interest of the public the land should not be platted and developed for the purpose proposed, the City Council shall not approve the land for subdivision unless adequate methods are formulated by the subdivider for meeting the problems that will be created by the subdivision and development of the land.

(2) The Council, may refuse to approve what it considers to be scattered or premature subdivision of land which would involve danger or injury to the public health, safety, welfare, or prosperity by reason of lack of adequate water supply, schools, property drainage, good roads, and transportation facilities or other public services; or which would necessitate an excessive expenditure of public funds for the supply of such services such as undue maintenance costs for adequate roads.  
(Ord. 331, passed 8-13-2013)

#### ' 151.11 UTILITIES AND PUBLIC SPACE.

##### (A) *Water facilities.*

##### (1) *General requirements.*

(a) Necessary action shall be taken by the applicant to extend or create a water supply district for the purpose of providing a water supply system capable of providing domestic water use and fire protection.

(b) Where a public water main is accessible, the subdivider shall install adequate water facilities (including fire hydrants) subject to the specifications of the City Utilities Department as shown on the final utility plan required in ' 151.09(A).

(c) Water main extensions shall be approved by the Utilities Superintendent. If the water main is extended adjacent to property that will not participate in the initial construction cost of the water main, the developer shall submit to the Utilities Superintendent a cost recovery study based upon the actual construction costs showing the amount due from each property when a connection is made to the extended water main.

(d) To facilitate the above, the location of all fire hydrants, all water supply improvements, and the boundary lines of proposed districts shall be shown on the preliminary water and sewer plan.

(2) *Public water supply.* Land which is located over or adjacent to a water bearing stratum or water supply reservoir and which is designated as an area providing or supplementing a municipal water supply shall not be developed or subdivided for residential, recreational, commercial, or industrial purposes except when public water and sewer systems are provided.

(3) *Design standards.* All water facilities including water mains, valves, fire hydrants, storage facilities, and pumping stations shall be designed in accordance with SDCL Ch. 10 of the engineering design standards and are subject to the approval of the City Engineer.

(B) *Sanitary sewers.*

(1) *Provided for each lot.* Each lot within a subdivision area shall be provided with a connection to an approved public sanitary sewer.

(2) *Exceptions.* In areas where a public sanitary sewer is not reasonably accessible, but where plans, including the comprehensive plan, a facilities plan, or any other approved plan for the installation of sanitary sewers in the vicinity of the subdivision has been prepared, the subdivider shall install sewers in conformity to plans approved by the City Engineer. In cases where a connection to an existing public sanitary sewer may not be immediately practical, a connection may be made to the gravity sewer system by the use of a lift station, constructed in accordance with the regulations and requirement set forth by the City Engineer.

(3) *Design standards.* All sanitary sewer facilities including gravity sewers, manholes, lift stations, and force mains shall be designed in accordance with the engineering design standards and are subject to the approval of the City Engineer.

(C) *Public open space.*

(1) Where increased demands on park or recreation areas will occur as a result of the applicant=s proposed residential subdivision or development, the city may require a public open space fee applicable to residential development and dwelling units. Said fee shall be established by resolution of the City Council and may be amended by the Council from time to time. In lieu of the public open space fee, the applicant may dedicate one acre for each 75 proposed dwelling units within the proposed development for open space for park, multi-purpose trails, or recreation purposes. The land that is proposed by the applicant for dedication must be suitable and acceptable to the city for the use or activity that is identified. The City Council declares that development of an area smaller than two acres for public park purposes is impractical. Therefore, if fewer than 150 units are proposed by a plat filed for approval, the developer shall be required to pay the applicable public open space fee. The public open space fee requirement shall not apply to developments of five dwelling units or less, unless such development is a phase, section, or part of a development plan that will include more than five lots when completed.

(2) The public open space fee payment shall occur at the time of platting or as agreed upon in the development agreement. Public open space fee payments shall be deposited in the city=s Park Development Fund and used solely for the purchase of park land and development of same. The open space land dedication in lieu of the public open space fee required by this division (C) shall be made by filing of the final plat unless additional dedication is required subsequent to the filing of the final plat. If the actual number of completed dwelling units exceed the figure upon which the original dedication was based, such additional dedication shall be required, and shall be made by payment of the public open

space fee of land amount or by conveyance of an appropriate amount of land to the city.

(3) Where a proposed park, recreation, or other public area which is shown on the comprehensive plan is located in whole or in part in a residential development, the City Council may require the dedication or reservation of such area within the proposed development for public purposes.

(4) Where private open space for park and recreation purposes is provided in a proposed subdivision, such areas shall not be used for credit towards the requirement of dedication for park and recreation purposes, unless the City Council finds it is in the public interest to do so.

(5) The city, upon consideration of the particular type of development, may require that a lesser parcel of land be dedicated due to particular features of the development. In such cases, a public open space fee contribution shall be required above the land dedication to ensure that compensation is received for the full amount of the impact on the city's park and trail system.

(6) Property being re-platted with the same number of lots and same number of dwellings units shall be exempt from all public open space fee requirements. If the number of lots or the number of dwelling units is increased, or if land outside the previously recorded plat is added, then the public open space fee and/or public open space land dedication shall be based on the additional lots and on the additional land being added to the plat.

(7) Wetlands, ponding areas, and drainageways accepted by the city may not be considered in the public open space fee and/or land dedication to the city. The applicant shall confer with city staff at the time the initial development plan is under consideration to secure a recommendation as to the location of any property that should be dedicated to the public, such as parks, playgrounds, or other public property. The public open space fee may be adjusted by resolution of the City Council.

(Ord. 331, passed 8-13-2013)

## **151.12 GRADING AND DRAINAGE.**

### *(A) Grading plan.*

(1) The final grading plan for the subdivision shall be submitted to and approved by the City Engineer. The grading plan shall, as much as possible, be laid out to conform to the natural contour of the land. At his or her option, the City Engineer will inspect the grading project and charge the grading contractor an inspection fee equivalent to the hourly rate for the personnel involved. The City Engineer shall conduct additional inspections during the course of the grading operation as deemed necessary.

(2) For individual lots, a visual inspection shall be completed prior to the occupancy verifying that the lot grading has been accomplished to the approved site plan and subdivision engineer plans. The city may require an as-built survey in areas with minimal grade or where a problem exists.

(3) The developer shall do all site grading including the front 15 feet of the lots, common greenway and open spaces, stormwater storage ponds, and surface drainageways, including sodding of

boulevards and drainageways.

(4) Boulevards shall be graded at an incline of 2% behind the curb. The sidewalk construction shall be in accordance with the city-approved streetscape and shall reflect a consistent grade that follows the back of the curb.

(B) *Drainage plan.*

(1) The final drainage plan for the subdivision shall conform to the city-approved master drainage plan. If a master drainage plan is not available for a proposed subdivision location and if the city deems it necessary, one will be conducted by the city on the drainage basin of which the proposed subdivision is part. No subdivision plans will be approved prior to completion and acceptance of the master drainage plan.

(2) (a) All drainage facilities, including on-site detention, drainage ways, detention ponds, and drainage channels, shall be shown on a drainage plan and approved by the authorized official and other appropriate city officials. The developer may be required to expand the drainage plan to include other properties within the drainage basin when the city determines the potential exists for impact beyond the development area, both upstream and downstream.

(b) The plan shall provide the following information:

1. Existing and proposed contour lines and the surface water drainage system, including any major alteration of the existing drainage pattern. Drainage ways and detention ponds shall be designed for a 100-year storm occurrence. The contour interval shall be of such detail that the final drainage pattern is adequately illustrated. Major drainage ways which are a designated part of the major drainage system may have sufficient land area dedicated to the city. The area to be dedicated may include the entire area which would be inundated by the 100-year design storm. The city may require an additional 30 feet on each side of said drainage way for maintenance and access;

2. Detention pond sites which are designated parts of the major drainage system shall have sufficient land area dedicated to the city. The area to be dedicated shall include the entire area which would be inundated by the 100-year design storm. The city may also require an additional 30 feet on the perimeter of the pond site in order to provide for maintenance and access. The boundaries of all drainage easements and detention ponds shall also be indicated on the plat. The maintenance agreement for the upkeep of the detention ponds, in form and manner acceptable to the city, shall be filed with the plat;

3. Individual lot drainage shall be coordinated with the general surface drainage pattern for the area. Drainage shall be designed so as to avoid a concentration of storm drainage water from each lot to adjacent lots. Lot corner elevations shall be shown for each lot which shall conform to the general lot drainage plan; and

4. The city requires that detention be implemented to reduce the potential of increasing runoff. Post-development peak runoff rates shall be limited to pre-development peak flow

rates for a five-year and 100-year event as calculated based on guidance in the city engineering design standards or generally accepted procedures in this area. The City Engineer has final approval on drainage design techniques and the use of coefficients if they differ from the design standards. The city's completed stormwater master plan provides general guidance of existing flows and potential developed flows for the purposes of reviewing regional detention.

(c) Drainage channels (open channel drainage ways utilized within a subdivision) with longitudinal slopes of 0.1% to 0.5% shall line the channel with concrete to a depth and width applicable for the flow it needs to convey. Drainage channel with longitudinal slopes of 0.51% to 0.75% shall line the channel with sod to the width applicable for the flow it needs to convey. Channel slopes greater than 0.76% shall utilize sod or conventional seeding to provide permanent soil stabilization. All proposed overland flow routes will be evaluated on a case by case basis for maintenance, access, and potential flow obstructions. Proposed overland flow routes may be required to be concrete based on these evaluations. These evaluations will be complete for all longitudinal slopes.

(C) *Design standards.* All drainage facilities, including storm sewers, on-site detention drainageways, detention ponds, and drainage channels shall be designed in compliance with SDCL Ch. 11 of the currently approved engineering design standards and are subject to approval of the City Engineer.

(Ord. 331, passed 8-13-2013)

### 151.13 EROSION CONTROL PLAN.

#### (A) *Specifications.*

(1) Measures used to control erosion on a development site shall meet the requirements of the engineering design standards. Stripping of vegetation, regrading, and cut and fill operations should be kept to a minimum, as should the amount of land and the duration of exposure. Whenever feasible, development plans should be made in conformance with topography in order to create the least erosion potential. Similarly, as much as possible, natural vegetation shall be retained, protected, and supplemented.

(2) The City Engineer shall require any further measures as necessary to prevent erosion on building sites and developments from depositing wastes or sediments on public streets or other property. Every effort shall be made to retain the natural vegetation on all ditches and drainageways. Ditches and drainageways will not be disturbed without the approval of the City Engineer.

#### (B) *Subdivisions and individual lots.*

##### (1) *Generally.*

(a) Land disturbing activities of one acre or more shall comply with the Erosion and Sediment Control Guidelines of the city's engineering design standards and all State Department of Environment and Natural Resources.



(b) Throughout build-out, a subdivision owner and developer is responsible for and shall implement and maintain best management practices (BMP) and conditions of the approved erosion and sediment control plan to control erosion and sediment problems on all property within the subdivision until the notice of termination is granted. It shall be the responsibility of the subdivision owner and developer to inform owners and contractors of lots within the development about the erosion control standards. The responsibility may be transferred to new owners of lots within the subdivision by completing the transfer of permit coverage form as stated in the general permit.

(Ord. 331, passed 8-13-2013)

#### 151.14 PRESERVATION OF NATURAL FEATURES AND AMENITIES.

Existing natural features which would add value to residential development or to the community as a whole, such as trees, water courses, and similar irreplaceable assets, should be preserved in the design of the subdivision.

(Ord. 331, passed 8-13-2013)

#### 151.15 RURAL SUBDIVISIONS.

(A) *Generally.*

(1) Premature subdivision of land is to be discouraged, due to unavailability of urban services, higher energy consumption, premature and excessive loss of agricultural land, and inefficient delivery of basic government services.

(2) Where rural subdivisions are allowed in the major street plan area, their design standard and minimum improvements are the same as those required within the city limits except for the following exceptions listed below.

(B) *Roads.*

(1) Specifications for roads shall be in accordance with the engineering design standards approved by the City Engineer.

(2) Roads shall be designated on the plat as dedicated right-of-way. The responsibility for maintenance of all subdivision roads shall be certified on the plat or spelled out in a maintenance agreement to be filed with the plat.

(3) All roads shall comply with other right-of-way and street naming requirements outlined in this chapter.

(C) *Lots and blocks.* Lots fronting along an arterial road or a federal, state, or county highway shall be discouraged. Where they are allowed, shared drives may be required, or dedication of a frontage road

between the arterial or highway and the lot shall be provided. Said road shall provide direct access to the adjoining property while limiting curb cuts along the major road. Approval shall be certified by the appropriate public entity for access onto all dedicated roads.

(D) *Grading and drainage.* Driveways and drainage culverts shall be installed by the lot owner in accordance with the engineering design standards and approved by an applicable township, county, or state agency. Stormwater collection and disposal systems may be required by the City Engineer.

(E) *Water supply.* If a city public water system is not available, a central water system shall be provided in such a manner that an adequate supply of potable water will be available to every lot in the subdivision. All subdivisions shall require proof of an adequate water supply prior to issuance of any building permits.

(F) *Sanitary sewers.* In areas where public sanitary sewers are not accessible and no plans for public sewers have been prepared, or where the connection to public sanitary sewer is impractical, individual sewer systems will be permitted provided they comply with the regulations set forth for holding tanks by the appropriate state agency and any additional county requirements.

(Ord. 331, passed 8-13-2013)

#### ' 151.16 VARIANCES.

(A) *Exceptional conditions.* The City Council may grant a variance to this chapter where, by reason of the unusual shape of a specific piece of property, or where, by reason of exceptional topographic conditions, the strict application of these regulations would result in extreme practical difficulties and undue hardship upon the owner of such property; provided, however, that such relief may be granted without detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting such variances or modifications, the City Council may require such conditions as will substantially secure the objectives of the standards or requirements so varied or modified. Financial disadvantage to the property owner is not proof of hardship within the purpose of this chapter.

(B) *Planned development projects.* A comprehensive group housing, commercial, or industrial development, including the large-scale construction of housing commercial or industrial units, together with necessary drives and ways of access may be approved by the City Council although the design of the project does not include standard street, lot, and subdivision arrangements; provided, that departure from the standards of these requirements can be made without destroying their intent and is in accordance with the provisions of Ch. 152 concerning planned development projects.

(Ord. 331, passed 8-13-2013)

#### ' 151.17 ASSURANCES FOR THE COMPLETION OF MINIMUM IMPROVEMENTS.

(A) *Developer assurances for subdivisions within the city limits.*

(1) No plats of any subdivision shall be approved unless the improvements required by this chapter have been installed prior to such approval, or unless the developer shall have signed an assurance agreement to establish the responsibility for the construction of such improvements in a satisfactory manner and within a period specified by the City Engineer; such period not to exceed three years.

(2) An extension to that three-year period may be granted at the discretion of the City Engineer. This developer assurance agreement shall be recorded with the Register of Deeds at the time of filing the plat. The city may require the developer to file with the city a surety bond in which the applicant enters into a contract agreeing to install all required improvements.

(3) This contract and bond shall be subject to the approval of the City Attorney and may be in the form of a surety bond, certificate of deposit, certified check, or other security equal in amount to the amount to the estimated cost of improvements.

(B) *Assurances for rural subdivisions.*

(1) No plat of any rural subdivision shall be approved unless the improvements required by this chapter have been installed prior to such approval, or unless the developer shall have posted a surety bond or irrevocable letter of credit or acceptable cash deposit assuring completion of all required improvements.

(2) No building permits shall be issued until assurances have been filed or all required road improvements have been completed.  
(Ord. 331, passed 8-13-2013)

**151.18 CERTIFICATES REQUIRED.**

(A) *Certificates of preliminary plans.*

CITY COUNCIL APPROVAL

Be it resolved by the City Council of the City of Parkston, that the preliminary plan of (Subdivision Name) to the City of Parkston is hereby approved and that the Finance Officer of the City of Parkston is hereby directed to endorse on such plan a copy of this resolution and certify the same thereon.

Adopted this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Mayor, City of Parkston

ATTEST: \_\_\_\_\_  
City Finance Officer

STATE OF SOUTH DAKOTA )

: SS

**Parkston - Land Usage**

COUNTY OF HUTCHINSON )

I, (Name), the duly appointed, qualified and acting City Finance Officer of the City of Parkston, South Dakota, hereby certify that the above resolution is a true and correct copy of the resolution adopted by the City Council of the City of Parkston, at a meeting held on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand as City Finance Officer and the official seal of the City of Parkston, South Dakota.

\_\_\_\_\_  
City Finance Officer  
City of Parkston, South Dakota

**CITY ENGINEER APPROVAL**

We, (Name), City Engineer of the City of Parkston, do hereby certify that we did duly review and recommend approval of this preliminary plan on this \_\_\_ day of \_\_\_\_\_ 20\_\_.

City Engineer  
City of Parkston, South Dakota

**CITY PLANNING AND ZONING ADMINISTRATOR APPROVAL**

I, (Name), City Planning & Zoning Administrator of the City of Parkston, do hereby certify that I did duly review and recommend approval of this preliminary plan on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Planning and Zoning Administrator  
City of Parkston, South Dakota

**CITY PLANNING AND ZONING COMMISSION APPROVAL**

The City Planning and Zoning Commission of the City of Parkston approves the preliminary plan of (Subdivision Name) to the City of Parkston and the same is recommended to the City Council of the City of Parkston for approval.

\_\_\_\_\_  
City Planning and Zoning Commission  
(Chair)

*(B) Certificates for plats and re-plats.*

**SURVEYOR=S CERTIFICATE**

I, (Name), a Registered Land Surveyor of the State of South Dakota, do hereby certify that I did on or before (Date), survey that parcel of land described as (Legal Description) containing (Size) (and it is in all respects correct).

\_\_\_\_\_  
Registered Land Surveyor

**OWNER=S CERTIFICATE OF COMPLIANCE**

I, (Name), do hereby certify that I am the owner of all land included in the above plat and that said plat has been made at my request and in accordance with my instructions for the purposes (Indicated Herein), and that the development of this land shall

conform to all existing applicable zoning, subdivision, and erosion and sediment control regulations.

DEDICATION OF LAND FOR PUBLIC USE

I hereby dedicate to the public for public use forever the streets, roads and alleys, parks, and public grounds, if any, as shown on said plat, including all sewers, culverts, bridges, water distribution lines, sidewalks, and other improvements on or under the streets, alleys, parks, and public grounds whether such improvements are shown or not. I also hereby grant easements to run with the land for water, drainage, sewer, gas, electric, telephone, or other public utility lines or services under, on or over those strips of land designated hereon as easements.

I hereby waive any rights of protest to any special assessment program which may be initiated for the purpose of installation of improvements required by the Subdivision Ordinance of the City of Parkston.

OWNER=S CERTIFICATE FOR PRIVATE MAINTENANCE OF FACILITIES

I, (Name), also certify that ownership and maintenance of streets, roads and alleys, parks and other open space, private drainage easements, drainageways, and detention areas, if any, as shown on said plat, and any improvements thereto, shall be provided by the \_\_\_\_\_ Homeowner=s Association except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. I also hereby grant easements to run with the land for water, drainage, sewer, gas, electric, telephone, or other public utility lines or services under, on or over those strips of land designated hereon as easements.

If mutual access easements are shown, include:

I further grant and certify that the roadway is a mutual access easement which is hereby created as a perpetual common unobstructed access in favor of the lots abutting on it. The easement is for vehicular and pedestrian travel over the roadway for the purpose of access to the abutting property. The owner, their lessees, and assignees shall maintain the easement area. They shall, at their own expense, keep the easement area in good repair and maintenance and clear of snow and other obstructions. No improvements of any kind may be erected within the easement area which might interfere in any way with the proper maintenance, use, repair, reconstruction, and patrolling of the mutual access easement. This covenant shall run with the land.

If the plat is a condominium or includes common ownership include:

We hereby set aside Tract X as a common area for the purpose of access to a public way and for parking and loading for Tracts A through A . We further certify that the common areas shall be owned by the owners of Tracts A through A inclusive as tenants in common; and that Tracts A through Z shall not be sold, transferred, or otherwise conveyed unless the instrument of conveyance for the Tract being transferred and conveyed also transfers and conveys all of that Tract owner=s interest in Tract X.

If the plat is a re-plat include:

I, ("Name"), do hereby certify that this re-plat will not place any existing lot or building in violation of any applicable ordinance, code, regulation, or law including, but not limited, to zoning, building, subdivision, and flood prevention.

I further certify that this platting of said described (New Subdivision Name) does hereby vacate the following platting:

(Legal description of old plat) on file at the Register of Deeds Office in Book \_\_\_\_\_page \_\_\_\_\_, said plat, hereby vacated, being situated within described (New Subdivision Name) as surveyed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name

STATE OF SOUTH DAKOTA )

**Parkston - Land Usage**

: SS  
COUNTY OF HUTCHINSON)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, appeared (Name), known to be the person whose name is subscribed to the within instrument and acknowledged to me that h or she executed the same for the purposes therein contained.

In witness thereof, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

My commission expires: \_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, South Dakota

**CITY PLANNING AND ZONING ADMINISTRATOR CERTIFICATE**

I (Name), City Planning & Zoning Administrator of the City of Parkston, do hereby certify that this plat has been approved by me or my authorized agent and that the City Finance Officer is hereby directed to certify the same thereon.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20.

**FINANCE OFFICER=S CERTIFICATE**

I, (Name), the duly appointed, qualified and acting Finance Officer of the City of Parkston, South Dakota, hereby certify that the certificate of approval is true and correct including the signature thereon, and that any special assessments which are liens upon the land shown in the above plat, as shown by the records in my office, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, have been paid in full.

\_\_\_\_\_  
City Finance Officer  
Parkston, South Dakota

**COUNTY TREASURER=S CERTIFICATE**

I, Treasurer of Hutchinson County, South Dakota, do hereby certify that all taxes which are liens upon any land included in the above (and the foregoing) plats, as shown by the records of my office, have been fully paid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Treasurer of Hutchinson County, South Dakota

**DIRECTOR OF EQUALIZATION**

I, Director of Equalization of Hutchinson County, South Dakota, do hereby certify that a copy of the above plat has been filed at my office.

\_\_\_\_\_  
Director of Equalization,  
Hutchinson County, South Dakota

**REGISTER OF DEEDS**

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o=clock in, and recorded in Book \_\_\_\_\_ of Plats on page \_\_\_\_\_.

\_\_\_\_\_  
Register of Deeds, Hutchinson County, South Dakota

(C) *Sample assurance agreement form.*

This Agreement, made and entered into on \_\_\_\_\_, by and between the City of Parkston, a municipal corporation, in the State of South Dakota (the ACity@) by and through its Mayor and Members of the City Council (the AGoverning Body@) and \_\_\_\_\_, of \_\_\_\_\_ (address)

(AOwner@) and \_\_\_\_\_

of \_\_\_\_\_ (address), the (ADeveloper@).

For and in consideration of the mutual covenants contained herein, it is agreed as follows:

1. **Definitions.** The following words shall have the meaning set forth hereafter, unless the context clearly indicates otherwise:

- a. City means the City of Parkston;
- b. Developer means the person listed above;
- c. Owner means the person or persons listed above;
- d. Person means an individual, partnership, corporation, or other legal entity;
- e. Development means the property listed on Exhibit A attached hereto which the Owner and Developer wish to plat and develop.
- f. Homeowner Association means the agreement attached hereto that is responsible for the maintenance of streets, water, sewer, and property.

2. **Contract Restrictions on Use of Land.** This Agreement is made pursuant to and in accordance with the provisions of SDCL ' ' 11-5-1 and 11-5-2. Pursuant to Act provisions, the Owner contractually regulates and restricts the construction or use of the land as provided herein.

3. **Purpose of this Agreement.** That a purpose of this Agreement is to provide assurances and conditions upon which the Developer can develop the land and public improvements in accordance with the subdivision ordinances of the City. A copy of the Zoning and Subdivision Ordinances are on file in the Planning and Zoning Office or can be found online at [www.cilyofparkston.org](http://www.cilyofparkston.org).

4. The Developer and Owner have or intend to file with the City a Plat. A Plat application and checklist can be found on the City website. **The Hutchinson County Treasurer and Director of Equalization must sign the plat prior to City approval.**

5. It is agreed and understood by the Developer as follows:

- a. That the Developer will follow all design standards of the City. A hard copy is on file in the Planning and Zoning Office or the City website;
- b. That the Developer will cooperate and communicate with the City engineer;
- c. The Developer agrees to provide for the maintenance of all public streets, public common open space, public recreational facilities, storm water and drainage system, including retention ponds and detention areas, sanitary sewers, and water mains in the development until such time as the City accepts the public improvement by resolution or ordinance;
- d. The Developer agrees to provide for the maintenance of all private streets, private common open space, private recreational facilities, storm water and drainage system, including retention ponds and detention areas, sanitary sewers and water main, and private rights-of-way in the development. The Developer also agrees to provide a sample Home Owners

**Parkston - Land Usage**

Association Agreement and is recorded with the plat;

e. That the Developer will pay all expenses with respect to the Development;

f. The Developer agrees to maintain streets, lots, detention, and public open spaces free of debris and weeds throughout the development until a building permit is issued on that lot or the City accepts the public improvement; and

g. The Developer agrees to provide a Letter of Credit or escrow for the final lift of asphalt.

1. The final lift shall not exceed 18 months or 50% of the residential lots developed, whichever comes first, from the time the first lift of asphalt is completed. A two year warranty on the street is effective from the time of acceptance by the City. No additional phases or plats will be approved until all development construction requirements are met.

2. No final lift of asphalt will be installed within the first year without City Council approval.

**Improvements Required and Method of Payment** (Owner/Developer CD, Special Assessment CS A, Not Required--NR):

<i>Improvements Required</i>	<i>Responsibility of Payment</i>	<i>Comments</i>
<b>STREETS</b>		
Grading and Graveling		
Curb and Gutter		
Paving		
40		
Other		
<b>UTILITIES</b>		
Street Lighting		
Water System		
Sanitary Sewer System		
<b>DRAINAGE</b>		
Storm Sewer		
Drainageways		
Lot Grading		
<b>OTHER</b>		
Park Grading		

6. It is agreed and understood that if there is a failure to follow the City's Design Standards, Ordinances, or subdivision regulations, that the City can deny building permits for the Development until such failures or violations are cured.



7. Any portion of the development which might be considered a public type improvement, if the property had been subdivided and the streets dedicated to the City, shall conform to minimum specifications as called for in the Subdivision Ordinance of the Municipal Code of the City of Parkston, as to size, quality of materials, height, and strength of improvements. For the purpose of the foregoing, the following shall be considered a public type improvement: roadways, sidewalks, curbs and gutters, storm sewer systems, water lines, fire hydrants, and sanitary sewers. Roadways, sidewalks, and curb and gutters shall be located in Development. In the event private streets, sidewalks, or other private utilities are employed in developing the Development, in addition to such improvements conforming to the City Ordinances as provided in the preceding sentence, the Developer shall not permit occupancy and the City shall not issue occupancy permits for any buildings or portions thereof until such private improvements are fully completed to serve the developed area; provided, however, that the City may waive this provision in its entirety or as to portions of the improvements upon the Developer delivering to the City in a form and content agreeable to the City one of the following placing the City in an assured position to complete the improvements: a cash escrow, an irrevocable letter of credit issued by a financial institution, or a performance bond with an acceptable licensed insurance company as surety.

8. This Agreement shall be binding upon the parties to it, their respective grantees, successors, assigns, or lessees for a full term of years commencing, as of the date of this Agreement, provided by statute and to the extent permitted thereby and for such further term as may subsequently be authorized by law. It is here agreed that if the Premises is annexed to the City of and if any of the terms of this Agreement are challenged in any court proceeding, then the period of time during which such litigation is pending shall not be included in the calculation of said year term.

9. Upon a breach of this Agreement, any of the parties in any court of competent jurisdiction, by action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance of both, or may obtain rescission, disconnection, and damages for repudiation or material failure of performance. Before any failure of any party to this Agreement to perform its obligations under this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining party within 5 days of the receipt of such notice.

10. The parties agree that this Agreement and any exhibits attached to it may be amended only by the mutual consent of the parties in writing.

11. List any other agreed items specific to each development.

ATTEST:

\_\_\_\_\_  
Finance Officer

CITY OF PARKSTON

\_\_\_\_\_  
Mayor

OWNER

Name

Name

\_\_\_\_\_

\_\_\_\_\_

Parkston - Land Usage

Name \_\_\_\_\_ DEVELOPER \_\_\_\_\_  
Name and Title

STATE OF SOUTH DAKOTA,  
COUNTY OF HUTCHINSON, ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ personally appeared before me

\_\_\_\_\_

to me known to be the person(s) described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as Ins/her voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of South Dakota.

My commission expires \_\_\_\_\_ .

ATTACHMENTS:

- 1. Home Owners Association Agreement
- 2. Letter of Credit
- 3. Weed & Debris Ordinances

(D) *Sample pre-annexation agreement.*

THIS AGREEMENT is made pursuant to SDCL ' 9-4-1.1 and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the City of Parkston, South Dakota Municipal Corporation (ACity@), and \_\_\_\_\_ (AOwner/Developer@).

WHEREAS, the Owner/Developer has requested that the City of Parkston annex the property subject to this agreement, legal title to which is vested in the Owner, legally described on the attached Exhibit A, shown on the map attached as Exhibit B for illustrative purposes, and Owner/Developer has plans and intentions of developing the annexed property hereafter referred to as the ASubject Property@; and

WHEREAS, the Subject Property is located in the unincorporated portion of Hutchinson County, South Dakota and is contiguous with the City of Parkston on its \_\_\_\_\_ and boundaries. Subject property contains approximately \_\_\_\_\_ acres; and

WHEREAS, City has by execution of this Agreement manifested its intention to annex the Subject Property pursuant to the terms and conditions of this Agreement and SDCL ' 9-4-1.1 and by resolution of the City, the City shall after execution of this Agreement have the Subject Property annexed to the City; and

WHEREAS, the parties intend to fully comply with all relevant statutes of the State of South Dakota and ordinances of the City of Parkston with respect to the annexation, zoning, and subdivision regulations. The City of Parkston has or will give proper notice and conduct all hearings necessary to effectuate the annexation, rezoning, or any other necessary issues including hearing by the Planning & Zoning Commission, and the Council of the City of Parkston, to effectuate this agreement in the annexation of the Subject Property; and

**In consideration of this agreement, the City and Owner/Developer further mutually covenant and agree to the**

following terms and conditions:

1. **Completion of the Annexation Process.** Owner/Developer will file with the City all documents necessary to complete the annexation process.

2. **Zoning.** The Subject Property, upon annexation, application, and proper consideration shall complete the process for change of zoning district to reflect residential and commercial zoning classification or planned development district as defined and permitted by the zoning ordinances of the City of Parkston as well as the Official Zoning Map. The Subject Property shall be developed in accordance with the plan marked Exhibit C which attached here and made a part of this Agreement.

3. **Comprehensive Plan.** The Owner/Developer shall make all efforts necessary to comply with the current Comprehensive Plan for Community Development for the City of Parkston and the execution of this Agreement as well as completion of the annexation process will serve as acknowledgment of compliance with the comprehensive plan.

4. **Subdivision Regulations.** The Owner/Developer will follow and adhere to the requirements of the Subdivision Regulations which in turn requires compliance with the Comprehensive Plan, Zoning Regulations, Official Zoning Map, Engineering Design Standards, and other applicable plans or regulations, such as nuisance ordinances. Subdivision Regulations are attached and made a part of this Agreement as Exhibit C.

5. **Park Development.** Owner/Developer agrees to comply with ' 151.11, Public Open Space.

6. **Conveyance or Dedication.** Owner/Developer shall convey or dedicate all necessary easements to the City for the extension of water, sewer, or other utilities or for other public improvements which may serve not only the Subject Property but other properties. These easements or right-of-way shall be located as to cause a minimum of inconvenience in the development of the Subject Property Owner/Developer shall provide access to each street for the construction of streets. Any street right-of-way not dedicated at the time of annexation shall be dedicated in the final plats and the City shall accept the dedication of any such right-of-way.

7. **Development Plans.** Before Final Development Plans on Subject Property are approved by the City of Parkston, Owner/Developer agrees to sign a Developer Assurance agreement as required by the Parkston Subdivision Ordinance.

8. **Agreement Binding on Successors.** This Agreement shall be a covenant running with the land, the Subject Property, and shall be binding upon and inure to the benefit of the parties, successor owners of record of the Subject Property, assignees, and lessees.

9. **Recordation.** This Agreement shall be recorded in the Hutchinson County Register of Deeds Office to give notice to the public and all interested parties of the obligations herein.

CITY OF PARKSTON, SOUTH DAKOTA

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(CITY SEAL)

(NAME OF OWNER/DEVELOPER)  
By \_\_\_\_\_

(Ord. 331, passed 8-13-2013)

**' 151.19 AMENDMENTS.**

Any provisions of these regulations may from time to time be amended, supplemented, changed, modified, or repealed by the City Council according to law; however, such amendments, supplements, changes, or modifications shall not become effective until after study and recommendation by the Planning and Zoning Commission and final approval by the City Council as follows:

(A) Proposed change(s) in subdivision regulations drafted and sent to City Attorney for review;

(B) Letter received from City Attorney confirming legality of proposed change(s);

(C) Planning and Zoning Commission holds a public hearing on the proposed change(s) with notice to be published in the city=s official newspaper at least ten days prior to the scheduled date of the public hearing;

(D) Planning and Zoning Commission recommends adoption of the proposed change(s) to the City Council;

(E) City Council holds a public hearing on the proposed change(s) with notice to be published in the city=s official newspaper at least ten days prior to the scheduled date of the public hearing;

(F) First reading of ordinance changing the regulations held;

(G) Second reading and adoption of the ordinance changing the regulations held;

(H) Notice of adoption published; and

(I) Revised subdivision regulations become effective 20 days after publishing the notice of adoption, unless the referendum is invoked.

(Ord. 331, passed 8-13-2013)

**' 151.20 ENFORCEMENT AND VIOLATIONS.**

(A) The Planning and Zoning Administrator and City Engineer are hereby authorized and directed to enforce all the provisions of these regulations and establish rules for its administration. For such purposes, the Planning and Zoning Administrator shall have the powers of a law enforcement officer.

(B) No owner or developer of any parcel of land located in a proposed subdivision shall transfer or sell any part of the parcel before a final plat of the subdivision has been approved in accordance with the provisions of the regulations and filed with the County Register of Deeds unless provisions of plat

exemptions apply as within ' 151.06(D) (subdivision plan exemptions - minor plat) and (E) (plat exemptions).

(C) Whenever any work is done contrary to the provisions of these regulations, the Planning and Zoning Administrator may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done; and any such persons shall forthwith stop such work until authorized by the Planning and Zoning Administrator to proceed with work.

(D) The Planning and Zoning Administrator and City Engineer shall together have the authority to make interpretations of these regulations and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions.

(E) No permit shall be issued for the demolition or construction of any building or structure located on a lot or parcel subdivided or sold in violation of the provisions of these regulations.  
(Ord. 331, passed 8-13-2013)

**' 151.21 LEGAL STATUS PROVISIONS.**

(A) *Purpose of captions.* The captions appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose 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) *Grandfather clause.* Any pre-existing subdivision=s infrastructure that has not been officially adopted by the City Council must meet the standards set out in this chapter. This does not pertain to infrastructure that has already been installed prior to the passing of this chapter.

(C) *Effective date.* This chapter shall take effect and be in force from and after its passage and publication according to law.  
(Ord. 331, passed 8-13-2013)

***DEVELOPMENT ENGINEERING PLAN CRITERIA***

**' 151.35 GENERAL REQUIREMENTS.**

(A) Before a plat is submitted, developers shall have an approved development engineering plan which shall comply with the following criteria and all engineering design standards consisting of a:

- (1) Lot and block layout - approved by Planning and Zoning Administrator and City Engineer;
- and

(2) Drainage, water, and sanitary sewer developer=s engineering plans - approved by City Engineer.

(B) The plat shall conform to the criteria of the preliminary subdivision plan, plus the additional criteria for development engineering plans.  
(Ord. 331, passed 8-13-2013)

‘ **151.36 BLOCKS.**

Block lengths shall not exceed 1,200 feet.  
(Ord. 331, passed 8-13-2013)

‘ **151.37 LOTS.**

(A) Lot dimensions shall be appropriate for the location of the subdivision and conform to this chapter.

(B) Each lot shall abut a dedicated right-of-way, mutual access, or common area.

(C) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide off-street parking and loading for the use contemplated.

(D) All interior lot lines shall be a straight line or a series of straight lines. Curved interior lot lines shall be prohibited.

(E) Side lot lines shall be at right angles to streets except on curves where they shall be radial except when otherwise approved.

(F) Corner lots for residential use shall have extra width to permit appropriate building setbacks from both sides.

(G) In undeveloped or vacant areas, streets shall be identified and classified through the transportation planning process. The location of major streets shall conform to the official major street plan.

(H) Number of units shall not exceed 30 with only one access.  
(Ord. 331, passed 8-13-2013)

‘ **151.38 STREETS SYSTEM.**

(A) *Street design standards.*

(1) *Generally.* All public street improvements, including pavement width, street grades, alignment and visibility, and intersections shall be designed in accordance with standard accepted engineering practice and are subject to the approval of the City Engineer. All public street facilities shall be designed in compliance with the engineering design standards.

(2) *Half streets.* Whenever an existing half street is adjacent to a tract being subdivided, the other half of the street shall be platted within said subdivision. A preliminary plan of a subdivision may show half a street along adjoining property which has not been subdivided, but only a lot(s) abutting the dedicated half street side shall have a building permit issued for it.

(B) *Traffic calming.* Improving traffic flow into and through subdivisions also needs to take into consideration traffic volumes and speeds. Traffic calming is the process by which vehicular speeds and volumes on local streets are reduced to acceptable levels. This is achieved through the installation of approved devices such as traffic circles, flares, and center islands. Traffic calming serves the purpose of reducing cut-through traffic, truck traffic, excessive speeding, noise, vibration, air pollution, and accidents in an attempt to provide a safer environment for motorists and pedestrians.

(1) Approved devices shall be spaced within the right-of-way along major collectors through residential subdivisions, based upon engineering design standards or based upon nationally recognized calming measures.

(2) Traffic calming devices may be required by the City Engineer, based upon the review of a traffic impact study.

(C) *Arterial and collector street development.* In order to maintain the traffic carrying capacity of the arterial and collector streets by limiting access from individual lots, and in order to protect the residents of property adjacent to arterial and collector streets for the high traffic volumes associated with the street, property along such arterials and collectors shall be subdivided in the manner set forth below.

(1) *Double frontage lots.* Where double frontage lots are permitted, an extra lot depth or width shall be required to provide for an extra setback to offset the impact of high traffic volume. When double frontage lots are proposed, the developer shall be required to escrow a sufficient amount of money to pay for the assessments on the arterial street or shall finance and complete construction of the arterial street to city specifications prior to plat approval.

(2) *Arterial or collector streets.*

(a) Whenever an arterial or collector street has been constructed for which the cost has not been apportioned against the property located outside the city which abuts an arterial street constructed by special assessment and which benefits the property located outside the city limits, the property shall pay its proportionate share of the cost of such construction, without interest, according to the benefits to accrue to such property before it may be served by the street. Access to an arterial shall be as described in the engineering design standards.

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(b) Collector and arterial streets will be constructed through special assessments based on the criteria above. The city may enter into agreement with an adjacent landowner for private construction of a collector street.

(D) *Privy streets.* There shall be no private streets platted within a subdivision. There shall be no reserve strips in a subdivision except where their control is definitely vested in the city under conditions approved by the City Council, as authorized by this chapter.

(E) *Mutual access easements.* When the traffic impact of one or more proposed property developments indicates that the public safety can be better served by the use of mutual access easements, the following requirements shall be observed.

(1) Any mutual access easement accepted by the city must provide for perpetual unobstructed access to the area it serves, and prohibit the erection of any structure within or adjacent to the access area which would interfere with the use of the mutual access easement by the public or any governmental agency.

(2) Mutual access easements shall be indicated on the plat or by recorded easement.

(3) Any plat presented for city approval which shows a mutual access easement as a means of access shall provide language in the owner=s certificate (see ' 151.17) reserving the mutual access easement as a perpetual unobstructed access easement.

(4) Mutual access easement areas shall be paved by the developer and maintained in passable condition. Designs for mutual access easements must be approved by the City Engineer.

(5) An easement area maintenance agreement among property owners who will depend on the mutual access easement for access shall be filed with the plat. It shall describe the legal responsibilities for the repair and maintenance of the easement area and the required signs (see division (E)(6) below).

(6) The developer may be required to place traffic control signs on mutual access easements or to pay the city to place traffic control signs for mutual access easements at the locations the City Engineer deems necessary for the safety and convenience of the public. Traffic control signs shall be approved by the City Engineer.

(F) *Alleys.*

(1) Alleys are permitted in commercial and industrial districts, except where provision is made for service access, such as off-street loading, unloading, and parking consistent with the requirement set forth in this chapter.

(2) Alleys are permitted in residential districts when design standards and conditions warrant an alternative means of access.

(G) *Continuation of street names.* Streets obviously in alignment with existing streets shall bear the



names of those streets. When, due to topography, offsets caused by rectangular surveys or other physical features, streets become interrupted, quarter line and section line streets shall retain the same name on either side of the irregularities.

(H) *Street naming criteria.*

(1) No street names shall be used which will duplicate, be the same in spelling, or alike in pronunciation with any other existing streets.

(2) All street names should be kept as short as possible to permit signs to be no longer than 36 inches.

(3) All street names shall indicate directions either north, south, east, or west.

(I) *Prohibition on certain street name suffixes.* No development engineering plan shall be approved which use the names of square, ridge, pass, way, or terrace as a suffix for a street name.

(Ord. 331, passed 8-13-2013)

' **151.39 FLOOD HAZARDS.**

(A) (1) Land subject to flooding and land deemed to be topographically unsuitable for residential development shall not be platted for residential use or for any other use, which may increase the danger to health, life, or property or aggravate erosion or flood hazards. Such land within the subdivision shall be set aside on the plat for such uses as will not be endangered by periodic or occasional inundation contrary to public welfare.

(2) To ensure that lots will be located only where they will provide flood-free house sites, the City Council may require the subdivider to provide elevation and flood profiles sufficient to demonstrate that the house sites will be completely free from the danger of flooding.

(B) (1) If a stream flows through or adjacent to the proposed subdivision, the plat plan shall provide for an easement or right-of-way along the stream for a floodway.

(2) For smaller streams, the plan shall also provide for channel improvement to enable them to carry all reasonable floods within banks. The floor elevations of houses shall be high enough to be well above the extraordinary flood.

(3) The floodway easement shall be wide enough to provide for future enlargement of the stream channel as adjacent areas become more highly developed and run-off rates are increased.

(Ord. 331, passed 8-13-2013)

' **151.40 WALKWAYS.**

Concrete or asphalt pedestrian walks of an appropriate width (as determined by the City Engineer) shall be required through blocks where deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, bus stops, and other community facilities. They may also be required to provide access through greenways and common areas. The walks shall be maintained by the adjacent property owners.

(Ord. 331, passed 8-13-2013)

**' 151.41 MINIMUM SUBDIVISION IMPROVEMENTS.**

Where development engineering plans are approved and plats within the development engineering plan are platted, utilities will be required to be extended to the edge of adjacent platted land.

(Ord. 331, passed 8-13-2013)

**' 151.42 MAINTENANCE AGREEMENTS.**

Where the subdivision contains sewers, sewage treatment plants, water supply systems, park areas, storm drainage systems, road systems, or other facilities or services which are necessary to or desirable for the area, and which are of common use or benefit and which are not accepted for maintenance by an existing public agency, provisions shall be made by trust agreement for the proper and continuous maintenance and supervision of such facilities. A final and signed copy of the agreement shall be attached to each and every plat having a facility or service covered by such an agreement.

(Ord. 331, passed 8-13-2013)

**' 151.43 EASEMENTS.**

(A) Easements shall be provided and dedicated where necessary for wires, cables conduits, fixtures, and equipment for distribution of electric power, wastewater collectors, storm drains, overland stormwater flow routes, sidewalks, pedestrian ways, bikeways, private roadways, and water mains at such locations and widths as determined by the city. The width of easements required for public wastewater collectors, storm drains, and/or water mains shall be as specified in the engineering design standards for the particular improvement adopted by the city. It is the policy of the city to locate all necessary utilities in the right-of-way or in easements abutting rear or side lot lines, except on double frontage lots.

(B) Deviations from this policy may be made when it is demonstrated that the utility is necessary and no practical alternative locations exist, in any dedication of an easement, the city may prohibit or restrict building, fences, driveways, and other improvements; may enter for construction, reconstruction, replacement, repair, operation, and maintenance purposes; and will be held harmless for the cost of replacement or damage to any improvement or vegetation within the easement and may make any other appropriate or necessary requirements.

- (1) All easements for municipal utilities shall be shown on the plat.

(2) There shall be a 12-foot utility easement for municipal utilities along all right-of-way frontages; except when the setback is equal to or less than 20 feet, then the utility easement shall be equal to half the distance of the required setback per the zoning district.

(3) Easements centered on rear lot lines shall be provided for utilities and drainage where necessary and shall be a minimum of 20 feet in total width unless otherwise required by the City Engineer. Utility easement shall be located outside the drainage easement.

(4) Where topographical or other conditions warrant side yard easements and easements across lots, easements at least ten feet in total width shall be provided.

(5) Lots and easements shall be arranged in such a manner as to eliminate unnecessary jogs or offsets and to facilitate the use of easements for power distribution, telephone service, drainage, water, and sewer services.

(6) The property owner whose property is subject to such easements shall be responsible for its maintenance. The property owners shall keep the easement clear of any structure, debris, trees, shrubs, or landscaping whatsoever except that lawn grass, which shall be regularly mowed, and annual vegetation may be grown thereon.

(7) The city reserves the right to widen any easement based on utility depth and access potential.

(Ord. 331, passed 8-13-2013)

**' 151.99 PENALTY.**

Any person violating any provisions of these regulations shall be punishable by a fine not to exceed the fine established by SDCL ' 22-6-2(2), by imprisonment not exceeding 30 days, or by both fine and imprisonment. Each day in which a violation of these regulations continues shall constitute a separate offense.

(Ord. 331, passed 8-13-2013)



## CHAPTER 152: ZONING

### Section

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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 *The 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;

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(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 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 Aentrance@, 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: AThis 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: AOn (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 hereinafter 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.

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(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	





Sign Type	Zoning Districts											
	Agricultural		Residential		Commercial		Highway Commercial		Industrial		Public/Semi-Public	
	Area	Ht	Area	Ht	Area	Ht	Area	Ht	Area	Ht	Area	Ht
Off-site (Billboard)	200	10	<i>Not permitted</i>		200	10	200	10	200	10	200	10
On-site (g)	6	4	12	6	6	4	6	4	6	4	6	4
Real Estate	32	6	4	4	6	4	32	6	32	6	32	6
Temporary (c)	32	6	4	4	6	4	32	6	32	6	32	6
<b>Building Signs</b>												
Banner	12	4	12	4	12	4	12	4	12	4	12	4
Home Occupation	6	4	6	4	6	4	6	4	6	4	6	4
Mounted Wall	200	10	<i>Not permitted</i>		100	10	200	10	200	10	200	10
Namplate	6	2	4	2	4	2	6	2	6	2	6	2
Projecting (d)	100	10	<i>Not permitted</i>		25	6	100	10	100	10	100	10
Roof	100	10	<i>Not permitted</i>		100	10	100	10	100	10	100	10
<b>Other Signs</b>												
Easement and Utility	5	2	5	2	5	2	5	2	5	2	5	2
Grounds and 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

*All measurements are in feet or square feet*

- (a) Must be at least 10 feet from front lot line in all districts, except commercial. All other yard requirements must be met
- (b) These signs are allowed in all districts and shall conform to standards adopted or approved by the regulating public agency
- (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
- (d) Must be at least 10 feet in height above grade
- (e) The total area of all sides of these signs shall not exceed 200 square feet
- (f) There are no specific height regulations for flags
- (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 AObjects 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

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(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:

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(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) Amphitheaters, 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:

Standards;

- (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 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) 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;

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(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:

**Parkston - Land Usage**

- 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 rights 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)