Title 17

ZONING

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Chapter 17.04

GENERAL PROVISIONS

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17.04.010 Purpose of title.

A. This title is a zoning ordinance combined with a historic preservation ordinance (Chapter 17.68.)

B. It is the purpose of this title to promote the orderly development of the city and to improve the health, safety and general welfare of its citizens.

C. Specifically, this title is designed to achieve the following zoning goals:

1. Lessen congestion in the streets;

2. Secure safety from fire, panic and other dangers;

3. Provide adequate light and air;

4. Prevent overcrowding of land;

5. Avoid undue concentration of population;

6. Facilitate adequate provisions of transportation, water, sewage, schools, parks and other public services;

7. Protect water quality;

8. Preserve and enhance visual attractiveness and economic vitality;

9. Require appropriate setbacks for buildings and other structures to facilitate the safe movement of vehicular pedestrian traffic, provide adequate fire lanes and ensure adequate distance from dust, noise and fumes created by vehicular traffic;

10. Reduce the amount of grading necessary for site preparation; and

11. Encourage the most appropriate use of land throughout the community.

(Ord. 952 (part), 1999: Ord. 831 § 1.1 (part), 1992)

17.04.020 Purpose of historic preservation chapter (Chapter 17.68.)

A. The city is internationally known for its role in the history of the United States, for its significant collection of historic resources, and for its natural setting. As a matter of public policy, the city intends to preserve, enhance and perpetuate those aspects of the city that have historical, cultural, architectural, archeological and/or natural merit. Such activities will promote and protect the prosperity, education and general welfare of citizens and visitors to Deadwood.

B. The historic preservation chapter is designed to achieve the following goals:

1. Protect, enhance and perpetuate resources which represent distinctive and significant elements of the city's historical, cultural, social, economic, political, archeological and architectural identity;

2. Strengthen civic pride and cultural stability through neighborhood conservation;

3. Stability the city's economy through the use, preservation and revitalization of its resources;

4. Protect and enhance the city's attractions to visitors and the resulting support and stimulus to business and industry;

5. Promote the use of cultural resources for the education, pleasure and welfare of the people of the city;

6. Provide a review process for the continued preservation and appropriate development of the city's resources.

(Ord. 952 (part), 1999; Ord. 831 § 1.1 (part), 1992)

17.04.030 Enactment.

This chapter is adopted pursuant to the authority conferred within 1967 SDCL, Chapters 11-4, 11-6, 9-19, 9-29 and 1-19B as amended. This title is enacted by ordinance.

(Ord. 900 (part), 1995; Ord. 831 § 1.2, 1992)

17.04.040 Title.

This title (including all addenda and amendments) shall be known as the "zoning code," and may be cited as such and shall also be referred to as such herein.

(Ord. 831 § 1.3, 1992)

17.04.050 Interpretation.

In applying the provisions of this title, they shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare. Whenever the requirements of this title are also regulated by another ordinance, the ordinance, which is deemed more restrictive, shall govern.

(Ord. 831 § 1.4, 1992)

17.04.060 Jurisdiction.

The jurisdiction of this title shall include the corporate limits of the city and such additional territory outside the corporate city limits as permitted by 1967 SDCL, Chapter 11-6 and agreed upon by the county commissioners of Lawrence County upon petition by the city.

(Ord. 831 § 1.5, 1992)

17.04.070 Rules of construction.

For the purpose of this title, certain words and terms are to be interpreted as follows:

A. Words used in the present tense can include the future; words used in the masculine gender can include the feminine and neuter; words in the singular number can include the plural; and the words in the plural can include the singular, unless the obvious construction of the wording indicates otherwise.

B. The word “building” includes the word “structure” and the word “structure” includes the word “building”; the word “lot” includes the word “plot”; the word “used” shall be deemed also to include designed, intended or arranged to be used; the term “erected” shall be deemed also to include constructed, reconstructed, altered, placed, relocated or removed.

C. Unless otherwise specified, the term “day” means calendar day.

D. The word “may” is discretionary.

E. The word “shall” is mandatory.

F. The word “persons” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

G. Words shall dominate over graphics.

(Ord. 831 § 1.7, 1992)

17.04.080 Severability.

A. The requirements and provisions of this title are severable, and should any section, part or provision of this title be declared invalid or unconstitutional by any court of competent jurisdiction, the decision of the court shall not affect the validity of the title, as a whole or any section thereof, other than the section, part or provision thereof, so declared to be invalid or unconstitutional.

B. Appeals from decisions of the board of adjustment may be taken as provided in SDCL 11-4-25. Ordinances or parts of ordinances in conflict or inconsistent with the provisions of this title are repealed to the extent necessary to give this title full force and effect.

(Ord. 1010 § 1 (part), 2003; amended during 2004 codification; Ord. 831 § 1.8, 1992)

17.04.090 Conformance required.

A. This title is intended to regulate the erection, construction, reconstruction, alteration and use of buildings and structures and the uses of land. All regulations shall be uniform for each class or kind of building throughout each district.

B. The requirements set forth in the districts shall be considered as minimum requirements for the district and may be exceeded by the individual property owner, except as provided in this section:

1. No land shall be used or occupied except in conformity with the regulations prescribed for the district in which the land is located.

2. No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any buildings or part thereof be used or occupied except in conformity with the use regulations prescribed for the district in which the building is located.

3. No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered except in conformity with off-street parking as prescribed by the uses.

4. The minimum site area, yards, parking spaces and open spaces required by this title for each building existing at the time of the passage of the ordinance codified in this title or for any building hereafter erected, shall not be encroached upon or considered as required yard or open space for any other building, except as hereinafter provided, nor shall any site area

be reduced below the requirements of this title.

5. Every building or structure, other than any accessory structure, hereafter erected, converted, enlarged, reconstructed, moved or structurally altered, shall have provided and continuously maintained for it a separate building site as defined in Chapter 17.08.

6. Construction of principal use and accessory use structures may be concurrent, but no accessory use structure shall be constructed or occupied prior to construction or occupancy of the principal structure.

7. Every use, except as expressly exempt by this title, shall be operated entirely within a completely enclosed structure.

8. No grading shall be undertaken within the corporate limits of the city without having been first issued a grading permit from the building inspector. Approval may be contingent upon review by a registered professional engineer, city archaeologist, city historic preservation officer and other city officials at the discretion of the city. Before any permit is issued the applicant shall pay a permit fee as listed in the city fee schedule, which is set and amended by resolution.

(Ord. 1271, 2017; Ord. 851 (part), 1993; Ord. 831 § 4.1, 1992)

17.04.100 Permits.

A. A building permit is required for any activity covered by this title or any other ordinance duly passed by the city. The fee for such permit shall be established based upon the value of the project for which a permit is requested, as applied to a schedule of fees that has been established by the City Commission in its Code of Ordinances, Section 15.01.060.

B. No land shall be used or occupied and no structures shall be occupied except in conformance with all regulations established in this title and upon performance of all conditions set forth.

C. A demolition permit is required for any activity covered by this title or any other ordinance duly passed by the city. The fee for such permit shall be established based upon the tax assessed value of the property to be demolished, for which a permit is requested, as applied to a schedule of fees that has been established by the City Commission in its Code of Ordinances, Section 15.01.060.

D. In demolition cases involving natural disasters, fire, or emergency measures, the minimum permit fee shall apply upon approval of the building official with concurrence of the historic preservation officer as long as the demolition does not encroach upon, damage, or destroy any historic property included in the National Register of Historic Places or the State Register of Historic Places or have an adverse effect on the historic districts under Section 17.68.020.

(Ord. 1205, 2014; Ord. 1091, 2007; Ord. 831 § 10.6, 1992)

17.04.110 Violation of title--Penalty.

A. The building inspector shall have the authority to issue citations to any person who violates this title or any amendment hereto. The citation for a Class 2 misdemeanor is punishable by the maximum punishment set forth by the laws of the State of South Dakota pursuant to SDCL 22-6-2. Each day that any violation of this title is in effect shall constitute a separate offense. Penalties for violations of Chapter 17.68 shall be found in Section17.68.120.

B. In addition to the penalties prescribed by subsection A. above, any person who commences work on a building, structure, electrical, gas, mechanical or plumbing system, or demolition, before obtaining the necessary permits, or is in violation of the approved plans, or is otherwise in violation of this title or any amendment hereto, shall be subject to an additional fee established by this section that shall be in addition to the required permit fees. The additional fee shall be a minimum of one hundred dollars ($100.00) for any project valued one thousand dollars ($1,000.00) or less. Any project valued over one thousand dollars ($1,000.00) shall be assessed an additional fee of two (2) times the permit fee that was required, pursuant to the schedule found in Chapter 15.01. An investigation fee shall be collected whether or not a permit is then or subsequently issued unless said permit is issued within twenty-four (24) hours of the receipt of criminal citation, pursuant to subsection A. above.

(Ord. 1213, 2014; Ord. 1092, 2007; Ord. 1010 § 1 (part), 2003; amended during 2004 codification; Ord. 851 (part), 1993; Ord. 831 § 10.11, 1992)

17.04.120 Financial guarantees.

A. General.

1. If at the time of a request for a certificate of occupancy all work required by a building permit or development agreement is not completed, the developer shall provide financial security in the form of an escrow of funds with the city, a letter of credit or other financial guarantee that is acceptable to the city attorney to secure the installation or completion of improvements required by this title or the terms of a development agreement, including without limitation, landscaping, building and site treatment, and public improvements.

2. The city planning department shall establish the amount and term of the financial guarantee.

3. The developer shall install or complete the improvements within the time specified in the development agreement.

4. The city planning department shall review the financial guarantee annually to assure that it meets the full current cost of installing or completing the improvements that it guarantees and may require the developer to augment the guarantee to

meet such costs.

5. If the improvements are not completed within the required time, the city planning department may cause them to be completed and collect against the financial guarantee or, if the guarantee is exhausted, against the developer for their full cost of completion.

6. The requirements of this section are in addition to any requirements for financial guarantees under any other provision of this title.

B. Commercial Building Permit.

1. At the time of application for a commercial building permit for any commercial projects greater than $100,000, the general contractor shall provide, along with the permit application, engineered plans for the work to be completed under the commercial building permit, along with an estimated time of completion for the project. The developer shall also provide financial security in the form of a performance bond that is acceptable to the city attorney to secure the completion of improvements under the commercial building permit, including, without limitation, landscaping, building, site treatment and public improvements,

2. In any instance where the developer seeks to act as general contractor for the project, the developer shall provide a performance bond, escrow funds with the city, letter of credit or other financial guarantee satisfactory to the city planning department to secure the completion of improvements under the commercial building permit, including, without limitation, landscaping, building, site treatment and public improvements.

3. The city planning department shall establish the amount and term of the performance bond, taking into account the total value of the project sought under the commercial building permit, as well as any costs of remediation should the developer fail to complete the project under the commercial building permit.

4. The city planning department shall review the performance bond annually to ensure that it meets the full and current costs of installing and completing the improvements that it guarantees, and may require the development developer to augment the bond or guarantee to meet such costs.

5. If the improvements are not completed within the required time, the city planning department may cause them to be completed and collect against the performance bond or, if the guarantee is exhausted, against the developer for their full cost of completion.

6. Requirements of this section are in addition to any requirements for financial guarantees under any other provision of this title.

C. Certificate of Occupancy.

1. If at the time of a request for a certificate of occupancy all work required by a commercial building permit or development agreement is not completed, the developer shall provide financial security in the form of an escrow of funds with the city, a letter of credit or other financial guarantee that is acceptable to the city attorney to secure the installation or completion of improvements required by this title or the terms of a development agreement, including, without limitation, landscaping, building and site treatment, and public improvements.

2. The city planning department shall establish the amount and term of the financial guarantee.

3. The developer shall install or complete the improvements within the time specified in the development agreement.

4. The city planning department shall review the financial guarantee annually to assure that it meets the full current cost of installing or completing the improvements that it guarantees, and may require the developer to augment the guarantee to meet such costs.

5. If the improvements are not completed within the required time, the city planning department may cause them to be completed and collect against the financial guarantee or, if the guarantee is exhausted, against the developer for their full cost of completion.

6. The requirements of this section are in addition to any requirements for financial guarantees under any other provision of this title.

(Ord. 1258, 2017; Ord. 831 § 10.12, 1992)

Chapter 17.08

DEFINITIONS

Sections:

17.08.010 Definitions.

17.08.010 Definitions.

As used in this title:

“Accessory” means subordinate or incidental to, and on the same lot or on a contiguous lot in the same ownership, as the building or use being identified or advertised.

“Accessory dwelling unit” means a separate and complete single housekeeping unit within a single-family dwelling unit. The single-family dwelling unit shall be owner occupied. See “dwelling, single-family.”

“Accessory use” means a use or building which:

1. Is clearly subordinate to, customarily found in association with, and serves a principal use; and

2. Is subordinate in purpose, area or extent to the principal use served; and

3. Contributes to the comfort, convenience or necessity of the occupants, business enterprise or operation within the principal use served or is located on the same lot as the principal use.

“Adult education facility or service” means a vocational or academic educational use serving a clientele at least fifty (50) percent of which are individuals who are eighteen (18) years of age or older.

“Agency” means the city commission and any officer, employee, department, division or other agency of the city, including boards and commissions.

“Agriculture” means the science and art of the production of plants and animals useful to humans, including the preparation of the products for humans’ use and their disposal by marketing or otherwise. In this broad sense it includes farming, horticulture, forestry, dairying, etc.

“Alley” means a street or way within a block set apart for public use, vehicular travel and local convenience to provide access to the rear or side of the abutting lots or buildings.

“Alteration” means any change to a resource because of construction, repair, maintenance or other means, except for maintenance and repairs which does not involve a change in design, material, color or outer appearance.

Alteration, Structural. “Structural alteration” means any change to a resource because of construction, repair, maintenance or other means, except for maintenance and repair which does not involve a change in design, material, color or outer appearance.

“Apartment house” means a residential building or a portion of a building containing three or more dwelling units for occupancy by three or more families living separately from each other.

“Appeal” means obtaining review of a decision, determination, order or failure to act pursuant to the terms of this title as expressly authorized.

“Appear on behalf of” means to act as a witness, advocate, or expert or otherwise to support the position of another person.

“Applicant” means the owner of record of a particular property; the lessee thereof with the approval of the owner of record in notarized form; or a person holding a bona fide contract to purchase a particular property, who makes application under this title.

“Approving agency” means the individual or agency which grants final approval to an applicant under this title.

“Appurtenances” mean:

1. Architectural features not used for human occupancy, consisting of spires, belfries, cupolas or dormers; roof water storage tanks; silos; parapet walls; and cornices without windows; and

2. Necessary mechanical equipment usually carried above the roof level having no more than twenty-five (25) percent roof coverage, including without limitation, chimneys, ventilators, skylights, antennas, microwave dishes and solar systems, and excluding wind energy conversion systems.

“Architectural projection” means any building projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, including without limitation, roof overhangs, mansards, unenclosed exterior balconies, marquees, canopies, awnings, pilasters and fascias, but not including signs.

“Automotive vehicle” means any vehicle, including every device in, upon or by which a person or property is or may be transported or drawn upon a public highway or any device used or designed for aviation or for flight in the air and upon which a specific ownership tax is imposed by the state of South Dakota, including without limitation, all motor vehicles, trailers, semi-trailers and aircraft, but excluding devices moved by human power or used exclusively upon stationary rails or tracks.

“Basement” means that portion of a building between floor and ceiling that is located partly below and partly above grade and has less than half its clear floor-to-ceiling height below the average grade of the adjoining ground abutting the exterior walls of the dwelling unit.

“Bathroom” means a room containing a toilet that may also contain a lavatory, shower or bathtub.

“Bed and breakfast establishment” means:

1. A single detached dwelling where temporary lodging or sleeping accommodations with no more than three guest rooms is provided with a breakfast meal to the traveling public, by the owner and his or her immediate family for a payment and such use shall be subordinate to the principle use of the dwelling as an owner occupied residence;

2. No bed and breakfast home shall be located on a lot closer than two hundred (200) feet or eight residences, whichever is greater, from any other lot containing a bed and breakfast home. However, the planning and zoning commission may waive the distance limitation if the structure is listed on the National Register of Historic Places or eligible for individual listing on the National Register of Historic Places. The Deadwood building inspector shall inspect the premises to insure compliance with the Building Code;

3. Applicants proposing tandem parking shall be required to provide a control board for the keys of the guests. The owner/manager shall be responsible for the control board. The subject residence proposed for a bed and breakfast shall be required to provide the following: (a) water meter, if one has not been installed on the subject premises; (b) proof of a state excise tax number shall be provided to the planning and zoning office for their files; and (c) proof that the business improvement district has been notified of the bed and breakfast establishment.

“Beneficiary.” (Reserved.)

“Berm” means a strip of mounded topsoil which provides a visual screen.

“Bicycle” means a vehicle propelled solely by human power through a chain, belt or gears and that has at least one wheel more than fourteen (14) inches in diameter.

“Bike path” or “bicycle path” means a separate path that has been designated for use by bicycles, by traffic control device or other sign and that is separated from the roadway for other vehicular traffic by open space or a barrier.

“Board of adjustment” means the city of Deadwood board of adjustment.

“Boarding house” means a residential building or structure, or portion thereof, other than a hotel, lodge or multi-family dwelling, providing temporary or long-term lodging for six or more guests, serving meals to those guests on a continuing basis for compensation and having a manager residing on the premises, but not providing a restaurant or bar, or accessory uses, such as recreational facilities, typically associated with a hotel or lodge.

“Brush.” (Reserved.)

“Buffer zone” means an area between land uses providing fencing, berms, mounds, plant materials or any combination thereof to act as visual or noise buffers.

“Building” means any structure used or intended for supporting or sheltering any use or occupancy.

“Building area” means the maximum horizontal area within the outer perimeter of the building walls, dividers or columns at ground level or above, whichever is the greater area, including without limitation, courts and exterior stairways, but excluding:

1. Uncovered decks, porches, patios, terraces and stairways all less than thirty (30) inches high; and

2. The outer four feet of completely open, uncovered, cantilevered balconies that have a minimum of eight feet vertical clearance below.

“Building coverage” means the ratio of the total building area on a lot to the total area of the lot.

Building, Detached. “Detached building” means a building having no structural connection with another building.

“Building envelope” means that area on any lot on which a structure can be erected consistent with existing setback requirements and is defined by the setback lines applicable to that lot. For planned unit developments or other property that may not be subject to prescribed setback requirements, the building envelope is defined by a line running around the protected structures on the property eight feet from their exterior walls.

Building, Principal. “Principal building” means the building containing the primary use on the lot.

“Bulk requirements” means the combination of lot area, height, setbacks and floor area ratio set forth in this title.

“Business” means all activities in which a person engages or in which such person causes another to be engaged with the object of gain, benefit or advantage, whether direct or indirect.

“Camper” means a unit containing cooking or sleeping facilities that is designed to be loaded onto or affixed to the bed or chassis of a truck to provide temporary living quarters for recreational camping or travel use.

“Camping areas” means a platted parcel of land separately owned and developed for commercial use, offering to the traveling public overnight parking spaces for trailer campers and/or tent sites.

“Caretaker’s residence” means a dwelling unit which is used exclusively by either the owner, manager or operator of a principal permitted use and which is located on the same parcel as the principal use.

“Car wash” means a structure or portion thereof containing facilities for washing motorized vehicles, using production-line, automated or semi-automated methods for washing, whether or not employing a chain conveyor, blower, steam-cleaning or similar mechanical devices.

“Cellar” means that portion of a building that is located partly or wholly below grade and has half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground abutting the exterior walls of the dwelling unit.

“Center” or “centerline” means an imaginary line that is equidistant from the boundaries of the street.

“Certificate of appropriateness” means a signed and dated document evidencing the approval of the historic district commission for work proposed by an applicant. The period for which such certificates are valid may be limited by the issuing commission.

"Certificate of occupancy" means a document issued by the city which states that the described portion of a building has been inspected for compliance with the requirements of the Building Code and division of occupancy and the use for which the proposed occupancy is classified.

“Change of use” means any change in use of land that requires additional parking under this title, whether or not such parking must actually be provided, or any initiation of or change to residential habitation of any portion of any structure, whether existing or new.

“Charitable organization” means any entity organized and/or operated in the city exclusively for religious or charitable purposes, no part of whose net earnings inures to the benefit of any private shareholder or individual.

“Church” means a building together with its accessory buildings and uses where persons regularly assemble for religious worship, such buildings being maintained and controlled by a religious body organized to sustain public worship.

Clinic, Dental or Medical. “Dental or medical clinic” means a building in which one or more physicians, dentists and allied professional assistants are engaged in carrying on their profession; the clinic may include a dental or medical laboratory, but it shall not include in-patient care or operating rooms for major surgery.

“Club (private) or lodge” means buildings and facilities intended to be used as a center of informal association for social, recreational or educational purposes for selective membership not open to the general public.

“Code enforcement officer” means any city employee or person employed under independent contract by the city who is appointed to enforce the laws of the city.

“Community center” means a facility maintained by a public agency or nonprofit community or neighborhood association for the social, recreational or educational needs of the community.

“Comprehensive plan” means the official document or elements thereof, adopted by the city, and intended to guide the physical development of the city or a portion thereof. Such plan may include maps, plats, charts, policy statements, etc.

“Condominium” means real property having more than one dwelling unit and the ownership of which consists of separate, divided, fee simple estates in individual air space units, together with an undivided fee simple interest in the common elements appurtenant to such units.

“Condominium conversion” means the transfer of ownership of less than the total number of dwelling units in a multiple dwelling unit structure, where the ownership interests created by the transfer of ownership, are in a number of dwelling units that is less than the total number of units in the structure in which the seller had an interest prior to the sale or, with respect to a mobile home park, the transfer of ownership of the mobile home park property so that it is jointly and severally owned by the owners of the mobile homes upon such property.

“Condominium unit” means a form of property ownership of airspace.

“Congregate care facility” means a facility for long-term residence exclusively by persons sixty (60) years of age or older, and which shall include, without limitation, common dining and social and recreational features, special safety and convenience features designed for the needs of the elderly, such as emergency call systems, grab bars and handrails, special door hardware, cabinets, appliances, passageways and doorways designed to accommodate wheelchairs, and the provision of social services for residents which must include at least two of the following: meal services, transportation, housekeeping, linen and organized social activities.

“Construction project” means the erection, installation, alteration, repair or remodeling of a building or structure upon real estate or any other activity for which a building permit is required under this code or an ordinance of the city.

“Contiguous” means a sharing of a common border at more than a single point of intersection and in such a manner that the shared boundaries are touching and not separated except by boundaries or private rights-of-way, watercourses or water bodies or other minor geographical divisions of similar nature running parallel and between the shared boundaries. Contiguity is not the mere touching of points at intersections.

“Crown spread.” (Reserved.)

“Cul-de-sac” means a local street, one end of which is closed and consists of a circular turn-around.

“Day care, large” means a facility that provides care for six or more children that are primarily present during daytime hours, and do not regularly stay overnight. Basic requirements for a large day care facility are: 1) Operator must comply with the standards of the state Fire Marshal relating to the subject of fire and life safety in large day care facilities; 2) The applicant shall be licensed by the State of South Dakota as a day care facility; 3) Applicant shall develop and distribute information to the day care clients stating the need not to disrupt the neighborhood when dropping off and picking up children; 4) Off-street parking shall be provided for employees of the day care facility; 5) Drop-off and pick-up areas are

designated for clients.

“Day care, small” means a resident occupied dwelling that provides care for five or less children who do not reside in the dwelling, are present primarily during daytime hours, and do not regularly stay overnight. Basic requirements for a small day care facility are: 1) The caregiver must live in the residence and be the main care provider; 2) A fire extinguisher is provided onsite; 3) Smoke detectors are provided in appropriate areas. The building inspector performs an onsite inspection to insure the above items are provided; 4) Landowners within three hundred feet (300’)are notified of the use byfirst class mail; and 5) Fee for small day care facilities is fifty dollars ($50.00) to cover administrative and mailing costs.

“Delicatessen” means an establishment where food is sold for consumption off-premises and no counters or tables for on-premises consumption of food are provided, but excludes groceries and supermarkets.

“Demolition” means the complete or partial removal of buildings, structures, objects or sites, including appurtenances.

“Demolition by neglect” means improper maintenance or lack of maintenance of any resource which results in substantial deterioration of the resource and threatens its continued preservation.

“Developer” means any person who participates in any manner in the development of land.

“Development” means any human-made change to improved or unimproved real estate, including without limitation, building, repairing, replacing or expanding or enlarging but not maintaining a building or other structure or portion thereof, or mining, dredging, filling, grading, paving or excavation.

“Developmentally disabled person” means a person having cerebral palsy, multiple sclerosis, mental retardation, autism or epilepsy.

“Development permit” means any permit or authorization issued by the city as a prerequisite for undertaking any improvement to real property including, without limitation, building permits, planned unit developments, variances, height or conditional use permits and nonconforming permits.

District, Zoning. “Zoning district” means a section of the territory within the jurisdiction of the city for which uniform regulations governing the use of the land, the height, area, size and intensity of buildings is herein established.

“Drive-in restaurant” means a restaurant in which the patrons have the option of purchasing food or beverages from a window on the exterior of the building while seated in their vehicle, or where an order is taken by speakerphone, or where the patron dines in their automobile.

“Drive-in theater” means an outdoor theater for viewing movies, where individual speakers are provided to each automobile parking space, and the movie is normally viewed from within the automobile.

“Driver” means every person who drives or is in actual physical control of the steering, accelerating or braking controls of a vehicle or the rider of an animal. No person shall be deemed to be the driver or to drive because a vehicle is out of control except immediately following a collision not proximately caused by a traffic violation of such driver. A person dismounted from a bicycle, moped or motorcycle and pushing it on foot is a pedestrian, not a driver.

“Driveway” means that space or area of a lot that is specifically designated and reserved for the movement of motor vehicles within the lot or from the lot to a public street.

“Duplex” means a structure containing two dwelling units, each of which has direct access to the outside. All duplexes shall be required to install a water meter, if one has not been installed on the subject property.

“Dwelling” means a building or portion thereof, designed or used for residential occupancy. The term dwelling shall not be construed to mean motels, hotels, boarding houses, tourist homes or mobile homes except in a mobile home park.

Dwelling, Mobile Home. “Mobile home dwelling” means a single-family residential unit with all of the following characteristics:

1. Designed for long-term occupancy, and containing sleeping accommodations, a flush toilet, a tub or shower, bath and kitchen facilities with plumbing and electrical connections provided for attachment to outside systems;

2. Designed to be transported after fabrication on its own wheels or on a flat bed or other trailer or detachable wheels;

3. Arriving at the site where it is to be occupied as a dwelling complete, conventionally designed to include major appliances and furniture and ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports, connection to utilities, and the like; and

4. Designed for removal to and installation or erection on other sites.

A mobile home may include two or more units, separately towable, which when joined together shall have the characteristics as described above. For the purpose of this title, a mobile home shall not be deemed a single-family dwelling. The placement of such on a permanent foundation shall not be construed as creating a dwelling unit as elsewhere defined.

Dwelling, Modular Unit. “Modular unit dwelling” means a factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure that will be a finished building in a fixed location on a permanent foundation. The term is intended to apply to major assemblies, and does not include prefabricated panels, trusses, plumbing trees and other prefabricated sub-elements incorporated into a structure at the site. For the

purpose of this title, a modular unit shall be deemed a single-family dwelling and shall not be deemed a mobile home.

In addition, to be recognized as a factory-built home, the unit must meet or exceed all of the following construction and aesthetic standards set forth by the city planning and zoning commission:

1. The construction must meet HUD, FHA, and local building codes;

2. The unit must have a perimeter frame consisting of an approved material, either wood or steel I-beam, which is connected to the permanent foundation;

3. The unit must be no less than twenty-four (24) feet in width;

4. The unit must meet standard exterior appearance not to be less than that of the existing housing in any given residential area.

Owners of such units must provide the planning and zoning commission with proof that the unit in question can meet these standards.

Dwelling Unit, Single-Family. “Single-family dwelling unit” means a detached residential dwelling unit other than a mobile home, containing only one dwelling unit and not occupied by more than one family and not used for carrying on any commercial or business activity including providing housing for transient persons.

Dwelling Unit, Multiple-Family. “Multiple-family dwelling unit” means a dwelling containing three or more attached dwelling units, not including motels, boarding houses, tourist homes or mobile homes.

“Easement” means the authorization by a property owner of the use by another and for a specified purpose of any designated part of that owner’s property.

“Efficiency living unit” means a dwelling unit that contains a bathroom and kitchen and does not exceed a maximum floor area of four hundred (400) square feet.

“Engineer” means a professional who is registered with the State Engineering and Architectural Department as a professional engineer.

“Erosion” means the detachment and movement of soil or rock fragments by water, wind, ice and/or gravity.

“Essential municipal or public utility services” means distribution, collection, communication, supply or disposal systems, including without limitation, poles, wires, transformers, disconnects, regulators, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories that are reasonably necessary for public utilities for the city to furnish adequate service or for the public health, safety, or welfare.

“Excavation” means the removal of surface vegetation or the excavation of more than ten (10) cubic yards of soil in a one-year period.

“Expansion or enlargement of a structure” means any addition of an exterior wall to the structure or any addition to the floor area of the structure, whether under, at, or above grade, and whether or not the external dimensions of the structure are changed.

“Expansion to an existing manufactured home park or manufactured home subdivision” means the preparation of additional sites by the construction of facilities for servicing manufactured homes, including without limitation, installation of utilities, final site grading, pouring of concrete pads or construction of streets.

“Exterior features” means and includes, but is not limited to, the color, kind and texture of building materials and the type and style of windows, doors and appurtenances.

“Extractive industry” means an industry that removes natural resources, including without limitation, precious metals, oil, gas, coal, sand and gravel.

“Facilities” means all structures and equipment and all uses of land that are made in conjunction with or that are related or incidental to the construction, installation, or use of the structures and equipment necessary to contain and control storm water including, without limitation, conduits, channels, bridges, pipes and detention ponds.

“Factory-built home” means the same as “Dwelling, modular unit.”

“Family” means one or more persons occupying a premises and living together as a single housekeeping unit, subject to a limit of not more than three persons eighteen (18) years of age or over who are not related by blood, marriage or legal adoption.

“Fence” means a freestanding structure of metal, masonry, wood or any combination thereof resting on, or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

“Festival” means any fair, festival or similar activity where patrons are charged admission or other fees for the privilege of watching or participating in entertainment, including, but not limited to, music shows concerts and revivals.

“Floor area” means the total square footage of all levels included within the outside walls, as measured from the exterior face of the exterior walls of a building or portion thereof, but excluding courts and uninhabitable areas below the first floor level.

“Floor area ratio (FAR)” means the ratio of the floor area of a building to the area of the lot on which the building is situated.

“Food” means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Foundation, Permanent. “Permanent foundation” means a support structure for a building, wall or fence which is capable of supporting the weight, extends to below frost depth, is capable of resistance to wind uplift of the highest recorded winds in the area and includes but is not necessarily limited to, concrete caisson/grade beam, caissons and spread footer types.

Frontage, Building. “Building frontage” means the horizontal, linear dimension of that side of a building that abuts a street, a parking area, a mall or other circulation area open to the general public and that has either a main window display of the enterprise or a public entrance to the building; in industrial zone districts, a building side with an entrance open to employees is a building frontage; where more than one use occupies a building, each such use having a public entrance or main window display for its exclusive use is considered to have its own building frontage, which is the front width of the building occupied by that use.

Frontage, Street. “Street frontage” means the linear frontage of a lot or parcel abutting a private or public street that provides principal access to or visibility of the premises.

“Funeral chapel” means a building used primarily for human funeral services.

“Funeral home” means a building or part thereof used for human funeral services. Such building may contain space and facilities for:

1. Embalming and the performance of other services used in the preparation of the dead for burial;
2. The performance of autopsies and other surgical procedures;
3. The storage of caskets, funeral urns and other related funeral supplies; and
4. The storage of funeral vehicles, but shall not include facilities for cremation.

For the purpose of this title, where a funeral home is permitted, a funeral chapel shall also be permitted.

“Gaming establishment” means an establishment so licensed for gaming activity under the laws of the state of South Dakota.

“Garage” means an accessory building or part of a principal building used only for the storage of passenger vehicles in operating condition as an accessory use and having no provision for repairing or servicing such vehicles for profit.

Garage, Private. “Private garage” means an enclosed, detached or semi-detached building used principally for the shelter of motor vehicles which are owned by persons occupying the dwelling unit which the garage is intended to serve.

Garage, Storage. “Storage garage” means an enclosed building for the storage and care of personal property on a commercial basis.

“Garbage” means putrescent animal or vegetable waste resulting from the preparation, cooking and serving of food or the storage or sale of product.

“Garbage container” means a metal or other nonabsorbent container, which shall be equipped with a tightly-fitting metal or nonabsorbent lid, or sealed plastic garbage bags, but does not include incinerators or ash pits.

“Gasoline service station” means premises on which the principal use is the retail sale of gasoline, oil or other motor vehicle fuel, which may include, as an accessory use only, facilities for polishing, greasing, washing, or otherwise cleaning, servicing, or repairing motor vehicles, but does not include liquefied petroleum gas distribution facilities.

“General circulation” means delivered to a substantial number of residences in the city and also otherwise made available for purchase or distribution.

“Governing body” means the city commission.

“Governmental facility” means a municipal, county, state or federal structure, building or use.

“Grade” means the average elevation of the finished ground level at the center of all walls of a building. When walls are parallel to and within five feet of a sidewalk, “grade” means the sidewalk level.

“Group care facility” means a facility providing custodial care and treatment in a protective living environment for persons residing voluntarily or by court placement, including without limitation, correctional and post-correctional facilities, drug or alcohol abuse centers, juvenile detention facilities and temporary custody facilities.

“Group home for the developmentally disabled” means a state-licensed facility for the exclusive use of eight or fewer developmentally disabled persons.

“Habitable room” means a room or enclosed floor space used, intended to be used or designed to be used for living, sleeping, eating or cooking and excludes bathrooms, toilet compartments, closets, halls and storage places.

“Height of building” means the vertical distance above a reference datum measured to the highest point of the coping of a

flat roof or to the deck line of an mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following; whichever yields a greater height of building:

1. The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten (10) feet above lowest grade;

2. An elevation ten (10) feet higher than the lowest grade when the sidewalk or ground surface described in subsection 1 of this definition is more than ten (10) feet above lowest grade;

3. The height of a stepped or terraced building is the maximum height of any segment of the building;

4. The city planner may approve additions of appurtenances to buildings causing a building height to exceed the allowed height if the following standards are met:

a. A functional need is established;

b. The functional need cannot be met with an appurtenance less than thirty-five (35) feet in height above the ground; and

c. Visible material and colors are compatible with the building to which the appurtenance is attached;

5. No appurtenance may have useable floor area except for mechanical equipment installations; have more than twenty-five (25) percent coverage of the roof area of the building; or be more than sixteen (16) feet in height;

6. All mechanical equipment shall be screened from view, regardless of the height of the building, unless in the opinion of the city planner, such screening conflicts with the function of the mechanical equipment. Screening shall be an integral part of the building design.

"Historic district commission" means the Deadwood historic district commission established by virtue of SDCL 1-19B-38, pursuant to Ordinance No. 777.

"Historic preservation commission" means the Deadwood historic district commission established by virtue of SDCL 1-19B-2, pursuant to Resolution 1987-10.

"Historical resource" means a building, structure, site, or object fifty (50) years of age or older related to the community's history, architecture, archeology, engineering and/or culture.

"Home occupation" means a business, occupation or trade conducted entirely within a residential building or accessory structure for gain or support by a resident of the dwelling, and no other, which:

1. Is clearly incidental and secondary to the residential use of the building;

2. Does not change the essential character of the use;

3. Employs no more than one person who is a nonresident of the building;

4. Operates pursuant to a valid occupational license for the use held by the resident of the dwelling unit;

5. Is confined to no more than twenty-five (25) percent of the total floor area of the dwelling;

6. Does not advertise, display or otherwise indicate the presence of the home occupation on the premises other than provided by the city's sign ordinance (codified in Chapter 15.32 of this code) and any other amendments thereto;

7. Does not store outside of the dwelling any equipment or materials used in the home occupation; and

8. Provides off-street parking to accommodate the needs of the home occupation.

"Hospital" means any building or portion thereof licensed as a hospital by the South Dakota Department of Health and used for diagnosis, treatment, surgery, and care of human ailments, including the usual and customary accessory uses and ancillary offices of a hospital.

"Hostel" means a facility for resident of under one month that provides simple dormitory or sleeping rooms and common rooms for cooking, meeting, recreational and educational use; that is chartered or approved by the International Hostel Federation or its national or regional affiliates, or similar organizations; and that is supervised by resident house-parents or managers who direct the guests' participation in the domestic duties and activities of the hostel.

"Hotel room, motel room or other accommodation" means any room or other accommodation in any hotel, apartment-hotel, motel, guest house, trailer court or any such similar place to any person who for a consideration uses, possesses or has the right to use or possess such room or other accommodation for a total continuous duration of less than one month.

"House museum" means an organized and permanent nonprofit and for-profit institutions, essentially educational or aesthetic in purpose, with professional staff, which owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regular schedule.

Activities and services, standard to augment the house proper include an orientation area where visitors are introduced to the house and where they pay a fee, buy a ticket or turn in tickets purchased in another location. Traditionally, such facilities also include space for public coat storage, offices, artifact storage, conservation and exhibit preparation, volunteer facilities, archives, maintenance storage, and museum shop storage/support, rental of the facility and site.

Illumination, Direct. “Direct illumination” means lighting by means of an unshielded light source, including neon tubing, which is effectively visible as part of the sign, where light travels directly from the source to the viewer’s eye.

Illumination, Indirect. “Indirect illumination” means lighting of the surface by light source that is directed at the reflecting surface in such a way as to illuminate the sign from the front or a light source that is primarily designed to illuminate the entire building facade on which a sign is displayed, but does not include lighting that is primarily used for purposes other than sign illuminating, including without limitation, parking lot lights or lights inside a building that may silhouette a window sign but that are not primarily installed to serve as inside illumination of a sign.

Illumination, Internal. “Internal illumination” means lighting by means of a light source that is within a sign having a translucent background and silhouettes opaque letters or designs or that is within letters or designs that are themselves made of translucent material. This term shall also extend to and include opaque letters or designs set out from a building or sign face and lit by illumination from behind the letters.

“Impervious surface” means those surfaces which generally do not absorb water. For the purposes of this title, they consist of buildings, parking areas, driveways, roads, sidewalks and any areas of concrete or asphalt.

“Improvements” means street grading and surfacing, curbs and gutters, sidewalks, water mains and lines, sanitary and storm sewers, culvert, bridges and other related utilities.

“Indoor amusement establishment” means a commercial operation open to the public without membership requirements, including without limitation, bowling alleys, indoor arcades, movie theaters, pool halls and skating rinks.

“Intersection” means the area embraced within the prolongation or connection of the lateral curblines of two streets that join one another at, or approximately at, right angles or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict, whether or not one such street crosses the other, but the term does not include the junction of any alley with a street. If a street includes two roadways thirty (30) feet or more apart, every crossing of each roadway of such divided street by an intersecting street is a separate intersection. If such intersecting street also includes two roadways thirty (30) feet or more apart, every crossing of such streets is a separate intersection. The farthest applicable points shall be used when measuring.

“Junk” means any manufactured goods, appliance, fixture, furniture, machinery, motor vehicle or trailer that is abandoned, demolished, discarded, dismantled, or so worn, deteriorated, or in such a condition as to be generally unusable in its existing state, including without limitation, scrap metal, scrap material, waste, bottles, tin cans, paper, rubble, boxes, crates, rags, used lumber, building materials, motor vehicles and machinery parts, and used tires.

“Junk yard” means a building, structure, or parcel of land or portion thereof, used for the collection, storage, dismantling, salvaging, demolition or sale of junk on the premises for more than one week, but excludes such uses within enclosed buildings.

“Landmark” means a building, structure, object or site so designated by the historic preservation commission, or declared by the South Dakota Historical Preservation Center to be a contributing feature to a local, state or nationally registered historic district.

“Landscaped area” means any land set apart for planting grass, shrubs, trees or similar living materials, including without limitation, land in an arcade, plaza or pedestrian area, and of which fences and walls may be a part.

“Landscaping.” (Reserved.)

“Land surveying” means the locating, establishing or relocating of any land boundary line or the locating of any United States government, state, county, township, municipal or other governmental land survey lines of any public highway, street or road.

Land Surveyor, Registered. “Registered land surveyor” means any land surveyor registered in good standing and legally authorized to practice land surveying.

“Legal description” means a description of real property by lots, blocks, subdivision, or metes and bounds, but excludes an assessors tract number.

“Light source” means neon, fluorescent, or similar tube lighting, an incandescent bulb, including the light-producing elements therein, and any reflecting surface that, by reason of its construction or placement, becomes the light source.

“Lot area” means the total horizontal area included within the lot lines of a lot.

Lot, Building. “Building lot” means a parcel of land, including without limitation, a portion of a platted subdivision, that is occupied or intended to be occupied by a building or use and its accessory buildings and uses, together with the yards required under the provisions of this code; that has not less than the minimum area, usable open space, building area and off-street parking spaces required by this code for a lot in the district in which such land is situated; that is an integral unit of land held under unified ownership in fee or co-tenancy or under legal control tantamount to such ownership; and that is precisely identified by a legal description.

Lot, Corner. “Corner lot” means a lot situated at the junction of and abutting on two or more intersecting streets.

“Lot coverage” means the part or percent of the lot occupied by buildings or structures, including accessory buildings or structures.

“Lot depth” means the average horizontal distance between the front lot line and the rear lot line of a lot.

“Lot interior” means any lot, including a through lot, other than a corner lot.

Lot Line, Front. “Front lot line” means a street line which forms the boundary of a lot or in the case where a lot does not abut a street other than by its driveway, or is a through lot, that lot line which faces the principal entrance of or approach to the main building. On a corner lot, the shorter street line shall be deemed to be the front lot line, regardless of the location of the principal entrance or approach to the main building.

“Lot of record” means a lot, if part of a subdivision, the plat of which has been recorded in the office of the register of deeds, or a lot described by metes and bounds, the description of which has been recorded in the office of the register of deeds of Lawrence County, South Dakota.

Lot, Platted. “Platted lot” means a lot that has been subdivided pursuant to a legal subdivision approval process and is precisely identified by reference to a block and lot.

Lot, Through. “Through lot” means an interior lot but not a corner lot, abutting two or more public streets, but not including an alley.

“Lot width” means the distance between side lot lines measured at the front building line.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement), except that 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 nonelevation design requirements of this title.

“Maintenance” means the replacing, repairing or repainting of a portion of a sign structure, periodic changing of bulletin board panels or renaming of copy that has been made unusable by ordinary wear and tear, by nature or by accident.

“Mobile home park” means a tract of land of a minimum area of forty thousand (40,000) square feet, wherein, mobile homes as defined are intended to be placed, located and maintained for occupancy and includes accessory buildings and improvements. The term “mobile home park” does not include sales lots on which unoccupied mobile homes, whether new or used, are parked for the purposes of inspection and sales.

“Mobile home space” means a plot of ground within a mobile home park designed for the accommodation of one mobile home and its accessory structures.

“Motor vehicle” means any self-propelled vehicle other than a moped.

“New construction” means a structure or portion thereof for which the start of construction occurred on or after January 1, 1989.

“Nonconforming building” means any building that does not conform to the requirements of this title, unless the nonconformity was approved as part of a planned unit development, as a second principal building on a lot, or as a variance.

“Nonconforming lot” means any lot that does not conform to the minimum lot area or frontage upon a required public street, unless the nonconformity was approved as part of a planned unit development.

“Nonconforming use” means a building, structure or use of land existing at the time of the enactment of the ordinance codified in this title which does not conform to the use regulations of the district in which it is located.

“Notice” or “legal notice” means any requirement for informing a person or persons, a segment of the public, or the public generally. A notice required to be published may be published in any newspaper of general circulation unless otherwise required by this code or an ordinance of the city.

“Nursing home” means any institution or facility defined as such for licensing purposes under South Dakota law or pursuant to the rules and regulations for nursing homes and homes for the aged by the State Department of Health, whether proprietary or nonprofit, including, but not limited to nursing homes owned or administered by the federal or state government or an agency or political subdivision thereof.

“Object” means a thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

“Occupant” means any person living in, sleeping, possessing, or otherwise using any land, building, or part thereof.

“Office” means the principal use of a room(s) for the conduct of business by persons, including without limitation, accountants, architects, attorneys, consultants, engineers, insurance salespeople, investment consultants, real estate brokers or therapists, where there is no display of merchandise and the storage and sale of merchandise is clearly incidental to the service provided, but excluding medical or dental clinics or offices.

Office, Accessory. “Accessory office” means an office subordinate to, a necessary part of and in the same building with the principal business, commercial or industrial use, including without limitation, administrative, record-keeping, drafting and research and development offices.

“Ordinance” as used in this title means a permanent legislative act of the governing body of a municipality within the limits of its power.

“Owner” means a person, as defined by this code, who, alone, jointly or severally with others, or in a representative capacity (including without limitation, an authorized agent, executor, or trustee) has legal or equitable title to any property in question.

“Parcel” means the area within the boundary lines of a development.

“Parking lot” means an area, not within a building or other structure, where motor vehicles may be stored for the purpose of temporary, daily or overnight off-street parking. A parking lot shall include a motor vehicle display lot and a commercial parking lot.

“Party to a hearing” means any interested person who requests a hearing, appears at a hearing or submits a written entry of appearance at or before a hearing.

“Pawnbrokers” means any person who loans money on deposit or pledge of personal property or other thing of value or who deals in the purchasing of personal property or other thing of value on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgage on personal property and takes possession of the property so mortgaged, or any part thereof.

“Person” means a firm, association, organization or corporation as well as an individual.

“Personal service outlet” means an establishment that provides personal services for the convenience of the neighborhood, including without limitation, barber and beauty shops, shoe repair shops, self-service laundries, travel agencies, photographic studios and automatic teller machines.

“Place or event open to the public” means any place or event, the admission or access to which is open to members of the public upon payment of a charge or fee. This term includes without limitation, the following places and events when a charge or fee for admission to such places and events is imposed upon members of the public:

1. Any performance of a motion picture, stage show, play, concert, or other manifestation of the performing arts;
2. Any sporting or athletic contest, exhibition or event whether amateur or professional;
3. Any lecture, rally, speech or dissertation;
4. Any showing, display or exhibition of any type, such as an art exhibition; and
5. Any restaurant, tavern, lounge, bar or club, whether the admission is called a “cover charge,” “door charge,” or any other such term.

“Planning commission” means the city planning and zoning commission.

“Planting season.” (Reserved.)

“Plat” means a map or chart indicating the subdivision or resubdivision of land intended to be filed for record. Other forms include sketch plat, preliminary plat, final plat and replat.

“Possessor of real property” means a person not the owner of the property but who is responsible as lessee, caretaker or otherwise for its care and upkeep and is in control of the property.

“Preliminary construction acceptance” means the city’s acceptance of the developer’s or subdivider’s construction, installation and testing of public improvements and appurtenances thereto as conforming with city standards and defines the date on which the warranty period on such improvements commences.

“Premises” means only that property over which the owner or keeper has full possession and control. The unenclosed property of a condominium or townhouse or the common passageway, parking facility or unenclosed common yard of an apartment building or shopping center are not premises of an owner or keeper.

Principal Building . See “Building, principal.”

“Principal use” means the main use of land as distinguished from an accessory or subordinate use.

“Project approval” means a signed and dated document evidencing the approval of the historic preservation commission for work proposed by an applicant. The period for which such approvals are valid may be limited by the issuing commission.

“Property” means real, tangible and intangible personal property.

“Public entrance” means an entrance to a building or premises that is customarily used or intended for use by the general public. Examples of private entrances not intended for use by the general public are fire exits, special employee entrances and loading dock entrances.

“Public hearing,” unless otherwise specifically redefined, means a public hearing pursuant to a notice published, in an official newspaper of the city, at least ten (10) days prior to the date of such hearing which notice shall specify the general purpose, time and place of such hearing. Any such hearing, after publication may be continued, recessed or adjourned from time to time without any further publication or notice thereof.

“Public utility” means any person, firm, corporation, municipal department or board duly authorized to furnish and maintain installations for the supply of electricity, oil, gas, communications, transportation and water.

“Public way” means any street, alley, boulevard, parkway, highway, sidewalk or other public thoroughfare.

“Real property, premises, real estate or lands” means lands, tenements and hereditaments.

Rear Yard. See “Yard, rear.”

“Recycling center” means an enclosed building used for storing junk and unenclosed premises on which junk is stored for one week or less.

“Rental property” means all dwellings, dwelling units and rooming units located within the city and rented or leased for any valuable consideration, but the term excludes dwellings owned by the federal government or the state of South Dakota or any of their agencies or political subdivisions and facilities licensed by the state of South Dakota as health care facilities.

“Residential care facility” means a facility providing social services in a protective living environment for adults or children, including without limitation, group foster care homes; shelters for abused children or adults; nursing homes, intermediate care facilities; or residential care facilities licensed by the South Dakota Department of Health.

“Residential structure” means any structure that is used for the temporary or permanent residence of persons, including without limitation, a dwelling, a boarding house, a hotel, a motel and similar structures.

“Resolution,” as used in this title, means any determination, decision or direction of the governing body of a municipality of a special or temporary character for the purpose of initiating, effecting or carrying out its administrative duties and functions, under the laws and ordinances governing the municipality.

“Resource” means “Historical resource”.

“Restaurant” means an establishment provided with special space, sanitary kitchen, dining room equipment and persons to prepare, cook and serve, in consideration of payment, meals and drinks to guests.

“Roadway” means that portion of a street from curb to curb improved, designed or ordinarily used for vehicular travel. If a street includes two or more separate roadways, “roadway” refers to any such roadway separately, but not to all such roadways collectively.

“Roof” means the cover of any building, including the eaves and similar projections.

“Roof line” means the highest point on any building where an exterior wall encloses usable floor space (including roof areas for housing mechanical equipment) and the highest point on any parapet wall.

“Rooming house” means any building other than a hotel, cafe or restaurant where, for direct or indirect compensation, lodging, with or without kitchen facilities or meals, is provided for generally one month or more, for three or more roomers not related to the head of the household by marriage, adoption or blood, up to the second degree of consanguinity.

“Rooming unit” means a type of housing accommodation that consists of a room or group of rooms for a roomer, arranged primarily for sleeping and study, and that may include a private bath but does not include a sink or any cooking device.

“Rubble” means large brush, wood, large cardboard boxes or part thereof, large or heavy yard trimmings, discarded fence posts, crates, vehicle tires, junked motor vehicle bodies or part thereof, scrap metal, bed springs, water heaters, discarded furniture, and all other household goods or items, demolition materials, used lumber and other discarded or stored objects three feet or more in length, width, or breadth.

School, Elementary, Junior and Senior High. “Elementary, junior and senior high school” means any public or private school for any grades between first and twelfth which satisfies state compulsory education requirements.

“Service garage” means a building in which the principal use is performing major repairs to and the servicing of motor vehicles.

“Setback” means the minimum distance in linear feet measured on a horizontal plane between the outer perimeter of a structure and each of its lot lines. Where a building is to be erected on multiple platted lots, setbacks shall be measured from the boundaries of the parcel which shall be made up of the multiple lots considered as a whole.

“Shrub.” (Reserved.)

“Sidewalk” means that portion of the sidewalk area paved or otherwise improved, designed or ordinarily used for pedestrians and every such walk parallel and adjacent to a roadway.

“Sidewalk area” means the area between the curb of a street and the adjacent property lines.

“Sign” means any writing, pictorial representation, decoration (including any material used to differentiate sign copy from its background), form, emblem, trademark, flag or banner or any other figure of similar character that:

1. Is a structure or any part thereof (including the roof or wall of a building); or

2. Is written, printed, projected, painted, constructed or otherwise placed or displayed upon or designed into a building, board, plate, canopy, awning, or vehicle or upon any material, object or device whatsoever; and

3. By reason of its form, color, wording, symbol, design, illumination or motion, attracts or is designed to attract attention to the subject thereof or is used as a means of identification, advertisement or announcement. 17.08.010

Single-Family Dwelling. See “Dwelling, single-family.”

“Site” means a place where something was, is, or is to be located.

“Site plan” means a required submission, which is a detailed engineering drawing of the proposed improvements required in the development of a given lot.

“Solar Access, Obstruction Protected by Permit.” (Reserved.)

“Solar Collector.” (Reserved.)

“Solar Energy System.” (Reserved.)

“Solar Fence.” (Reserved.)

“Solar Noon.” (Reserved.)

“Sound condition and good repair” means freedom from defects that would endanger the health, safety and welfare of the occupants of the structure.

“Special population” means persons over the age of sixty (60), disabled persons, single parents, or the homeless.

“Stairway” means all stairwells and includes stair stringers, risers, treads, handrails, banisters and vertical and horizontal support.

“Start of construction” means and includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (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.

“State highway” means a street designated as part of the state highway system. Designation of the street as a state highway on any map published by the state or the city or marked as such by signs is prima facie evidence of such designation.

“Storm water” means any flow occurring during or following any form of normal precipitation and resulting therefrom.

“Street” means the entire width between the property boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and includes without limitation, alleys, or the entire width of every way declared to be a public highway by any law.

“Subdivider” means any person who participates in any manner in the dividing of land for the purpose, immediate or future, of sale or building development.

“Subdivision” means the division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale or building development for residential, industrial, commercial or other use, but the term excludes any transaction that is exempt from subdivision regulation under the subdivision ordinance.

“Substantial improvement” means any repair, reconstruction or improvement of any structural element of a structure the cost of which, when added to the cumulative cost of such prior repairs, reconstructions and improvements equal or exceed fifty (50) percent of the market value of the structure in constant dollars either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this title, “substantial improvement” begins when the first alteration of any structural wall, ceiling, floor or other structural part of the structure commences, whether or not that alteration affects the external dimensions of the structure, and all such repairs, reconstructions, and improvements since the date of adoption of the ordinance codified in this title are aggregated. The term does not include either:

a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are necessary to assure safe living conditions; or

b. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places or designated a local landmark or a contributing building in a local, state or national historic district.

“Tavern” means an establishment serving malt and vinous liquids for retail consumption on the premises.

“Temporary housing” means any mobile home, camper or other structure used for human shelter that is designed to be transportable and is not attached to the ground, to another structure, or to any utilities system.

“Tenant.” See “Occupant.”

“Townhouse” means a multi-unit dwelling in which the ownership of each dwelling unit consists of a separate fee simple estate on an individually platted lot, together with an undivided fee simple interest in the common elements, if any.

“Townhouse unit” means that part of a townhouse constituting a single dwelling unit.

“Traffic” means pedestrians, ridden or herded animals, and vehicles, either singly or together, while using any street for purposes of travel.

“Traffic control sign” means a sign on, above or adjacent to a street placed by a public authority to regulate, warn or guide traffic.

“Traffic control signal” means a device on, above or adjacent to a street placed by a public authority by which traffic is alternately directed to proceed and stop by means of the display of colored lights or symbols.

“Transaction” means any contract; any sale or lease of any interest in land, material, supplies or services; or any granting of development right, license, permit or application.

“Travel trailer” means a portable structure, mounted on wheels and designed to be towed by a motor vehicle, which contains cooking or sleeping facilities to provide temporary living quarters for recreational camping or travel.

“Tree.” (Reserved.)

"Undertaking" or "project" means any demolition of any building or structure or historic resource and any other action or contemplated action which requires a permit under any ordinance adopted by the city including the Building Code, as adopted and/or amended, by the city commission.

Use, Conditional. “Conditional use” means a use not allowed within a given district unless certain conditions are met. The conditional use must be a use which is desirable to the zone itself. The city may require substantial conditions to be met by the use to mitigate negative impacts. Example: private nursery school in a residential area. The use is desirable within the district, but the nature of the use is such that special precautions need to be taken to protect neighbors from undue traffic, noise and inconvenience.

“Use-by-right” means a use which is permitted in a given zoning district without having to show need or having specific conditions imposed to be allowed.

“Valet parking” means a parking arrangement where an employee of a hotel/motel or public facility performs a service for the customers in which such employee parks the vehicle and returns it from a designated area.

Applicants requesting valet parking shall provide the legal description of the proposed site. The area being proposed must be site specific. The applicant shall provide a parking layout and a written statement addressing how the valet parking will be managed.

“Vehicle” means any device that is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks, but the term excludes devices used exclusively upon stationary rails or tracks.

“Watercourse” means a portion of the floodway area functioning as a natural or improved channel carrying flows not constituting a flood, a stream, a creek, a pond, a slough, a gulch, an arroyo, a reservoir or a lake. The term, includes without limitation, established natural and human-made drainage ways for carrying storm run-off but does not include irrigation ditches.

“Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

“Wind energy conversion system” means any machine that converts wind to another form of energy.

“Yard” means an open space between a building and the adjoining lot lines unoccupied and unobstructed by structures except for open steps and terraces and architectural appurtenances. A yard shall be measured as the shortest horizontal distance from the building to the adjacent lot line. This definition shall be construed to exclude parking in the setback areas in districts zoned R1 residential district and R2 multi-family residential district. Yards are normally classified as front yards, rear yards and side yards (see “Setback.”)

Yard, Front. “Front yard” means an open, unoccupied space on the same building site with a main building, extending the full width of the building site and situated between the street line and the front line on the building projected to the side lines of the building site. The depth of the front yard shall be measured between the front line of the building and the street line (see “Setback.”)

Yard, Rear. “Rear yard” means an open, unoccupied space on the same building site and situated between the rear line of the building site and the rear line of the building projected to the side lines of the building site. The depth of the rear yard shall be measured between the rear line of the building site and the rear line of the building (see “Setback.”)

Yard, Side. “Side yard” means an open, unoccupied space on the same building site with a main building, situated between the side line of the building and the adjacent side line of the building site and extending from the rear line of the front yard to the front line of the rear yard; if no front yard is provided, the front boundary of the side yard shall be the front line of the building site, and if no rear yard is provided, the rear boundary of the side yard shall be the rear line of the building site (see “Setback.”)

“Zoning administrator” means the person designated by the city commission to administer and enforce the provisions of this title.

“Zoning district” means an area(s) specifically designated within the limits of the city for which the regulations and requirements governing use, lot and size of building and premises are set forth.

“Zoning lot” means:

1. A tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten (10) feet, located within a singular block, which at the time of filing for a permit, is declared to be a tract of land to be treated as one zoning lot for the purposes of this title;

2. A zoning lot, therefore, may or may not coincide with a lot as shown on the official city map, or on any recorded subdivision plat or deed;

3. A zoning lot may be subdivided into two or more zoning lots, provided that all resulting zoning lots and all buildings thereon shall comply with all of the applicable provisions of this title;

4. Where several contiguous lots are in single ownership, they may be lumped together and treated as a zoning lot for the purposes of the floor area ratio computation.

“Zoning map” means the zoning district map of the city, adopted as a part of this zoning title, as amended from time to time as provided herein.

(Ord. 1289, 2019; Ord. 1035 (part), 2005; Ord. 1026 (part), 2004; Ord. 1003, 2003; Ord. 952 (part), 1999; Ord. 940, 1998; Ord. 930 (part), 1997; Ord. 915 (part), 1996; Ord. 900 (part), 1995; Ord. 851 (part), 1993; Ord. 831 § 1.7, 1992)

Chapter 17.12

ZONING MAP AND ZONING DISTRICTS

Sections:

17.12.010 Zoning map.

17.12.020 Zoning map amendments.

17.12.030 Boundaries.

17.12.040 Annexation.

17.12.050 Zoning districts established.

17.12.010 Zoning map.

A. The zoning districts map dividing the city into several districts, as shown, is made a part of this title.

B. The official zoning districts map shall be kept and maintained in legible and satisfactory condition by the zoning administrator and shall be available for inspection and examination by members of the public at all reasonable times as any other public record. A duplicate zoning map shall be entrusted to and safeguarded by the city attorney.

C. When, in accordance with provisions of this title and 1967 SDCL 11-4-8, changes are made in district boundaries or other matters portrayed on the zoning districts map, such changes shall be made promptly after the amendment has been approved by the governing body.

(Ord. 831 § 2.1, 1992)

17.12.020 Zoning map amendments.

The zoning map is a part of this title and all changes to the map must be made by ordinance. The city shall, within a reasonable time after adoption of any such amendment, place the amendment on the zoning map. All amendments made to the zoning map shall bear the ordinance number of the amendment, followed by the effective date of enactment of the amending ordinance in parenthesis and shall be signed by the city zoning administrator after placement of the amendment upon the zoning map.

(Ord. 831 § 2.2, 1992)

17.12.030 Boundaries.

A. Map Symbols. The symbols of a given zoning district, as defined by the legend of the zoning districts map shall apply to all property contained in the boundaries of that district as shown on the map.

B. Interpretation of District Boundaries. Where uncertainty exists with respect to the precise location of any of the aforesaid districts shown on the zoning districts map, the following rules shall apply:

1. Boundaries shown as following or approximately following streets, highways or alleys shall be construed to follow the center lines of such streets, highways or alleys;

2. Boundaries shown as following or approximately following platted lot lines or other property lines, such lines shall be construed to be the boundary lines;

3. Boundaries shown as following or approximately following railroad lines shall be construed to lie midway between the main tracks of such railroad lines;

4. Boundaries shown as following or approximately following the center line of streams, rivers or other continuously flowing water courses shall be construed as following the channel center line of such water courses and the boundaries shall be deemed to be at the limit of the jurisdiction of the city unless otherwise indicated;

5. Boundaries shown as following or closely following the limits of political jurisdictions shall be construed as following such limits;

6. Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two districts, the regulations of the more restrictive districts shall govern the entire parcel in question, unless otherwise determined by the governing body;

7. Whenever any street, alley or other public easement is vacated, the district classification of the property to which the vacated portions of land accrue, shall become the classification of the vacated land.

(Ord. 831 § 2.3, 1992)

17.12.040 Annexation.

A. Zoning of annexed land or land in the process of annexation shall be considered an initial zoning and shall be consistent with the goals and land use designations of the Deadwood comprehensive plan.

B. Zoning of land in the process of annexation shall follow the procedures for notice for rezoning set forth in this title. In addition, the city shall post the property with a notice indicating that annexation and zoning have been requested and that interested persons may obtain more information from the city planning department.

C. An ordinance proposing zoning of land to be annexed shall not be finally adopted by the city commission before the date of final adoption of the annexation resolution.

D. Any land annexed shall be zoned and placed upon the zoning district map within ninety (90) days after the effective date of the annexation resolution, notwithstanding any judicial appeal of the annexation. The city shall not issue any building or occupancy permit until the annexed property becomes a part of the zoning district map.

E. A lot annexed and zoned that does not meet the minimum lot area or open space per dwelling unit requirements of this code may be used notwithstanding such requirements in accordance with this code or any ordinance of the city, if such lot was a buildable lot under Lawrence County jurisdiction prior to annexation.

(Ord. 831 § 2.4, 1992)

17.12.050 Zoning districts established.

A. Zoning districts are classified according to the predominant character of development and current or intended uses in an area. District regulations shall be as set forth in this section and in Section 17.04.080 and Chapter 17.60 of this title.

B. Uses in the following zone districts are separated into two groups: (1) uses permitted by right; and (2) conditional uses. The uses listed under both categories will be used for such purposes and/or any use which the planning and zoning commission considers comparable to another use which is directly listed under uses permitted by right and conditional uses. The planning and zoning commission will consider the following criteria when comparing uses under uses permitted by right and/or conditional uses: 17.12.050

1. The proposed use will not pose a threat to the public health, safety and welfare of the city;

2. Similarities are determined in the character and intensity among the uses being compared;

3. Possibility of street congestion, traffic and parking problems is investigated;

4. Public convenience and impact, if any, on property values be considered.

C. The districts are established as set out in this title.

(Ord. 952 (part), 1999; Ord. 831 § 3 (part), 1992)

Chapter 17.16

A1 AGRICULTURAL DISTRICT

Sections:

17.16.010 Intent.

17.16.020 Uses permitted by right.

17.16.030 Conditional uses.

17.16.040 Area and bulk requirements.

17.16.010 Intent.

The A1 agriculture district is intended to provide locations for the growing of forests, grasslands, row crops, and flowers and similar crops and provide for associated farming activity.

(Ord. 831 § 3.1, 1992)

17.16.020 Uses permitted by right.

Property in the A1 agriculture district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Day care, small;
2. Dwelling unit, single-family;
3. Farming, ranching and general agriculture crops;
4. Nurseries and green houses;
5. Parks, recreation lands;
6. Ranch offices;
7. Roadside stands; and
8. Wildlife preserves.

(Ord. 1035 (part), 2005; Ord. 831 § 3.1.1, 1992)

17.16.030 Conditional uses.

The following uses, or any use which the planning commission considers comparable to another use which is directly listed under this section, may be permitted in the A1 agriculture district under the provisions of Chapter 17.76, Conditional Uses.

1. Animal hospital for large animals;
2. Animal hospital for small animals;
3. Day care, large;
4. Dwelling unit, for hired personnel only;
5. Dwelling unit, modular;
6. Electrical substations;
7. Electrical transmission lines;
8. Electrical distribution lines - underground (k.v. or less);
9. Fire and police stations;
10. Gas regulator stations;
11. Gas transmission lines;
12. Gas distribution lines;
13. Home occupations;
14. Kennel;
15. Processing of agriculture products;
16. Radio and television towers;
17. Riding academy;
18. Sewer collection lines;

19. Sewer lift station;
20. Telephone lines;
21. Television cables - only below ground;
22. Utility offices;
23. Water pumping stations;
24. Water storage tanks - in ground; and
25. Water storage tanks - above ground either wholly or partially.

(Ord. 1035 (part), 2005; Ord. 851 (part), 1993; Ord. 831 § 3.1.2, 1992)

17.16.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.
1. Minimum lot area: five acres.
2. Minimum lot area per dwelling unit: five acres.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):
1. Minimum front yard, principal buildings and uses: thirty-five (35) feet.
2. Minimum front yard, accessory buildings and uses: thirty-five (35) feet.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses:
1. Minimum side yard, principal buildings and uses: twenty (20) feet.
2. Minimum side yard, from interior lot line for principal buildings and uses: ten (10) feet.
3. Minimum side yard, from interior lot line for accessory buildings and uses: ten (10) feet.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and accessory uses:
1. Minimum rear yard, for principal buildings and uses: twenty-five (25) feet.
2. Minimum rear yard, for accessory buildings and uses: twenty-five (25) feet.

E. Height Requirements. Maximum height:
1. Height for principal buildings and uses: fifty (50) feet.
2. Height for accessory buildings and uses: fifty (50) feet.
3. Principal building maximum floor area ratio: n/a.

(Ord. 831 § 3.13, 1992)

Chapter 17.20

PF PARK FOREST DISTRICT

Sections:

17.20.010 Intent.
17.20.020 Uses permitted by right.
17.20.030 Conditional uses.
17.20.040 Area and bulk requirements.

17.20.010 Intent.

The PF park forest district is intended to provide areas in forested sections of the city to be used for low-density single-family residential development while minimizing potential adverse affects on the surrounding environment.

(Ord. 831 § 3.2, 1992)

17.20.020 Uses permitted by right.

Property in the PF park forest district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Day care, small;
2. Dwelling unit, single-family;
3. Farming, ranching and general agriculture crops;
4. Parks, recreation lands;
5. Ranch offices; and
6. Wildlife preserves.

(Ord. 1035 (part), 2005; Ord. 831 § 3.2.1, 1992)

17.20.030 Conditional uses.

The following uses, or any uses which the planning and zoning commission considers comparable to any uses already listed under this section, may be permitted in the PF park forest district under the provisions of Chapter 17.76, Conditional Uses.

1. Camping areas;
2. Churches and related uses;
3. College and university buildings;
4. Country clubs;
5. Day care, large;
6. Dwelling unit, modular;
7. Electrical distribution lines - underground (k.v. or less);
8. Electrical substations;
9. Electrical transmission lines;
10. Fire and police stations;
11. Gas distribution lines;
12. Gas regulator stations;
13. Gas transmission lines;
14. Golf course and associated driving range;
15. Governmental offices;
16. Home occupations;
17. Kennel;
18. Sewer collection lines;
19. Sewer lift station;
20. Telephone lines;
21. Television cables - only below ground;
22. Utility offices;
23. Water pumping stations;
24. Water storage tanks - in ground; and
25. Water storage tanks - above ground either wholly or partially.

(Ord. 1035 (part), 2005; Ord. 831 § 3.2.2, 1992)

17.20.040 Area and bulk requirements

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.

1. Minimum lot area for nonconforming lots of record: one-half acre.
2. Minimum lot area for all new lots: one acre.
3. Minimum lot area per dwelling unit for nonconforming lots of record: One-half acre.
4. Minimum lot area per dwelling unit for all new lots: one acre.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):

1. Minimum front yard, principal buildings and uses: thirty-five (35) feet.
2. Minimum front yard, accessory buildings and uses: thirty-five (35) feet.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses:

1. Minimum side yard, principal buildings and uses: twenty (20) feet.
2. Minimum side yard, from interior lot line for principal buildings and uses: ten (10) feet.
3. Minimum side yard, from interior lot line for accessory buildings and uses: ten (10) feet.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and uses:

1. Minimum rear yard, for principal buildings and uses: twenty-five (25) feet.
2. Minimum rear yard, for accessory buildings and uses: twenty-five (25) feet.

E. Height Requirements. Maximum height ;

1. Height for principal buildings and uses: thirty-five (35) feet.
2. Height for accessory buildings and uses: twenty-five (25) feet.
3. Principal building maximum floor area ratio: n/a.

(Ord. 831 § 3.2.3, 1992)

Chapter 17.24

R1 RESIDENTIAL DISTRICT

Sections:

17.24.010 Intent.

17.24.020 Uses permitted by right.

17.24.030 Conditional uses.

17.24.040 Area and bulk requirements.

17.24.010 Intent.

The R1 residential district is intended to provide locations for medium density, residential development commensurate with an urban area. The primary use is single-family detached residences.

(Ord. 831 § 3.3, 1992)

17.24.020 Uses permitted by right.

Property in the R1 residential district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Day care, small;
2. Dwelling unit, single-family;
3. Parks, recreation land; and
4. Wildlife preserves.

(Ord. 1035 (part), 2005; Ord. 831 § 3.3.1, 1992)

17.24.030 Conditional uses.

The following uses, or any use which the planning commission considers comparable to another use which is directly listed under conditional uses, may be permitted in the R1 residential district under the provisions of Chapter 17.76, Conditional Uses.

1. Accessory housing;
2. Bed and breakfast;
3. Condominium;
4. Country clubs;
5. Day care, large;
6. Duplexes;
7. Dwelling unit, for hired personnel only;
8. Dwelling unit, modular;
9. Dwelling unit, multiple family;
10. Electrical distribution lines - underground (k.v. or less);
11. Fire and police stations;
12. Gas distribution lines;
13. Gas regulator stations;
14. Gas transmission lines;
15. Golf course and associated driving range;
16. Home occupations;
17. House museums;
18. Neighborhood residential parking lot, on vacant lot - three hundred (300) foot distance requirement;
19. Sewer collection lines;
20. Sewer lift stations;
21. Telephone lines;
22. Television cables - only below ground;
23. Townhouses;
24. Utility offices;
25. Water pumping stations;
26. Water storage tanks - above ground either wholly or partially; and
27. Water storage tanks - in ground.

(Ord. 1035 (part), 2005; Ord. 1033, 2005; Ord. 930 (part), 1997; (Ord. 900 (part), 1995 (part), 1995; Ord. 851 (part), 1993; Ord. 831 § 3.3.2, 1992)

17.24.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.

1. Minimum lot area for nonconforming lots of record: two thousand five hundred (2,500) square feet.

2. Minimum lot area for all new lots: five thousand (5,000) square feet.

3. Minimum lot area per dwelling unit for nonconforming lots of record: two thousand five hundred (2,500) square feet. Minimum lot area per dwelling unit for all new lots: (a) five thousand (5,000) square feet for single-family dwellings and duplexes; (b) for multiple-family structures, there shall be a lot area of not less than three thousand five hundred (3,500) square feet for the first unit, plus an additional one thousand (1,000) square feet for each additional dwelling unit. For those structures which provide off-street parking within the main structure, the lot area requirement per each additional unit may be

reduced to two hundred (200) square feet per dwelling unit; (c) four hundred (400) square feet of open space shall be provided for each multi-family unit. A fifty (50) foot frontage on the lot is required for multi-family dwellings.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):

1. Minimum front yard, principal buildings and uses: twenty (20) feet.
2. Minimum front yard, accessory buildings and uses: twenty (20) feet.

C. Side Yard Requirements. Minimum side yard setback requirements or all buildings and uses:

1. Minimum side yard, principal buildings and uses: fifteen (15) feet.
2. Minimum side yard, from interior lot line for principal buildings and uses: five feet.
3. Minimum side yard, from interior lot line for accessory buildings and uses: five feet.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and uses:

1. Minimum rear yard, for principal buildings and uses: ten (10) feet.
2. Minimum rear yard, for accessory buildings and uses: ten (10) feet.

E. Height Requirements. Maximum height:

1. Height for principal buildings and uses: thirty-five (35) feet.
2. Height for accessory buildings and uses: twenty-five (25) feet.
3. Principal building maximum floor area ratio: n/a.

(Ord. 900 (part), 1995; Ord. 831 § 3.3.3, 1992)

Chapter 17.28

R2 MULTI-FAMILY RESIDENTIAL DISTRICT

Sections:

17.28.010 Intent.

17.28.020 Uses permitted by right.

17.28.030 Conditional uses.

17.28.040 Area and bulk requirements.

17.28.010 Intent.

The R2 multi-family residential district is intended to provide locations for medium density, multiple-family units such as duplexes, townhouses, condominiums and apartment developments.

(Ord. 831 § 3.4, 1992)

17.28.020 Uses permitted by right.

Property in the R2 multi-family residential district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Accessory housing;
2. Condominium;
3. Day care, small;
4. Duplexes;
5. Dwelling unit, single-family;
6. Dwelling unit, multi-family;
7. Efficiency living unit;
8. Parks, recreation land;
9. Townhouses; and
10. Wildlife preserves.

(Ord. 1062, 2006; Ord. 1035 (part), 2005; Ord. 900 (part), 1995: Ord. 831 § 3.4.1, 1992)

17.28.030 Conditional uses.

The following uses, or any use which the planning and zoning commission considers comparable to any uses already listed under conditional uses, may be permitted in the R2 multi-family residential district under the provisions of Chapter 17.76, Conditional Uses.

1. Bed and breakfast;
2. Churches and related uses;
3. Country clubs;
4. Day care, large;
5. Dwelling unit, for hired personnel only;
6. Dwelling unit, modular;
7. Electrical distribution lines - underground (k.v. or less);
8. Fire and police stations;
9. Gas distribution lines;
10. Gas regulator stations;
11. Gas transmission lines;
12. Golf course and associated driving range;
13. Group home for developmentally disabled;
14. Group care facility;
15. Home occupations;
16. Homes for the aged;
17. Hostel;
18. House museums;
19. Medical and dental clinics;
20. Neighborhood residential parking lot, on vacant lot - three hundred (300) foot distance requirement;
21. Residential care facility;
22. Sewer collection lines;
23. Sewer lift stations;
24. Telephone lines;
25. Television cables - only below ground;
26. Utility offices;
27. Water pumping stations;
28. Water storage tanks - above ground either wholly or partially; and
29. Water storage tanks - in ground.

(Ord. 1035 (part), 2005; Ord. 1026 (part), 2004; Ord. 930 (part), 1997; Ord. 851 (part), 1993; Ord. 831 § 3.4.2, 1992)

17.28.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements:

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size. Minimum lot area: five thousand (5,000) square feet. Minimum lot area per dwelling unit for all new lots: (a) five thousand (5,000) square feet for single-family dwellings and duplexes; (b) for multiple-family structures, there shall be a lot area of not less than three thousand five hundred (3,500) square feet for the first unit, plus an additional one thousand (1,000) square feet for each additional dwelling unit. For those structures which provide off-street parking within the main structure, the lot area requirement per each additional unit may be reduced to two hundred (200) square feet per dwelling unit; (c) four hundred (400) square feet of open space shall be provided for each multi-family unit. A fifty (50) foot frontage on

the lot is required for multi-family dwellings.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):

1. Minimum front yard, principal buildings and uses: twenty (20) feet.
2. Minimum front yard, accessory buildings and uses: twenty (20) feet.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses:

1. Minimum side yard, principal buildings and uses: fifteen (15) feet.
2. Minimum side yard, from interior lot line for principal buildings and uses: five feet.
3. Minimum side yard, from interior lot line for accessory buildings and uses: five feet.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and uses:

1. Minimum rear yard, for principal buildings and uses: ten (10) feet.
2. Minimum rear yard, for accessory buildings and uses: ten (10) feet.

E. Height Requirements. Maximum height:

1. Height for principal buildings and uses: thirty-five (35) feet.
2. Height for accessory buildings and uses: twenty-five (25) feet.
3. Principal building maximum floor area ratio: n/a.

(Ord. 900 (part), 1995; Ord. 831 § 3.4.3, 1992)

Chapter 17.32

C1 COMMERCIAL DISTRICT

Sections:

17.32.010 Intent.

17.32.020 Uses permitted by right.

17.32.030 Conditional uses.

17.32.040 Area and bulk requirements.

17.32.010 Intent.

The C1 commercial district is intended to provide locations coinciding with the downtown core commercial zone where certain commercial uses and gaming are permitted.

(Ord. 831 § 3.5, 1992)

17.32.020 Uses permitted by right.

Property in the C1 commercial district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Auditorium, indoor theaters;
2. Auto accessory parts and repair;
3. Bakery;
4. Banks;
5. Barber shops, beauty shops;
6. Book, hobby, toy, music stores;
7. Bowling alley;
8. Chiropractic office;
9. Churches;
10. Civic youth social/fraternal organization;

11. Convenience stores;
12. Delicatessen;
13. Department store, dry good and variety stores;
14. Dwelling unit, for hired personnel only;
15. Electrical and household appliance stores, sales and service;
16. Florist;
17. Frozen food lockers, not including slaughtering on the premises;
18. Fuel storage tanks - above and below ground;
19. Furniture stores;
20. Gaming (within city limits as of November 1, 1989);
21. Gasoline service station;
22. Hardware stores;
23. Hospitals;
24. Hotels and motels;
25. Indoor amusement establishment;
26. Insurance, real estate, investment offices;
27. Libraries and museums;
28. Liquor stores;
29. Mail order;
30. Music, radio and television stores;
31. Novelty, curio, antique and souvenir shops;
32. Paint stores;
33. Parks, recreation land;
34. Pet shops;
35. Photographic equipment, sales and service;
36. Printing, photocopying, blueprint service;
37. Professional/accounting service offices;
38. Radio and television studios;
39. Restaurant, bar and lounge;
40. Second-hand stores;
41. Shoe stores;
42. Shoe repair;
43. Sporting goods stores;
44. Travel bureaus; and
45. Wildlife preserves.

(Ord. 900 (part), 1995; Ord. 831 § 3.5.1, 1992)

17.32.030 Conditional uses.

The following uses, or any use which the planning commission considers comparable to another use which is directly listed under this section, may be permitted in the C1 commercial district under the provisions of Chapter 17.76, Conditional Uses.

1. Adult education facility;
2. Auto parking lots (commercial);
3. Auto service station and garage;

4. Bed and breakfast;
5. Bus, train and airline terminals;
6. Condominiums;
7. Day care centers;
8. Dry cleaning;
9. Duplexes;
10. Dwelling, single-family;
11. Dwelling unit, multiple-family;
12. Efficiency living unit;
13. Electrical distribution lines - underground (k.v. or less);
14. Equipment rental;
15. Fire and police stations;
16. Gas distribution lines;
17. Gas regulator stations;
18. Gas transmission lines;
19. Governmental offices;
20. Home occupations;
21. Laundry;
22. Massage therapy office, city license required;
23. Mortuaries;
24. Schools, vocational-technical;
25. Sewer collection lines;
26. Sewer lift stations;
27. Tattoo business, state license required;
28. Telephone lines;
29. Television cables - only below ground;
30. Utility offices;
31. Valet parking;
32. Water pumping stations;
33. Water storage tanks - above ground either wholly or partially; and
34. Water storage tanks - in ground.

(Ord. 952 (part), 1999: Ord. 915 (part), 1996; Ord. 900 (part), 1995; Ord. 851 (part), 1993; Ord. 831 § 3.5.2, 1992)

17.32.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.

1. Minimum lot area: two thousand five hundred (2,500) square feet.
2. Minimum lot area per dwelling unit: n/a.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet): n/a.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses: n/a.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and uses: n/a.

E. Height Requirements. Maximum height:

1. Height for principal buildings and uses: forty-five (45) feet (existing historic buildings may be repaired or restored to a pre-existing height, if documentation or photographs are presented).

2. Height for accessory buildings and uses: forty-five (45) feet.

3. Principal building maximum floor area ratio: 2.5:1.

(Ord. 952 (part), 1999; Ord. 831 § 3.5.3, 1992)

Chapter 17.36

CE COMMERCIAL ENTERPRISE DISTRICT

Sections:

17.36.010 Intent.

17.36.020 Uses permitted by right.

17.36.030 Conditional uses.

17.36.040 Area and bulk requirements.

17.36.010 Intent.

The CE commercial enterprise district is intended to provide locations for the development of a shopping area or center which will include commercial service establishments primarily catering to the retail service and merchandise needs of the local population. Gaming is not a permitted use in this district.

(Ord. 831 § 3.6, 1992)

17.36.020 Uses permitted by right.

Property in the CE commercial enterprise district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Adult education facility;
2. Auditorium, indoor theaters;
3. Auto accessory part and repair;
4. Bakery;
5. Banks;
6. Barber shops, beauty shops;
7. Books, hobby, toy, music stores;
8. Bowling alley;
9. Chiropractic office;
10. Civic youth social/fraternal organization;
11. College and university buildings;
12. Convenience stores;
13. Delicatessen;
14. Department, dry goods and variety stores;
15. Dwelling unit, for hired personnel only;
16. Electrical and household appliance stores, sales and service;
17. Florist;
18. Frozen food lockers, not including slaughtering on the premises;
19. Fuel storage tanks - above and below;
20. Furniture stores;

21. Gasoline service station;
22. Hardware stores;
23. Hotels and motels;
24. Indoor amusement establishment;
25. Insurance, real estate, investment offices;
26. Libraries and museums;
27. Liquor stores;
28. Mail order;
29. Medical and dental clinics;
30. Music, radio and television stores;
31. Novelty, curio, antique and souvenir shops;
32. Paint stores;
33. Parks, recreation land;
34. Pet shops;
35. Photographic equipment sales and service;
36. Pre-school care/educational centers;
37. Printing, photocopying, blueprint service;
38. Professional/accounting service offices;
39. Radio and television studios;
40. Restaurant, bar and lounge;
41. Schools, vocational-technical;
42. Second-hand stores;
43. Shoe repair;
44. Shoe stores;
45. Sporting goods store;
46. Travel bureaus; and
47. Wildlife preserves.

(Ord. 900 (part), 1995; Ord. 831 § 3.6.1, 1992)

17.36.030 Conditional uses.

The following uses, or any uses which the planning commission considers comparable to another use which is directly listed under this section, may be permitted in the CE commercial enterprise district under the provisions of Chapter 17.76, Conditional Uses.

1. Auto parking lots (commercial);
2. Auto service station and garage;
3. Auto sales and service;
4. Bed and breakfast;
5. Building materials supply;
6. Bus, train and airline terminals;
7. Churches and related uses;
8. Condominiums;
9. Day care centers;
10. Duplexes;
11. Dry cleaning;

12. Dwelling, single-family;
13. Dwelling unit, multiple-family;
14. Efficiency living unit;
15. Electrical distribution lines - underground (k.v. or less);
16. Equipment rental;
17. Fire and police stations;
18. Gas distribution lines;
19. Gas regulator stations;
20. Gas transmission lines;
21. Governmental offices;
22. Group care facilities;
23. Group home for developmentally disabled;
24. Home occupations;
25. Homes for the aged;
26. Hospitals;
27. Hostel;
28. Laundromat;
29. Laundry;
30. Massage therapy office, city license required;
31. Mortuaries;
32. Nursing homes;
33. Residential care facility;
34. Sanitariums, mental institutions;
35. Sewer collection lines;
36. Sewer lift stations
37. Tattoo business, state license required;
38. Telephone lines;
39. Television cables - only below ground;
40. Utility offices;
41. Valet parking;
42. Water pumping stations;
43. Water storage tanks - above ground either wholly or partially; and
44. Water storage tanks - in ground.

(Ord. 1026 (part), 2004; Ord. 915 (part), 1996; Ord. 900 (part), 1995; Ord. 851 (part), 1993; Ord. 831 § 3.6.2, 1992)

17.36.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.

1. Minimum lot area: two thousand five hundred (2,500) square feet.
2. Minimum lot area per dwelling unit: two thousand five hundred (2,500) square feet.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):

1. Minimum front yard, principal buildings and uses: twenty (20) feet.
2. Minimum front yard, accessory buildings and uses: twenty (20) feet.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses:

1. Minimum side yard, principal buildings and uses: fifteen (15) feet.
2. Minimum side yard, from interior lot line for principal buildings and uses: five feet.
3. Minimum side yard, from interior lot line for accessory buildings and uses: five feet.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and uses:

1. Minimum rear yard, for principal buildings and uses: ten (10) feet.
2. Minimum rear yard, for accessory buildings and uses: ten (10) feet.

E. Height Requirements. Maximum height:

1. Height for principal buildings and uses: forty-five (45) feet.
2. Height for accessory buildings and uses: thirty-five (35) feet.
3. Principal building maximum floor area ratio: 1.7:1.

(Ord. 952 (part), 1999; Ord. 831 § 3.6.3, 1992)

Chapter 17.40

CH COMMERCIAL HIGHWAY DISTRICT

Sections:

17.40.010 Intent.

17.40.020 Uses permitted by right.

17.40.030 Conditional uses.

17.40.040 Area and bulk requirements.

17.40.010 Intent.

The CH commercial highway district is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking.

(Ord. 831 § 3.7, 1992)

17.40.020 Uses permitted by right.

Property in the CH commercial highway district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Adult education facility;
2. Animal clinic;
3. Auditorium, indoor theaters;
4. Auto parking lots (commercial);
5. Auto sales and service;
6. Auto service station and garage;
7. Auto accessory part and repair;
8. Auto wash and polish service;
9. Bakery;
10. Banks;
11. Barber shops and beauty shops;
12. Book, hobby, toy and music stores;

13. Bowling alley;
14. Chiropractic office;
15. Civic youth social/fraternal organization;
16. Convenience stores;
17. Delicatessen;
18. Department, dry goods and variety stores;
19. Drive-in restaurants;
20. Dwelling unit, for hired personnel only;
21. Electrical and household appliance stores, sales and service;
22. Florist;
23. Frozen food lockers, not including slaughtering on the premises;
24. Fuel storage tanks, above and below ground;
25. Furniture stores;
26. Gaming (within city boundaries as of November 1, 1989);
27. Gasoline service station;
28. Hardware stores;
29. Hotels and motels;
30. Indoor amusement establishment;
31. Insurance, real estate, investment offices;
32. Laundromat;
33. Libraries and museums;
34. Liquor stores;
35. Mail order;
36. Medical and dental clinics;
37. Miniature golf;
38. Music, radio and television stores;
39. Novelty, curio, antique and souvenir shops;
40. Paint stores;
41. Parks, recreation land;
42. Pet shops;
43. Photographic equipment sales and service;
44. Printing, photocopying, blueprint service;
45. Professional/accounting service offices;
46. Radio and television studios;
47. Restaurant, bar and lounge;
48. Schools, vocational and technical;
49. Second-hand stores;
50. Shoe stores;
51. Shoe repair;
52. Sporting goods stores;
53. Travel bureaus; and
54. Wildlife preserves.

(Ord. 900 (part), 1995; Ord. 831 § 3.7.1, 1992)

17.40.030 Conditional uses.

The following uses, or any use which the planning commission considers comparable to another use which is directly listed under this section, may be permitted in the CH commercial highway district under the provisions of Chapter 17.76, Conditional Uses.

1. Animal hospital for large animals;
2. Animal hospital for small animals;
3. Bed and breakfast;
4. Building materials supply;
5. Bus, train and airline terminals;
6. Camping areas;
7. Churches and related uses;
8. Condominium(s);
9. Day care centers;
10. Duplexes;
11. Dry cleaning;
12. Dwelling unit, multiple-family;
13. Dwelling unit, single-family;
14. Efficiency living unit;
15. Electrical distribution lines - underground (k.v. or less)
16. Electrical, heating, painting, plumbing, roofing and ventilating shops and service;
17. Equipment rental;
18. Fire and police stations;
19. Gas distribution lines;
20. Gas regulator stations;
21. Gas transmission lines;
22. Governmental offices;
23. Group care facility;
24. Group home for developmentally disabled;
25. Home occupations;
26. Homes for the aged;
27. Hospitals;
28. Hostel;
29. Laundry;
30. Machine shops;
31. Massage therapy office, city license required;
32. Mortuaries;
33. Nursing homes;
34. Residential care facility;
35. Sanitariums, mental institutions;
36. Sewer collection lines;
37. Sewer lift stations;
38. Tattoo business, state license required;

39. Telephone lines;
40. Television cables - only below ground;
41. Utility offices;
42. Valet parking;
43. Warehouse (storing of goods connected with an industrial operation - “No Hazardous Materials”);
44. Water pumping stations;
45. Water storage tanks - above ground either wholly or partially; and
46. Water storage tanks - in ground.

(Ord. 1026 (part), 2004; Ord. 952 (part), 1999: Ord. 915 (part), 1996; Ord. 900 (part), 1995; Ord. 851 (part), 1993; Ord. 831 § 3.7.2, 1992)

17.40.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.
   1. Minimum lot area: two thousand five hundred (2,500) square feet.
   2. Minimum lot area per dwelling unit: two thousand five hundred (2,500) square feet.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):
   1. Minimum front yard, principal buildings and uses: fifteen (15) feet.
   2. Minimum front yard, accessory buildings and uses: fifteen (15) feet.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses:
   1. Minimum side yard, principal buildings and uses: ten (10) feet.
   2. Minimum side yard, from interior lot line for principal buildings and uses: five feet.
   3. Minimum side yard, from interior lot line for accessory buildings and uses: five feet.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and uses:
   1. Minimum rear yard, for principal buildings and uses: five feet.
   2. Minimum rear yard, for accessory buildings and uses: five feet.

E. Height Requirements. Maximum height:
   1. Height for principal buildings and uses: forty-five (45) feet.
   2. Height for accessory buildings and uses: thirty-five (35) feet.
   3. Principal building maximum floor area ratio: 1.7:1.

(Ord. 952 (part), 1999; Ord. 831 § 3.7.3, 1992)

Chapter 17.44

PB PLANNED BUSINESS DISTRICT

Sections:

17.44.010 Intent.
17.44.020 Uses permitted by right.
17.44.030 Conditional uses.
17.44.040 Area and bulk requirements.

17.44.010 Intent.

The PB planned business district is intended to provide a location for light industrial, office/industrial, service industrial and heavy commercial service uses.

(Ord. 831 § 3.8, 1992)

17.44.020 Uses permitted by right.

Property in the PB planned business district shall be used for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Adult education facility;
2. Auto accessory part and repair;
3. Auto sales and service;
4. Building material supply;
5. Cabinet making and carpentry shops;
6. Civic youth social/fraternal organization;
7. Electrical and household appliance stores, sales and service;
8. Electrical, heating, painting, plumbing, roofing and ventilating shops and service;
9. Equipment rental;
10. Industrial-scientific research, manufacturing, compounding, fabrication, assembling, processing or treatment of products, food and beverage processing or similar types of use;
11. Insurance, real estate, investment offices;
12. Machine shops;
13. Parks, recreation lands;
14. Printing, photocopying, blueprint service;
15. Schools, vocational-technical;
16. Warehouses (storing of goods connected with an industrial operation -- “No Hazardous Materials”); and
17. Wildlife preserves.

(Ord. 851 (part), 1993; Ord. 831 § 3.8.1, 1992)

17.44.030 Conditional uses.

The following uses, or any uses which the planning commission considers comparable to another use which is directly listed under this section, may be permitted in the PB planned business district under the provisions of Chapter 17.76, Conditional Uses.

1. Agriculture equipment, sales and service;
2. Animal hospital for large animals;
3. Animal hospital for small animals;
4. Auto service station and garage;
5. Auto salvage and wrecking;
6. Auto wash and polish service;
7. Day care centers;
8. Dry cleaning;
9. Electrical distribution lines - underground (k.v. or less);
10. Electrical substations;
11. Fire and police stations;
12. Fuel storage tanks - above or below ground;
13. Gas distribution lines;
14. Gas regulator stations;
15. Gas transmission lines;

16. Governmental offices;
17. Laundry;
18. Medical and dental clinics;
19. Mobile home sales;
20. Printing - Metropolitan Arch type;
21. Professional/accounting service offices;
22. Radio and television towers;
23. Recycling center;
24. Sewer collection lines;
25. Sewer lift station;
26. Telephone lines;
27. Television cables - only below ground;
28. Utility offices;
29. Valet parking;:
29. Water pumping stations;
30. Water storage tanks - above ground either wholly or partially; and
31. Water storage tanks - in ground.

(Ord. 915 (part), 1996; Ord. 851 (part), 1993; Ord. 831 § 3.8.2, 1992)

17.44.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.

1. Minimum lot area: six thousand (6,000) square feet.
2. Minimum lot area per dwelling unit: n/a.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):

1. Minimum front yard, principal buildings and uses: ten (10) feet.
2. Minimum front yard, accessory buildings and uses: ten (10) feet.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses:

1. Minimum side yard, principal buildings and uses: ten (10) feet.
2. Minimum side yard, from interior lot line for principal buildings and uses: five feet.
3. Minimum side yard, from interior lot line for accessory buildings and uses: five feet.

D. Rear Yard Requirements. Maximum rear yard setback requirements for all buildings and uses:

1. Minimum rear yard, for principal buildings and uses: five feet.
2. Minimum rear yard, for accessory buildings and uses: five feet.

E. Height Requirements. Maximum height:

1. Height for principal buildings and uses: forty-five (45) feet.
2. Height for accessory buildings and uses: thirty-five (35) feet.
3. Principal building maximum floor area ratio: 1.7:1.

(Ord. 952 (part), 1999; Ord. 831 § 3.8.3, 1992)

Chapter 17.48

PU PUBLIC USE DISTRICT

Sections:

17.48.010 Intent.

17.48.020 Uses permitted by right.

17.48.030 Conditional uses.

17.48.040 Area and bulk requirements.

17.48.010 Intent.

The PU public use district is intended to provide locations for areas worthy of preservation due to their natural beauty and open character or otherwise to provide for public uses which will serve the public good.

(Ord. 831 § 3.9, 1992)

17.48.020 Uses permitted by right.

Property in the PU public use district shall be used only for the following purposes or any use which the planning commission considers comparable to another use which is directly listed under this section.

1. Auditoriums;
2. Churches;
3. Libraries and museums;
4. Parks, recreation lands;
5. Schools, public and parochial;
6. Schools, private; and
7. Wildlife preserves.

(Ord. 831 § 3.9.1, 1992)

17.48.030 Conditional uses.

The following uses, or any use which the planning commission considers comparable to another use which is directly listed under conditional uses, may be permitted in the PU public use district under the provisions of Chapter 17.76, Conditional Uses.

1. Cemeteries;
2. Country clubs;
3. Dwelling unit, for hired personnel only;
4. Electrical distribution lines - underground (k.v. or less);
5. Electrical substations;
6. Fairgrounds;
7. Fire and police stations;
8. Gas distribution lines;
9. Gas regulator stations;
10. Gas transmission lines;
11. Golf course, and associated driving ranges;
12. Governmental offices;
13. Radio and television towers;
14. Sewer collection lines;
15. Sewer lift station;
16. Telephone lines;
17. Television cables - only below ground;

18. Utility offices;
19. Water pumping stations;
20. Water storage tanks - above ground either wholly or partially; and
21. Water storage tanks - in ground.

(Ord. 831 § 3.9.2, 1992)

17.48.040 Area and bulk requirements.

All buildings shall set back from street right-of-way lines and lot lines to comply with the following requirements.

Where contiguous lots are in single ownership, the setbacks for the structure may be measured from the perimeter of the combined lots.

A. Lot Size.
   1. Minimum lot area: n/a.
   2. Minimum lot area per dwelling unit: n/a.

B. Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):
   1. Minimum front yard, principal buildings and uses: ten (10) feet.
   2. Minimum front yard, accessory buildings and uses: ten (10) feet.

C. Side Yard Requirements. Minimum side yard setback requirements for all buildings and uses:
   1. Minimum side yard, principal buildings and uses: ten (10) feet.
   2. Minimum side yard, from interior lot line for principal buildings and uses: five feet.
   3. Minimum side yard, from interior lot line for accessory buildings and uses: five feet.

D. Rear Yard Requirements. Minimum rear yard setback requirements for all buildings and uses:
   1. Minimum rear yard, for principal buildings and uses: five feet.
   2. Minimum rear yard, for accessory buildings and uses: five feet.

E. Height Requirements. Maximum height:
   1. Height for principal buildings and uses: thirty-five (35) feet.
   2. Height for accessory buildings and uses: twenty-five (25) feet.
   3. Principal building maximum floor area ratio: n/a

(Ord. 831 § 3.9.3, 1992)

Chapter 17.52

ENVIRONMENTAL OVERLAY ZONE

Sections:

17.52.010 Purpose.
17.52.020 Boundaries.
17.52.030 Review.

17.52.010 Purpose.

For the purpose of the protection of sensitive environmental areas and protection of the public from environmental hazard areas of the city, an environmental overlay zone is established, and any development within such district shall occur under the additional provisions of this chapter.

(Ord. 831 § 8.1, 1992)

17.52.020 Boundaries.

The boundaries of the environmental overlay zone shall be set by a variety of means:

A. Flood plain boundaries shall be set by the Federal Emergency Management Agency (FEMA) map as amended and adopted by the city.

B. Other sensitive environments and environmental hazards, such as, but not necessarily limited to, rock fall areas, cliffs, steep slopes, unstable slopes, subsidence areas, areas contaminated by hazardous waste, areas subject to wildfire hazard, riparian habitat and critical wildlife habitat shall have their boundaries set by studies funded by the developers of individual properties, and funded by studies done by local government at its sole option.

(Ord. 831 § 8.2, 1992)

17.52.030 Review.

A. Property in the environmental overlay zone shall only be developed subject to the specific review of the planning and zoning commission. Due to the sensitive and hazardous nature of these areas, the development of the specific property will often require an extensive mitigation plan. Such mitigation plan will be developed by the developer and the city planning department and will be presented as part of the development package to the planning and zoning commission.

B. The city's cost to develop and coordinate the development of a mitigation plan shall be borne by the developer. The city may retain expert as required whose costs shall be paid by the developer.

(Ord. 831 § 8.3, 1992)

Chapter 17.53

TRANSIENT COMMEERCIAL USE OF RESIDENTIAL PROPERTY--PROHIBITED

Sections:

17.53.010 Purpose.

17.53.020 Definitions.

17.53.030 Permission.

17.53.040 Exception.

17.53.050 Liability and enforcement.

17.53.060 Violation--Penalty.

17.53.010 Purpose.

The purpose of this chapter is to:

A. Preserve and enhance the character of the residential districts.

B. Promote the public health, safety, and general welfare of the city.

C. Expressly prohibit transient commercial use of residential property for remuneration, which uses are inharmonious with and injurious to the preservation of the residential character and environment of the city.

(Ord. 1022 (part), 2004)

17.53.020 Definitions.

A. Except as otherwise defined or where the context otherwise indicates, the following defined words shall have the following meaning:

"Person" means an individual, a group of individuals, or an association, firm, partnership, corporation or other entity, public or private.

"Remuneration" means compensation, money, rent, or other bargained for consideration given in return for occupancy, possession, or use of real property.

"Residential property" means any single-family dwelling unit or structure located on one or more contiguous lots of record within the R-1 residential district and R-2 multi-family residential district.

"Transient" means a period of time less than thirty (30) consecutive calendar days.

"Transient commercial use of property" means the commercial use, by any person, of residential property for bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is for less than thirty (30) consecutive calendar days.

B. The definitions herein include the singular and plural meanings of each defined word.

(Ord. 1022 (part), 2004)

17.53.030 Permission.

Transient commercial use of residential property for remuneration is prohibited in the residential land use districts, except as otherwise expressly permitted by this ordinance.

(Ord. 1022 (part), 2004)

17.53.040 Exception.

This ordinance shall not apply to transient commercial use of residential property for remuneration for a period of fourteen (14) days or less during the month of August, commencing four days immediately preceding the official start of the Sturgis Motorcycle Rally and ending three days after the end of the Sturgis Motorcycle Rally each year.

(Ord. 1022 (part), 2004)

17.53.050 Liability and enforcement.

A. Any person acting as agent, real estate broker, real estate sales agent, property manager, reservation service or otherwise who arranges or negotiates for the use of residential property in violation of the provisions of this section is guilty of an infraction for each day in which such residential property is used, or allowed to be used, in violation of this section.

B. Any person who uses, or allows the use of residential property in violation of the provisions of this section is guilty of an infraction for each day in which such residential property is used, or allowed to be used, in violation of this section.

(Ord. 1022 (part), 2004)

17.53.060 Violation--Penalty.

Citations will be issued to any person who violates this title or any amendment hereto. The violator, upon being found guilty, shall be punished as for a misdemeanor, and any court having jurisdiction of misdemeanor cases shall have jurisdiction to try violators and upon finding them guilty, may penalize them with a fine not exceeding two hundred dollars ($200.00) or by imprisonment not exceeding thirty (30) days or by both such fine and imprisonment. Each day that any violation of this title is in effect shall constitute a separate offense.

(Ord. 1022 (part), 2004)

Chapter 17.56

NONCONFORMING USES, BUILDINGS AND LOTS

Sections:

17.56.010 Purpose and scope.

17.56.020 Continuation of nonconformities.

17.56.030 Nonconforming review process.

17.56.040 Nonconforming uses.

17.56.050 Nonconforming buildings.

17.56.060 Nonconforming lots or parcels.

17.56.070 Criteria for changes to or expansions of nonconforming buildings, uses and lots.

17.56.010 Purpose and scope.

A. Purpose. Adoption of land use controls and changes in zoning have created nonconforming uses, buildings and lots. The purpose of this chapter is to allow these nonconforming uses, buildings and lots to be changed and upgraded without necessarily requiring their elimination, if the change would not substantially adversely affect the traffic, parking and environment of the surrounding area and if the change would reduce the degree of nonconformity of the use or improve the physical appearance of the structure or site.

B. Scope. The term “nonconforming” is commonly defined to mean a use of land, building or lot that lawfully existed prior to the enactment of a zoning ordinance and that is maintained after the effective date of such ordinance, even though it does not comply with the use restrictions applicable to the area in which it is situated.

The following three categories are included within the broad term of “nonconformities”:

1. “Nonconforming uses” means a building, structure or use of land that is in existence and lawful on the date when a zoning ordinance or amendment becomes effective prohibiting such use, but which, nevertheless, may continue unaffected by such an ordinance or amendment thereto.

2. “Nonconforming structure or building” means a lawfully existing structure which becomes nonconforming because of an ordinance enacted subsequent to its erection. The nonconformance may be attributed to size, nature of construction, location of the structure or building on the land or its proximity to another building or structure.

3. “Nonconforming lot of record” means any validly recorded lot which at the time it was recorded fully complied with all applicable laws and ordinances but which does not fully comply with the lot requirements of this chapter.

(Ord. 831 § 5.1, 1992)

17.56.020 Continuation of nonconformities.

A. A nonconforming use in existence on the effective date of the ordinance which first made it nonconforming, and has been discontinued for at least one year, may not be resumed or replaced by another nonconforming use as allowed under Section 17.56.030, unless the approving agency grants an extension of the time in the following cases:

1. If an extension of time is requested in writing prior to the expiration of the one-year period and the approving agency finds that an undue hardship would result if such extension were not granted; or

2. If the extension is requested to allow restoration of a nonconforming use in a landmark structure.

B. Nonconforming buildings, buildings that contain nonconforming uses or buildings on a nonconforming lot may be restored to a safe condition if the building has been declared unsafe under the building code or other applicable safety or health codes.

C. Any nonconformity that has been damaged by fire, flood, wind, or other calamity or act of God may be restored to its original condition, provided that such work is started within twelve (12) months of such event and completed within twenty-four (24) months of the date on which the restoration commenced.

(Ord. 831 § 5.2, 1992)

17.56.030 Nonconforming review process.

A. Application. Any person with an ownership interest in land upon which a nonconforming use or building exists or which is a nonconforming lot or parcel and who wishes to expand or change such nonconformity shall file an application meeting the requirements of this title, for nonconforming review with the city planning department. The application for nonconforming review shall also include, without limitation, plans and elevations of the existing building or buildings and any new additions or renovations proposed.

B. Review and Recommendation. The city will either grant or deny the application or refer the request for review of a nonconforming lot or building modification to the board of adjustment and a request for a change of use to the planning and zoning commission. If a determination by the planning and zoning commission or the board of adjustment is required by this title, the city planning department will refer the review to that board for decision.

C. Appeal. An applicant or any abutting landowner of the subject property may appeal a decision of the city planning department to the board of adjustment for an application involving a nonconforming lot or building modification, or to the planning and zoning commission for an application involving a change in use.

D. Conditions of Approval. The approving agency may impose conditions upon an applicant in order to meet the purposes of this chapter, reduce nonconformity and improve site design.

(Ord. 851 (part), 1993 Ord. 831 § 5.3, 1992)

17.56.040 Nonconforming uses.

A. To constitute a nonconforming use, the use must be actual and not merely contemplated. Thus, a nonconforming use will not be established solely because:

1. The landowner intends to make the use in question;

2. The land is potentially available for such uses;

3. An application for a permit was filed;

4. There has been preliminary planning; or

5. A building permit has been obtained, but construction has not commenced within the term

of the permit.

B. The burden of establishing that any nonconformity is a legal nonconformity as defined by this chapter shall, in all cases, be upon the owner of such nonconformity and not upon the municipality. In order to prove the existence of a nonconforming use, evidence must be presented demonstrating: (1) the use was a lawful use prior to the adoption of a zoning regulation or amendment to the regulation. This generally may be accomplished through the introduction of

authenticated versions of the zoning ordinance text to show the law as it existed on the date prior to the regulation making the use (or building) nonconforming; (2) the use existed prior to the enactment of the restrictive ordinance. This may be accomplished through testimony of neighboring property owners, and tax, licensing or utility records; (3) The use has continued without abandonment or cessation for the statutorily prescribed period, and there has been no change or extension of the use. Proof of abandonment of a nonconforming use requires showing an intent to abandon and a voluntary clear action or failure to act, implying that the owner neither claims nor retains any interest in the use. Temporary cessation of use does not constitute abandonment. Similarly, an involuntary cessation of a nonconforming use does not constitute abandonment.

C. Except as otherwise provided in this chapter, any nonconforming lot or structure lawfully existing on the effective date of the ordinance codified in this chapter or subsequent amendment thereto, may be continued so long as it remains otherwise lawful. All nonconformities shall be encouraged to convert to conformity wherever possible.

D. No nonconformity shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

E. Any other provision of this chapter to the contrary notwithstanding, no use or structure which is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it shall thereafter conform to all regulations of this title.

F. No conforming use may be changed to a nonconforming use, notwithstanding the fact that some of the features of the lot, building or parking are nonconforming.

G. The city planning department shall grant a request for the replacement of one nonconforming use with another if the new use does not constitute a change of use under subsection H of this section. Any request for a change of use must be reviewed pursuant to the procedures of this section.

H. Any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided the planning and zoning commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the planning and zoning commission may require appropriate conditions and safeguards in accordance with the provisions of this title.

A change of use occurs when:

1. The parking is inadequate for the new use;

2. The new use is an expansion in size or impact of a nonconforming use;

3. In a business or industrial district, the new use constitutes an activity included under a different category of permitted use in this title, and the new use is not similar in operation to the previous use, including without limitation, hours of operation, parking needs, trips generated, number of employees, and noise impact on adjacent properties; or

4. In a residential district, the new use adds additional dwelling units or requires additional parking.

I. The purchase of adjacent property after enactment of the ordinance codified in this title does not authorize owners to extend the nonconforming use to adjacent property on theory that natural growth and expansion of business requires it.

J. An owner of a nonconforming use sometimes may be found to have a vested right to use an additional area of the subject tract or the entire tract, even though only a portion of the tract was used when the ordinance was enacted. However, nonconforming uses do not necessarily have the right to expand operations or facilities to the boundaries of the property existing at the time of the enactment, but such may be allowed after review and approval from the planning and zoning commission.

(Ord. 900 (part), 1995; Ord. 831 § 5.4, 1992)

17.56.050 Nonconforming buildings.

A. The city planning department shall grant a request for a building modification for a nonconforming building which has less than fifty (50) percent of the building area situated in the required setbacks, if such building modification meets the setback requirements in Chapters 17.16 through 17.48 of this title, for the district in which the building is located and complies with all other applicable requirements of those chapters.

B. Unless modified under a planned unit review, any other building modification for a nonconforming building is an expansion of use and shall be reviewed under the provisions of Sections 17.56.030 and 17.56.070 of this chapter.

C. Nothing in this chapter shall be construed to permit expanding the height of a building any part of which exceeds the maximum height as set forth in Chapters 17.16 through 17.48 of this title and the provisions of those chapters and Section 17.60.160 supersede the provisions of this chapter, unless such has historic significance and additional stories can be documented by evidence or photographs.

(Ord. 831 § 5.5, 1992)

17.56.060 Nonconforming lots or parcels.

A. An existing nonconforming lot or parcel of land in the city may be used if it meets the lot size requirements and dwelling densities set forth below:

District	Lot Size (sq. ft.)	Dwelling Units	Side Yard Setback
PF	21,780	1	5 feet
R1	2,500	1	3 feet
R2	3,500	2	6 feet

B. Unless modified under a planned unit review, no person shall use any other nonconforming lot or parcel without first obtaining approval under Sections 17.56.030 and 15.56.070 of this chapter.

C. The city planning department shall grant a request for the structural alteration, repair or expansion of a building on a nonconforming lot, to improve safety, or efficiency, if the building meets the setback requirements of Chapters 17.16 through 17.48 of this title for the district in which it is located, and if the addition or alteration does not constitute a change of use as defined in Section 17.56.040(H) of this chapter.

(Ord. 831 § 5.6, 1992)

17.56.070 Criteria for changes to or expansions of nonconforming buildings, uses and lots.

No application for a change to or expansion of a nonconforming use, building or lot other than described in Sections 17.56.020, 17.56.040, 17.56.050 or 17.56.060 of this chapter shall be granted unless all of the following criteria are met:

A. The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding neighborhood, including without limitation, objectionable conditions, visual or noise pollution, vehicular traffic, storage of necessary equipment, materials, and refuse, and on-street parking, so that the change will not adversely affect the surrounding neighborhood.

B. The proposed change or expansion will either reduce the degree of nonconformity of the use, building or lot or improve the physical appearance of the structure or the site without increasing the degree of nonconformity.

C. The proposed change or expansion in use complies with all of the requirements of this title:

1. Except for change of a nonconforming use to another nonconforming use;

2. Unless a variance to the setback requirements has been granted pursuant to Chapters 17.16 through 17.48 of this title, or the setback has been varied through the application of the requirements of Chapter 17.80 of this title.

D. The existing building or lot cannot reasonably be utilized or made to conform to the requirements of Chapters 17.16 through 17.48 of this title.

(Ord. 851 (part), 1993; Ord. 831 § 5.7, 1992)

Chapter 17.60

SPECIAL USES

Sections:

17.60.010 Useable open space for residential uses.

17.60.020 Dedication and improvement of rights-of-way, trail and utilities easements.

17.60.030 Curb cuts.

17.60.040 Sight distance.

17.60.050 Fences, hedges and walls.

17.60.060 Illumination.

17.60.080 Public improvements.

17.60.090 Flood control.

17.60.100 Fire and life safety.

17.60.110 Principal buildings on a single lot.

17.60.120 Setback encroachments.

17.60.130 Easements.

17.60.140 Trash storage.

17.60.150 Swimming pools, spas and hot tubs.

17.60.160 Building height.

17.60.010 Useable open space for residential uses.

A. Residential useable open space may be used to meet the yard setbacks or useable open space requirements of Chapters 17.16 through 17.48 of this title.

Useable open space includes:

1. A landscaped area;

2. Outdoor activity or recreational elements such as play fields, swimming pools, hot tubs, spas or Jacuzzis, and hard surface areas that are unenclosed by an overhead structure, e.g., tennis, volleyball or basketball court;

3. Individual balconies, decks, patio areas that are not intended or designed to be enclosed and if the minimum size of such individual balcony, deck or patio is not less than thirty-six (36) square feet. Such areas shall count for no more than fifteen (15) percent of the required useable open space;

4. Pedestrian ways, plazas or atria within a building that are designed for the specific use and enjoyment by the residents or tenants of that structure, but only if these areas are visually or physically connected to the outside. Such areas shall constitute no more than twenty-five (25) percent of the required useable open space; and

5. An open parking area and drive or enclosed lean-to that serves one detached dwelling unit.

6. If specifically approved as part of a planned unit development, landscaped areas of public or private rights-of-way that are not anticipated to be converted to public or private highways, streets or alleys within the next ten (10) years. Such areas shall constitute no more than ten (10) percent of the required useable open space.

B. Portions of a lot that have structures or unenclosed uses shall not be counted as useable open space for residential uses unless allowed in subsection A of this section. The following are specific examples of things that may not be counted as useable open space:

1. Public or private rights-of-way for highways, streets or alleys;

2. Roofs that do not meet the provisions of subsection (A)(2) or (3) of this section;

3. Parking areas and garages that do not meet the provisions of subsection (A)(5) of this section;

4. Land area with a slope in excess of forty-five (45) degrees unless approved as part of a planned unit development.

(Ord. 952 (part), 1999; Ord. 831 § 6.1, 1992)

17.60.020 Dedication and improvement of rights-of-way, trail and utilities easements.

A. The arrangement, character, extent and location of all streets shall conform to the city's subdivision ordinance and city utilities construction standards.

B. At the time of issuance of a building permit for new development, redevelopment exceeding twenty-five (25) percent of the value of the existing structure, all street rights-of-way abutting the subject property shall be dedicated to the city up to thirty-three (33) feet from the centerline of all adjacent, proposed or existing streets designated collector or greater in the city utilities construction standards. If the utilities standards require a greater width for an abutting street, then the area beyond thirty-three (33) feet from the centerline shall be reserved for future purchase by the city.

C. All abutting street, alley or pedestrian rights-of-way shall be improved at the time of issuance of a building permit for new development, or redevelopment exceeding twenty-five (25) percent of the value of the existing structure. The street, alley, and right-of-way improvements shall include up to half width of a collector street and any adjacent bike paths, sidewalks or other pedestrian ways. If right-of-way improvements are not appropriate at the time of development or redevelopment, the city planning department may accept suitable financial guarantees to guarantee their completion in the future. For properties in A1, PF, R1 or C1 districts, no alley improvement shall be required except through an assessment district.

D. The city may require as part of an annexation, subdivision or rezoning, or issuance of a building permit for new development or redevelopment exceeding twenty-five (25) percent of the value of the existing structure, that the applicant dedicate right-of-way or an easement, at the city's option, for a trail.

E. The city may require as part of an annexation, subdivision or rezoning, or issuance of a building permit for new development or redevelopment exceeding twenty-five (25) percent of the value of the existing structure, that the applicant shall dedicate utility easements as required by the city.

(Ord. 831 § 6.2, 1992)

17.60.030 Curb cuts.

A. Vehicular access to property shall be controlled in such a manner as to protect the traffic-carrying capacity of the street upon which the property abuts as well as to protect the value of the adjacent property.

B. Each parcel of land under one ownership at the time of its annexation will be reviewed in terms of access as one parcel (regardless of subsequent sales of a portion) unless the property is subdivided.

C. Any curb cut on a designated state highway must receive a permit from the South Dakota State Highway Department prior to being issued a building permit. Any other curb cut must receive a permit from the city planning department.

1. The minimum number of curb cuts necessary to serve the subject parcel is permitted. No entrance or exit may be located nearer than fifty (50) feet to any intersecting street right-of-way line or nearer than ten (10) feet to any adjacent property line, except where it is possible to provide one access point that will serve both adjacent properties. If adherence to these requirements would leave a parcel of property without vehicular access, either or both of the setback requirements may be reduced by the city planning department to permit a single vehicular access point if they find that the intent of this subsection would be served.

2. On arterial streets, acceleration-deceleration lanes may be required of the development if the city planning department finds that they are necessary to preserve the safety or the traffic-carrying capacity of the existing street. The city planning department shall determine the length of the required acceleration-deceleration lane.

3. No residential structures shall have direct access onto an arterial street. However, if no alternative street access is possible, a curb cut may be permitted with the spacing and acceleration-deceleration lanes determined to be necessary by the city planning department to preserve the safety and the traffic-carrying capacity of the arterial street.

4. Exceptions to this section may be made if the city planning department determines that safe and reasonable access is provided. The requirements of this section may also be modified to provide for safe and reasonable access.

(Ord. 831 § 6.3, 1992)

17.60.040 Sight distance.

A. Where a drive way intersects a public right-of-way or where property abuts the intersection of two public rights-of-way, all landscaping, structures or fences within the vision triangle area described in subsection B of this section shall provide unobstructed cross-visibility.

B. For purposes of this section, the vision triangle area is:

1. The area formed at a corner intersection of public right-of-way and a driveway, whose two sides are fifteen (15) feet, measured along the right-of-way line of the street and the edge of driveway, and whose third side is a line connecting the two sides; or

2. The area formed at a corner intersection of two public right-of-way lines, whose two sides are thirty (30) feet, measured along the intersection right-of-way lines, and whose third side is a line connecting the two sides.

C. All shrubs located within these triangular areas shall be maintained at a height not to exceed thirty (30) inches above the sidewalk grade. Trees may be planted and maintained in this area if all branches are trimmed to maintain a clear vision for a vertical height of eight feet above the roadway surface. No landscaping except required grass or ground cover may be located closer than three feet from the edge of an access way pavement.

D. Any fence, hedge or wall placed within fifteen (15) feet of the intersection of a public sidewalk or proposed location of such walk and an alley or driveway shall not restrict or obscure the visibility through such fence, hedge or wall by more than twenty-five (25) percent of its total vertical plane area. Such fence, hedge or wall shall maintain at least seventy-five (75) percent of the unobstructed view when viewed at an angle of ninety (90) degrees from the direction of the fence, hedge or wall and a distance of thirty (30) feet.

E. The requirements of this section may be modified by the planning and zoning commission if the safety of pedestrians, motorists and bicyclists is not impaired.

F. No person shall violate or fail to prevent or remedy any violation of the provisions of this section on such property.

(Ord. 831 § 6.16, 1992)

17.60.050 Fences, hedges and walls.

A. A fence, hedge, wall, column, pier or any similar structure or any combination of such structures is permitted in the required setback if it meets the following conditions:

1. All fences and walls meet the building code and the requirements of this title;

2. All property lines are located in order to determine that no fence, hedge or wall extends beyond or across a property line. A fence, hedge or wall may cross a property line if an agreement with the abutting property owner is obtained;

3. No barbed wire or other sharp, pointed or electrically-charged fence may be erected or maintained except as follows:

a. A temporary fence on a construction site, which may be as high as required, notwithstanding the requirements of

subsection B of this section, to protect the property during the period of construction and may have barbed wire where it is not less than eight feet above the ground and does not extend more than two feet above the temporary fence;

b. Electric fences may be permitted in the A1 district when used as an internal fence not on the periphery of the property to contain livestock, and in the A1 and PF districts, as an internal fence not on the periphery of the property to protect crops and plantings. No person shall maintain an electric fence without a fence permit. All such electric fencing must meet the following requirements:

(i) Controllers are approved by Underwriters' Laboratories and so designated on an attached label;

(ii) Electric fencing may not be located within five feet of the periphery of the property;

(iii) Electric fencing may not be located in a required yard abutting a street nor in a required vision triangle; and

(iv) Electric fencing may not inhibit access by emergency equipment and operators.

c. In the PB planned business district, a fence or wall set back at least twelve (12) feet from the property line may have barbed wire if it is not less than eight feet above the ground and does not extend more than two feet above the fence or wall, notwithstanding the requirements of subsection B of this section.

B. No fence or wall may exceed seven feet in height, measured as follows:

1. In a required yard abutting a street, the total effective height above the finished grade measured on the side nearest the street;

2. In any other required yard the total effective height above the finished grade measured on the side nearest the abutting property; and

3. On a property line, measured from the finished grade of either side when the abutting property owners are in joint agreement.

C. Along a major road, a fence or wall over seven feet in height may be approved by the city planning department as a part of a comprehensive noise barrier system.

D. No person shall construct, alter or maintain a fence, hedge, wall, column, pier, post or any similar structure or any combination of such structures except in conformance with all of the requirements of this section.

(Ord. 831 § 6.17, 1992)

17.60.060 Illumination.

A. All outdoor illumination shall meet the following conditions:

1. All roadway, parking lot and walkway luminaries shall be shielded so that substantially all the directly emitted luminous flux falls within the property line. Lamps must be in an I.E.S. certified cut-off luminaire if the output is above that of a sixty (60) watt incandescent.

2. All exterior building floodlights are designed or retrofitted with shielding in such a manner that all the luminous flux falls upon either the surface of the structure to be illuminated or on the ground, never up into the air. Lamps must be in an I.E.S. certified cut-off luminaries if above the output of a sixty (60) watt incandescent.

3. All stadium and all other exterior sport arena luminaries used for the purpose of illumination of the playing area are extinguished by ten p.m. or immediately after the conclusion of the final event of the day. The remainder of the facility lighting, except for reasons of security, is extinguished at ten p.m. or within one hour after the event, whichever is later, and remains extinguished until one hour prior to the commencement of the next event. For reasons of security, however, a maximum average level of five footcandles at an entrance and one footcandle on the rest of the structure is permitted.

4. No outdoor illumination is used in any manner that could interfere with the safe movement of motor vehicles on public thoroughfares, including:

a. Any fixed luminaire not designed for roadway illumination that produces incident or reflected luminous flux that could be disturbing to the operator of a motor vehicle;

b. Any luminaire that may be confused with or construed as a traffic control device; or

c. Any blinking, flashing or changing intensity lights, except for temporary holiday displays.

B. No person shall install, illuminate or maintain any beacon or search light.

C. Light trespassing from a property should be minimal.

(Ord. 831 § 6.18, 1992)

17.60.080 Public improvements.

All development shall meet the applicable requirements and all public improvements shall be designed and constructed in accordance with the city utilities construction standards.

(Ord. 831 § 6.21, 1992)

17.60.090 Flood control.

Refer to Chapter 15.36 of this code.

(Amended during 2004 codification; Ord. 831 § 6.22, 1992)

17.60.100 Fire and life safety.

All development shall meet the applicable requirements of UBC, NFPA 101, UFC.

(Ord. 831 § 6.23, 1992)

17.60.110 Principal buildings on a single lot.

A. No person shall construct or maintain more than one principal building on any lot except as provided under this section or approved as part of a planned unit development.

B. In a R2 district, two principal buildings may be placed on a lot if the following conditions are met:

1. Access to a street or alley is provided for each unit, with easements dedicated as necessary;

2. Access to all new units is visible from a public or private street with well-defined walkways for emergency response and general services;

3. A private or semi-private outdoor area is provided for each unit;

4. A uniform landscape plan is provided and all existing trees over three inches in caliper measured four inches above the ground are preserved, unless this requirement is waived by the city planning and zoning commission for good cause;

5. A parking easement is dedicated for each unit;

6. Privacy fencing or visual buffering of parking areas is provided;

7. Each unit has separate utility services in approved locations;

8. All utilities are underground for existing and new units, unless this requirement is waived by the city planning department for good cause;

9. New density and open space requirements are met; and

10. New units maintain the side yard setback requirements and at least ten (10) feet is maintained between the principal structures; and the front yard setback requirement for the front unit is maintained; and the rear yard setback requirement is maintained for the rear unit.

11. All area and bulk requirements in Section 17.28.040 must be met for each principal building so built, on an aggregate basis; for example, a single-family dwelling (5,000 square feet) or a two unit multiple-family dwelling (4,500 square feet) would require a minimum total lot size equal to the sum of both (10,000 or 9,000 square feet, respectively) for the lot on which the two principal buildings are proposed to be built.

(Ord. 1132, 2010; Ord. 831 § 6.24, 1992)

17.60.120 Setback encroachments.

No structure or building shall be constructed or maintained in a required setback except for:

A. A balcony, patio or deck less than thirty (30) inches in height;

B. A stairway less than thirty (30) inches in height;

C. A fireplace;

D. A maximum of thirty (30) inches of roof overhang; or

E. The outer four feet of completely open, uncovered, cantilevered balconies that have a minimum of eight feet vertical clearance below, which may project into any required yard except an interior side yard of less than ten (10) feet in width.

(Ord. 831 § 6.25, 1992)

17.60.130 Easements.

A. No person shall construct or maintain a part of any structure that projects onto an adjacent property without a recorded easement or covenant granting such a right from the owner of such adjacent property.

B. No person shall construct or maintain a part of any structure in a public or private easement without first obtaining the written consent of the easement owner.

(Ord. 831 § 6.26, 1992)

17.60.140 Trash storage.

Trash storage for attached dwellings and all business and industrial buildings or uses located within fifty (50) feet of the public street containing the numerical address for a residence or business shall be accommodated within the structure, or adequate area shall be included on-site and indicated on a site plan. All outdoor trash storage and containers located within fifty (50) feet of the public street containing the numerical address for a residence or business shall be placed on a hard surface, including without limitation concrete, and shall be screened on all four sides by a permanent fence, wall, landscaping or other appropriate materials. Any trash receptacles, dumpsters and portable toilets located within an alley way is exempt from screening.

(Ord. 1302, 2019; Ord. 831 § 6.28, 1992)

17.60.150 Swimming pools, spas, and hot tubs.

A swimming pool, spa or hot tub may be permitted in any district as an accessory use, subject to the following additional requirements:

A. Such uses may not be located in any required front yard or side yard abutting a street;

B. Such uses must be completely surrounded by a fence or wall not less than forty-eight (48) inches in height with no openings large enough to permit children to pass through other than gates or doors that can be fastened to protect against entry. A building may be used as part of such required enclosure; and

C. All gates or door openings through such enclosures must be equipped with self-closing and self-latching hardware keeping the gate or door securely closed at all times when not in use.

(Ord. 831 § 6.29, 1992)

17.60.160 Building height.

A. Height limitations within the city are as set forth in Chapters17.16 through 17.48 of this title, except as provided in subsection (A)(2) of this section.

1. The height of a building is determined as described in the definition of “height” inChapter 17.08 of this title.

2. On or adjacent to slopes of greater than twenty (20) degrees (36.4 percent slope), the building height may not exceed twenty-five (25) feet. The twenty-five (25) foot height restriction applies to any and all parts of a building, excluding allowed appurtenances, measured from existing grade directly below the building.

B. Appurtenances may be added under the following circumstances:

1. The addition of an appurtenance to a building is permitted if it does not cause building height to exceed the height allowed in this section, considering, for this purpose only, the uppermost point of the appurtenance to be the uppermost point of the roof.

2. The city planning department may approve additions of appurtenances to buildings causing a building height to exceed the allowed height if the following standards are met:

a. A functional need is established;

b. The functional need cannot be met with an appurtenance less than thirty-five (35) feet in height above the ground; and

c. Visible materials and colors are compatible with the building to which the appurtenance is attached.

3. No appurtenance may have useable floor area except for mechanical equipment installations, have more than twenty-five (25) percent coverage of the roof area of the building; or be more than sixteen (16) feet in height.

4. All mechanical equipment shall be screened from view, regardless of the height of the building, unless in the opinion of the city planning department such screening conflicts with the function of the mechanical equipment. Screening shall be an integral part of the building design.

C. For structures erected in accordance with the height restrictions applicable at the time of their erection, but the height of which now exceeds that permitted, no addition to that portion of the building exceeding the height limitation is allowed.

D. For any structure requiring a building permit, with a height exceeding thirty-five (35) feet and within three hundred (300) feet of any residential property, the forty-five (45) foot height allowed in the C1 commercial district, CE commercial enterprise district, CH commercial highway district and PB planned business district may be reduced if such height materially and substantially diminishes or impairs an adequate supply of light and air, or the residential quality of life or character of the neighborhood, or the visual aesthetics of a substantial number of adjoining residents.

E. Notwithstanding any other provision of this section, appurtenances of buildings within the historic overlay zone may be repaired or restored to a pre-existing height, upon approval of the city historic preservation commission. If the city historic preservation commission approves such a repair or restoration, it is not effective until thirty (30) days after the date of its approval. Promptly after the approval of the repair or restoration, the city planning department shall forward to the board of adjustment a written report, including a description of the repair or restoration and the reasons for the approval.

(Ord. 952 (part), 1999; Ord. 831 § 6.30, 1992)

Chapter 17.64

OFF-STREET PARKING AND LOADING

Sections:

17.64.010 Parking generally.

17.64.020 Parking deferral.

17.64.030 Parking reduction for elderly housing.

17.64.040 Parking stall requirements.

17.64.050 Parking area design standards.

17.64.060 Off-street parking.

17.64.070 Off-street loading and unloading requirements.

17.64.080 Storage and parking of recreational vehicles.

17.64.090 Bicycle parking.

17.64.010 Parking generally.

A. In order to prevent undue congestion in and interference with the traffic-carrying capacity of city streets, off-street parking and loading shall be provided for all land uses.

1. The number of parking stalls required for each individual use is prescribed by Section17.64.060, but for planned unit developments; the number may be varied as provided by Section 17.72.070.

2. For the purposes of this title, for all parking space requirements resulting in a fraction, the fraction shall be rounded to the next higher whole number.

3. The off-street parking requirements of Section17.64.060 do not apply to nonresidential uses within a mandatory parking district. For residential uses within a mandatory parking district, the parking requirements are one space per unit.

B. If parking spaces cannot be provided on the same lot as the main building, it may be provided on a lot within city limits. The applicant shall submit with his or her application for building permit, for the principal use: (1) a legal description of all parcels used to meet off-street parking requirements; (2) a certificate of title or proof of ownership for these parcels; (3) an attested copy of the leasing agreement if such parcels are not owned by the person(s) requiring parking; and (4) a parking plan depicting the layout of the parking spaces on the site(s). The applicant shall also agree, in writing, that he or she, or their successors or assigns, shall notify the zoning department if the required off-street parking spaces cannot be provided on these parcels or their equivalent, so long as the principal use shall continue and shall agree that the principal use shall be discontinued, should the required off-street parking no longer be provided on these parcels or their equivalent. Violations of this provision shall constitute an unauthorized illegal occupancy of the principal use.

(Ord. 900 (part), 1995; Ord. 831 § 6.4, 1992)

17.64.020 Parking deferral.

A. The city planning department may defer the construction and provision of up to forty (40) percent of the off-street parking spaces required by Section 17.64.060 in the PB planned business and C1 commercial districts and twenty (20) percent in any other district if an applicant demonstrates that:

1. The unusual character of the use lowers the anticipated need for off-street parking, and data from similar uses establishes that there is not a present need for the parking;

2. The use is immediately proximate to public transportation that serves a significant proportion of residents, employees or customers;

3. There is an effective private or company car pool, van pool, bus or similar group transportation program; and

4. The deferred percentage of residents, employees and customers regularly walk or use bicycle or other nonmotorized vehicular forms of transportation.

(Ord. 831 § 6.5, 1992)

17.64.030 Parking reduction for elderly housing.

The city planning department may reduce by up to seventy (70) percent the number of parking spaces required by this

chapter for governmental-sponsored housing projects for the elderly.

(Ord. 831 § 6.6, 1992)

17.64.040 Parking stall requirements.

A. All off-street parking spaces shall meet the minimum size as indicated in the parking design standards, except that a small car parking space may be a minimum of seven feet nine inches wide, fifteen (15) feet in length, with the standard width drive lane. If the proposed use anticipates long term parking as the major parking demand, the city planning department may reduce the minimum parking stall size as required by Appendix A attached to the ordinance codified in this title.

B. A proportion of the total spaces in each parking area may be designed and shall be signed for small car use according to the following table:

Total Spaces Required	Allowed Small Car Stalls
5-49	40%
50-100	50%
100 or greater	60%

C. Parking spaces for the disabled shall be twelve (12) feet wide, nineteen (19) feet in length, with the standard width drive lane. A proportion of spaces in any parking facility provided to serve business, individual or public uses shall be reserved as parking for the disabled according to the following table:

Total Parking In Lot	Required Minimum Number of Accessible Spaces
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2% of total
Over 1,000	20 plus 1 for each 100 over 1,000

A proportion of spaces in any parking facility provided to serve attached residential units shall be reserved as parking for the disabled according to the following table:

Number Of Units	Required Minimum Number of Accessible Spaces
0-7	0
8-14	1
15-21	2
22-28	3
29-35	4
36-42	5
Etc.	

One in every eight accessible spaces, shall be served by an access aisle ninety-six (96) inches wide minimum and shall be designated “van accessible.” Van accessible spaces shall have an additional sign “Van-Accessible” mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space. The vertical clearance at such spaces may be grouped on one level of a parking structure.

The space must provide minimum vertical clearance of one hundred fourteen (114) inches at accessible passenger loading zones and along at least one vehicle access route to such areas from the site entrance(s) and exit(s) and provide a minimum vertical clearance of ninety-eight (98) inches at the parking space and along at least one vehicle access route to such spaces from the site entrance(s) and exit(s).

(Ord. 831 § 6.7, 1992)

17.64.050 Parking area design standards.

A. Parking areas shall meet the following standards:

1. There is a definite and logical system of drive lanes to serve the entire parking area. Drive lanes have an eighteen (18) foot clearance for two-way traffic and a ten (10) foot clearance for one-way traffic unless the city planning department finds that the parking stalls to be served require a greater or lesser width. A physical separation or barrier, such as vertical curbs, may be required in order to separate parking areas from the travel lanes.

2. All parking dimensions conform to Appendix A attached to the ordinance codified in this title.

3. A system of lighting is provided for parking lots of twenty (20) stalls or more that are to be used after dark.

4. No parking stall is located so as to block access by emergency vehicles.

5. All parking areas are paved with asphalt, concrete or other similar permanent, hard surface except for parking areas for detached dwelling units.

6. Suitable curbs or barriers to protect public sidewalks and to prevent parking in areas where parking is not permitted, except for parking areas for detached dwelling units.

7. All open off-street parking areas with twelve (12) or more spaces are screened from any adjoining residentially-zoned lot or public street by a solid wall at least forty-two (42) inches in height, or by a buffer zone at least four feet wide planted with trees, shrubs or hedges that will form a compact screen when fully grown and that are maintained in good condition at all times, or by other similar screening treatments determined to be appropriate by the city planning department.

8. Driveways parallel to public sidewalks are separated from such walks by an eight-foot landscaped area or a solid wall at least forty-two (42) inches in height.

9. Wheel or bumper guards are located so that no part of a vehicle extends beyond a parking area boundary line, intrudes on a pedestrian way or contacts any wall, fence, or planting (except ground cover).

10. Turnarounds are provided for dead-end parking bays of eight stalls or more.

11. Driveways located in required yards are situated at an angle of approximately ninety (90) degrees to the street to which they contact.

12. All parking areas with twenty-four (24) or more parking stalls shall have five percent of the parking area as a landscaped area or areas, which shall include deciduous trees. These planting areas may be located within the lot areas as tree islands, at the end of parking bays, within medians between rows of cars or in corners and peripheral areas.

B. When one hundred (100) or more parking spaces are required, the applicants shall supply to the city planning department a report indicating the relationship of the number and siting of parking spaces provided to the various uses to be served by the parking. When possible, a site plan indicating discrete areas or zones where parking relates to specific building areas shall be supplied with an analysis of the number of parking spaces provided relative to the number of parking spaces required.

(Ord. 900 (part), 1995; Ord. 831 § 6.8, 1992)

17.64.060 Off-street parking.

The following amounts of off-street parking facilities are deemed to be minimums. For the purpose of determining the amount of off-street parking facilities to be provided if it is not readily determinable, the principal use of the building shall be determined by the planning and zoning commission. A deferral to these parking requirements may be granted under the procedure outlined in Section 17.64.020.

A. New construction or new uses in buildings built post-1940:

1. Dwelling, one-family: two spaces per family dwelling unit.

2. Dwellings, two-family: two spaces per family dwelling unit.

3. Dwellings, multiple-family/senior citizens housing: one and one-half spaces per unit.

4. Hotels, motels, rooming houses, tourist courts, bed and breakfast establishments: one space per guestroom.

5. Institutions for the aged, convalescent homes: one and one half spaces per four beds.

6. Theaters, auditoriums, gymnasiums, convention halls: one space per three seats.

7. Churches: one space per four seats.

8. Funeral homes: one space per four seats in parlors and chapels.

9. Schools, elementary: one space per classroom.

10. Schools, secondary: six spaces per classroom.

11. Restaurants: One space per five hundred (500) square feet of gross floor area.

12. General business, commercial, and personal service establishments, commercial amusements, offices, filling stations, repair shops, medical and dental clinics, clubs and lodges, museums: one space per five hundred (500) square feet

of gross floor area.

13. Industrial and manufacturing establishments: one space per one thousand five hundred (1,500) square feet of gross floor area or .75 spaces for each employee, whichever is greater.

14. Warehouses, (or any building which is arranged and intended for use as a warehouse): one parking space per one thousand five hundred (1,500) square feet of gross floor area plus one parking space per employee.

B. Existing and new uses in buildings built pre-1941:

1. In planning unit 4, in the historic overlay zone, uses existing as of the date of the ordinance codified in this title and any new uses in buildings built prior to January 1, 1941, shall not be required to provide off-street parking facilities.

2. In all other planning units the requirements of subsection A of this section shall apply.

(Ord. 831 § 6.9, 1992)

17.64.070 Off-street loading and unloading requirements.

In addition to the parking requirements, no person conducting a business or industrial use other than in the C1 zone shall fail to provide as an accessory use an off-street loading space of five hundred (500) square feet with no single dimension less than ten (10) feet. No person conducting a business or industrial use of over twenty-five thousand (25,000) square feet of floor area shall fail to provide one additional loading space for each additional twenty-five thousand (25,000) square feet of floor area. Off-street loading spaces may not block any parking area, public right-of-way, public or private access, or sidewalk.

(Ord. 831 § 6.10, 1992)

17.64.080 Storage and parking of recreational vehicles.

No person shall park, store or use a travel trailer, tent trailer, pickup camper or coach, motorized dwelling, boat and boat trailer, snow vehicle, cycle trailer, utility trailer and van, horse trailer and van or similar vehicular equipment in a residential district unless the following requirements are met:

A. Such vehicular equipment is stored or parked on private property no closer than eighteen (18) inches to any proposed or existing public sidewalk and so as not to project into the public right-of-way;

B. On corner lots, any such vehicular equipment that exceeds thirty-six (36) inches in height is not parked in the triangular area formed by the three points established by the intersection of property lines at the corner and the points thirty (30) feet back from this intersection along each property line;

C. No travel trailer, tent trailer, pickup camper or coach, motorized dwelling, or van is used for the conduct of business or for living or housekeeping purposes except when located in an approved mobile home park or in a campground providing adequate sanitary facilities;

D. Any travel trailer, tent trailer, detached pickup camper or coach, boat and boat trailer, cycle trailer, utility trailer and van, horse trailer and van parked or stored out-of-doors is adequately blocked or tied down or otherwise secured so that such vehicle does not roll off the lot and is not moved about by high winds; and

E. No vehicular equipment regulated by this section is stored out-of-doors on a residential lot unless it is in condition for safe and effective performance of the functions for which it is intended.

(Ord. 831 § 6.11, 1992)

17.64.090 Bicycle parking.

A. At least three bicycle parking spaces or ten (10) percent of the required off-street parking spaces, whichever is greater, is required in all districts except A1, C1, R1 and R2 districts. After the first fifty (50) bicycle parking spaces are provided, the required number of additional bicycle parking spaces is five percent of the required off-street parking spaces.

B. Bicycle parking facilities, both lockers and racks, shall:

1. Provide for storage and locking of bicycles, either in lockers or medium security racks or equivalent installation in which both the bicycle frame and the wheels may be locked by the user;

2. Be designed so as not to cause damage to the bicycle;

3. Facilitate easy locking without interference from or to adjacent bicycles; and

4. Consist of racks or lockers anchored so that they cannot be easily removed and of solid construction, resistant to rust, corrosion, hammers and saws.

C. Additional bicycle parking facilities guidelines shall be the following:

1. Such facilities shall be consistent with their environment in color and design and be incorporated whenever possible into building or street furniture design; and

2. Such facilities shall be located in convenient, highly-visible, active, well-lighted areas but shall not interfere with pedestrian movements.

(Ord. 831 § 6.12, 1992)

Chapter 17.68

HISTORIC PRESERVATION

Sections:

17.68.010 Historic overlay zone.

17.68.020 Historic preservation commission.

17.68.030 Historic district commission.

17.68.040 Rules of procedure.

17.68.050 Criteria for issuance of certificates of appropriateness or project approvals.

17.68.060 Procedures for issuance of certificates of appropriateness and project approvals.

17.68.070 Unreasonable economic hardship.

17.68.080 Appeals.

17.68.090 Minimum maintenance requirements.

17.68.100 Demolition by neglect.

17.68.110 Public safety exclusion.

17.68.120 Enforcement and penalties.

17.68.130 Appropriations.

17.68.140 Title to property acquired.

17.68.150 Project review by state.

17.68.010 Historic overlay zone.

A. Purpose. An historic overlay zone is established for the purpose of the protection of the historical resources of the city. Any development within such zone shall comply with the provisions of this chapter.

B. Boundaries. The boundaries of the historic overlay zone are indicated on the zoning map and follow the boundaries of the federally designated Deadwood National Historic Landmark District and its environs.

C. Planning Units.

1. The historic overlay zone is comprised of a series of planning units, indicated on the zoning map.

The planning units are based on historical development patterns. The historic preservation commission provided for herein, shall initiate a thorough investigation of each planning unit, and may develop design review guidelines specific to each unit. Such guidelines may be consistent with local, state and federal guidelines and regulations, including, but not limited to, building safety and fire codes and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation;

2. Except in planning unit 4 where a certificate of appropriateness is required, no person shall commence any undertaking or project, as defined in Section 17.08.010 of this title, affecting any building, structure or historic resource without approval of such undertaking or project by the historic preservation commission, except when the commission or its staff has determined that the undertaking or project will not encroach upon, damage or destroy any historic property. Such determination shall be based upon the guidelines adopted by the Deadwood historic preservation and district commission(s);

3. Within planning unit 4, no exterior portion of any building or other structure (including walls, fences, light fixtures, steps and pavement or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic district commission created by Ordinance No. 777. A certificate of appropriateness shall be required whether or not a building permit is required.

(Ord. 952 (part), 1999; Ord. 900 (part), 1995; Ord. 831 § 7.1, 1992)

17.68.020 Historic preservation commission.

A. Purpose. By virtue of SDCL 1-19B-2, the city is authorized to establish a historic preservation commission to preserve, promote and develop the historical resources of the city, and to perform such other functions as may be provided by law. Pursuant to Resolution No. 1987-10, such a commission was established. That commission is recognized, and shall consist of its current members until their successors are appointed as provided by this section.

B. Membership. The Deadwood historic preservation commission shall consist of not less than five (5) nor more than ten (10) members, who shall be appointed by the city commission with due regard to proper representation of such fields as history, architecture, urban planning, archeology, paleontology and law. All members of the historic preservation commission shall reside within the city and shall serve for terms not to exceed three (3) years, being eligible for reappointment.

C. Powers of the Historic Preservation Commission. In order to preserve, promote and develop the historical resources of the city, the historic preservation commission shall have the following powers:

1. To employ such qualified staff personnel, as it deems necessary;

2. To conduct a survey of local historic properties;

3. To enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;

4. To participate in the conduct of land-use, urban renewal and other planning processes undertaken by the city;

5. To cooperate with the federal, state and local governments in the pursuance of the objectives of historic preservation;

6. To contract, with the approval of the city, with the state or the federal government, or any agency of either, or with any other organization;

7. To acquire fee and lesser interests in historic properties, including adjacent or associated lands, by purchase, bequest or donation;

8. To preserve, restore, maintain and operate historic properties under the ownership or control of the commission;

9. To sell, lease and otherwise transfer or dispose of historic properties subject to rights of public access and other covenants and in a manner that will preserve the property;

10. To promote and conduct an educational and interpretive program on historic properties within the city;

11. In addition to any review by the city's planning and zoning commission and/or building official, the historic preservation commission shall review any undertaking, whether publicly or privately funded, which will encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places; the issuance of a permit is required before any undertaking which will encroach upon, damage, or destroy historic property may proceed; the decision to approve or deny a permit shall be based on the standards for historic preservation, restoration, and rehabilitation projects adopted by rules promulgated pursuant to SDCL 1-19A-29; properties owned by the State of South Dakota are exempt from local review; and, as appropriate, the historic preservation commission shall also consider criteria contained in Section 17.68.050;

12. To recommend ordinances and otherwise provide information for the purposes of historic preservation to the city commission;

13. To investigate and report on the historical, architectural, archeological or cultural significance of any properties proposed to be included in a locally-designated historic district pursuant to SDCL 1-19B-20. (Ord. 1160, 2011: Ord. 952 (part), 1999: Ord. 900 (part), 1995: Ord. 831 § 7.2, 1992)

17.68.030 Historic district commission.

A. Purpose. By virtue of SDCL 1-19B-38, the city is authorized to establish a locally designated historic district, and a historic district commission. Pursuant to Ordinance No. 777, such a district and commission were established. That district and commission are recognized by this section.

B. Membership. The historic district commission shall consist of not less than three nor more than seven members appointed by the city commission with due regard to proper representation of fields such as history, architecture, architectural history, urban planning, archaeology, paleontology and law. Where possible, the members shall be selected from residents of the district.

The appointments to membership on the commission shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in like manner for terms of three years.

C. Powers of the Historic District Commission. In order to preserve, promote and develop the historical resources of the historic district established by Ordinance No. 777, the historic district commission shall have the following powers:

1. To study any proposed amendments to Ordinance No. 777 and report thereon;

2. To adopt rules and regulations;

3. To employ clerical and technical assistants or consultants;

4. To accept gifts of money and expend the same for the performance of their purpose;

5. To issue or deny the issuance of certificates of appropriateness in accordance with Section 17.68.010(C)(3) of this chapter.

(Ord. 831 § 7.3, 1992)

17.68.040 Rules of procedure.

To fulfill the purposes of this chapter:

A. A majority of the members of the historic preservation or historic district commission must vote in agreement to constitute any valid action of that commission.

B. Each commission annually shall elect from its membership a chairperson and vice-chairperson. It shall select a secretary from its membership or its staff. If neither the chairperson nor the vice-chairperson attend a particular meeting, the remaining members shall select an acting chairperson from the members in attendance at such meeting.

C. Each commission shall keep minutes and records of all meetings and proceedings, which shall be a matter of public record.

D. Each commission shall establish its own regular meeting time, which shall be scheduled at least once every month. The chairperson or any two members may call a special meeting to consider an urgent matter.

E. Certificates of appropriateness issued by the historic district commission and project approvals issued by the historic preservation commission shall expire twelve (12) months after issuance. When a certificate or an approval have expired, an applicant may seek a new certificate or approval.

F. Should any voting member of either commission miss three consecutive meetings without adequate excuse, or twenty-five (25) percent of the meetings in any one calendar year, the voting members of that commission shall have the authority to recommend to the city commission that such member be removed from the commission.

(Ord. 900 (part), 1995; Ord. 831 § 7.4, 1992)

17.68.050 Criteria for issuance of certificates of appropriateness or project approvals.

The historic district and historic preservation commissions shall use the following criteria and established design review guidelines in granting or denying certificates of appropriateness and project approvals:

A. General Factors.

1. Architectural design of the resource and proposed alteration;

2. Historical significance of the resource;

3. General appearance of the resource;

4. Condition of the resource;

5. Materials composing the resource;

6. Size of the resource;

7. The relationship of the above factors to, and their effect upon the immediate surroundings and upon the district as a whole and its architectural and historical character and integrity; and

8. The location and visibility of the alteration and resource.

B. New Construction.

1. In advance of new construction, steps shall be taken to insure evaluation of possible archaeological resources, as set forth in SDCL 1-20.

2. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between width and height of the facade(s), the proportions and relationship between doors and windows, the rhythm of solids to voids created by openings in the facade, the materials, the textures, the colors, the patterns, the trims and the design of the roof.

3. Existing rhythm created by existing building masses and spaces between them shall be preserved.

4. The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the fabric of a resource, or adjacent public or private improvements like sidewalks and walls.

5. No specific architectural style shall be required.

6. With respect to these new construction criteria, the commission shall also consider the zoning classification and historic integrity of visually related buildings.

C. Exterior Alteration.

1. All exterior alterations to a building, structure, object, site or landscape feature shall be compatible with the resource itself and other resources with which it is related. The original design of a building, structure, object or landscape feature shall be considered in applying these standards.

2. Exterior alterations shall not affect the architectural character or historic quality of a resource and shall not destroy the significance of resource sites.

D. Demolition.

1. The individual architectural, cultural and/or historical significance of the resource.

2. The importance or contribution of the resource to the architectural character of the district and, where appropriate, the damaging impact of the resource on the architectural character of the district.

3. The importance or contribution of the resource to neighboring property values and, where appropriate, the damaging impact of the resource on neighboring property values.

4. The commission shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material or detail.

5. An applicant for demolition must receive a certificate of appropriateness or project approval for demolition before receiving a demolition permit, which must be received prior to demolition. In order to receive such certificate of appropriateness or project approval, the applicant must submit plans for the property. In planning unit number 4, such plans must include or contemplate new construction, and the applicant shall provide the historic district commission with plans for this purpose which shall include, but shall not be restricted to, project concept, primary elevations, site plans, completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction and a construction or project schedule including satisfactory assurances of compliance with such construction or project schedule. Other than in planning unit number 4, such plans do not have to include new construction.

6. Applicants that have received a certificate of appropriateness or project approval for demolition shall be permitted to receive such demolition permit without additional commission action, provided that such certificate of appropriateness includes approval of construction plans if the demolition is located within planning unit number 4. Permits for demolition and construction shall be issued simultaneously if the requirements of this section are met, and the applicant has provided financial proof of his or her ability to complete the project.

7. When the commission recommends approval of demolition of a resource, a permit shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, departments and agencies.

(Ord. 952 (part), 1999; Ord. 926 (part), 1997; Ord. 831 § 7.5, 1992)

17.68.060 Procedures for issuance of certificates of appropriateness and project approvals.

A. Whenever any application for a certificate of appropriateness or project approval is filed with the historic district or historic preservation commission, the commission shall immediately notify the city building official that the application has been filed.

Similarly, whenever the city building official becomes aware that an application has been filed for a permit affecting a property under the jurisdiction of the historic district or historic preservation commission, the city building official shall immediately notify the commission chairperson or vice-chairperson, if the chairperson is unavailable, that such an application has been filed.

B. The commissions and/or their staff shall have the authority to determine when a filed application is complete and contains all required information. An application deemed incomplete by the commissions shall not be considered to have been filed for the purposes of this chapter. The commissions shall develop standard application forms and its written guidelines shall specify what information an applicant shall attach to each form.

C. The chairperson or vice-chairperson of each commission shall establish a regular schedule for the hearings of that commission. At least one hearing shall be scheduled for each month.

D. The applicant shall, upon request, have the right to a preliminary conference with a member of the commission or of the commission staff for the purpose of learning whether changes or adjustments to the application could make it more consistent with the commission's standards.

E. At the scheduled hearing, the applicant for a certificate of appropriateness or project approval has the right to present any relevant information pertaining to the application. Likewise, the city, the commission and its staff and members of the public shall have the right to present any additional relevant information pertaining to the application.

F. The commissions shall have the right to recommend changes and modifications to enable the applicant to meet the requirements of the commission.

G. The issuance of a certificate of appropriateness or project approval shall not relieve an applicant of the need for a companion building permit, conditional use permit, variance or other authorization from compliance with any other requirement or provision of the laws of the city concerning zoning, construction, repair or demolition. In all such cases,

applicants are encouraged to apply first for a certificate of appropriateness or project approval as other city agencies will be advised by the historic preservation or historic district commissions in making their subsequent decisions. No building permit which affects a resource shall be issued by the city official prior to the issuance of a certificate of appropriateness or project approval by the historic district or historic preservation commission.

(Ord. 831 § 7.6, 1992)

17.68.070 Unreasonable economic hardship.

A. When a claim of unreasonable economic hardship is made due to the effect of this chapter, the owner of record must present evidence sufficient to prove that as a result of the historic district or historic preservation commission's action he or she is unable to obtain a reasonable return or a reasonable beneficial use. The owner of record shall submit by affidavit to the commission for its review information which shall include, but not be limited to, the following:

1. Date the property was acquired by its current owner;

2. Price paid for the property (if acquired by purchase) and the relationship (if any) between the buyer and the seller of the property;

3. Mortgage history of the property, including current mortgage;

4. Current market value of the property;

5. Equity in the property;

6. Past and current income and expense statements for a two-year period;

7. Past capital expenditures during ownership of current owner;

8. Appraisals of the property obtained within the previous two years; and

9. Income and property tax factors affecting the property.

B. The commission may require that an applicant furnish additional information relevant to its determination of unreasonable economic hardship.

C. The commission may receive and consider studies and economic analyses from other city agencies and from private organizations relating to the property in question.

D. Should the commission determine that the owner's present return is not reasonable, it must consider whether there are other uses currently allowed that would provide a reasonable return and whether such a return could be obtained through investment in the property for rehabilitation purposes.

E. Should the applicant satisfy the commission that he or she would suffer an unreasonable economic hardship if a certificate of appropriateness or project approval were not issued, such certificate must be approved.

(Ord. 831 § 7.7, 1992)

17.68.080 Appeals.

The applicant who desires to appeal a decision by the historic district or historic preservation commission shall file an appeal with the circuit court of Lawrence County within thirty (30) days after the determination of the issue by the commission in the manner provided by law.

(Ord. 831 § 7.8, 1992)

17.68.090 Minimum maintenance requirements.

In order to insure the protective maintenance of resources, the exterior features of such properties shall be maintained to meet the requirements of the city's property maintenance code and the city's building code under Chapter 15.01 of this code. The building official shall consult with the zoning administrator, director of public work and the historic preservation officer about any suspected violations of said codes.

(Ord. 1250, 2016; Ord. 831 § 7.9, 1992)

17.68.100 Demolition by neglect.

The historic preservation commission shall prepare and follow written procedures to identify and protect resources from potential demolition resulting from the deliberate, intentional or inadvertent neglect of the owner or owners.

A. Purpose. The owner or other person having such legal possession, custody, and control of any resource as defined in Chapter 17.08 of this title within an historic district or historic overlay zone shall not allow the potential demolition resulting from the deliberate, intentional or inadvertent neglect.

B. Investigation and Inspection. During the investigation and inspection of any resource under Section 17.68.090 is found that the condition of the resource is suspected of being destroyed, damaged, or lost through or by neglect or intentional neglect of the owner of the resource, the building official shall consult with the zoning administrator, director of

public work and the historic preservation officer about any suspected deficiencies or defects.

C. Findings. Upon determination by mutual agreement of the official's reference in Subsection B. above that demolition or intentional neglect is occurring, the building official shall prepare, within fifteen (15) days of the completion of his investigation and inspection, a written report of his findings on the condition of the resource.

D. Notice of Report. A copy of any report shall be sent by certified mail, return receipt requested, to the owner of the resource and a copy provided to the public work director, zoning administrator, historic preservation officer and the historic preservation commission and may include any recommendations including a time frame to conduct the remedial work or other work necessary to stop the demolition by neglect, stabilize the resource, vacate the property, or demolish the resource.

E. Hearing and Notice of Hearing. Upon receipt of any written report in which the building official has found that there is demolition by neglect, or the resource can or should be demolished, the historic preservation officer shall cause to be scheduled a hearing before the historic preservation commission to review and take action based on the report from the building official. The owner of the resource shall be served with written notice of the time and date of the hearing not less than ten (10) days prior to the hearing.

F. Legal Notice Requirement. Any notice required herein shall be considered delivered if sent by certified mail, return receipt requested and mailed to the last known address of the record owner or owners as listed on the city and/or county tax rolls or by other methods allowed by law.

G. Hearing on Report. At the hearing the historic preservation commission shall receive evidence on the issue of whether the subject resource should be repaired, vacated, stabilized, or can be demolished. At the hearing, the historic preservation commission shall require the owner to present a preliminary plan including a timetable to the historic preservation commission within thirty (30) days generally identifying the work necessary to abate the demolition by neglect. The owner or owners or their agents shall submit an application for a certificate of appropriateness and/or project approval for all proposed work. The historic preservation commission must review and act on all applications before issuance of a building permit. All work shall be completed within ninety (90) days of the approval from the historic preservation commission. The historic preservation commission may grant up to two (2) extensions of ninety (90) days each due to inclement weather or other unforeseen difficulties. Should the historic preservation commission find that the owner or owners have not pursued the necessary repairs with reasonable diligence, the historic preservation commission may pursue civil and/or criminal penalties under Section 17.68.120 and/or request that the city cause the required work to be completed with any costs associated thereto attached to the property as a tax lien.

H. Notice of Commission Action. The historic preservation officer shall notify the owner in writing of the determination of the historic preservation commission and the action required of the owner within ten (10) days of the hearing. Such notice shall identify and provide clear instructions to the owner as to the remedial work required by the historic preservation commission.

I. Remedial Work and Compliance. Upon the completion of any remedial work, recordation work, or other work required by the historic preservation commission, the owner shall notify the historic preservation officer of the completed work. The building official along with the historic preservation officer and any other professional deemed necessary by the building official and/or historic preservation officer shall inspect, within fifteen (15) days of notification, the completed work and shall cause, within fifteen (15) days of the inspection, the issuance of a written report to be submitted to the owner and the historic preservation commission to determine if the work completed is in compliance with city codes and ordinances and meets the requirements of the historic preservation commission. The historic preservation commission must review and act upon all such reports. All remedial work required by the historic preservation commission must be completed in compliance with such plans approved by the historic preservation commission.

J. Intentional Neglect. Intentional neglect shall be defined as willful actions perpetrated by the owner or owners or their agents that result in damage to a resource. Such actions may include, but are not limited to, intentional running of water taps, hoses, or other man-made water devices resulting in flooding, erosion, or other water damage to the resource; intentional exposure of the resource to natural elements of wind, rain, snow, or other precipitation through the opening of windows, doors, skylights, or other moveable features of a resource; intentional drilling, boring, or cutting of holes in the roof, exterior walls or supporting members of a resource.

(Ord. 1250, 2016; Ord. 1081 (part), 2007; Ord. 1007, 2003; Ord. 831 § 7.10, 1992)

17.68.110 Public safety exclusion.

In the event any resource shall be damaged by flood, fire, or other catastrophe or unforeseen event that results in damage or possible loss of a resource, and the building official, with the concurrence of the city planner and the historic preservation officer, deems the resource to present an immediate threat to public safety, the historic preservation officer shall call an emergency meeting before the historic preservation commission, which shall take place within seventy-two (72) hours of the event. At such meeting, evidence shall be presented regarding the seriousness of the damage and the threat to public safety and any evidence in rebuttal thereto may also be presented. In the event the danger to public safety is imminent, the owner or owners shall stabilize and protect the resource pending consideration by the historic preservation commission. The historic preservation commission shall, based on the evidence presented, determine the course of action to be taken.

(Ord. 1081 (part), 2007; Ord. 831 § 7.11, 1992)

17.68.120 Enforcement and penalties.

The following civil and criminal penalties may be imposed upon those persons, firms, or corporations found to have violated requirements or prohibitions contained within this chapter.

A. Civil Penalty.

1. Any person who constructs, alters, relocates, or demolishes any building or resource in violation of this chapter or causes any building or resource to be constructed, altered, relocated, or demolished in violation of this chapter may be required to restore the building or resource to its appearance or setting prior to the violation. Any action to enforce this provision shall be brought by the city. Any civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.

2. If demolition of a building or resource occurs without a certificate of appropriateness, or project approval, then any permits on the subject property, with the exception of a permit to restore the building or resource as set forth above, may be denied for a period of ten (10) years. In addition, the applicant may not be entitled to have issued to the applicant, by any city office, a permit allowing any curb cuts on the subject property for a period of ten (10) years from and after the date of such demolition.

3. If any other undertaking or project other than the demolition of a building or resource occurs without a required certificate of appropriateness or project approval, then any permits on the subject property, with the exception of a permit to restore the building or resources as set forth above, may be denied for a period of five (5) years. In addition, the applicant may not be entitled to have issued to the applicant, by any city office, a permit allowing any curb cuts on the subject property for a period of five (5) years from and after the date of such undertaking or project.

4. If any resource found to be in a state of demolition by neglect as outlined in17.68.100 should be allowed by the owner or owners to remain in a state of demolition by neglect, then any permits for any property issued to the owner or owners, with the exception of those permits expressly for the necessary repairs to restore the resource to a safe and sound condition, may be denied for a period of ten (10) years or until such time as the resource has been returned to a safe and sound condition, whichever is shorter. In addition, the owner or owners may not be entitled to have issued to them, by any city office, a permit allowing any curb cuts on any property for a period of ten (10) years, or until such time as the resource has been returned to a safe and sound condition, whichever is shorter.

B. Criminal Penalty. Any person or legal entity who constructs, alters, relocates, demolishes, or intentionally allows demolition by neglect of any building or resource in violation of this chapter or who causes any building or resource to be constructed, altered, relocated, or demolished in violation of this chapter, shall be guilty of a Class 2 misdemeanor punishable by the maximum sentence as set forth in SDCL 22-6-2. Each day the violation continues to exist shall be punishable as a separate offense.

(Ord. 1204, 2014; Ord. 1081 (part), 2007; Ord. 851 (part), 1993; Ord. 831 § 7.12, 1992)

17.68.130 Appropriations.

The city is authorized to make appropriations to the commission necessary for the expenses of the operation of the commission and may make additional amounts available as necessary for the acquisition, restoration, preservation, operation and management of historic properties.

(Ord. 831 § 7.13, 1992)

17.68.140 Title to property acquired.

All property acquired by funds appropriated by the city shall be acquired in the name of the city unless otherwise provided by the city.

(Ord. 831 § 7.14, 1992)

17.68.150 Project review by state.

Projects requiring review pursuant to this chapter, after approval by the historic district commission or historic preservation commission, will be submitted to the South Dakota Historical Preservation Center for review as required by SDCL 1-19A-11.1 or any written agreements between the city and the state of South Dakota. The requested certificate of appropriateness or project approval shall be issued or denied by the city after the review process described by SDCL 1-19A-11.1 and its supporting rules or any written agreements between the city and the state of South Dakota has been implemented.

(Ord. 961, 2000: Ord. 831 § 7.15, 1992)

Chapter 17.72

PLANNED UNIT DEVELOPMENTS

Sections:

17.72.010 Purpose.

17.72.020 Permitted principal and accessory uses and structures.

17.72.030 Application.

17.72.040 Review and application.

17.72.050 Criteria for review.

17.72.060 Density increase.

17.72.070 Parking reduction.

17.72.080 Minor modifications and amendments.

17.72.090 Approval and certification process.

17.72.010 Purpose.

The purpose of planned units is to allow flexibility and encourage innovation in land use development, promote the most appropriate use of land, improve the design, character, and quality of new development, facilitate the adequate and economical provision of streets and utilities and preserve the natural and scenic features of open space.

(Ord. 831 § 9.1, 1992)

17.72.020 Permitted principal and accessory uses and structures.

A. The following uses are permitted:

1. Single-family detached dwellings;
2. Two-family dwellings;
3. Multiple-family dwellings;
4. Limited commercial uses;
5. Recreational uses; and
6. Public and semi-public uses.

B. Limited commercial uses include, but are not limited to, municipal buildings, schools, churches, art galleries, professional offices, theaters (but not drive-ins), motels/hotels and restaurants. Limited commercial shall not be construed to include “gaming”, unless such use is listed and permitted under Uses By Right in the subject zoning district for which the application is being filed and shall exclude lands which were not established within the city limits as of January 1, 1989.

C. Recreational uses include, but are not limited to, private parks, golf courses, swimming pools, ski slopes, etc. (so long as these facilities do not produce noise, glare, odor or air pollution).

(Ord. 900 (part), 1995; Ord. 831 § 9.2, 1992)

17.72.030 Application.

A person having an interest in land to be included in a PUD may file an application for approval of a PUD on a form provided by the city planning department that shall include all information and materials required by Section 17.96.020, Development Review Application, and, without limitation, the following:

A. The site plan shall show the major details of the proposed PUD, prepared on a scale of not less than one inch equals one hundred (100) feet and shall provide sufficient detail to evaluate the features of the PUD required by this chapter. The site plan shall contain insofar as applicable, the following information.

1. The name(s) and addresses of the current developer and owner(s) and the engineer which is preparing the plan;

2. A certificate of title, from a title company, verifying ownership, and a complete and accurate legal description of the proposed PUD property;

3. Vicinity map;

4. Location by legal description (if the proposed site requires subdivision, the plan shall show the layout of all the lots and the plan shall comply with the regulations outlined in the subdivision ordinance);

5. Overall development plan, depicting the total acreage of the sites, the uses, dimensions, and location of proposed sites, and open spaces designated for various uses (i.e. parking, structures, residential or commercial, streets, parks or playgrounds);

6. Location, widths, and names of all existing or prior platted streets, railroad and utility spaces, permanent buildings and structures, permanent easements, municipal boundaries if within two hundred (200) feet of the development;

7. Location, and dimensions of proposed streets and names, entrances, exits, pedestrian walkways, bikeways, equestrian trails, easements, sidewalks, buildings, building uses, building setbacks, and curblines, schematics of utilities,

and elevation of the building(s). Buildings exceeding the height restrictions of the zoning district in which it is located will require a variance as allowed under Chapter 17.80 of this title.

8. Location, arrangement and dimensions of automobile parking spaces, width of aisles, width of bays, angle of parking;

9. Any physical limitation for development, including areas with high water table conditions, rock outcroppings, steep slopes, wetlands and any other limiting factors of the site for developers;

10. The areas subject to the one hundred (100) year flood as defined in the city's flood plain ordinance, codified in Chapter 15.36 of this code, and any area of the site that is within a designated floodway;

11. Proposed drainage system;

12. Location and general exterior dimensions of principal and accessory buildings and signs.

B. Written statements containing the following information:

1. An explanation of the objectives to be achieved by the PUD, including without limitation, building and use descriptions, sketches or elevations that may be required to describe the objectives;

2. A development schedule indicating the approximate date when construction of the PUD or phases of the PUD can be expected to begin and be completed; and

3. Copies of any special agreements, conveyances, restrictions or covenants that will govern the use, maintenance and continued protection of the goals of the PUD and any of its parks, recreation areas, playgrounds or open space.

(Ord. 900 (part), 1995; Ord. 831 § 9.3, 1992)

17.72.040 Review and application.

The city will review and decide whether an application for a PUD is in accordance with the provisions of Section 17.96.020(B) of this title.

(Ord. 831 § 9.4, 1992)

17.72.050 Criteria for review.

No PUD application shall be approved unless the approving agency finds that:

A. The plan is consistent with the purposes and policies of the Deadwood comprehensive policy plan; and

B. That the plan utilizes site design techniques which enhance the quality of the development. In determining whether this subsection is met, the approving agency will consider the following factors:

1. Open space, including without limitation, parks, recreation areas and playgrounds.

a. The required open space is accessible, functional and useable by the people being served;

b. Private open space is provided for each residential unit;

c. The project provides for the preservation of natural features, including without limitation, trees and drainage areas; and

d. The open space provides a relief to the density, both within the project and from surrounding development.

2. Landscaping.

a. The project provides for a variety of plant and hard surface materials and the selection of materials provide a variety of colors and contrasts;

b. The setbacks, yards and useable open space along public roadways are landscaped to provide attractive streetscapes to enhance architectural features and to contribute to the development of an attractive site plan;

c. The landscaping is designed to facilitate the buffering of one use from another;

d. Screening of service yards and other places which tend to be unsightly is accomplished by the use of walls, fencing, planting or a combination of these; and

e. The project provides for continual maintenance of landscaping.

3. Circulation, including the transportation system that serves the property, whether public or private and whether constructed by the developer or not.

a. High speeds are discouraged or a physical separation between streets and the project is provided;

b. Pedestrian-vehicular conflicts are minimized;

c. Safe and convenient connections within the project and between the project and existing and proposed transportation systems are provided, including without limitation, streets, bikeways and pedestrian ways;

d. The amount of land devoted to the street system is minimized;

e. The project is designed for the types of traffic expected, including without limitation, automobiles, bicycles and pedestrians, and provides safety, separation from living areas and control of noise and exhaust;

f. City construction standards are met and emergency vehicle use is facilitated; and

g. On-site facilities for external linkage with other modes of transportation, where applicable, are provided.

4. Parking.

a. The project incorporates into the design of parking areas, measures to provide safety, convenience and separation of pedestrian movements from vehicular movements;

b. The minimum amount of land necessary to meet the demands of the project is devoted to parking;

c. The design and treatment of parking areas and light is such as to reduce the visual impact on the project, adjacent properties, and adjacent streets; and

d. The project meets the parking requirements of this title, unless modified by the provision of Section 17.72.060 of this chapter.

5. Livability.

a. Noise is minimized between uses and units, within and between buildings and from external sources, either on or off site;

b. For all projects, sunlight is provided and shadows are minimized on windows, roofs, parks, recreation areas, playgrounds, open space (both public and private) and sidewalks;

c. A lighting plan is provided which addresses security, conservation, safety and aesthetics;

d. Impacts of wind are mitigated;

e. View corridors toward the mountains or the city are protected throughout the project, and internal views are provided where applicable; and

f. Cut and fill are minimized on the site, and the design of structures conforms to the natural contours of the land.

6. Building Design and Relationship to Surrounding Area.

a. The building design and type provide a variety and quality that adds to the visual attractiveness of the community;

b. The building height, mass, scale, orientation and configuration are compatible with the general character of the area;

c. The orientation of the building or buildings is such to minimize shadows or blocking of views from adjacent properties;

d. Where the character of the area is identifiable, the project is compatible with such conditions by the appropriate use of color, materials, vegetation, signs and lighting; and

e. The project meets the density requirements of Chapters 17.16 through 17.48 of this title, unless modified by the provisions of Section 17.72.060.

(Ord. 831 § 9.5, 1992)

17.72.060 Density increase.

The density of the project may be increased through the reduction of the lot area requirement for established districts or the open space requirements for developing and redeveloping districts. This density increase shall occur only if the planning and zoning commission finds that the following criteria have been met:

A. Maximum Reduction.

1. Twenty-five (25) percent of lot area, except that:

a. No density increase in the number of dwelling units allowed under Chapters 17.16 through 17.48 of this title.

B. Criteria for Reduction.

1. The needs of the PUD's occupants for useable open space can adequately be met;

2. The open space or lot area reduction does not significantly affect the character of the PUD nor the character of the surrounding area; and

3. The specific percentage reduction in open space or lot area requested by the applicant is justified by any one or combination of the following site design features not to exceed the maximum reduction allowed under subsection A of this section:

a. Architectural treatment that results in reducing the apparent bulk and mass of the structure or structures and site planning which increases the openness of the site, maximum five percent reduction;

b. Close proximity to a public mall or park for which the PUD is specially assessed or to which the PUD contributes funding of capital improvements beyond that required by other sections of this title or other city ordinances;

c. A common park, recreation or playground area functionally useable and accessible by the PUD's occupants for active recreational purposes and sized for the number of inhabitants of the development, maximum five percent reduction; or developed facilities within the PUD designed to meet the active recreational needs of the occupants, maximum five percent reduction; and

d. Occupancy of the PUD by a unique residential population whose needs for conventional open space is reduced, maximum five percent reduction.

(Ord. 831 § 9.6, 1992)

17.72.070 Parking reduction.

The off-street parking requirement for projects which would require five or more parking spaces under the requirements of this chapter may be modified as follows:

A. The city planning department may grant a parking reduction not to exceed twenty (20) percent of the required parking. Only the planning and zoning commission may grant a parking reduction exceeding twenty (20) percent.

B. Parking Reduction Criteria. Upon submission of documentation by the applicant of how the project meets the following criteria, the approving agency may approve modifications to the parking requirements, if it finds that:

1. For residential uses, the probable number of motor vehicles to be owned by occupants of and visitors to dwellings in the PUD will be adequately accommodated;

2. The parking needs of any nonresidential uses will be adequately served;

3. A mix of residential with either office or retail uses is proposed, and the parking needs of all uses will be accommodated through shared parking;

4. If joint use of common parking areas is proposed, varying time periods of use will accommodate proposed parking needs; and

5. If the number of off-street parking spaces is reduced because of the nature of the occupancy, the applicant provides assurances that the nature of the occupancy will not change.

(Ord. 831 § 9.7, 1992)

17.72.080 Minor modifications and amendments.

A. Minor Modifications and Amendments. Changes to the site plans, building plans and landscaping plans may be approved by the city planning department without an amendment to the site plan if such changes are minor and do not alter the basic intent of the approved PUD. In determining whether a proposed change is a minor modification, the following guidelines shall apply:

1. Approved setbacks may not be varied more than twenty (20) percent;

2. The floor area of the development may be expanded by no more than ten (10) percent, or, in the case of height reviews, no more than five percent, except, that portion of any building over thirty-five (35) feet in height may not be expanded under the provisions of this subsection;

3. Building locations may vary by no more than ten (10) feet in any direction, except that portion of any building over thirty-five (35) feet in height may not be expanded under the provisions of this subsection; or

4. There is no increase in parking reduction that had been granted by the planning and zoning

commission.

All minor modifications shall be noted, signed and dated on the approved PUD site plan. For proposed minor modifications of PUDs that are partially or totally developed, the applicant shall provide notice to any owners of property within the development that might be affected as determined by the city planning department.

B. Amendments.

1. No proposal to modify, structurally enlarge or expand any approved PUD, other than a minor modification, shall be approved unless the site plan is amended and approved in accordance with the procedures prescribed by this section for approval of a PUD, except for the notice and consent provisions of this subsection.

2. If an applicant requests approval of an amendment to an approved PUD, the city planning department will determine which properties within the PUD would be affected by the proposed change. The applicant shall provide notice of the proposed changes to all owners of property so determined to be affected and to all owners of property within three hundred (300) feet of the boundaries of such property.

(Ord. 831 § 9.8, 1992)

17.72.090 Approval and certification process.

The application for final approval must be received by the planning and zoning commission and city commission. The following procedures then apply to the final approval of a plan:

A. The application shall include such drawings, covenants, easements, conditions, performance bonds and content as set forth at the time of preliminary approval. The boards may, at their discretion, require that a public hearing be held for the application for PUD.

B. Approval of the plan, that has been given final approval by the planning and zoning commission and the city commission, must be certified as follows:

Certification by Architect: _____

Name

of _____ states that he/she has prepared portions of the

City, State

_____ Planned Unit Development, including:

Name of Development

_____

_____

_____

Title Sheet Numbers

and that the same was prepared pursuant toChapter 17.72 entitled “Planned Unit Development” of the City of Deadwood Code of Ordinances and that the same has been prepared according to the normal standard architectural care and practices in the State of South Dakota. Modifications may occur during preparation of construction plan and/or during construction.

Dated this _____ day of _____ , 20 ___

_____

Architects Name

SUBSCRIBED AND SWORN BEFORE ME this _____ day of _____, 20 ___ .

_____

Notary Public

(SEAL)

My Commission Expires: _____

ENGINEERING CERTIFICATION

_____ of _____

Engineering Company City, State, Zip

states that it prepared portions of the _____

Name of Development

Planned Unit Development Including: _____

_____

_____

_____

Title Sheet Identification

and that the same were prepared pursuant toChapter 17.72 entitled “Planned Unit Development” of the City of Deadwood Code of Ordinances and that the same has been prepared according to normal standard engineering care and practices in the State of South Dakota. Modifications may occur during preparation of construction plan and/or during construction.

Dated this _____ day of _____, 20 ____

Engineering

BY: _____

ITS: _____

SUBSCRIBED AND SWORN BEFORE Me this _____ day of _____, 20 ____ .

_____

Notary Public

(SEAL) My Commission Expires: _____

APPROVAL BY DEADWOOD PLANNING AND ZONING COMMISSION

Approved by the Planning and Zoning Commission of the City of

Deadwood

, this _____ day of

_____, 20 _____.

Signed: _____

Chairperson

Signed: _____

Secretary

APPROVAL BY DEADWOOD CITY COMMISSION

Be it resolved that the Deadwood City Commission having examined the within Planned Unit Development, do hereby give our approval for this instrument to be recorded in the office of the Lawrence County Register of Deeds. Upon the filing of the plan, zoning and subdivision regulations otherwise applicable to the land included in the plan will cease to apply thereto. Should changes on the PUD be approved by the City of Deadwood, a set of as-built plans shall be made available to the Planning and Preservation Office of the City of Deadwood.

Signed: _____

Mayor, City of Deadwood

Attest: _____

City Finance Officer

OFFICE OF REGISTER OF DEEDS

State of South Dakota, County of Lawrence

Filed for record this _____ day of _____, 20 ____ , at _____

o'clock, ____.M, and recorded as Document No. _____ .

_____

Register of Deeds

C. Upon abandonment of an approved plan, or if building construction has not commenced within a two-year period, unless an extension of time has been requested, and granted, the final approval will be null and void, and any subsequent use of the property must be in accordance with the provisions of the zone in which the property is located.

(Amended during 2004 codification; Ord. 900 (part), 1995; Ord. 831 § 9.9, 1992)

Chapter 17.76

CONDITIONAL USES

Sections:

17.76.010 Conditional use permits generally.

17.76.020 Purpose.

17.76.030 Application.

17.76.040 General use standards for conditional use permits.

17.76.050 Report to board of adjustment.

17.76.060 Conditions governing applications and provisions.

17.76.010 Conditional use permits generally.

Conditional use permits may be issued for any uses or purposes as listed, or such uses which are comparable in degree and impact. A lot or legal subdivision of the city shall be allowed only one conditional use permit.

(Ord. 900 (part), 1995; Ord. 851 (part), 1993; Ord. 831 § 10.7, 1992)

17.76.020 Purpose.

A. Conditional uses are those uses which have some special impact or uniqueness since their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. At the time the application is submitted, a review of the location, design, configuration and impact is conducted by comparing the proposed use to fixed standards.

This review determines whether the proposed use should be permitted by weighing public need for, and benefit to be derived from, the use against the local impact which it may cause.

B. The planning and zoning commission and board of adjustment shall either approve or deny the application, and, where approved shall establish the specific conditions under which the application is approved. The application shall be denied if the Deadwood planning and zoning commission or Deadwood board of adjustment finds either that:

1. The application and record fail to establish compliance with the standards made applicable to the proposed development by the provisions of this chapter;

2. The proposed use developed in the proposed manner and at the proposed location, will be inconsistent with the standards applicable to it pursuant to the provisions of this chapter;

3. After taking into consideration any proposals of the applicant and any conditions that might be imposed by the commissions pursuant to the provisions of this chapter to alleviate adverse impacts, such adverse impacts of the development shall outweigh any public or private benefits of the proposal and require denial of the conditional use in the interest of the overall public health, safety and welfare. Should a conditional use permit request be denied by the commissions, a new application for the same use, in the area represented in the application, cannot be filed for one year.

(Ord. 851 (part), 1993; Ord. 831 § 10.7.1, 1992)

17.76.030 Application.

An application for a conditional use permit shall be filed with the city planning department on a prescribed form. An application for approval may be filed by any person having an interest in the property for which the conditional use is requested. The following information shall be included:

A. All materials and information required by Section 17.96.020 of this title, Development Review Application;

B. A complete site plan showing the major details of the development, including without limitation, location of buildings and structures, useable open space, off-street parking areas, off-street loading areas, service and refuse areas, means of ingress/egress and screening. Signage requires approval from the historic preservation commission and a sign application can be obtained at the building inspector's office.

C. A written statement indicating how the application meets the criteria for approval. Such written statement shall include information relating to the intensity of uses, amount of traffic generated, hours of operation and other information that the board deems necessary. The planning and zoning commission shall consider and decide all applications or conditional uses within thirty (30) days of receipt of such and in accordance with the standards provided below.

(Ord. 900 (part), 1995; Ord. 831 § 10.7.2, 1992)

17.76.040 General use standards for conditional use permits.

In reviewing any case under the authority of this chapter and as a further guide to its decision upon the facts of the case, the commission shall consider, among other things, the following facts:

A. The proposed use shall be in harmony with the general purposes, goals, objectives and standards to the city policy plan, this title, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the city.

B. Whether or not a community need exists for the proposed use at the proposed location; in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use: (a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.

C. The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way.

D. Whether or not the proposed use increases the proliferation of nonconforming uses as well as previously approved conditional use permits which are still in use, when influenced by matters pertaining to the public health, safety and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the policy plan, this title, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development.

For any conditional use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application, shall be considered in their entirety.

E. Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities and services specified in this chapter. Where any such improvements, facilities, utilities or services are not available or adequate to service the proposed use in the proposed location, the applicant, as part of the application and as a condition to approval of the proposed conditional use permit, is responsible for establishing ability, willingness and binding commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with the policy plan, this title, and other plans, programs, maps and ordinances adopted by the city to guide its growth and development. The approval of the conditional use permit shall be conditioned upon such improvements, facilities, utilities, and services being provided and guaranteed by the applicant as described in Section 17.04.110 of this title, Financial Guarantees.

(Ord. 900 (part), 1995; Ord. 831 § 10.7.3, 1992)

17.76.050 Report to board of adjustment.

For each application for a conditional use, the planning and zoning commission shall report to the board of adjustment its findings and recommendations, including the stipulation that additional conditions will be complied with when they are deemed necessary for the protection of the public interest.

(Ord. 831 § 10.7.4, 1992)

17.76.060 Conditions governing applications and provisions.

A. In the R1 residential district and/or R2 multi-family residential district, conditional use permits granted by this chapter shall be temporary in nature, with the exception of townhouses, condominiums and multi-family dwellings, and shall be granted to a designated person who resides at a residential address. They are not transferable from person to person or from address to address.

B. Following the issuance of a conditional use permit pursuant to the provisions of this chapter, such permit may be amended, varied or altered only pursuant to the standards and procedures established by this section for its original approval.

C. In the R-1 residential district and/or R2 multi-family residential district, should a home occupation permit holder die or move to a new location, the existing permit shall be automatically terminated, except that, in the case of death, should a surviving spouse or child desire to continue the home occupation, written notice to that effect shall be given to the zoning administrator, and the board of adjustment may authorize continuation of that permit without further hearing.

D. Conditional use permits, once granted, can be revoked by the board of adjustment for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filed with the zoning administrator and may be initiated by the planning and zoning commission or any three residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the conditional use permit application hearings.

E. The planning and zoning commission shall have the authority to review conditional use permits at any time and on an annual basis and place additional stipulations to mitigate a problem.

F. To defray the administration costs of processing requests for conditional use permits, a fee has been set by resolution by the city commission and such information is available at the planning and zoning office.

G. Any use permitted under the terms of any conditional use permit shall be established and conducted in conformity with the terms of such permit and of any conditions designated in connection therewith.

H. If the use permitted under the terms of a conditional use permit has not been started within six months of the date of issuance thereof, the permit shall expire and be canceled by the city planning department. Written notice thereof, shall be given to the persons affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

I. If the use permitted under the terms of a conditional use permit ceases, for whatever reason, for a period of twelve (12) months, the permit shall expire and be canceled by the city planning department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

J. Upon receipt in proper form of the application and other requested material, the board of adjustment shall hold at least one public hearing in a location to be prescribed by the board of adjustment, and shall make a decision upon the proposal to grant or deny the conditional use permit. At least ten (10) days in advance of each hearing, notice of the time and place of

such hearing shall be published in the official newspaper of the city. Notice shall be posted on the property for which the conditional use application has been filed.

(Ord. 1035 (part), 2005; Ord. 952 (part), 1999; Ord. 900 (part), 1995; Ord. 831 § 10.7.5, 1992)

Chapter 17.80

VARIANCES

Sections:

17.80.010 Zoning variance appeals to board and decisions of board.

17.80.010 Zoning variance appeals to board and decisions of board.

The purpose of the variance is to modify the strict application of the specific requirements of this title in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his or her land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his or her lot as this title intended.

A. Application. A property owner may make application to the board of adjustment for a variance. Such application shall be made on forms obtained from the city zoning administrator and shall include an abstract or certificate of title, deed or other document to prove ownership of land and the application fee.

B. Public Hearing. Upon receipt of a complete application, required supportive material as set forth in subsection E of this section and submittal of the fee set by resolution by the city commission, the board shall hold a public hearing, having first given a minimum of ten (10) days notice. Such notice of the time and place of such hearing shall be published in the officially designated newspaper of the city, and the property shall be posted by an official sign provided by the city. The board shall consider and decide all applications for variances within thirty (30) days of such public hearing and in accordance with the standards provided below.

C. Standards for Variances. In granting a variance, the board shall ascertain that the following criteria are met, and presented at the public hearing or otherwise included in the record.

1. A variance may be appropriate where, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions or other extraordinary conditions on a piece of property, the strict application of any regulation enacted under this title would result in peculiar, exceptional and undue hardship on the owner of such property. The aforesaid circumstances or conditions shall be set forth in the findings of the board.

2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.

3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.

4. The granting of any variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, and/or detrimental to the public welfare, or in conflict with the established policies of the city.

5. There must be proof of practical difficulty, which may be based upon sufficiently documented economic factors, but such proof shall not be based solely upon or limited to such economic factors. Furthermore, the hardship complained of cannot be self-created, nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this title; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

6. That the proposed variance will not impair an adequate supply of light and air to adjacent properties, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.

7. A fee, as adopted by resolutions, due and payable prior to the public hearing, shall be paid to the zoning administrator as agent for the board to cover the costs of notices and other expenses incidental to the hearing.

8. The applicant has proven that he or she is the owner of the property, or is his or her officially designated agent and has presented proof thereof.

D. Requirements for the Granting of a Variance. Before the board shall have the authority to grant a variance, the person claiming the variance has the burden of showing:

1. That the granting of the permit will not be contrary to the public interest;

2. That the literal enforcement of this title will result in unnecessary or unreasonable hardship;

3. That by granting the permit, substantial justice will be done.

The board of adjustment may vote to approve, deny or approve with conditions the application for a variance.

E. Required Supportive Materials. Site Plan: three copies of a site plan must be submitted with the application. The site plan must show all data pertinent to the proposed variance, which shall include at a minimum the following:

1. Date of drawing;

2. Scale;

3. North arrow;

4. Name of person or firm who drew the plan; and

5. Locations and dimensions of property lines, abutting rights-of-way, easements, required setbacks, off-street parking, proposed landscaping and exiting for proposed structures.

F. A variance shall be null and void two years from the date it is granted unless completion or substantial construction has taken place. The board of adjustment may extend the variance for an additional period not to exceed one year upon the receipt of a written request from the applicant demonstrating good cause for the delay.

G. If upon review by the zoning administrator, a violation of any condition, imposed in approval of a variance is found, the administrator shall inform the applicant by registered mail of the violation and shall require compliance within sixty (60) days, or the administrator will take action to revoke the permit. The administrator's letter, constituting notice of intent to revoke variance may be appealed to the board of adjustment within thirty (30) days of its mailing. The board of adjustment shall consider the appeal and may affirm, reverse or modify the administrators notice of intent to revoke. The applicant must comply with the board of adjustment's order on appeal of notice of intent to revoke variance within thirty (30) days of the board's decision.

(Ord. 952 (part), 1999; Ord. 831 § 10.10, 1992)

Chapter 17.84

ZONING ADMINISTRATOR AND BUILDING INSPECTOR

Sections:

17.84.010 Zoning administrator--Powers and duties.

17.84.020 Building inspector--Powers and duties.

17.84.030 Historic preservation officer—Powers and duties.

17.84.010 Zoning administrator--Powers and duties.

The zoning administrator is designated as the enforcing officer and is vested with the duties of administration and enforcement of this title and the power necessary for such administration and enforcement. The duties of the zoning administrator are as follows:

A. Review all applications for building permits and make reports concerning these applications as they relate to zoning, to the planning and zoning commission and city commission.

B. If the zoning administrator shall find that any of the provisions of this title are being violated, the zoning administrator shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. If the violator continues work after the date written notification is received, the violation and penalty clause will take effect. The zoning administrator shall order discontinuance of illegal buildings or structures or of illegal additions, alterations or structural changes; discontinuance of any illegal work being done; or, shall take any action authorized by this title to ensure compliance with or to prevent violations of its provisions.

(Ord. 831 § 10.8(A), 1992)

17.84.020 Building inspector--Powers and duties.

The building inspector shall act as the chief building official for the city. The duties of the building inspector are as follows:

A. To review, in conjunction, with the city planner, zoning administrator and historic preservation officer, all applications for building permits.

B. The building official is charged with administration and enforcement of the current building codes per Chapter 15.01.

C. The building official is authorized and directed to enforce all the provisions of the current building codes per Chapter 15.01. For such purposes, the building official shall have the powers of a law enforcement officer.

D. The building official shall have the power to render interpretations of the current building codes per Chapter 15.01 and

to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of the current building codes per Chapter 15.01.

E. Should the building official find that any of the provisions for a building permit are being violated, he or she shall notify in writing the person(s) responsible for such violation(s).

(Ord. 1206, 2014; Ord. 831 § 10.8(B), 1992)

17.84.030 Historic preservation officer—Powers and duties.

A. The historic preservation officer, as appointed by the city commission, is hereby empowered with the necessary authority to interpret and insure compliance with this title. The authority and responsibilities of the historic preservation officer shall include, but not be limited to the following:

1. Review, evaluate, and approve all applications relating to the construction, alteration, remodeling or restoration or other construction of all properties to insure the protection and preservation of all properties within the city.

2. To review and approve, in conjunction with the zoning administrator and building inspector, all applications for permits, including sign permits, as they relate to properties and the historic preservation of the city.

3. To issue citations, stop work orders or seek injunctions related to the enforcement of this chapter in furtherance of the protection and preservation of all properties.

4. Interpret this title and SDCL 1-19A and 1-19B and to propose rules and supplemental regulations in order to clarify and enforce the application of this title. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of this title and be approved by the historic preservation commission and adopted by the city commission.

5. If the historic preservation officer determines that any of the provisions of this title are being violated, he shall notify, in writing, the person responsible for such violations. The notice shall indicate the nature of the violation and if necessary, set forth any remedial action necessary to correct it.

6. If the person deemed responsible for the violation fails to undertake the proper remedial work in a timely manner or ceases to work as ordered by the historic preservation officer, the historic preservation officer may seek an injunction from the court to stop the work or issue a citation for the violation of this chapter.

B. Appeal of historic preservation officer's decision or order. Any person aggrieved by a decision or order of the historic preservation officer may appeal the decision or order to the historic preservation commission within thirty (30) days of receipt of any notice or order unless a citation for the violation has been issued pursuant to Section 17.68.120B.

(Ord. 1075, 2006)

Chapter 17.88

PLANNING AND ZONING COMMISSION

Sections:

17.88.010 Statutory authority.

17.88.020 Tenure of office--Membership.

17.88.030 Organization.

17.88.040 Appropriation.

17.88.050 Powers.

17.88.010 Statutory authority.

The authorization for the establishment of the planning and zoning commission is set forth under South Dakota Codified Laws (SDCL), Chapters 11-4 and 11-6 and amendments and supplements thereto as enacted under the authority of 1967 SDCL, Chapter 11-4, as amended.

(Ord. 831 § 10.1, 1992)

17.88.020 Tenure of office--Membership.

A. The city planning and zoning commission shall consist of five members appointed by the city commission. The members shall be resident electors of the city qualified by knowledge or experience to act in matters pertaining to the development and administration of a comprehensive plan of development for the city.

B. The term of each of the appointed members of the planning and zoning commission shall be for five years.

Approximately one-half of the members shall be appointed for three years, and the balance of the members shall be appointed for five years. Thereafter, appointment of each member shall be for terms of five years so that there will be no overlapping of tenures. Any vacancy in a membership shall be filled for the unexpired term by the mayor in the same manner as for appointment, and the mayor, with the confirmation of the city commission, shall after public hearing, have authority to remove any member for cause, which said cause shall be stated in writing and made a part of such hearing.

(Ord. 831 § 10.2, 1992)

17.88.030 Organization.

A. Officers.

1. The officers of the planning and zoning commission shall consist of a chairperson, vice-chairperson and secretary.

2. The chairperson shall:

a. Preside at all meetings and hearings of the planning and zoning commission;

b. Call special meetings of the commission in accordance with the by-laws;

c. Sign documents of the commission; and

d. See that all actions of the commission are properly taken.

3. The vice-chairperson shall act as the chairperson in the absence, disability or disqualification of the chairperson. The vice-chairperson shall exercise or perform all the duties and be subject to all the responsibilities of the chairperson.

4. The secretary, with the assistance of such staff as is available, shall keep the minutes and records of the planning and zoning commission.

B. Election of Officers.

1. The chairperson shall appoint a nominating committee consisting of three members to present candidates for office on the first meeting in January of each calendar year. The planning and zoning board members shall elect its officers from among its members for a term of one year, with eligibility for re-election, and may fill such other of its offices as it may create in a manner prescribed by the rules of the planning and zoning commission.

2. An annual organization meeting shall be held in January of each calendar year for the purpose of election of officers as presented by the nominating committee. Nominations may also be made from the floor at this meeting.

3. A candidate receiving a majority vote of the entire membership of the planning and zoning commission shall be declared elected and shall serve for one year or until that person's successor shall take office.

4. Vacancies in office shall be filled immediately by regular procedure.

C. Operations. The planning and zoning commission shall adopt by-laws providing for the regularly scheduled meetings. All meetings, or portions of meetings, at which official action is taken shall be open to the general public.

(Ord. 831 § 10.3, 1992)

17.88.040 Appropriation.

The city commission shall budget adequate funds on an annual basis to operate the planning and zoning commission.

(Ord. 831 § 10.4, 1992)

17.88.050 Powers.

Powers and duties are delegated to the planning and zoning commission by the city commission by resolution dated February 11, 1991, in accordance with the enabling law cited herein, and by this title.

(Ord. 831 § 10.5, 1992)

Chapter 17.92

BOARD OF ADJUSTMENT

Sections:

17.92.010 Board of adjustment--Powers and duties.

17.92.020 Organization.

17.92.010 Board of adjustment--Powers and duties.

The city commission shall act as a board of adjustment pursuant to SDCL 11-4-24. The board shall have the following powers:

A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement to this title or any ordinance adopted pursuant thereto;

B. To hear and decide special exceptions to the terms of this title upon which the board is required to pass under this title; and

C. To authorize upon appeal in specific cases such variance from terms of this title as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this title will result in unnecessary hardship and so that the spirit of this title shall be observed and substantial justice done.

(Ord. 831 § 10.9, 1992)

17.92.020 Organization.

A. Officers.

1. The officers of the board of adjustment shall consist of a chairperson and vice-chairperson. The mayor shall serve as chairperson and shall appoint a vice-chairperson to serve until the expiration of his or her term as city commissioner or the expiration of the chairperson's terms as mayor, whichever first occurs.

2. The chairperson shall have the following powers:

a. To preside at all meetings of the board of adjustment;

b. To administer oaths and compel the attendance of witnesses at any

meeting of the board; and

c. To call meetings of the board.

B. Meetings.

1. Meetings of the board of adjustment shall be held at the call of the chairperson, or at such other times as the board may determine.

2. All meetings of the board of adjustment shall be open to the public.

3. The concurring vote of at least two-thirds of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under this title, or to effect any variation in this title.

(Ord. 831 § 10.9.1, 1992)

Chapter 17.96

DEVELOPMENT REVIEW PROCESS

Sections:

17.96.010 Development review process--Established--Compliance required.

17.96.020 Development review application.

17.96.030 Development review action.

17.96.010 Development review process--Established--Compliance required.

A. A single development review process is established in order to provide a uniform and consistent method for evaluating and reviewing all annexed land pursuant to Section 17.12.040 of this title, expansion of nonconforming uses or modifications to nonconforming buildings pursuant to Section 17.56.050, changes to nonconforming uses pursuant to Section17.56.040, conditional uses pursuant to Chapter 17.76, zoning variances pursuant toChapter 17.80 and building height variances pursuant to Section 17.60.160.

B. No person shall commence construction of buildings pursuant to an approval of a conditional use, a nonconforming review, a height review, a planned unit review, a historic district overlay or an environmental district overlay review without first complying with all requirements of this title and such approval.

(Ord. 851 (part), 1993; Ord. 831 § 10.13, 1992)

17.96.020 Development review application.

A. Pre-Application Conference. Upon request of an applicant, the planning department will hold a pre-application conference with an applicant for a development review to respond to questions regarding development review procedures, related city requirements and information required in an application.

B. Application. A person having a demonstrable property interest in land to be included in a development review may file an application for approval on a form provided by the planning department, that shall include, without limitation, the following:

1. The written consent of the owners of all property to be included in the development;

2. A list of property owners within three hundred (300) feet;

3. An improvement survey, including all easements;

4. Development plans including site, landscaping, drainage plans, building plans and building elevations as applicable;

5. A written statement addressing the criteria for approval; and

6. Any other information that the applicant wishes to submit.

In addition, the submitted application shall include all additional information required in the various specific requirements, for the type of review requested, and the fee as adopted by city resolution, for the type of review requested. A schedule of fees is available at the planning department.

C. Combined Reviews. If a development proposal, by its nature, requires more than one type of approval under this title, the following will apply in addition to other requirements of this chapter:

1. Only one fee shall be collected and it shall be the larger of the amounts prescribed by the fee schedule outlined in the resolution.

2. The notice requirements of subsection D of this section shall be met for each individual type of approval required, although such notices may be combined in one posting, one publication and one hearing. However, should one of the applicant's requests require a time period prior to becoming lawful, and the action of one application requires the approval of the other, the appropriate board may attach a stipulation to the other particular requests, whereas approval is contingent upon the subject application becoming lawful.

3. The applicant shall provide all information required by subsection B of this section and shall additionally provide any additional application material or information required.

4. The approving agency shall apply the criteria for each type of approval required in reviewing combined development proposals.

D. Public Notice of Application. The city planning department will provide the following public notice of a development review application:

1. After receiving such application and at least ten (10) days prior to any decision, the city planning department will post the property for which the application is filed with a notice indicating that a development review application has been made, the type of review requested, and that interested persons may obtain more detailed information from the planning department.

2. After receiving such application, the city planning department will notify by first class mail, the owners of properties located within three hundred (300) feet of the boundaries of the land included in the application. The notice will indicate that a development review application has been filed, the type of review requested, that such persons may review the application during the planning department's regular business hours, that they may request a copy of the city planning department's recommendation or decision on the application, and that public hearings may be held before the planning and zoning commission or board of adjustment for which only published, rather than personal, notice will be provided. The purpose of such mailed notice is to reasonably inform surrounding property owners of an application for development review. If at or prior to a public hearing before an approving agency an omission or defect in the mailing is brought to the agency's attention, the agency will determine whether the omission or defect would impair or had impaired a surrounding property owner's ability to participate in the public hearing. Upon such a finding, the agency shall continue the hearing for at least ten (10) days. Any omission or defect in the mailed notice that is not brought to the agency's attention or that the agency finds did not impair a surrounding property owner's ability to participate in the hearing does not affect the validity of the development review proceeding.

(Ord. 831 § 10.14, 1992)

17.96.030 Development review action.

A. City Planning Department Review and Recommendation. No development review application shall be accepted unless and until it is determined to be complete. Within twenty-five (25) days of receiving a complete application, the city planning department shall review the application and provide the applicant with a list of any recommended modifications. Thereafter, the city planning department shall either grant the application in whole or in part, with or without modifications and conditions, deny it, or refer it to the appropriate approving agency for review or decision, as provided in this title, for the type of review requested. The city planning department will transmit by mail or otherwise a written recommendation or decision and findings to the applicant, the appropriate approving agency or appeal body, and by mail only to the owners of property

to whom notice was mailed who have requested it. The city planning department's recommendation or decisions will specifically set forth in what respects the application meets or fails to meet the standards and criteria required by this code, for the type of review requested. A decision not referred to, appealed to, or called up by the appropriate approving agency is final fourteen (14) days after the date of mailing.

B. Board Review and Recommendation. A development review application may be referred by the city planning department or the planning and zoning commission for a decision of the board of adjustment. The decision of the city planning department may be appealed to or called-up by the board for review, public hearing and decision as follows:

1. Referral. The city planning department shall refer to the appropriate approving agency any application for development review for which referral is required under this title, and any other application which the city planning department deems appropriate.

2. Appeal.

1. The applicant, any of the owners of the property to whom notice is mailed or any interested person may appeal the city planning department's decision to grant or deny an application to the planning and zoning commission or board of adjustment, as appropriate, by delivering a written notice of appeal to the city planning department within fourteen (14) days of the decision.

2. The planning and zoning commission may call-up for review any development review application upon which the city planning department has acted within fourteen (14) days of the planning department's action.

3. On any application that it calls up, the commission shall hold a joint public hearing under the procedures prescribed, after publishing notice as provided in this chapter. After having considered all comments offered and all of the evidence and testimony presented; and, after discussion and consideration of the application, the planning and zoning commission shall recommend to the board of adjustment, as appropriate, a recommendation to approve, approve with conditions or deny the application. Within thirty (30) days of the public hearing or within such other time as the board of adjustment and applicant mutually agree, the board of adjustment shall either grant the application in whole or in part, with or without modifications and conditions, or deny it. The findings of fact shall specifically set forth in what respects the development review application meets or fails to meet the standards and criteria required by this title, for the type of review requested.

C. Building Permit Pending Appeal. A building permit may be applied for after the initial approval of a development review application, but no building permit shall be issued until after any and all applicable call-up or appeal periods have expired. An applicant for such a permit bears all risks of subsequent disapproval and waives any vested rights or claims arising from the permit application.

D. Judicial Review. Exhaustion of administrative remedies is a prerequisite to judicial review of any decision made under this chapter.

(Ord. 831 § 10.15, 1992)

Chapter 17.100

AMENDMENTS

Sections:

17.100.010 Purpose.

17.100.020 Petitions for amendment.

17.100.030 Standards of review.

17.100.040 Application.

17.100.010 Purpose.

The purpose of this chapter is to provide a means for amending the text of this title and the official zoning district map. It is not intended to relieve particular hardships or confer special privileges or rights on any person.

(Ord. 831 § 11.1, 1992)

17.100.020 Petitions for amendment.

Any amendment to this title or the zoning district map must be made in the same manner and upon the same notice as required for the adoption of any city ordinance.

(Ord. 831 § 11.2, 1992)

17.100.030 Standards of review.

In reviewing an amendment to the text of this title or an amendment to the official zoning district map, the city commission and planning and zoning commission shall consider:

A. Whether the proposed amendment is in conflict with any applicable portions of this title.

B. Whether the proposed amendment is consistent with all elements of the comprehensive plan.

C. Whether the proposed amendment is compatible with surrounding zone districts and land uses, considering existing land use and neighborhood characteristics.

D. The effect of the proposed amendment on traffic generation and road safety.

E. Whether and the extent to which the proposed amendment would result in demands on public facilities, and the extent to which the proposed amendment would exceed the capacity of such public facilities, including, but not limited to transportation facilities, sewage facilities, water supply, parks, drainage, schools and emergency medical facilities.

F. Whether the proposed amendment is consistent and compatible with the community character in the city.

G. Whether there have been changed conditions affecting the subject parcel or the surrounding neighborhood, which support the proposed amendment.

H. Whether the proposed amendment would be in conflict with the public interest, and is in harmony with the purpose and intent of this title.

(Ord. 900 (part), 1995; Ord. 831 § 11.3, 1992)

17.100.040 Application.

The application for amendment to the text of this title or amendment to the official zoning district map shall include:

A. If the application requests an amendment to the text of this title, the precise wording of any proposed amendment.

B. If the application requests an amendment to the official zoning district map:

1. The present zone district classification and existing land uses of the real property proposed to be amended;

2. The area of the property proposed to be amended, stated in square feet or acres, or a major fraction thereof; and

3. An accurate survey map of the real property proposed for amendment.

(Ord. 831 §11.4, 1992)