

**CITY OF BOX ELDER ORDINANCE NO. 715**  
**TO AMEND BOX ELDER CODE OF ORDINANCES, CHAPTER 44 – ZONING**

**WHEREAS**, the City of Box Elder seeks to enhance the clarity of its Zoning ordinances.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Box Elder that Box Elder Code of Ordinances, Chapter 44, Zoning be amended to read as follows:

**Chapter 44 ZONING<sup>1</sup>**

**ARTICLE I. IN GENERAL**

**Sec. 44-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandon or Abandoned* means a use that has been discontinued for a minimum period of 180 days or a building, structure, sign, or other object that remains vacant or unused for a minimum period of 180 days

*Abandoned motor vehicle* means any motor vehicle that is left in one location on public property or on private property without the consent of the owner thereof for a continuous period of more than seventy-two (72) hours.

*Abutting property* means property lying immediately adjacent to and sharing a common property line with subject property.

*Accessory building* means a building detached from a principal building, located on the same lot as the principal building, and customarily incidental and subordinate to the principal building, such as a detached garage or storage shed. The term "accessory building" does not include any dwelling units or living quarters.

*Accessory dwelling unit (ADU) means* a habitable living unit added to or created within a primary single-family dwelling and contained on one lot.

*Accessory dwelling unit (ADU), detached means* a self-contained dwelling unit separated from a single-family residence, but located on an owner-occupied property which maintains complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, including a separate kitchen and/or laundry facilities.

*Accessory dwelling unit (ADU), internal means* an accessory dwelling unit created within a primary dwelling; within the footprint of the primary dwelling at the time the internal accessory dwelling unit is created; and for the purpose of offering a long-term rental of thirty (30) consecutive days or longer.

*Accessory use* means a use of land or of a building or portion thereof customarily incidental, necessary, and subordinate to the principal use of the land or building and located on the same lot with the principal use. An accessory use may only be constructed in conjunction with the issuance of a building permit for, or following the construction of, a primary use. In the case of adjoining lots under common ownership, an accessory use shall only be constructed on the same lots as the primary use.

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*Accident potential zone (APZ)* means two areas (APZ 1 and APZ 2) near the end of an airport or military airport runway that have been found to have significant statistical probability for aircraft accidents such that land use restrictions are appropriate to prevent concentrations of people and limit resident density.

*Adult foster care homes* means a family-style residence which provides supervision of personal care, health services, and household services for no more than four aged, blind, physically disabled, developmentally disabled, or socially-emotionally disabled adults.

*Adult oriented business (AOB)* means an establishment as described and regulated by §11-12 of SDCL. Includes an adult arcade, adult bookstore or video store, cabaret, adult live entertainment establishment, adult motion picture theater, adult theater, massage establishment that offers adult service, or nude model studios as those terms are defined in §11-12 of SDCL.

*Adjacent or Adjacent landowners* means a lot or parcel of property, or the owner of record of such, according to the records of the Register of Deeds that has a common boundary line with a lot or parcel of property that is the subject of action before the City.

*Agency* means the City Council of Box Elder and any officer, employee, department, division, or other agency of the City, including boards and commissions, but excludes the City's court.

*Aggrieved persons* means any person directly interested in the outcome of and aggrieved by a decision or action or failure to act pursuant to this chapter who:

1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;
2. Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;
3. Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;
4. Shows that the injury is unique or different from those injuries suffered by the public in general.

*Agribusiness* means businesses collectively associated with the production, processing and distribution of agricultural projects. Includes but is not limited to aquaculture, chicken or turkey farms, concentrated animal feeding operations, dairy farms, and stockyards.

*Agriculture* means the production, storage, keeping, harvesting, boarding, or maintenance, for sale, lease, or personal use, of plants and animals useful to humans, including, but not limited to, forages (hay) and sod crops; grains and seed crops; livestock including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery, floral, ornamental, and greenhouse products; or lands devoted to a soil conservation or forestry management program. The term "agriculture" shall not include intensive agricultural activities such as aquaculture, chicken or turkey farms, concentrated animal feeding operations, dairy farm, and other agribusiness activities.

*Affected entity* means a county, municipality, independent special service district or school district. Also includes a property owner or property owners' association if they have filed a valid request to receive notice. Such a request is valid for a period of one year and can be refiled.

*Air installation compatible use zone (AICUZ)*, as described in the Air Installation Compatible Use Zone (AICUZ) Study for Ellsworth Air Force Base, South Dakota, December 2008, is intended to identify and restrict land uses in locations that might obstruct or otherwise be hazardous to airfield operations and identify land areas which are exposed to health, safety, or welfare hazards due to airfield operations.

*Airspace surfaces* means a collection of geometric planes defined by the FAA that were created primarily to prevent existing or proposed manmade objects, objects of natural growth, or terrain from extending upward into

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navigable airspace. Examples of airspace surfaces are primary surfaces, approach/departure clearance surfaces, inner and outer horizontal surfaces, conical surfaces, and transitional surfaces.

*Alley* means a service roadway providing only a secondary means of access to abutting property(ies) and not intended for general traffic circulation.

*Allowed gathering density* means a limit on the number of people allowed to gather on a parcel of land, in a structure, or at an event at any one time within a specified area.

*Alteration* means any change or re-arrangement in the supporting members of an existing building, such as beams, bearing walls, columns, girders, load-bearing interior partitions, or trusses, as well as any enlargement to a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

*Ambulatory surgical center* means any facility which is not part of a hospital and which is not an office of a dentist, whether for individual or group practice, in which surgical procedures requiring the use of general anesthesia are performed upon patients.

*Amend or Amendment* means any repeal, modification or addition to a regulation; any new regulation; any change in the number, shape, boundary or area of a district; or any repeal, abolition, change or addition to the Zoning map.

*Amusement and recreation business* means any business whose primary function is entertainment, such as theaters, billiard halls, amusement rides, shows, sightseeing tours, or any other entertainment or amusement which may be recommended by the Planning Commission for authorization by the City Council.

*Antenna* means any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) or microwave communications. Such structures and devices include, but are not limited to, directional antennas such as panels, microwave dishes, and satellite dishes and omnidirectional antennas, such as whips.

*Apartment house.* See *Dwelling, multiple-family.*

*Appeal authority* means the person, board, commission, agency or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

*Applicant* means the owner, or owner's agent, of the property that is the subject of a land use application.

*Application or Land use application* means a written request for development approval including, but not limited to an alteration or revision to an approved master planned development, conditional use permit, zoning or rezoning, subdivision, or annexation. The term "application" shall not include any building permits associated with construction within an approved subdivision or on an existing platted lot unless otherwise specified.

*Approach clearance surface* means a portion of the airspace, defined by the FAA, as the lowest altitude for an aircraft to use to safely land on an airport or military airport runway. This surface (altitude) increases at a constant rate as it goes outward and upward from the runway surface.

*Approach/departure surface.* See *Approach clearance surface.*

*Approved* means the approval of the City Council or its authorized agent.

*Aquaculture* means land devoted to the hatching, raising and breeding of fish or other aquatic plants or animals for sale or personal use. A fish farm.

*Architectural projection* means any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, including, without limitation, a roof overhang, mansard, unenclosed exterior balcony, marquee, canopy, awning, pilaster, and fascia, but not including a sign.

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*Area, building*, means the total areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces, and decks, etc.

*Artisan distiller* means any manufacturer in the State of South Dakota producing, rectifying, or blending distilled spirits, as defined in §35-1-1, in a total quantity not in excess of fifty thousand gallons within a calendar year, where at least thirty percent of the raw materials, other than water, used in the finishing product are grown or produced in the State of South Dakota.

*Assisted living facility* means any institution, rest home, boarding home, place, building, or agency that is maintained and operated to provide personal care and services that meet some need beyond basic provision of food, shelter, and laundry.

*Authorized emergency vehicle* means every vehicle equipped with audible or visual signals meeting the requirements of state law and the City, as amended, and operated by law enforcement personnel, City fire department personnel, ambulance personnel and every other vehicle defined as an authorized emergency vehicle by state law.

*Authorized service vehicle* means such highway or traffic maintenance vehicles as are publicly owned and operated on a highway by or for a governmental agency, the function of which requires the use of service vehicle warning lights as prescribed by state law, and such other vehicles having a public service function, including, without limitation, public utility vehicles and tow trucks, as determined by the State Department of Transportation (SDDOT). Some vehicles may be designated as both an authorized emergency vehicle and an authorized service vehicle.

*Automobile parking lot, public*, means a parcel of land, lot or portion thereof owned or operated by a governmental or official public agency for off-street motor vehicle parking, but excluding the storage of dismantled or wrecked vehicles, parts thereof or junk.

*Automobile repair service* means an establishment primarily engaged in furnishing general automotive repair, rebuilding or reconditioning engines, body and fender work, vehicle and trailer painting, or upholstering services.

*Automobile service station* means any building, land area, or other premises or portion thereof used for the retail dispensing or sales of vehicular fuels or electricity, servicing and repair of automobiles, washing of automobiles, and including as an accessory use the sale and installation of lubricants, tires, batteries, and similar vehicle accessories.

*Automobile storage garage, private*, means an accessory building, including a barn used for automobile storage, or a portion of a main building or building attached thereto, designed, arranged or used for housing private motor vehicles, including farm machinery and vehicles. A private automobile garage shall not be used for the commercial storage of dismantled or wrecked vehicles or junk.

*Automobile wrecking/junkyard* means the dismantling, storage, sale, crushing or dumping or used of motor vehicles, trailers or parts thereof.

*Average slope* means an expression of rise or fall in elevation along a line perpendicular to the contours of the land connecting the highest point of land to the lowest point of land within a lot or building area. A vertical rise of one hundred (100) feet between two points one hundred (100) feet apart measured on a horizontal plane is 100 percent (100%) slope.

*Bank* means any corporation or limited liability company, organized pursuant to Chapter §47-34A of SDCL, authorized under Title §51A of SDCL to engage in the business of banking or in the combined business of a bank and trust company or in the combined business of a bank with trust powers. Includes branch banks, and mobile branch banks.

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*Bed and breakfast* means an owner-occupied, single-family residence offering overnight lodging and a morning meal for compensation, with not more than four (4) guest sleeping rooms for not more than eight (8) transient persons. A bed and breakfast in a residential zone shall be regulated as a home occupation.

*Bicycle or walking path* means a separate path that has been designated for use by non-motorized bicycles or pedestrians, by traffic control device or other sign, and that is separated from the roadway for other vehicular traffic by open space or a barrier.

*Birth center* means any health care facility at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

*Board* means the Board of adjustment.

*Board of adjustment* means the Planning Commission for the City.

*Boardinghouse* means an owner-occupied residence, as distinct from a hotel or motel, where, for compensation and by pre-arrangement for definite periods of time, meals or lodging are provided for three or more persons, but not more than eight persons, not related by blood or law, but not open to transient guests. The term "boardinghouse" shall include residence clubs, fraternities, sororities, and community shelters.

*Body piercing* means to place a permanent or temporary foreign object in a person's body for a decorative or other nonmedical purpose by a person not directly under the supervision of a licensed physician as defined by §34-4-11 of SDCL.

*Body piercing establishment* means the building or structure where body piercing is practiced.

*Brush* means woody shrubs, not part of a planned and maintained landscape of either a highly structured manicured type or natural appearance.

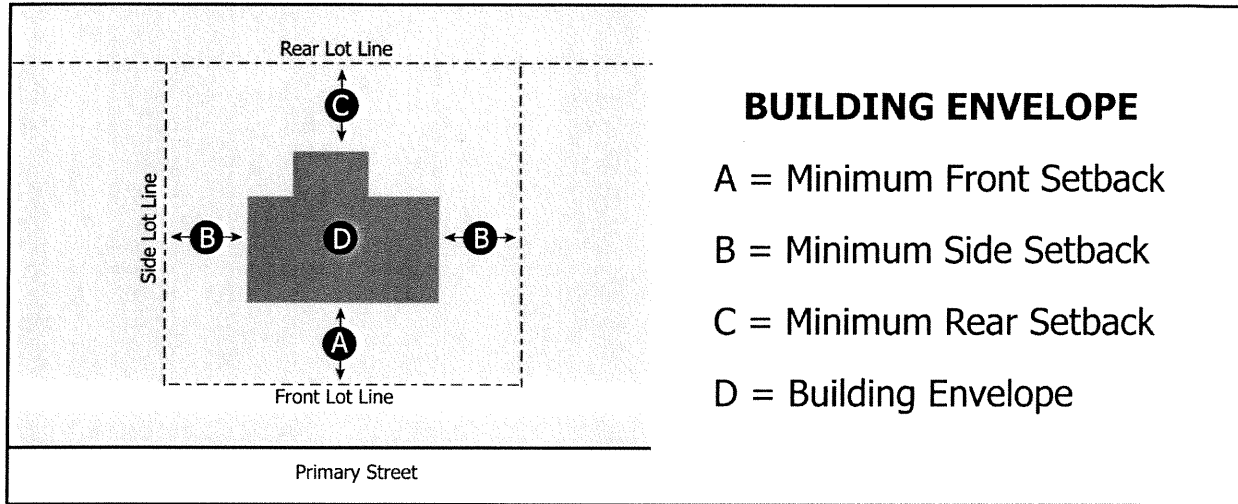
*Building* means any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, family, animal, process, equipment, goods, or materials of any kind. The term "building" includes the term "structure."

*Building, accessory.* See *Accessory building*.

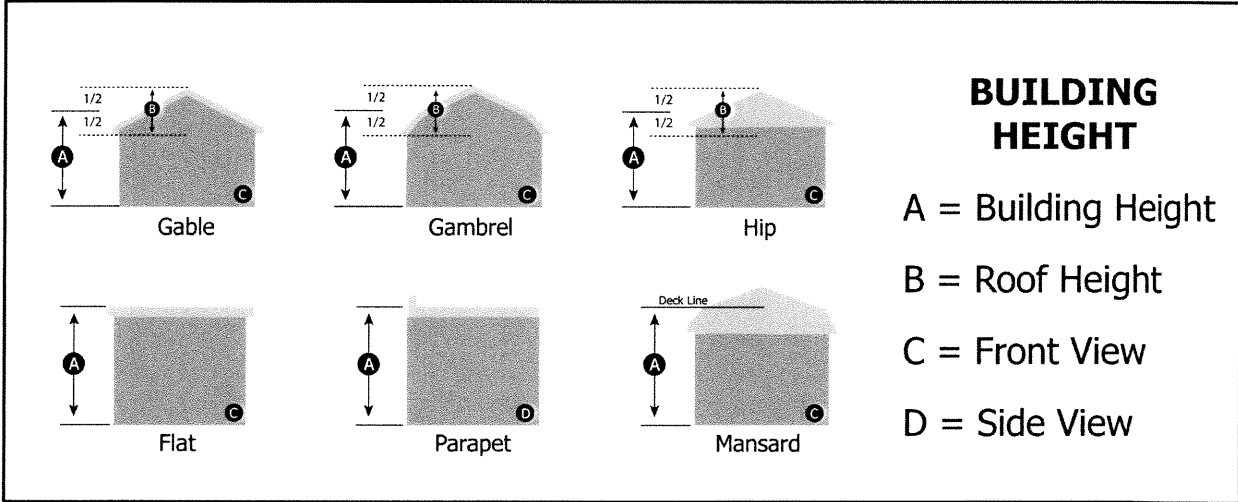
*Building code* means that code in effect, adopted by the State of South Dakota and the City of Box Elder.

*Building coverage* means the ratio of the horizontal area, measured at grade from the exterior surface of the exterior walls of the ground floor of all principal and accessory buildings on a lot, to the total lot area.

*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; but no such line shall run closer than five feet from any property boundary, and to the extent required to avoid running closer than five feet to any property boundary, this line may run less than eight feet from the exterior wall of any protected structure.



*Building height* means the vertical distance from the average finished grade surface at the building wall to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or the mean height level between eaves and ridge for gable, hip, or gambrel roofs. Does not include chimneys or other similar structures.



*Building inspector* means the individual authorized by the City Council, Building Official or their designee, to conduct inspections and issue permits.

*Building, main or principal,* means a building which is considered the principal use of the lot on which it is situated. In any residential district, a dwelling shall be deemed a main building of the lot on which it is located.

*Building official* means the administrator of the building codes adopted by the City of Box Elder.

*Building or setback line* means the setback line beyond which the foundation wall or any enclosed porch, vestibule or other enclosed portion of a building shall not project to a property line, except as provided in this chapter.

*Building permit* means written permission issued by the Building Official for the construction, repair, alteration, or addition to a building.

*Bulk storage* means a product stored in large quantities in a tank, pipeline or tank vehicle.

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*Business* means any profession, trade or occupation and all and every kind of calling, whether or not carried on for profit, except those organizations exempt from the federal income tax pursuant to Section 501(c)(3) of the Federal Internal Revenue Code, as amended or renumbered.

*Business, place of*, means any location, building or portion thereof or premises in which or from which a business is carried on. The term "place of business" includes, but is not limited to, an office, warehouse, yard, or location where books and records are kept, the location from which business is solicited.

*Business, service* means any activities conducted for gain which render service primarily to other commercial and industrial enterprises, or which service and repair appliances and machines used in the home or business.

*COW* (carrier on wheels or cell on wheels) means a portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle- or trailer-mounted and contains a telescoping boom as the antenna support structure.

*CUP* means a conditional use permit.

*Camper*. See *Recreational vehicle*.

*Campground* means a parcel on which two or more campsites are located, established, or maintained for occupancy by camping units as temporary living quarters for recreation, education, or vacation purposes. The term "campground" may also be known as a recreational vehicle park.

*Camping unit* means any tent, trailer, cabin, lean-to, recreational vehicle, or similar structure established or maintained and operated in a campground as temporary living quarters for recreation, education, or vacation purposes.

*Campsite* means any plot of ground within a campground intended for exclusive occupancy by a camping unit under the control of a camper.

*Care home* means an assisted living facility, congregate residences, inpatient/residential hospice, or nursing home, for the twenty-four (24)-hour care of children or the aged, but excluding chemical dependency treatment facilities and inpatient psychiatric facilities.

*Carport* means a roofed and usually detached structure (not a building except for setback purposes, and therefore, exempt from the requirement to obtain a building permit) with no more than two walls, providing space for the parking of more than two motor vehicles or trailers.

*Centerline* means a line extended through the midpoint of each end of an airport or military airport runway.

*Character* means special physical characteristics of a structure or area that set it apart from its surroundings and contribute to its interest or individuality.

*Charitable and philanthropic institution* means a private, nonprofit body, association or society not organized for the business of conducting a business, which has no part of its net earnings which inures to the benefit of any individual, and which provides volunteer aid or relief, or religious, social, physical, recreational or benevolent services.

*Chemical dependency treatment facility* means any facility which provides a structured inpatient treatment program for alcoholism or drug abuse.

*Church* means a building or structure, or groups of buildings or structures, together with its accessory buildings and uses, where persons regularly assemble for religious worship. The term "church" is also known as a house of worship, mosque, synagogue, or temple.

*Cider manufacturer* means Any manufacturer located in the State of South Dakota producing cider, as defined in §35-1-1 of SDCL, that is not a micro-cidery.

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*City* means the City of Box Elder or the area within the territorial City limits of the City of Box Elder and such territory outside of this City over which the City has jurisdiction or control by virtue of any constitutional or charter provision, or any law.

*Clergy* means persons who conduct religious services and undertake the duties prescribed by religious orders or denominations.

*Clergy residence* means the home of a member of the clergy that may be located on the same parcel as the church, as a customary accessory use.

*Clinic* means an establishment where patients are admitted for examination, rehabilitation, or treatment on an outpatient basis by chiropractors, dentists, optometrists, physicians, psychologists, social workers, or other medical personnel, and where such examination and treatment generally require a stay of less than 24 hours. The term "clinic" is also known as an ambulatory health care facility. Includes an ambulatory surgical center, birth center, and mental health center.

*Club* means a group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

*Clubhouse* means a building, or portion thereof, used by a club.

*College/University* means an educational institution of higher learning which can consist of an undergraduate division which confers associate and bachelors degrees, and/or a graduate division which includes a graduate school or other professional school.

*Collocation* means the act of siting telecommunications facilities in the same location on the same support structure as other telecommunications facilities. The term "collocation" also means locating telecommunications facilities on an existing structure, such as a building, water reservoir, or tower, without the need to construct a new support structure.

*Commercial use* means any activity involving the sale of goods or services carried out for profit.

*Commission* means the Planning and Zoning Commission of the City of Box Elder.

*Community facility* means a building or structure owned and operated by a governmental agency to provide a governmental service to the public.

*Community garden* means garden plots where community members grow and care for plants for the purpose of consumption, neighborhood beautification, or education.

*Community living home* means any family-style residence whose owner or operator is engaged in the business of providing individualized and independent residential community living supports for compensation to at least one unrelated adult, but no more than four adults, and provides one or more regularly scheduled health related services, either administered directly or in collaboration with an outside health care provider. This term does not include any setting which is certified or accredited through Chapter §34-20A, Title 27A, or Title 27B of SDCL.

*Compatible land use* means a use of land or buildings that, in terms of development intensity, building coverage, design, bulk and occupancy, traffic generation, parking requirements, access and circulation, site improvements, and public facilities and service demands, is consistent with and similar to neighboring uses and does not adversely affect the quality of life of persons in surrounding or nearby buildings.

*Complete application* means a submission, which includes all information requested on the appropriate forms, and full payment of all applicable fees.

*Comprehensive plan* means any document which describes in words, and may illustrate by maps, plats, charts, and other descriptive matter, the goals, policies, and objectives of the municipality to interrelate all



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functional and natural systems and activities relating to the development of the territory under its jurisdiction. May also be called a master plan or general plan.

*Concentrated animal feeding operation (CAFO)* means a parcel of land, with or without buildings, used or intended to be used for the confined feeding, breeding, raising, or holding of animals in excess of fifty (50) animal units, and specifically designed to store and accumulate animal manure and other waste products in holding areas, feedlots, yards, or lagoons.

*Concept plan* means a sketch or drawing that may be submitted prior to the preliminary plat for subdivisions to enable a subdivider to reach general agreement with the City staff or the Planning and Zoning Commission as to the form of the plat, the objectives of these regulations, and to receive guidance as to the requirements outlined in this code.

*Conditional use* means any use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to the evaluation and approval by the approving authority. A conditional use is subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district.

*Condominium* means a building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structures, common areas, and facilities are owned by all of the owners on a proportional, undivided basis.

*Conduct* means to carry on or engage in, own, maintain, manage or operate any business, trade, art, profession, calling, employment, occupation or any commercial, industrial or professional pursuit, vocation or enterprise in the City.

*Congregate residences* means apartments or dwellings with communal dining facilities and services, such as housekeeping, organized social and recreational activities, transportation services, laundry, and other support services appropriate for the residents, and designed to provide a relatively independent lifestyle.

*Conservation area* means environmentally sensitive areas with characteristics such as steep slopes, wetlands, floodplains, high water tables, forest areas, endangered species habitats, dunes, or areas of significant biological productivity or uniqueness that have been designated by the council for protection from any activity that would significantly alter their ecological integrity, balance, or character.

*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.

*Contractor's shop or storage yard* means a lot, or portion thereof, or buildings used to store and maintain construction equipment and other materials and facilities customarily required in the building trade by a construction contractor.

*Council* means the chief legislative body or governing body of the municipality, also known as the City Council of the City of Box Elder.

*County* means the county or counties wherein the municipality concerned or affected is located (i.e. Meade or Pennington County).

*Coverage, lot,* means the lot area covered by all structures located therein, including the area covered by roofs.

*Cul-de-sac* means a circular area at the end of a dead end street which allows vehicles to turn around.

*Dairy farm* means any place or premise where one or more cows, sheep, or goats are kept and from which a part or all of the milk or milk products are produced and sold, or offered to sale to a milk plant.

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*Data center* means any facility established for the purpose of processing, storage, retrieval, or communication of data.

*Day care center* means an establishment providing for the care, supervision, and protection of children as a supplement to regular parental care, without transfer of legal custody or placement for adoption, with or without compensation, on a regular basis for part of a day.

*Dealer, Emergency vehicle* means any person who converts or manufacturers authorized emergency vehicles and who for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of new or new and used authorized emergency vehicles or who is engaged wholly or in part in the business of selling new or new and used authorized emergency vehicles. The term includes the submission of a bid proposal for the sale of a vehicle if the bid proposal is offered in response to a bid request originating in the State. Includes any vehicle preparation, warranty or repair work conducted as an accessory use. Excludes the storage of dismantled or wrecked vehicles, parts thereof or junk.

*Dealer, Mobile/Manufactured home* means any person, other than a manufacturer of a mobile home or a manufactured home, who sells three or more mobile homes or manufactured homes in any consecutive twelve month period. Excludes the storage of dismantled or wrecked mobile/manufactured homes, parts thereof or junk.

*Dealer, Snowmobile/Boat* means any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new or used snowmobiles, or who is engaged wholly or in part in the business of selling new or used snowmobiles and/or boats. Includes any vehicle preparation, warranty or repair work conducted as an accessory use. Excludes the storage of dismantled or wrecked snowmobile/boats, parts thereof or junk.

*Dealer, Trailer* means any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new or used trailers, semitrailers, recreational park trailers, or travel trailers or who is engaged in the business of selling new or used trailers, semitrailers, recreational park trailers, or travel trailers whether or not such vehicles are owned by such person. Any person who sells less than three travel trailers in a one year period is exempt, unless the person is licensed as a dealer in another state or holds themselves out as being in the business of selling vehicles. Includes any vehicle preparation, warranty or repair work conducted as an accessory use. Excludes the storage of dismantled or wrecked trailers, parts thereof or junk.

*Dealer, Used Vehicle* means any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of used vehicles or who is engaged in the business of selling used vehicles; or any person who sells five or more used vehicles or offers for sale five or more used vehicles at the same address or telephone number in any one calendar year. Any person who sells less than five vehicles in a one year period is exempt, unless the person is licensed as a dealer in another state or holds themselves out as being in the business of selling vehicles. Includes any vehicle preparation, warranty or repair work conducted as an accessory use. Excludes the storage of dismantled or wrecked vehicles, parts thereof or junk.

*Dealer, Vehicle* means any person who for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in part in the business of selling new, or new and used vehicles. Includes any vehicle preparation, warranty or repair work conducted as an accessory use. Excludes the storage of dismantled or wrecked vehicles, parts thereof or junk.

*Deck* means an above-grade, roofless platform, either detached (freestanding) or attached to a building, that is supported by pillars or posts.

*Density* means the number of families, individuals, dwelling units, households, or housing structures per unit of land. The most common standard is dwelling units per acre.

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*Density capacity* means the maximum number of persons permitted by this code which can be accommodated at any one time with a reasonable degree of comfort, safety and convenience.

*Developer* means any person, firm, partnership, corporation, or association who causes improvements to be constructed and used to be changed, or land to be subdivided for themselves or others. This includes an applicant for subdivision approval.

*Disability* means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment. "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in section 102 of the controlled substances act, 21 USC 802.

*Distiller* means any manufacturer located in the State of South Dakota producing, rectifying, or blending distilled spirits, as defined in §35-1-1 of SDCL, that is not an artisan distiller.

*District* means a part, section, zone, or geographic area within the city within which the regulations and provisions governing the development and use of buildings or land are uniform for the class of use permitted therein. Also known as a zoning district.

*Dormitory* means a building or portion thereof used for sleeping purposes in connection with a school, college, or other institution.

*Drive-in* means an establishment that by design, physical facilities, services, or packaging procedures encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

*Duplex* means a building containing only two (2) dwelling units, arranged one above the other or side by side on a single lot, located on a single lot containing two attached, one-family dwelling units totally separated from each other by one or more vertical or horizontal, unpierced, common, fire-resistant walls extending from the basement to the roof or floors.

*Dwelling* means a structure or portion thereof that is used exclusively for human habitation.

*Dwelling, attached*, means a building or portion thereof having two or more single-family dwellings attached to each other. Also known as a duplex.

*Dwelling, detached*, means a building arranged or designed as a dwelling and entirely separated from any other building or structure by space on all sides. Also known as dwelling, single-family.

*Dwelling, multifamily*, means a building located on a single lot containing three (3) or more dwelling units, including units that may be located one over another, and which can be rented for a period of not less than 28 days. Also known as an apartment house or townhouse.

*Dwelling, primary*, means a single-family dwelling that is occupied as the primary residence of the owner of record.

*Dwelling, single-family*, means a building located on a single lot containing one (1) dwelling unit that is not attached to any other dwelling by any means and is surrounded by yards.

*Dwelling unit* means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by the building code, for not more than one family, or a congregate residence for ten or less unrelated persons.

*EAFB* means Ellsworth Air Force Base.

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*Easement* means a grant of one or more of the property rights by the property owner to or for use by the public or a utility or another person or entity. An easement is self-perpetuating and executed upon the land unless otherwise stipulated.

*Educational institution* means a public elementary or secondary school or a private educational institution having a curriculum like that ordinarily given in public schools.

Eminent domain means the right of a public entity to acquire private property for public use upon the payment of just compensation.

*Encroachment*, other than described in AICUZ, means any obstruction or illegal or unauthorized intrusion in a required setback, delineated floodplain or right-of-way, or on adjacent land.

*Erosion and sediment control plan* means a plan submitted with the preliminary plan and with the construction drawings including narrative and/or drawings prepared by the developer that establish management practices to be employed and temporary and permanent facilities to be installed to control soil erosion and prevent sedimentation impacts to adjacent properties and public facilities during and after the construction of the subdivision.

*Excavation* means any operation in which earth, rock, or other material in or below the ground is moved or otherwise displaced by means of tools, equipment, or explosives, and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving, except:

1. tilling of soil and grading to a depth of twelve inches and the tilling of soil for agricultural purposes to a depth of eighteen inches;
2. pot hole repair and grading of an existing public road if the pot hole repair and grading does not extend more than eighteen inches below the finished roadway;
3. any vehicle operation or operation involving the use of any hand tool, other than a power tool, so long as such operation does not extend more than eighteen inches below the surface of the groundline within the right-of-way;
4. any road and ditch repair or road and ditch activity that does not extend more than eighteen inches below the surface of the original groundline within the right-of-way;
5. digging in a cemetery;
6. digging in a planned sanitary landfill; and
7. any bar test survey deemed necessary by an operator in response to a suspected natural gas, propane, or other combustible liquid or gas leak that is necessary to ensure public safety in an emergency.

*FAA* means the Federal Aviation Administration.

*Factory-built homes* means structures built off-site and designed for long-term, single-family residential use. For the purpose of these regulations, factory-built homes are built to existing local and state adopted codes.

*Family* means an individual, or two (2) or more persons related by blood or marriage, or a group of not more than ten (10) individuals not necessarily related by blood, marriage, adoption, or guardianship, living together in a dwelling unit as a single housekeeping unit. For purposes of this chapter, the term "family" does not include any society, club, fraternity, sorority, association, lodge, federation, or like organization, or any group of individuals who are in a group living arrangement as a result of criminal offenses. In determining whether individuals unrelated by blood are living together as the functional equivalent of a traditional family, the following criteria must be present:

The group is one which in theory, size, appearance, structure and function resembles a traditional family unit;

- a. The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family;

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- b. The group shares expenses for food, rent or ownership costs, utilities and other household expenses;
  - c. The group is permanent and stable. Evidence of such permanency and stability may include:
    - i. The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
    - ii. Members of the household have the same address for purposes of voters' registrations, drivers' licenses, motor vehicle registrations and filing of taxes;
    - iii. Members of the household are employed in the area;
    - iv. The household has been living together as a unit for a year or more, whether in the current dwelling unit or other dwelling units;
    - v. There is common ownership of furniture and appliances among the members of the household; and
    - vi. The group is not transient or temporary in nature.
  - d. Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

*Farm Winery* means any manufacturer located in the State of South Dakota producing wine, as defined in §35-1-1 of SDCL, in a total quantity not in excess of one hundred fifty thousand gallons within a calendar year, where at least fifty percent of the raw materials used in the finished product are grown or produced in the State of South Dakota, and without the use of wine imported from outside the State of South Dakota.

*Feasible* means the ability to construct an improvement on a site from the standpoint of physical capabilities. The term "feasible" does not include economic desirability.

*Fee schedule* means the schedule or any appendix of fees adopted periodically by ordinance of the City Council setting forth various fees charged by the City.

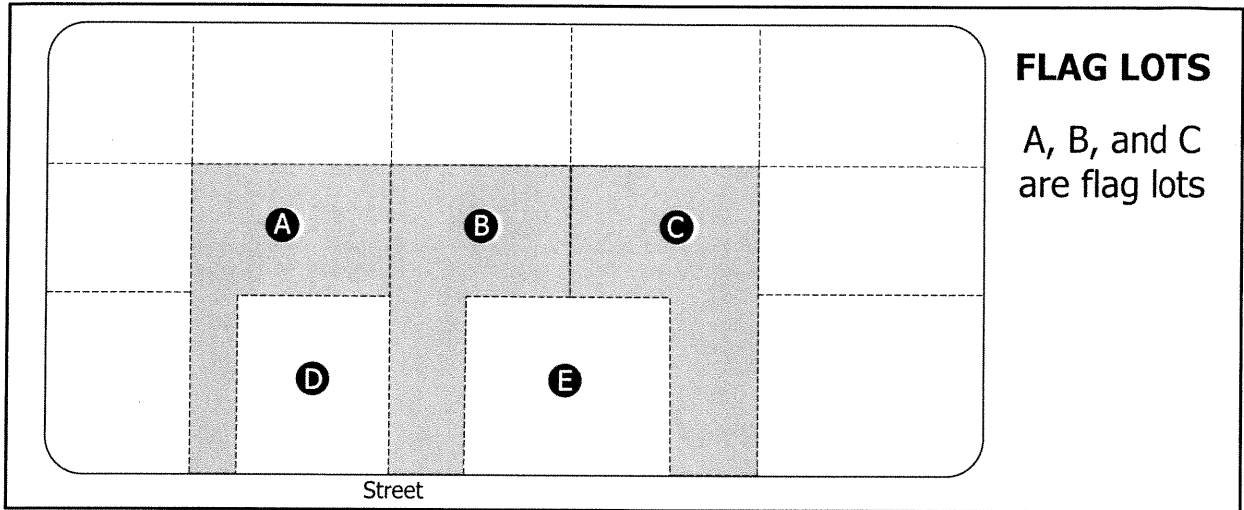
*FEMA (Federal Emergency Management Agency)* means the federal agency under which the National Flood Insurance Program (NFIP) is administered.

*Fence* means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

*Firearm* means any handgun, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.

*FIRM* means a flood insurance rate map developed by FEMA.

*Flag lot* means a building lot with street access, but without street frontage. The flag lot consists of an access portion and a banner portion.



*Floor area ratio* means the numerical value obtained by dividing the gross floor area of a building located on a lot or parcel of land by the total area of the lot or parcel of land.

*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.

*Fraternity or sorority house* means a building housing the members of a fraternity or sorority group living together under a cooperative arrangement, as distinct from boarding houses or lodging houses.

*Freestanding emergency medical care facility* means any facility structurally separate and distinct from a hospital that directly receives a person and provides emergency medical care. Also known as urgent care.

*Frontage* means all the property on one side of a street between two intersection streets (crossing or terminating), measured along the line of the street, or if the street is dead-ended, then all the property abutting on one side between an intersecting street and the dead-end of the street.

*Frontage, building*, 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 the primary window display of the enterprise or the primary public entrance to the building. In industrial districts, the building side with the primary entrance open to employees is the building frontage. Where more than one use occupies a building, each such use having a primary window display or a primary public entrance for its exclusive use is considered to have its own building frontage, which is the front width of the portion of the building frontage occupied by that use.

*Frontage, street*, 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.

*Garage, private*, means any garage building or part of a main building used for the storage of vehicles of those persons owning the property or for the storage of those persons occupying the property as their residence. The building shall not be utilized for the purpose of leasing or renting space for storage of vehicles of those other than the owners or the occupants of the primary use of the property.

*Garage, public*, means any garage not described as a private garage, which is available to the public, and which is used for the storage of motor vehicles.

*Garage, repair*, means a building which contains facilities for the care, servicing or repair of motor vehicles.

*Garbage* means animal or vegetable wastes resulting from the preparation, cooking, and serving of food or the storage or sale of produce.

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*Garbage container* means a metal or other non-absorbent container equipped with a tight-fitting metal or non-absorbent lid or sealed plastic garbage bags, but does not include incinerators or ash pits.

*Geotechnical report* means a report submitted with the preliminary plan, prepared by and stamped by a licensed engineer, practicing in the field of geotechnical engineering, that evaluates the existing soil conditions of the project site prior to new development. The geotechnical report should include descriptions of generalized site conditions, surface and subsurface conditions and recommendations for site preparation, excavation, grading, structural fill, foundation design, seismic considerations, concrete design, concrete and metal corrosion protection, pavement design, and soil moisture control. The report would also include exhibits and appendices showing a vicinity map, site plan, boring locations, boring logs, test results and any other information used by the geotechnical firm in determining his or her design recommendations,

*Grade, established,* means the elevation of the centerline of highways, streets, and roads as officially established by the City Council, its authorized agent or any public agency having jurisdiction over such highway, street or road.

*Grade, finished,* means the completed surfaces of lawns, walks and roads brought to grades as shown in official plans or designs thereto. When walls are parallel to and within five feet of a sidewalk, the grade is the sidewalk level.

*Grading permit* means the instrument used to permit the excavation, grading or fill of earth or other material within the procedures and regulations contained in this chapter. The grading permit is intended to regulate development of residential, public, commercial and industrial properties; grading of land within or adjacent to FEMA designated flood hazard areas and construction of subdivision roads.

*Grading plan* means a drawing showing the proposed grading of a subdivision in reference to the existing topography of the site.

1. Rough Grading Plan. A drawing submitted with or incorporated into the preliminary plan that shows existing contour topography overlaid with approximate proposed grading information including contour topography, retaining wall locations, and slopes for the subdivision area.
2. Final grading plan. A drawing submitted with the construction drawings showing the proposed grading of a subdivision site by identifying contour topography, spot elevations, slopes, curb elevations, road grades, road profiles, building pad elevations, cross sections, retaining wall elevations etc., to the hundredth of a foot for existing and proposed conditions.

*Gravel pit* means all sites where gravel or minerals will be extracted by an open pit method; to all sites where such extracted earth products are stockpiled; and to sites where overburden and leftover earth materials are placed in waste dumps.

*Greenways* means linear open spaces that link parks and neighborhoods within the community, such as paths or trails.

*Guest* means an occupant of a rental unit of a lodging establishment

*Guest room* means a room occupied or intended for sleeping, arranged or designed for occupancy by one or more guests.

*Hazardous material* means material (in gaseous, liquid, solid, particulate or any other form) which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects upon the social, economic or psychological well-being of individuals.

*Historical monuments or structures* means any antique structure or building existing contemporaneously with and commonly associated with an outstanding event or period of history, and any structure or building in which the relics or mementos of such event or period are housed and preserved.

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*Home occupation* means any activity carried out for gain by a resident and conducted in the resident's dwelling unit.

*Hospital* means any establishment with an organized medical staff with permanent facilities that include inpatient beds and is primarily engaged in providing by or under the supervision of physicians, to inpatients, any of the following services: diagnostic or therapeutic services for the medical diagnosis, treatment, or care of injured, disabled, or sick persons; obstetrical services including the care of the newborn; or rehabilitation services for injured, disabled, or sick persons. In no event may the inpatient beds including nursing facility beds or assisted living center beds unless the same are licensed as such pursuant to SDCL §34. Includes a critical access hospital, and rural emergency hospital.

*Hospital, critical access* means any nonprofit or public hospital providing emergency care on a twenty-four hour basis located in a rural area that has limited acute inpatient services, focusing on primary and preventative care and that has in effect an agreement with a general hospital that provides emergency and medical backup services and accepts patient referrals from the critical access hospital. For the purposes of this regulation, a rural area is any municipality under fifty thousand population.

*Hotel* means a facility offering transient short-term (not more than 28 days) guest lodging accommodations to the general public, and which may include additional facilities and services such as restaurants, meeting rooms, entertainment, personal services, and recreational facilities.

*Hotel room, motel room, or other accommodation* means any room or other accommodation in any hotel, motel, guest house, 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 28 days.

*Household pets* means animals or birds ordinarily permitted in the house and kept for company or pleasure, such as dogs, cats and canaries, but not including a sufficient number of dogs to constitute a "kennel", as defined in this section.

*Improvement* means changes and additions to land necessary to support the development or use of real property, such as, but not limited to, boulevards, bridges, culverts, curbs and gutters, electrical transmission and service lines, natural gas lines, potable water mains and service lines, sanitary or storm sewers, sidewalks, street grading and surfacing, street lights, survey monuments, telephone lines, and other similar items.

*Incidental* means subordinate and minor in significance and bearing a reasonable relationship to the primary use.

*Industry, light* means the manufacturing, compounding, processing, assembling, packaging or testing of goods or equipment entirely within an enclosed structure, with no outside storage, serviced by small (3/4 ton) trucks or vans, and imposing a nearly negligible impact upon the surrounding environment by noise, vibration, smoke, dust or pollutants

*Industry, medium* means the manufacturing, compounding, processing, assembling, packaging or testing of goods or equipment within an enclosed structure, or an open yard that is capable of being screened from neighboring properties, is serviced by trucks or other vehicles, and whose impact is within the standards as outlined in this title.

*Infrastructure* means construction such as but not limited to streets, curbs, gutters, sidewalks, fire hydrants, storm drainage facilities, and water, sewer and gas systems or parts thereof.

*Ingress* means an entrance subdivision street accessing an existing city street.

*Inpatient hospice* means any facility which is not part of a hospital or nursing home which is maintained and operated for the express or implied purpose of providing all levels of hospice care to terminally ill individuals on a twenty-four hour per day basis.



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*Inpatient psychiatric facility* means a public or private facility or unit thereof which provides mental health diagnosis, observation, evaluation, care, treatment, or rehabilitation when the individual resides on the premises including a hospital institution, clinic, mental health center or facility, or satellite thereof. An inpatient psychiatric facility may not include a residential facility which functions primarily to provide housing and other such supportive services when so designed by the Department of Social Services.

*Intersection* means the area embraced within the prolongation or connection of the lateral curb lines 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 "intersection" does not include the junction of any alley with a street. If a street includes two roadways 30 feet or more apart, every crossing of each roadway of such divided street by an intersecting street is a separate intersection. If such an intersecting street also includes two roadways 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 scrap, waste, reclaimable material, or debris, whether or not stored, for sale, or in the process of being dismantled, destroyed, processed, salvaged, stored, baled, disposed of, or for other use or disposition.

*Junkyard/salvage yard* means any land or building commercially used for the abandonment, storage, keeping, collecting or baling of paper, rags, scrap metals, other scrap or discarded materials, or for the abandonment, demolition, dismantling, storage or salvaging of motor or other vehicles not in running condition, and machinery or parts thereof.

*Kennel* means an establishment in which four (4) or more dogs, each more than six (6) months of age, are housed, kept, or boarded.

*Land use application* means an application required by this chapter.

*Landing* means a platform not covered by a roof, awning, or canopy that is no more than eight feet in width and extends no more than six feet into the required setback. The means of access to the landing, whether by steps or ramp, is exempt from the six-foot restriction in this definition. Landings and their means of access are not to be included in the calculation of lot coverage. *Landscaping* means any combination of living plants (such as grass, ground cover, shrubs, vines, hedges, or trees) or nonliving landscape material (such as rocks, pebbles, sand, mulch, walls, fences, or decorative paving materials). Landscaping may include the preservation and incorporation of existing trees, vegetation, or ecosystems into site development.

*Laundromat* means an establishment providing washing, drying, or dry cleaning machines on the premises for rental use to the general public.

*Law* means any regulation, ordinance, provision of this Code, or charter provision of the City; any rule, statute, or constitutional provision of the state which is binding; and any regulation, statute, or constitutional provision of the United States which is binding on the state or its cities.

*Leather and hide tanning and finishing* means an establishment primarily engaged in one or more of the following: tanning, currying, and finishing hides and skins; having other process hides and skins on a contract basis; and dyeing or dressing furs.

*License, business*, means the written authority of the City issued by its duly authorized agent, employee or officer, conferring permission on some person to pursue and exercise a trade, occupation or business for a definite period of time within the City, under the conditions prescribed by this code.

*Livestock* means any agricultural or commercial animal owned, bred, or raised for profit, but not including dogs, cats, rabbits, or other household pets. Livestock includes cattle, sheep, horses, mules, swine, goats, and buffalo.

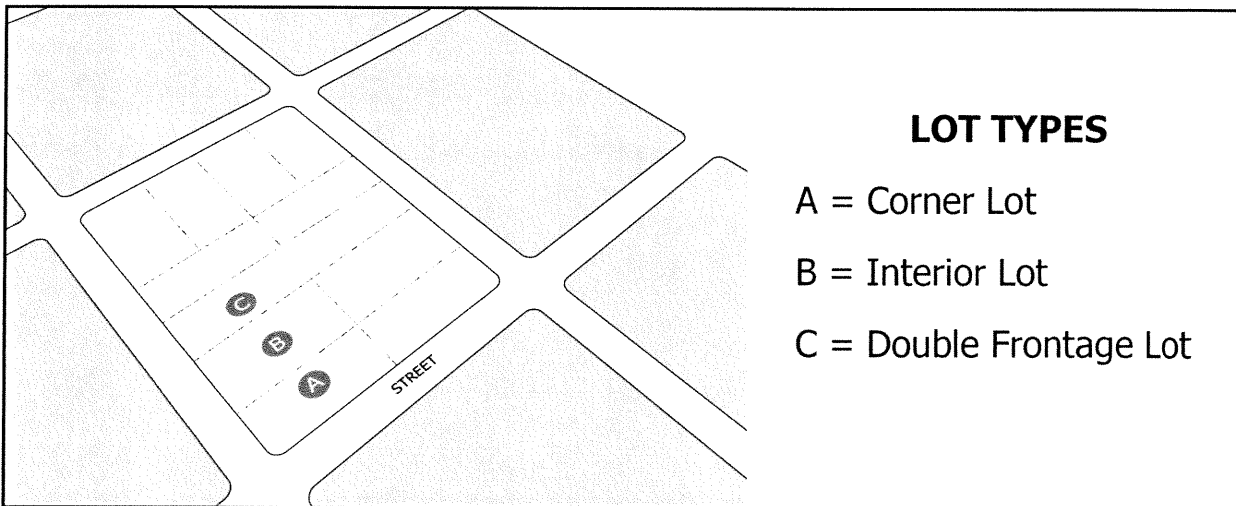
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*Loading space* means a space within the main building or on the same lot therewith providing for the standing, loading, or unloading of a truck.

*Local improvement* means a public improvement provided to a specific area benefiting that area and usually paid for by special assessment on the benefiting property owners; a parcel of land held under unified ownership in fee or co-tenancy, or under legal control tantamount to such ownership, considered as a unit used or proposed to be used for a certain use, or occupied or to be occupied by a building and its accessory buildings, together with such open spaces as are required under the provisions of this chapter, having at least the minimum areas required by this chapter for a lot in the district in which the same is situated, and having its principal frontage on a public highway, road, street or private road or right-of-way deemed adequate by the public agency having jurisdiction.

*Loft means* a floor level located more than 30 inches above the main floor, open to the main floor on one or more sides with a ceiling height of less than 6 feet 8 inches, and used as a living or sleeping space.

*Lot* is synonymous with the terms "plot" and "parcel." A parcel of land occupied or to be occupied by a main building or group of buildings (main and accessory), together with such yards, open spaces, lot width and lot area as are required by this title, and having frontage upon a street. More than one dwelling structure may be built on a lot only in cases where the lot is of such size as to provide such required lot area, yards and frontage for each dwelling structure as are required for the first dwelling structure on the lot.

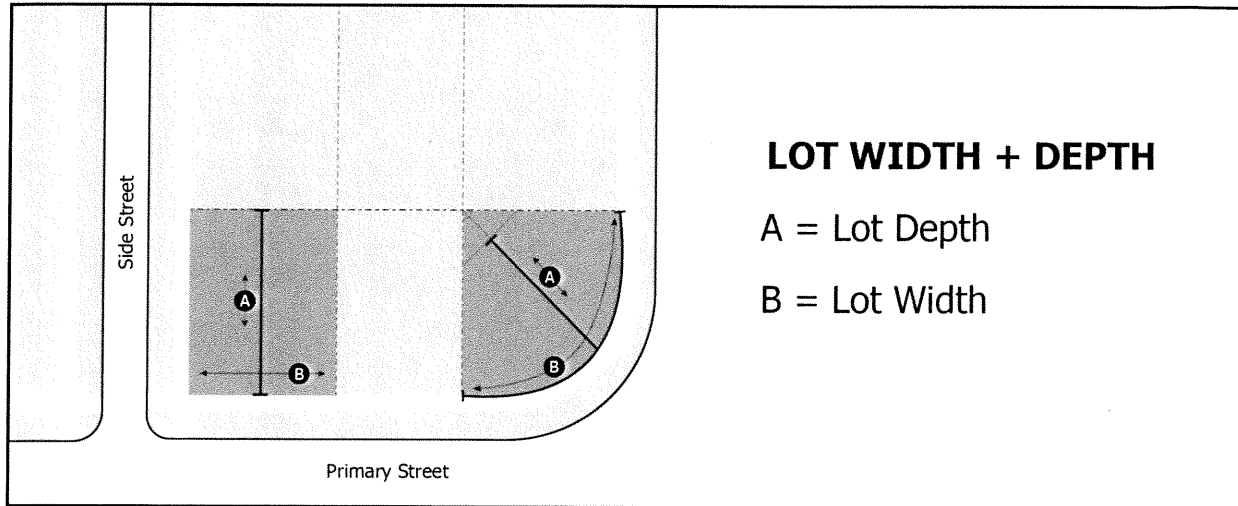


*Lot area* means the total area within the lot lines of a lot, excluding any street rights-of-way.

*Lot, corner,* means a lot of which at least two adjoining sides abut for their full lengths on a street, provided that the interior angle at the intersection of two such sides is less than 135 degrees.

*Lot, coverage, percentage of,* means the permissible percentage of lot area which may be covered by buildings, including covered porches and accessory buildings.

*Lot depth* means the average distance from the street line of the lot to its rear line, measured in the general direction of the side lines of the lot.



*Lot, double frontage*, means a lot which runs through a block from street to street and which has two non-intersecting sides abutting on two or more streets.

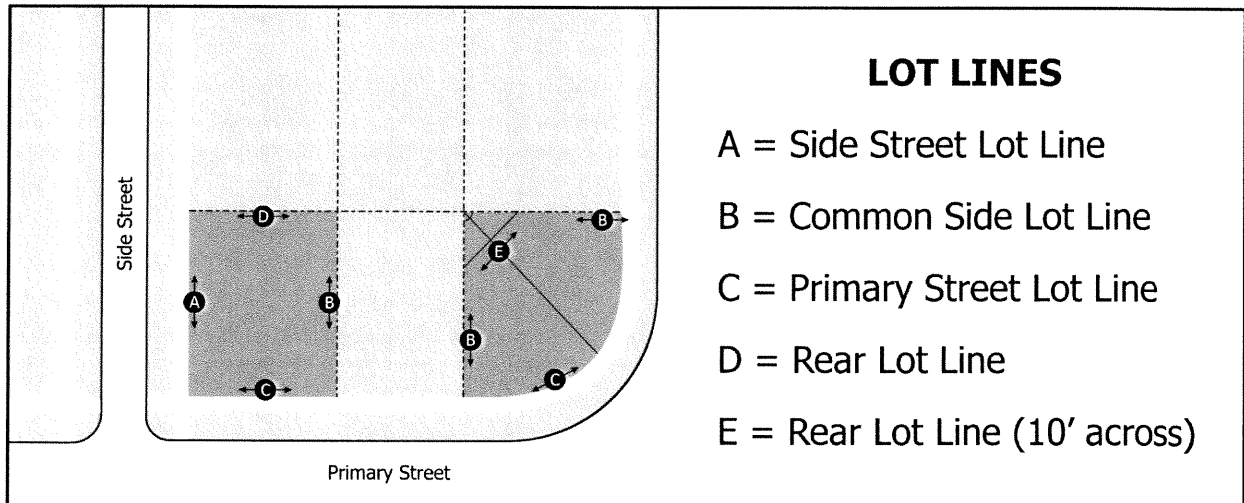
*Lot frontage* means the length of the front lot line measured at the street right-of-way line.

*Lot, front of*, means the line of an interior or through lot which abuts a street; in a corner lot, the term "front of lot" means the shortest line that abuts a street. When the lines are of equal length, the lot shall be considered to front on that street having the longest block frontage.

*Lot, improved*, means a lot with buildings or structures.

*Lot, interior*, means a lot other than a corner lot. An interior lot shall be deemed to have one front yard, two side yards, and one rear yard.

*Lot line* means a line of record bounding a lot that divides one lot from another lot or from a public street or any other public space.



*Lot line, front*, means the lot line separating a lot from a street right-of-way.

*Lot line, rear*, means the lot line opposite and most distant from the front lot line. In those cases where a lot has more than one front lot line, side lot lines shall be designated at a ratio of one side lot line per front lot line, and the remaining undesignated lot lines shall be designated as rear lot lines.

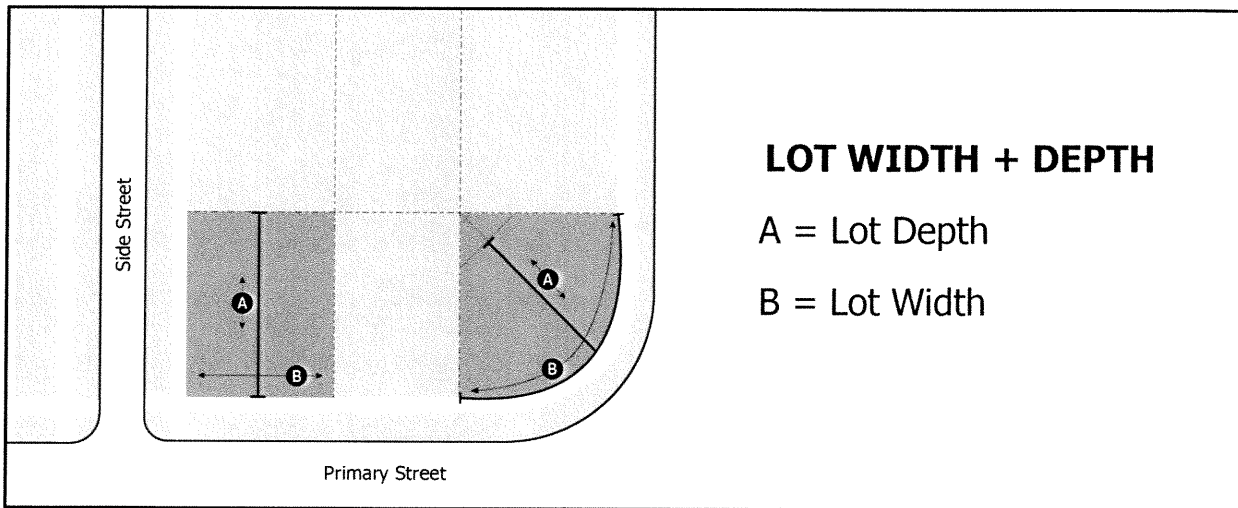
*Lot line, side*, means any lot line other than a front lot line or rear lot line.

*Lot, manufactured home*, means a designated area of land within a manufactured home park, to be separately leased or rented for the placement of a manufactured home to be used as a residence.

*Lot, net area of*, means the total horizontal area included in the rear, side and front lot lines or proposed street lines. No alley, street, public way, private right-of-way, public land or any area proposed for the foregoing purposes shall be included in determining the net area of the lot.

*Lot of record* means land designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed filed among the land records in the office of the registrar of deeds for Meade County and Pennington County.

*Lot width* means the horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.



*Lumberyard* means an area and structures used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products.

*Malt beverage manufacturer* means any manufacturer located in the State of South Dakota producing malt beverages, and defined in §35-1-1, that is not a microbrewery.

*Manufactured home* means a structure, transportable in one or more sections, which section is eight body feet or more in width or forty body feet or more in length in the traveling mode, or is three hundred twenty or more square feet when erected on a site; which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities; and which contains the plumbing, heating, air conditioning, and electrical systems therein. The term includes any structure which meets all the requirements of Title §32 of SDCL and any structure which has been certified by the Secretary of Housing and Urban Development. The term does not include a recreational park trailer.

*Manufactured home skirting* means a solid border constructed around the perimeter of a manufactured home from the bottom of the manufactured home to the finished grade.

*Manufactured home subdivision* means any area, tract, site or plot of land subdivided for the purposes of individual ownership of separate lots, on which any number of lots or mobile homes may be provided for, including accessory uses.

*Manufactured/mobile home park (MHP) or mobile/manufactured home court* means any area, tract, site or plot of land established before January 1, 2016, and designed, used, or intended to provide a location or

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accommodation for one or more manufactured homes, and which has three or more lots or parcels of land which are under common ownership and on which manufactured homes are to be placed or located for year-round occupancy; this is despite the lot or tract or any part thereof being held or operated for profit. The term "manufactured/mobile home park" or "mobile/manufactured home court" excludes RVs (recreational vehicles) and automobile or mobile home sales lots on which mobile homes are parked only for inspection and sale.

*Manufacturing* means the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as oils, plastics, metals, resins, or liquors.

*Mental health center* means any private nonprofit organization which receives financial assistance from the State of South Dakota or its political subdivisions and which is established or organized for the purpose of conducting a program approved by the Department of Social Services for the diagnosis and treatment, or both, of persons with mental and emotional disorders.

*Microbrewery* means any manufacturer located in the State of South Dakota producing malt beverages, as defined in §35-1-1 of SDCL, in a total quantity not in excess of thirty thousand barrels within a calendar year.

*Microcidery* means any manufacturer located in the State of South Dakota producing cider, as defined in §35-1-1 of SDCL, in a total quantity not in excess of twelve thousand barrels within a calendar year.

*Military airport* means any military air base, air station, airfield, or other area, publicly or privately owned, that is designed, set aside, and operated by the state, a political subdivision of the state, or the United States, for civil or national defense, or for any federal program relating to flight, or for the operation of military aircraft, and used in the interest of the public for those purposes.

*Milk plant* means any place where milk or a milk product is delivered or processed for commercial purposes.

*Minimum floor elevation* means the lowest elevation permissible for the construction or other placement of any floor, including a basement floor. *Mining operation* means the development or extraction of a mineral from its natural occurrence on affected land as that term is defined in §45-6B-3 of SDCL. The term includes surface mining and surface operation, in situ mining, the reprocessing of tailings piles, the disposal of refuse from underground mining, milling and processing located on the land described in the application for a mining permit, and stand-alone milling and processing facilities utilizing chemical or biological leaching agents. The term does not include extraction of sand, gravel, or rock to be crushed and used in construction, exploration activities, bulk sampling, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe, borrow excavation for embankments, or the extraction of geothermal resources.

*Mixed use* means a building, structure or premises occupied by or used by two (2) or more principal types of use, any of which is permitted in a district independent of other uses.

*Mobile branch bank* means a branch bank that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch bank may serve defined locations of a regular schedule or may serve a defined area at varying times and locations.

*Mobile home* means a movable or portable unit, designed and constructed to be towed on its own chassis (consisting of a frame and wheels), and designed to be connected to utilities for year-round occupancy. The term "mobile home" includes units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.

*Modular home*, also called sectional home, means any home pre-built in whole or in part for the purpose of permanent placement on a foundation. The term "modular home" does not include manufactured or mobile homes as defined in this section

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*Monopole* means a single, freestanding pole-type structure supporting one or more antennas.

*Monument* means a permanent survey marker established by a licensed surveyor and shown on a final plat with state plane coordinates, and/or a survey marker set in accordance with engineering specifications.

*Motel, motor court, motor hotel, or motor lodge* means a building in which lodging and boarding are offered to the public for compensation, and which has a separate entrance to the exterior from each unit, with at least one parking space for each unit.

*Motor home* means a self-propelled vehicle, primarily designed as a temporary dwelling for travel, recreational, or vacation use.

*Motor vehicle* means all land vehicles propelled or drawn by other than muscular power.

*Multi-use building* means a building containing two or more distinct uses.

*Neighborhood services* means limited types of retail and service establishments, office, and personal services which are intended for the use of nearby residential neighborhoods for the purpose of supplying day-to-day needs, professional services and neighborhood oriented personal services. Typical uses should not exceed 2,000 square feet of gross floor area, nor have any outdoor storage.

*Neighborhood shopping center* means a building containing three or more tenant spaces of retail, personal service or restaurant use sharing off-street parking in the open between the building and the street. Neighborhood shopping centers do not exceed 60,000 square feet of gross floor area. Multi-tenant retail, personal service or restaurant use buildings or building complexes without parking, with enclosed parking, or with parking screened from the street by the building shall not be a neighborhood shopping center.

*Newspaper* means a publication, having been in existence for at least six months, regularly printed and distributed no less than once a week, which contains news, opinions, advertisements, and other items of general interest.

*Non-commencement* means the failure to begin, or the discontinuation of, construction activity that would make a material change in a structure as evidenced by the cancellation, lapsing, or revocation of a building permit; or the failure to begin, or the discontinuation of, any other land use activity that would make a material change in the use of land.

*Noncomplying structure* means a structure that:

1. Legally existed before its current land use designation; and
2. Because one or more subsequent land use ordinance changes to governing law, does not conform to the setback, height restrictions or other regulations, excluding those regulations which govern the use of land.

*Nonconforming lot* means a lot, the area, dimensions, or location of which was lawful prior to the adoption of the ordinance from which this chapter is derived, but that fails by reason of such adoption to conform to the present requirements of the zoning district.

*Nonconforming structure* means a structure or building, the size, dimensions, or location of which was lawful prior to the adoption of the ordinance from which this chapter is derived, but that fails by reasons of such adoption to conform to the present requirements of the zoning district.

*Nonconforming use* means a land use that:

1. legally existed before its current land use designation;
2. has been maintained continuously since the time the land use ordinance governing the land changed; and
3. does not conform to the regulations that now govern the use of land because of one or more subsequent changes to governing law.

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*Notice or legal notice* means any requirement for informing a person, 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 charter, this Code, or an ordinance.

*Nursery, retail*, means the growing, cultivation, storage, and sale of garden plants, flowers, trees, shrubs, and fertilizers, as well as the sale of garden tools and similar accessory and ancillary products, to the general public.

*Nursery, wholesale*, means the growing, cultivation, storage, and sale of garden plants, flowers, trees, and shrubs to landscapers, developers, builders, and retail nurseries.

*Nursing home* means any facility that is maintained and operated for the express or implied purpose of providing care to one or more persons whether for consideration or not, who are not acutely ill but require nursing care and related medical services of such complexity as to require professional nursing care under the direction of a physician on a twenty-four hour per day basis; or a facility that is maintained and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who do not require the degree of care and treatment that a hospital is designed to provide, but who because of their mental or physical condition require medical care and health services that can be made available to them only through institutional facilities.

*Obstruction*, other than described in AICUZ, means any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure or matter in, along, across or projecting into any channel, watercourse or regulatory flood hazard area which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow or water might carry the same downstream to the damage of life or property.

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

*Office* means a room or group of rooms used for conducting the affairs of a business, profession, service, or industry, and generally furnished with desks, tables, files, and communication equipment.

*Official map* means a map drawn by the City and recorded with the County that:

1. Shows actual and proposed rights of way, centerline alignments and setbacks for highways and other transportation facilities;
2. Provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
3. Has been adopted as a part of the comprehensive plan.

*Open space* means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners, occupants, and their guests. Permitted improvements include walking paths, trails, and sitting areas with benches and chairs only. *Open space, usable*, means an open space within a lot, tract, parcel, or development site, excluding areas devoted to roadways and parking. At least one-half of all areas shall be designated as usable.

*Outdoor storage* means the keeping, in an area outside of a building, of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 hours.

*Overhang* means the part of a roof or wall that extends beyond the facade of a lower wall.

*Overlay zone* means a zoning district that encompasses one or more underlying zones and that imposes additional requirements beyond those required for the underlying zones.

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*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.

*Parapet* means the extension of the main walls of a building above the roof level.

1. *Park* means a plot of land that is landscaped, maintained as open space, serves a neighborhood, and is used as an informal gathering place for relaxation and play.

*Park model recreational vehicle* means a unit that:

1. is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use;
2. is not permanently affixed to real property for use as a permanent dwelling;
3. requires a special highway movement permit for transit; and
4. is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.

*Parking area, private*, means a parking area for the exclusive use of the owners or occupants of the lot on which the parking area is located.

*Parking area, public*, means a parking area other than on a street available to the public, with or without payment of a fee.

*Parking facility* means an approved, hard-surfaced open or enclosed off-street parking area or structure where licensed and operable motor vehicles are temporarily parked for a fee or allowed without a fee by a public entity.

*Parking lane* means a lane designed to provide on-street parking.

*Parking lot* means an off-street facility including parking spaces along with adequate provisions for drives and aisles for maneuvering and giving access, and for entrance and exit, all laid out in a way to be usable for the parking of more than six motor vehicles or trailers.

*Parking space* means an off-street, surface area of not less than 200 square feet (ten feet wide by 20 feet long) for the parking of a motor vehicle within a public or private parking area, exclusive of passageways and driveways appurtenant thereto and giving access thereto and having access to a street or alley.

*Party wall* means a common wall shared by two attached structures, buildings, or dwelling units.

*Permitted use* means any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

*Personal services* means establishments primarily engaged in providing services involving the care of a person or his apparel such as barber shops, beauty shops, clothing rental shops, coin-operated laundries, dress makers, dry cleaners, garment services, health clubs, photographic and art studios, shoe repair shops, tailors, and tanning salons.

*Pharmacy* means an establishment where drugs and medicines are prepared and dispensed.

*Phased subdivision* means conventional subdivisions that are proposed to be completed in designated phases.

*Planning director* means the authority charged with the administration and enforcement of this chapter, as designated by the City council.

*Plat* means a map or representation on paper, of a piece of land subdivided into lots, parcels, tracts, or blocks, including streets, commons, and public grounds, if any, all drawn to scale.



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*Plot plan* means a diagram of a lot, as seen from above, showing the outline of all structures on the lot and indicating the distance of the structures from the borders of the lot.

*Porch* means a roofed, open area which may be screened, attached to, or part of a building and with direct access to or from the building.

*Premises* means a lot, parcel, plot, or tract of land together with the buildings and structures thereon.

*Primary, primarily, principal, or principally* means more than half, if used in a quantifiable context, and first in rank, importance, or value, if used in a context where ranking is possible but quantification is not.

*Primary surface* means the limits of the obstruction clearance requirements in the immediate vicinity of the landing areas which consists of the runway, runway shoulders, and lateral safety zones and extends 200 feet beyond the runway end of an airport or military airport.

*Principal entrance* means the place of ingress and egress used most frequently by the public.

*Principal or Primary use* means the specific primary purpose for which land or a building is utilized.

*Private club or lodge* means a building and related facilities owned or operated by a corporation, association, or group of individuals established for the fraternal, social, education, recreational, or cultural enrichment of its members and not primarily for profit, and whose members pay dues and meet certain prescribed qualifications for membership.

*Private drive* means a non-dedicated thoroughfare or road used exclusively for private access to and from private land or developments.

*Professional service* means commercial transactions characterized primarily by the providing of service directly to the customer, patient, or client where any goods provided are incidental to the service provided.

*Prohibited use* means a use that is not permitted in a zoning district.

*Property* means real, tangible, and intangible personal property.

*Property line* means the boundary line of a parcel or lot.

*Proximate cause* means that which, in natural and continuous sequence, unbroken by an efficient, intervening cause, produced the result complained of and without which the result would not have occurred.

*Public authority* means the city, county, state or federal governments, any of their agencies or instrumentalities, and any bodies or officials thereof possessing power or authority delegated by the public authority.

*Public building* means any building owned, leased or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.

*Public hearing* means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

*Public meeting* means a meeting that is required to be open to the public.

*Public grain warehouse* means any public warehouse where grain is received for storage for hire. A public grain warehouse may also purchase, receive or handle grain in accordance with the provisions of SDCL Chapter §49-45 relating to grain buyers.

*Public library* means any library that serves free of charge all residents of a local governmental unit and receives its financial support in whole or in part from public funds made available by the governing body of that unit.

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*Public right-of-way* means the entire area between property boundaries which is owned by a government, dedicated to public use, or impressed with an easement for public use; primarily used for pedestrian or vehicular travel; and publicly maintained, in whole or in part, for such use. The term "public right-of-way" includes, without limitation, the public street, shoulder, gutter, curb, sidewalk, sidewalk area, parking or parking strip, and any other public way.

*Public storage warehouse* means a warehouse where any personal property except grain is received for storage for hire and that generates more than five thousand dollars in gross income from storage for hire per calendar year. A public storage warehouse does not include self-storage units where the depositor's personal property is kept separate from the personal property of other depositors.

*Public uses* means public parks, schools and administrative, cultural and service buildings, not including public land or buildings devoted solely to the storage and maintenance of equipment and material.

*Public utility* means a corporation, its lessees, its trustees and receivers, operating, maintaining or controlling in the State of South Dakota after July 1, 1967, equipment or facilities for the production, generation, transmission or distribution at retail of gas or electric service for the public and in the transmission and distribution using, or having a right to use, public roads, streets, alleys, or other public ways for the purpose of constructing, using, operating or maintaining wires, pipes, conduits or other facilities, which corporation is organized under the provisions of §49-33 of SDCL or is qualified in accordance with the provisions of §47-1A-1501 to §47-1A-1532, inclusive, as a foreign corporation authorized to transact business in the state.

*Public utility easement* means a right granted by an owner of property to a public utility or governmental agency to erect and maintain poles, wires, pipes, or conduits on, across or under the land for telephone, electrical power, gas, water, sewer, or other utility services.

*Radio or television broadcasting station* means an establishment engaged in transmitting oral and visual programs to the public and which consists of a studio, transmitter, tower, and antennas.

*Railroad* means any association or corporation, or other entity, other than a state agency or authority, engaged in operating a common carrier as defined in §49-16A-1 of SDCL by rail regardless of motive power used, excluding street railroads.

*Rail yard* means the use of land, or building or structure or part thereof for activities directly associated with the operation of a railroad or railway. Without limiting the generality of the foregoing, such activities may include loading and off-loading freight, and maintenance and repair of railroad or railway cars.

*RCRA* means the Rapid City Regional Airport.

*Reasonable use doctrine* means a common law principle that prohibits the use of one's property in such a way as to deprive others of the lawful enjoyment of their property.

*Record of survey map* means a graphic illustration of a survey of land prepared in accordance with state laws.

*Recreation facility* means a place or area designed and equipped for the conduct of sports and leisure-time activities (e.g., country clubs, riding stables, golf courses, and any other recreational facilities or centers, public or private).

*Recreational vehicle* means any vehicle or structure capable of being mounted on, attached to or towed with a hitch by a conventional motor vehicle; and for which no special road travel permit is required; and having a body width not exceeding eight feet exclusive of appendages (door knobs, handles, window or door sills, vents, etc.); and including travel trailers, camping trailers, fifth wheel trailers, pickup campers, and motor homes; and intended for temporary or transient living or sleeping quarters.

*Recreational vehicle park (RV park)* means any lot or parcel of land upon which two or more sites are located, established, or maintained for occupancy by recreational vehicles for a fee as temporary living quarters for recreation or vacation purposes.

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*Regulatory flood* means a flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur in a particular stream. The regulatory flood generally has a frequency of approximately 100 years, determined from an analysis of floods on a particular stream and other streams in the same general region.

*Religious use* means a structure or place in which worship, ceremonies, rituals, and education pertaining to a particular system of beliefs are held.

*Research laboratory* means a facility for investigation into the natural, physical, or social sciences, which may include engineering and product development.

*Residence* means a home, abode, or place where an individual is actually living at a specific point in time.

*Residential* means land designated in the city or county comprehensive plan and zoning ordinance for buildings consisting primarily of dwelling units. May be improved, vacant, or unimproved land.

*Residential density* means the number of dwelling units per acre of residential land.

*Residential hospice* means any facility which is not part of a hospital or nursing home which is maintained and operated for the express or implied purpose of providing custodial care to terminally ill individuals on a twenty-four hour per day basis.

*Restaurant* means an establishment where food and drink are prepared, served, and consumed, mostly within the principal building.

*Retail cluster shopping center* means a shopping center containing less than sixty thousand (60,000) square feet of gross floor area, but without common open parking between the building and the street.

*Retail or service establishment* means an establishment, 75 percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

*Rezone* means to change the zoning district classification of particular lots or parcels of land.

*Rezoning application* means a request for a change of zoning district to permit new uses, prohibit one or more current uses, or amend the current requirements.

*Right-of-way lines* means the lines that form the boundaries of a right-of-way.

*Road, right-of-way width* means the distance between property lines measured at right angles to the centerline of the street.

*Roof* means the outside top covering of a building or structure.

*Rubbish* means and includes paper, boxes, and cartons, all household wastes other than garbage, grass clippings, tree leaves, waste building materials or similar materials not regulated by the Environmental Protection Agency.

*Rubble* means stone, brick, concrete, or similar inorganic material, excluding ash, asphalt, waste tires, trees, yard waste, regulated asbestos-containing waste materials, and solid waste.

*Rubble site* means a specific portion of a parcel of land used to stockpile and bury rubble.

*Runway* means a defined rectangular area, with no curves or tangents, of an airport, prepared for the landing and taking off of aircraft along its length.

*Rural emergency hospital* means any nonprofit or public health care facility previously licensed as a hospital that provides emergency care on a twenty-four hour basis, is located in a municipality under fifty thousand population that has no acute inpatient services, and has in effect a transfer agreement with a level I or II trauma

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hospital, as designated by the South Dakota Department of Health, to accept patients from the rural emergency hospital.

*Sand and gravel operations* means the removal, extraction, truck hauling, crushing, processing, excavation and/or production of sand, gravel, rocks and similar mineral products.

*Sanitary sewer* means a city or community sewage disposal system of a type approved by the state department of environment and natural resources.

*Sawmill* means a permanent operation or facility which has as its predominant purpose, the sawing, splitting, shaving, chipping of timber or planing of logs or trees into rough slabs or semi-finished products.

*School, private*, means an institution of learning that is not tax-supported, including colleges and universities.

*School, public*, means a tax-supported institution of learning, including colleges and universities.

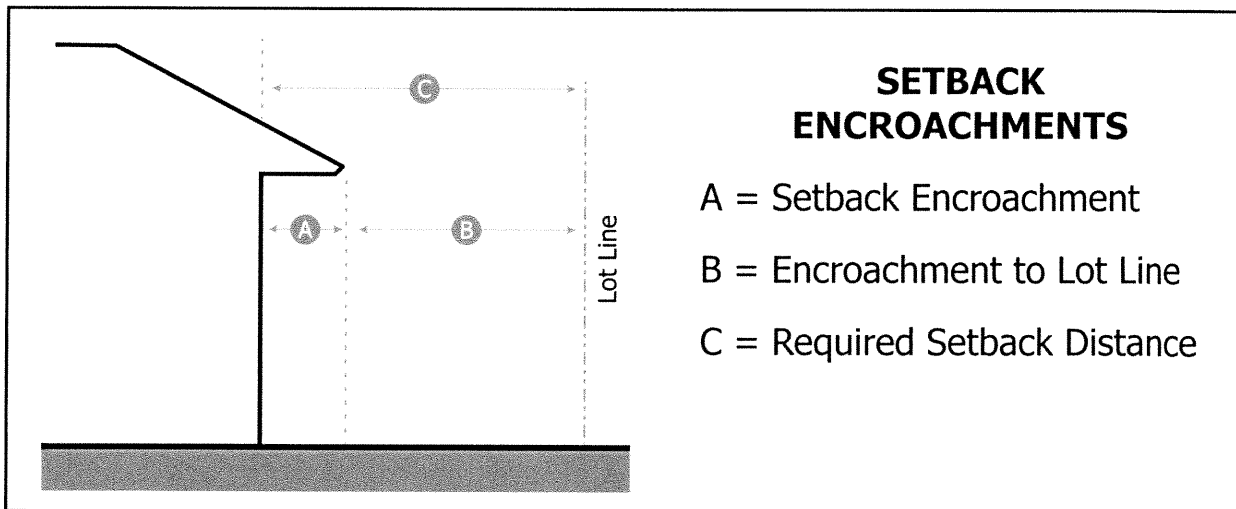
*Screening* means a method of visually shielding or buffering one abutting or nearby structure or use from another by the installation of fencing, walls, berms, or densely planted vegetation.

*Self-storage facility* means a building or group of buildings containing separate, individual, and private storage spaces of varying sizes that are available for lease or rent for varying periods of time.

*Semitrailer* means any vehicle of the trailer type equipped with a kingpin assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

*Setback* means the horizontal distance between a building (measured from the building line at grade) and a lot line.

*Setback line* means the line that is the required minimum distance from any lot line and that establishes the area within which the principal structure may be erected or placed.



*Sewage, private*, means an on-site method of sewage treatment, designed, installed, operated and maintained by the owner of the premises in accordance with the requirements and standards of the department of environment and natural resources.

*Sewage, public*, means a sanitary system owned, operated and maintained by a public agency, where waterborne wastes from sanitary facilities in dwellings, accessory buildings, business or industrial establishments or any combination thereof are conducted through pipes to a sewage treatment plant and disposal system approved by the department of environment and natural resources as to design and construction and operated and maintained in accordance with the standards and requirements of the department.

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*Shed* means an accessory structure or building used primarily for storage purposes.

*Shopping center* means a group of commercial establishments planned, constructed, and managed as a total entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

*Short-term rental* means a residential structure located on a legal lot and offering transient lodging accommodations in separate guest rooms and where meals may be provided. It is the rental of any house or part of a house for less than 28 days. Applicants must meet all applicable requirements of the building code and Land Use Ordinances, as adopted by the City.

*Sidewalk* means a slab of concrete utilized for pedestrian foot traffic, which is located within the public right-of-way

*Sidewalk area* means the area between the curb of a street and the adjacent property line.

*Sidewalk cafe* means a restaurant with tables on the sidewalk in front or on the side of the premises.

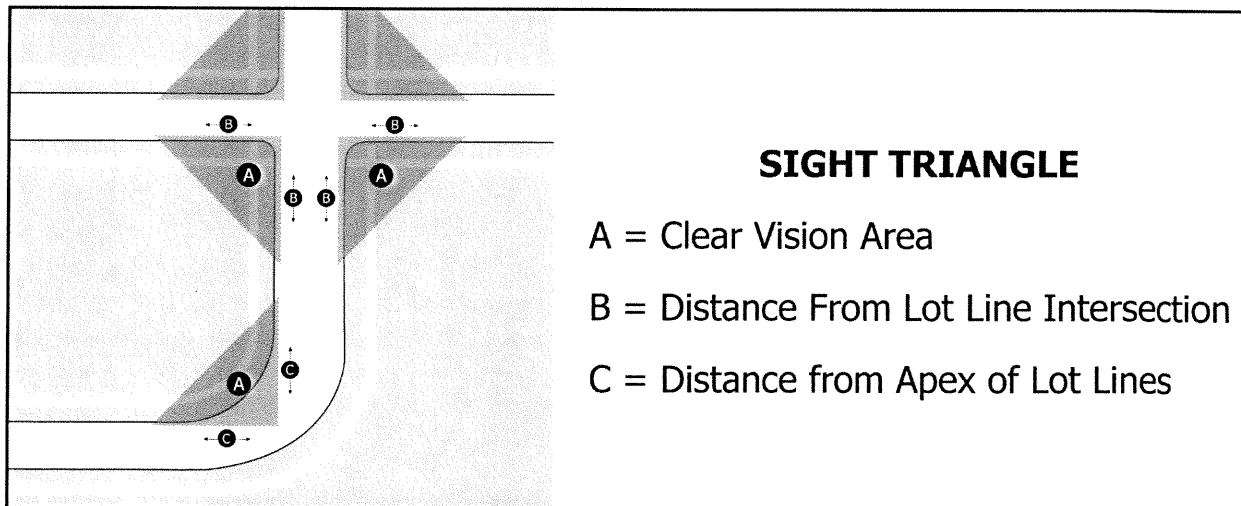
*Sidewalk display* means the outdoor display of merchandise for sale for business use.

*Sidewalk sales* means retail sales of a short-term and temporary nature conducted on the sidewalk or adjacent to the indoor establishment of the tenant or owner without permanent improvement made to the site.

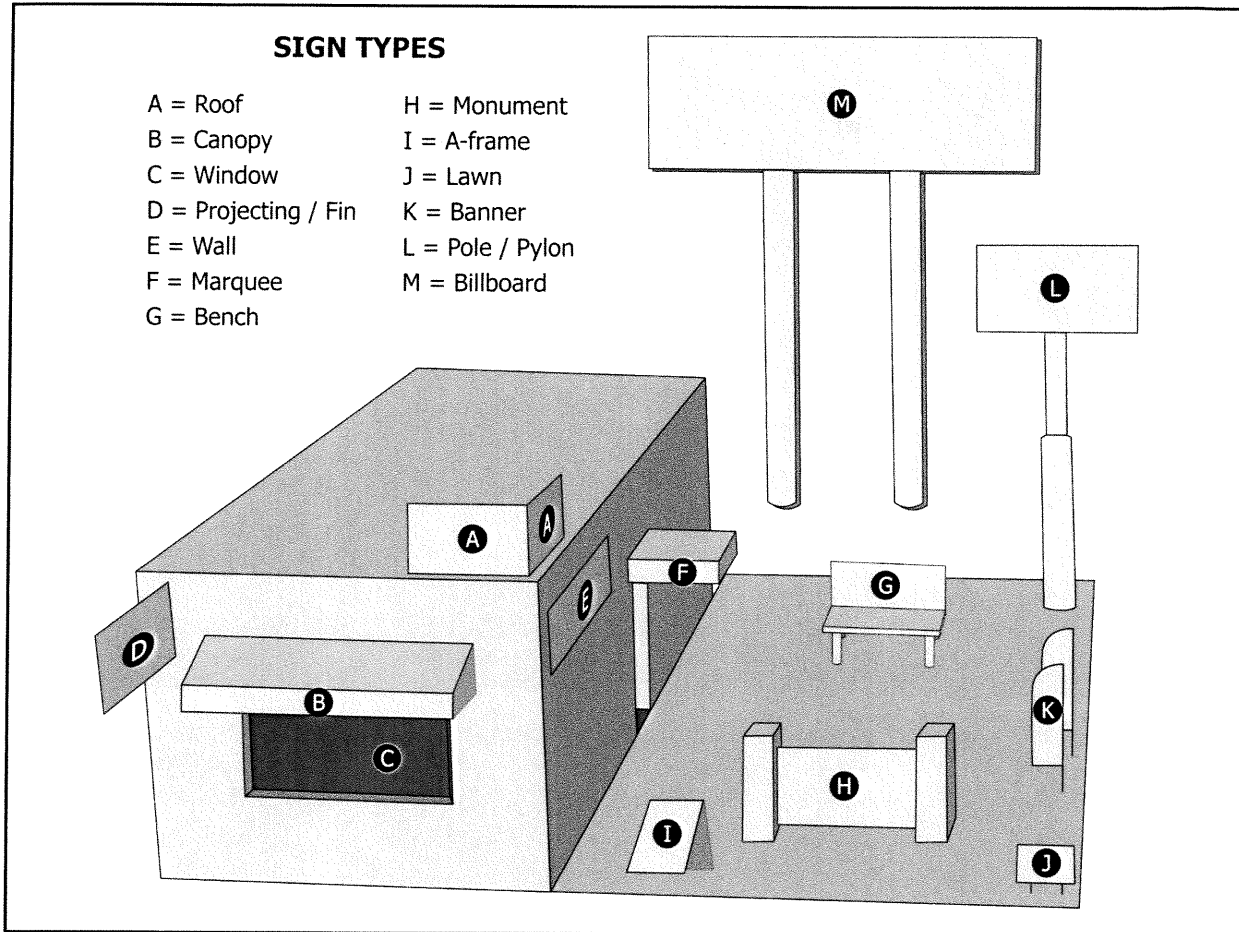
*Site plan* means a plan drawn to scale showing uses and structures proposed for a parcel of land as required by the applicable regulations. The term "site plan" includes lot lines, streets, building sites, reserved open space and other specific development proposals, similar to a plot plan.

*Sight distance* means the extent of unobstructed vision in a horizontal and vertical plan.

*Sight triangle* means a triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. (Distances for different roadway types are calculated by AASHTO standards).



*Sign* means any identification, description, illustration, or device, illuminated or non-illuminated, which directs attention to a product, service, place, activity, person, institution, business, opinion, or solicitation, including any permanently installed or situated merchandise, or any emblem, painting, banner, billboard, pennant, placard, or temporary structure designed to advise, identify, or convey information.



Site development standards means regulations unique to each zone concerning standards for development including, but not limited to lot areas, setbacks and building height.

*Similar use* means a use that has the same characteristics as the specifically-cited use in terms of trip generation and type of traffic, parking and circulation, utility demands, environmental impacts, physical space needs, and market area.

*Slaughter of animals* means the killing of livestock or poultry for processing for human consumption.

*Animal clinic* means an establishment operated by a licensed veterinarian where animals and household pets are treated for injuries and diseases on a primarily outpatient basis, although temporary indoor kenneling of recovering animals is allowed.

*Spot zoning* means the singling out of a lot or a small area for a zoning change which is out of harmony with the comprehensive plan and surrounding land to secure special benefits for a particular property owner without regard for the rights of adjacent landowners.

*Square footage* means the gross constructed area of all buildings and structures covered by a solid or screened roof and totally or partially enclosed by walls or other material. Nonresidential outdoor areas covered or uncovered which functionally extend the primary use, such as open seating and open retail are included, except that uses which generally completely occur outdoors, such as vehicle or monument sales, nurseries, gasoline sales, salvage yards, and outdoor storage, are not included. Nonresidential canopies and screened enclosures which functionally extend the primary use are included. Decorative canopies or canopies designed to protect from weather are not included.

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*Stable* means any premises or part thereof where horses or other equine animals are boarded, cared for, maintained, or trained for a fee.

*Stealth telecommunications facility* means a telecommunications facility that is integrated as an architectural feature of a structure so that the purpose of the facility for providing wireless services is not readily apparent to a casual observer.

*Steep slope* means land areas where the slope of the ground exceeds 20 percent.

*Stockyard* means a lot or building in which transient cattle, horses, sheep, or swine are temporarily kept for market, shipping, or slaughter.

*Story* means that portion of a building included between the surface of any floor and the surface of the next floor above; except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet above grade, as defined herein, for more than 50 percent of the total perimeter, or is more than 12 feet above the grade, as defined herein, at any point, such usable or unused under-floor space shall be considered as a story.

*Story, first*, means the lowest story in a building that qualifies as a story as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than four feet below grade, as defined herein, for more than 50 percent of the total perimeter, or not more than eight feet below grade, as defined herein, at any point.

*Story, half*, means a story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such a story.

*Street* means any public thoroughfare that affords the principal means of access to abutting property. The term "street" may be used interchangeably with avenue, boulevard, drive, highway, road or roadway or similar uses. All streets must be within a platted public right-of-way.

*Street, centerline of*, means line established as a centerline of a street by the City Council, or any state, county, or other official or public agency having jurisdiction thereof and shown as such on an officially adopted or legally recorded map, or if there is no centerline established or if there exists conflict among several maps, the centerline of a street shall be the line lying midway between the street right-of-way lines thereof. When the street lines are indeterminate and pavement or a well-defined traveled way exists, the centerline is assumed to be a line midway between the edges of such pavement or traveled way.

*Street furniture* means constructed, above-ground objects such as bollards, bus shelters, fountains, kiosks, outdoor seating, planters, sculptures, telephone booths, and trash receptacles that have the potential for enlivening and giving variety to streets, sidewalks, plazas, and other outdoor spaces open to and used by the public.

*Street grade* means the officially established grade of the street upon which a lot fronts, or in its absence, the established grade of other streets upon which lots abut at the midpoint of the frontage of the lot thereon. If there is no official established grade, the existing grade of the street at such midpoint shall be taken as the street grade.

*Street hardware* means mechanical and utility systems, usually located within a street right-of-way, such as directional signs, hydrants, lighting standards, manhole covers, traffic signals, and tree grids.

*Street intersection* means any street which joins another street at an angle, whether or not it crosses the other street.

*Street line* means the legal boundary line where the street right-of-way line and the property line of the abutting property coincide.

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*Street, private*, means a thoroughfare which affords the principal means of access to abutting property and is not maintained by a public entity.

*Street, public*, means any existing public or dedicated right-of-way, approved and accepted by the common council for public maintenance.

*Streetscape* means a design term referring to all of the elements that constitute the physical makeup of a street and that, as a group, define its character, including building frontage, street furniture, street paving, landscaping (including trees and other plantings), awnings and marquees, signs, and lighting.

*Strip commercial development* means commercial or retail uses, usually one story high and one store deep, that front on a major street.

*Structural alterations* means any change in supporting members of a building, such as bearing walls, columns, beams or girders.

*Structure* means a combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. Fences, walls used as fences, poles, lines, cables, mains, or other transmission or distribution facilities of public utilities are not considered to be structures under this definition.

*Subdivision* means the division of any tract or parcel of land into two or more lots, sites, or other division for the purpose, whether immediate or future, of sale or building development and includes resubdivision. This definition does not apply to the conveyance of a portion of any previously platted tract, parcel, lot, or site if the conveyance does not cause the tract, parcel, lot, or site from which the portion is severed to be in violation of any existing zoning ordinance or subdivision regulation applying to such tract, parcel, lot, or site.

*Subdivision, major* means all subdivisions of three or more lots, or any size subdivision requiring any new street or extension of municipal facilities, or the creation of any public improvements, and not in conflict with any provision or portion of the general plan, official zoning map and streets master plan, or these regulations.

*Subdivision, minor* means any subdivision containing less than five (5) lots that may require the recordation of a plat and all or part of the development requirement of a major subdivision, and not in conflict with any provision or portion of the general plan, official zoning map, streets master plan or these regulations.

*Subdivision plat* means the final map or drawing, on which the applicant's plan of a subdivision is presented to the City Council for approval and which, if approved, may be submitted to the Register of Deeds for filing.

*Substantial improvement* means any extension, repair, reconstruction, or other improvements of a property, the cost of which equals or exceeds 50 percent of the assessed value of a property either before the improvement is started or, if the property has been damaged and is being restored, or before the damage occurred.

*Supermarket* means a retail establishment primarily selling food as well as other convenience and household goods.

*Support structure* means a structure designed to support telecommunications facilities including, but not limited to, monopoles, towers, and other freestanding self-supporting structures.

*Surface mining* means the mining of minerals by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. The term includes mining directly from such deposits where there is no overburden and such practices as open cut mining, open pit mining, strip mining, placer mining, quarrying, and dredging.

*Tank farm* means an open-air facility containing large, above-ground containers for the bulk storage of material in liquid, gaseous, powder, or pellet form.

*Tattoo establishment* means the building or structure where tattooing is practiced.



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*Tattooing* means to make marks or designs into the skin by puncturing it and inserting indelible colors. The term includes microblading and similar techniques used to partially or fully simulate natural hair.

*Tavern* means an establishment in which alcoholic beverages are served, primarily by the drink, and where food or packaged liquors may also be served or sold.

*Telecommunications facility (TF)* means any unmanned facility established for the purpose of providing wireless transmission of voice, data, images, or other information including, but not limited to, cellular telephone service, personal communications service (PCS), or paging service. A telecommunications facility can consist of accessory equipment, a support structure, and one or more antennas. The following are not considered to be telecommunications facilities: antennas or satellite dishes used by residential households for radio and television reception; commercial television and radio broadcast towers and associated facilities; and ham radio or amateur radio facilities.

*Telecommuting* means an arrangement for performing work at a location other than the primary work location, such as at home or in a satellite office, and sending and receiving material by telephone, e-mail, fax, or other electronic means.

*Temporary housing* means any mobile home, tent, camper, or other structure used for human shelter that is designed to be transportable and is not connected to another structure or to any utilities system.

*Temporary outside displays and sales* means the display or sale of goods or merchandise not in or from an enclosed permanent building to be conducted for no more than 24 days at a single location, one time in a calendar year.

*Temporary structure* means any structure, building or edifice which is not placed on a foundation and is utilized for a period of less than 30 days.

*Tent and tent activities* means any canopy, temporary structure, enclosure or shelter constructed of fabric or pliable material. Tents, canopies and temporary membrane structures shall not be used for a period of more than 30 days at a single location.

*Terrace* means a level, landscaped, or surfaced area, also referred to as a patio, directly adjacent to a principal building, at the finished grade, and not covered by a permanent roof.

*Theater* means a building or part of a building used to show motion pictures or for dance, drama, musical, or other live performances.

*Tiny home* means a dwelling that is 400 square feet or less in floor area excluding lofts, installed on a permanent foundation, designed and intended as a permanent, year-round residence for one (1) single family. A tiny home does not include a park model recreational vehicle.

*Tiny home community/village* means a single parcel of land, not organized as a subdivision, containing more than one tiny home and no other type of dwelling unit.

*Tower* means a monopole or lattice-type structure, guyed or freestanding, that supports one or more antennas or wind energy generators.

*Townhouse* means a single-family dwelling unit in a row of three (3) or more attached units, in which each unit has its own access to the outside on at least two (2) sides, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical, un-pierced, common, fire-resistant walls. Also known as single-family attached dwellings or zero lot line homes.

*Transient/temporary merchant* means any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling or delivering goods, services, wares and merchandise, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, shop or any street, alley or other place for the exhibition and sale of such goods,

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wares and merchandise, privately, provided that the term "transient/temporary merchant" shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery. The term "transient/temporary merchant" shall include the terms "itinerant merchant" and "itinerant vendor."

*Transitional surface* means a portion of the airspace, defined by the FAA, as the lowest altitude for an aircraft to use and to safely transition between the primary surface and the approach clearance surface, or between other surfaces. This surface (altitude) increases at a constant rate as it goes outward and upward from the runway surface of an airport or military airport.

*Travel trailer means* a camping trailer, or fifth wheel trailer. A portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit from the State when drawn by a self-propelled motor vehicle.

*Unnecessary hardship* means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height, or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

*Use* means the principal purpose by right for which a lot or the main building thereon is designed, arranged or intended and for which it may be used, occupied or maintained.

*Use, accessory,* means a subordinate use which is incidental to and customarily found in connection with the principal use, and located on the same lot with the principal building or use. An accessory use shall not exceed one-fourth of the use or area of the main business or building.

*Use, nonconforming,* means a use of a building, structure, parking lot, sign or portion thereof which was lawfully established but which, due to the application of this chapter, no longer conforms to the regulations of the zone in which it is located, as defined in this chapter.

*Use, permitted,* means a use which is listed as permitted by right in a zoning district. Nonspecified uses which are similar to those specified are also permitted by right, except as otherwise restricted within this chapter.

*Use permitted on review. See conditional use.*

*Used or occupied,* as applied to any land or building, means and includes the term "intended, arranged or designed to be used or occupied."

*Utility* means electric utility, public utility, gas utility, municipal utility, municipal power agency, joint action agency, consumers power district, pipeline company, telecommunications company, and rural water system.

*Utility Easement* means the area designated for access to construct or maintain utilities on privately or publicly owned land

*Vacation home rental (VHR)* means a dwelling that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental. This term does not include a bed and breakfast.

*Valid* means a development order or other authorization which was legally issued, and that has not expired, lapsed, or been abandoned, revoked, or canceled; or is not subject to such by the passage of time or the conduct of the owner or developer, and on which or for which all conditions of approval are satisfied that must be satisfied by the terms or conditions of approval.

*Variance* means a relaxation of a restriction of this Code granted by the board of adjustment where, by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary or exceptional situation, condition or circumstance of a particular property, the literal enforcement of this Code restriction would result in unnecessary hardship while meeting the intent of the regulation.

*Vehicle* means any new or used automobile, truck, truck tractor, motorcycle, off-road vehicle, motor home, trailer, semitrailer or travel trailer of the type and kind required to be titled and registered under SDCL Chapter §32-3 and SDCL Chapter §32-5, or required to be titled under SDCL Chapter §32-20 except any manufactured home, used mobile home, moped, or snowmobile.

*Vested right* means a right which has been legally established and cannot be revoked by subsequent conditions or changes in law without due process of law. There is no vested right to an existing zoning designation.

*Way see street.*

*Wayside/roadside stand* means a structure designed, arranged or used for the display or sale of agricultural products grown or produced only on the premises upon which such a stand is located.

*Well* means an artificial excavation or opening in the ground, made by means of digging, boring, drilling, getting, or by any other artificial method, for the purpose of obtaining groundwater. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well.

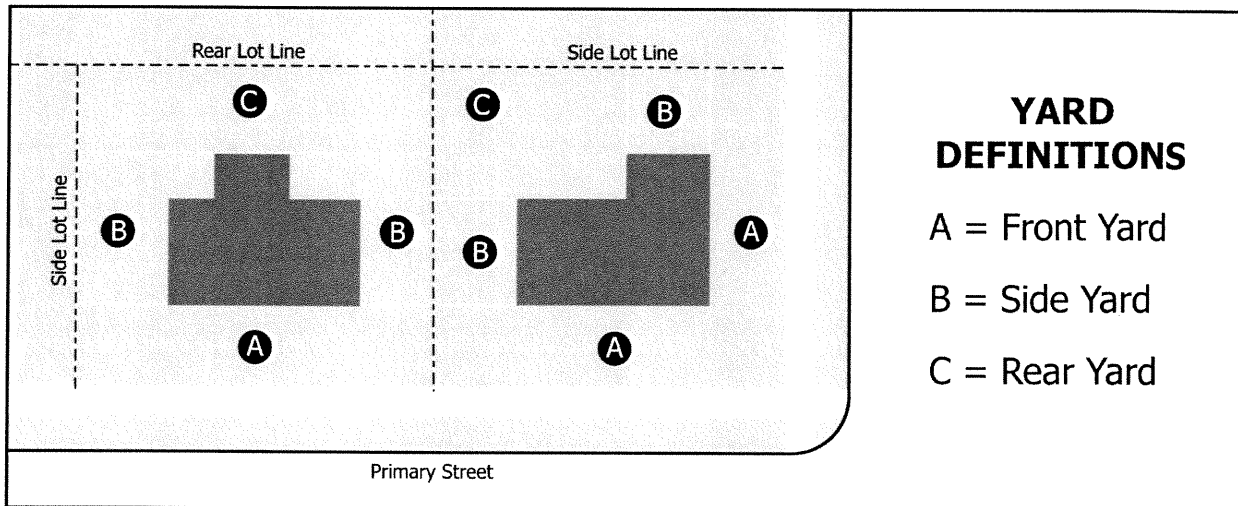
*Wholesale trade* means establishments or places of business primarily engaged in selling merchandise to other businesses including retailers, industrial, commercial, institutional, or professional business users, or other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

*Wind energy system (WES)* means an integrated system that converts wind movement into electricity, consisting of (but not limited to) a tower, generators, blades, a power collection system including pad-mounted transformers, and electrical interconnection systems.

*Wine manufacturer* means any manufacturer located in the State of South Dakota producing, blending, filtering, clarifying, aging and bottling wine, as defined in §35-1-1, that is not a farm winery.

*Winery* means a winery that produces its own wine and holds a federal basic wine manufacturing permit.

*Yard* means open space located on the same lot with a building or group of buildings, lying between the building or outer building of a group and the nearest lot or street line, unoccupied and unobstructed from the ground upward.



*Yard depth* means the shortest horizontal distance between a lot line and a yard line.

*Yard, exterior side,* means a side yard that extends from the front yard to the rear yard between the side street line and the nearest part of any building or structure on the corner lot.

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*Yard, front*, means a yard, for which the front door of the home faces and the home is addressed, extending across the full width of a lot, between the front lot line (or the proposed front street line if such line falls within the lot) and the nearest line of the building or the enclosed portion thereof. The depth of the yard is the shortest horizontal distance between the existing front lot line or proposed front street line and the nearest point of the building or enclosed portion thereof, and extending from side lot line to side lot line on interior lots.

*Yard, rear*, means a yard opposite the front yard, extending across the full width of the lot, between the rear lot line and the nearest line of the building, porch or projection thereof; the depth of the rear lot line and the nearest point of the building, porch or enclosed portion thereof. When the rear lot line is less than ten feet long or when the lot is pointed at the rear, the depth of the rear yard is measured to an assumed rear lot line, as defined under the term "lot line, rear" in this section.

*Yard, side (interior)*, means a yard between the side lot line perpendicular to the front and rear yards (or proposed side street line, if such line falls within the lot) and the nearest line of a building, porch or projection thereof, extending from the front yard to the rear yard, or, in the absence of either such yards, to the front lot line and the rear lot line. The width of the side yard is the shortest distance between the side lot line and the nearest point of the building, porch or projection.

*Zero lot line* means a development form in which a building is sited on one or more lot lines with no yard, or zero setback. The intent is to allow more flexibility in site design and to increase the amount of usable open space on the lot.

*Zoning certificate* means a written statement issued by the zoning office authorizing buildings, structures and uses thereof, and the use of land, or the changes in use in accordance with the provisions of this chapter, and for the purpose of carrying out and enforcing its provisions.

*Zoning map* means the zoning map for the City including sections or portions thereof adopted as part of this chapter, together with all amendments, modifications and changes thereto subsequently adopted.

*Zoning ordinance* means any ordinance adopted by the City of Box Elder to implement the comprehensive plan by regulating the location and use of buildings and uses of land.

(Ord. No. 560, § 153.004, 4-5-2016)

#### **Sec. 44-2. Purpose.**

It is the purpose of this chapter to promote the safety, health, morals, convenience and general welfare; to encourage the use of lands and natural resources in the city in accordance with their character, adaptability and suitability for particular purposes; to conserve social and economic stability, property values and the general character and trend of community development; to prevent excessive concentration of population; to lessen congestion on the public streets and highways; and to facilitate adequate provision of streets and highways, sewage and drainage, water supply and distribution, educational and other public resources by establishing herein standards for community development in accordance with these objectives and by providing for the enforcement of such standards.

(Ord. No. 560, § 153.095, 4-5-2016)

#### **Sec. 44-3. Scope.**

- (a) The regulations applying to each district include specific limitations on the use of land and structures, height and bulk of structures, density of population, lot area, yard dimension and area of lot that can be covered by structures.

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- (1) These requirements are intended to regulate the erection, construction, reconstruction, alteration, and use of buildings and structures and the use of land. All regulations are uniform for each class or kind of building throughout each zoning district.
  - (2) The requirements set forth in the zoning districts shall be considered as minimum requirements for the zoning district that must be met or exceeded by the individual property owner.
  - (3) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building or part thereof be used or occupied except in conformity with the use regulations prescribed for the zoning district in which the building is located.
  - (4) An accessory or utility structure shall not be occupied for residential use.
  - (5) No land shall be used or occupied and no structures shall be occupied except in conformance with all regulations herein established and upon performance of all conditions herein set forth.
  - (6) It shall be the responsibility of the landowner to ensure compliance of any structure moved onto or existing on his lot with the regulations set forth in these regulations.
  - (7) Land which is declared to be in violation of these regulations by a code enforcement staff or the code enforcement agency employed by the planning office is subject to the penalties set forth in this chapter, with each day that a violation exists constituting a separate offense.
  - (8) Where reference is made in this article to the requirements or regulations of a zoning district, it is intended that overlay district requirements or regulations shall be included in the reference.
  - (9) Land uses within an overlay district that were established before the effective date of the overlay district and that do not comply with the overlay district requirements shall be allowed to continue as a legally nonconforming use until such use is changed, at which time the use must come into compliance with the overlay district requirements.
  - (10) The commission and council may consider the recommendations provided in Department of Defense Instruction Number 4165.57, dated May 2, 2011, and the definitions provided in the Standard Land Use Coding Manual (SLUCM) by the department of commerce, when determining appropriate land uses in noise and accident potential zones.
  - (11) The council adopts the zoning overlay districts that are described in this chapter, below, to overlay and encompass the underlying zoning districts to impose additional land use regulations within the overlay districts that are intended to prevent or mitigate the impacts of natural or manmade hazards on land use and development.
  - (12) The location and boundaries of the overlay districts established by this chapter are denoted and defined as shown on the most current zoning overlay maps entitled "City of Box Elder Zoning Overlay Maps or AICUZ Map." The zoning overlay maps are incorporated into this chapter by reference.
  - (13) Land within an overlay district that is not within the city limits on the effective date of the zoning overlay map shall be subject to the district requirements immediately upon annexation.
  - (14) Where the requirements of an overlay district conflict with the requirements of the underlying zoning district, the requirements of the more restrictive shall apply.
  - (15) The hazard zone limits that were used to establish the boundaries of overlay districts do not follow property boundaries and have been interpreted to attempt to follow property boundaries, or logical subdivisions of those boundaries, as closely as possible. Appeals of such interpretations shall be made, in writing, to the planning coordinator, who shall rule on the appeal. Any person aggrieved by any ruling or decision of the planning coordinator may appeal the ruling or decision to the council. The appeal must be made in writing to the planning coordinator within 14 days of his ruling.

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(Ord. No. 560, § 153.096, 4-5-2016)

**Sec. 44-4. Adoption of plans and regulations by reference.**

- (a) *Comprehensive plan.* The Council has adopted a comprehensive plan, to provide for the orderly growth and development of the Box Elder community.
- (b) *Major street plan.* The Council has adopted a major street plan that has been filed in the Finance Office and with the Registrar of Deeds of Pennington County and Meade County.
- (c) *Flood damage regulations.* The council has adopted flood damage prevention regulations, as codified in article II of chapter 12, to provide for the regulation of flood hazard areas within the jurisdiction of the city.
- (d) *Zoning map.* The city's official zoning map, located and maintained in the City's Planning Department by the Planning Director.

(Ord. No. 560, §§ 153.015—153.017, 4-5-2016; Ord. No. 648, exhs. A, B, 3-18-2020)

**Secs. 44-5—44-26. Reserved.**

**ARTICLE II. PERMITS**

**Sec. 44-27. General requirements.**

- (a) The permit regulations established in this article are intended to supplement the permit regulations set forth in the building and property maintenance codes adopted by the Cty. Should conflicts between these regulations be discovered, the planning office shall determine which regulations, or parts thereof, shall apply.
- (b) Permit applications shall be made to the planning department on forms provided by the city. Permits may be issued only by the planning department. Unless stated otherwise in the following sections, the work described in a permit must be commenced within six months of the date of issuance of the permit or the permit shall become void. Once commenced, the work shall not be suspended or abandoned for a period of six months at any time after work has begun or the permit shall become void. Further, the work described in a permit must be completed within 12 months of the date of issuance of the permit or the permit shall become void. The term of a permit may be extended, before its expiration, at the discretion of the chief building official or an authorized designee.
- (c) The chief building official or authorized designee may suspend or revoke a permit issued under this article whenever a permit is issued in error, issued on the basis of incorrect or incomplete application information, or issued in violation of any city ordinance or regulation. Notice of suspension or revocation shall be made in person or by first class mail.
- (d) Unless otherwise stated in ordinance, permit fees shall be annually set by ordinance by the council. The permit fee shall be payable to the city as part of the submission of the permit application. Permit applications submitted after building, demolition, grading, moving, or parking has begun are subject to a late application fee in addition to the permit fee.
- (e) The city public works department shall not provide connection to utilities supplied by the city to structures or land deemed to be in violation by the code enforcement agency or the chief code enforcement officer of building, conditional use, grading, moving, or parking permit requirements until full compliance with the provisions of this article are met.

(Ord. No. 560, § 153.055, 4-5-2016)

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**Sec. 44-28. Approach permit requirements.**

- (a) An approach permit shall be obtained, before construction begins, for any additional driveway or private access road approach connecting a parcel to a public street or when deemed appropriate by the City Engineer or Public Works Department.
- (b)
- (c) Applications for approach permits shall be obtained by the property owner or general contractor from the planning office. Applications shall be subject to review and approval by the City Engineer.
- (d) Applications for approach permits shall be accompanied with a scaled site plan map that indicates the location and dimensions of the proposed approach. The map shall convey the length, diameter, and material of any culverts within the approach.

(Ord. No. 560, § 153.056, 4-5-2016)

**Sec. 44-29. Grading permit requirements.**

- (a) A grading permit shall be obtained from the Planning Department, before construction begins, for any clearing, filling, or grading of:
  - (1) One or more acres of land for non-agricultural or non-gardening purposes;
  - (2) Previously undisturbed or undeveloped parcels of land for residential, public, commercial, or industrial uses;
  - (3) Land within major drainage easements;
  - (4) Land within or adjacent to FEMA-designated flood hazard areas;
  - (5) Land for construction of subdivision roads or utilities; or
  - (6) The installation, readjustment, or replacement of a culvert in any driveway or drainage easement.
- (b) Grading permits are not required for clearing, filling, or grading of land for agricultural or gardening purposes, previously disturbed or developed land for expansion of existing residential, public, commercial, or industrial uses of less than one acre located outside of FEMA-designated flood hazard areas, or outside of major drainage easement areas.
- (c) Applications for grading permits shall be obtained by the property owner or general contractor from the Planning Department. Applications shall be subject to review and approval by the Public Works Department and the City Engineer. The Building Official or City Engineer may require the submission of a stormwater protection plan for the grading site before the grading permit is approved.
- (d) Applications for grading permits shall, at the discretion of the Building Official, City Engineer or Planning Director, be accompanied with a scaled site plan map that indicates the extent and areas to be cleared, filled, or excavated. The map shall convey the location of any existing or proposed approach, culvert, structure, well, cistern, septic tank, absorption field, utility line, driveway, parking area, road, flood hazard area boundary, stream or drainageway, water body, rock outcrop, and property line.
- (e) The estimated total area to be disturbed shall be noted on the map. Applications shall be accompanied by a copy of the authorization to discharge under the surface water discharge system from DANR when the anticipated area of land disturbance totals one or more acres when such authorization is required.
- (f) The construction authorized by a grading permit must begin within six (6) months of permit issuance and be completed within twelve (12) months of permit issuance unless otherwise first authorized by the Building Official, City Engineer or Planning Director.

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(Ord. No. 560, § 153.058, 4-5-2016)

**Sec. 44-30. Manufactured home park requirements.**

- (a) All new or expanded manufactured housing development after January 1, 2016, shall be required to meet all zoning, platting and subdivision regulations for the general residential manufactured (GR-4) district development.
- (b) Those mobile/manufactured home parks in existence prior to January 1, 2016, will be grandfathered; however, they may at no time expand their existing lot numbers or the boundaries of the park without complying with all adopted residential subdivision regulations of zoning district GR-4.
- (c) This section does permit existing manufactured home parks to remove and replace homes on existing lots. The replacement home shall, at a minimum, be 20 or fewer years in age and sixteen (16) feet in width.
- (d) The replacement structure shall be intended to be a single-family dwelling, designed to be a permanent residence, that meets or exceeds the Federal Manufactured Home Construction and Safety Standards Act, 42 USC 5401 et seq., and 24 CFR Part 3280 (Manufactured Home Construction and Safety Standards).
- (e) Discontinuing in its entirety the utilization of the land for a mobile/manufactured home park that has been grandfathered for more than a 180-day period as a whole, shall nullify the grandfather clause, and the development shall be brought into compliance with existing zoning regulations.

(Ord. No. 560, § 153.060, 4-5-2016)

**Sec. 44-31. Moving permit requirements.**

- (a) A moving permit shall be obtained from the Planning Department, before moving begins, to move any factory-built home or other structure intended to be occupied as a residence, storage unit, or business, into, out of, through or within the City's limits. Exceptions to this requirement shall be made to allow the vehicles moving such structures to move through the City while on Interstate 90, to exit and re-enter Interstate 90 on detour routes designated by the state department of transportation, or to exit and re-enter Interstate 90 by the shortest route to visit a truck stop. A moving permit shall become void 30 days after its date of issuance.
- (b) Applications for moving permits shall be obtained by the mover or structure owner from the Planning Department. Applications for moving structures through or out of the City or to move a factory-built home into a manufactured home park within the City may be approved by the Planning Director or their designee. Movement of structures shall not take place until the moving permit has been approved and the Planning Director or their designee has issued the moving permit and moving permit placard. Moving permits shall not be issued to move mobile homes into or within the City limits.
- (c) A moving permit placard shall be attached to the rear of the structure being moved and shall be visible to following traffic while within the City limits. A moving permit placard is intended for use on a single permitted structure and shall not be attached to any other structure.
- (d) There shall be a 24-hour delay after the issuance of a moving permit, before moving begins, to move any factory-built home or other structure that has been occupied as a residence or business out of the City to ensure that the Public Works Department has had sufficient time to remove the City's water meter and appurtenant parts. The Building Official or Planning Director may waive the delay with the prior approval of the City Engineer.

(Ord. No. 560, § 153.061, 4-5-2016)

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**Sec. 44-32. Inspection of manufactured homes.**

All manufactured homes moved into or within the City shall be inspected, before occupancy, by the Planning Department or its authorized designee for compliance with this chapter. Any manufactured home that, in the opinion of the Building Official, cannot be brought into compliance with this chapter shall not be occupied and shall be removed from the City within seven days. Homes so removed from the City shall be allowed to use the approved moving permit used to bring the home into the City. To be in compliance with this chapter the requirements of Chapter 6, Article III Construction Codes including the currently adopted International Residential Code shall be met.

(Ord. No. 560, § 153.062, 4-5-2016)

**Sec. 44-33. Structure parking permit requirements.**

- (a) A parking permit shall be obtained for any structure that is moved onto any property, other than into a manufactured home park, and is to be parked or stored on the property for more than 72 hours before being placed on a permanent foundation. Manufactured homes shall be skirted within 30 days of being moved onto a property unless a parking permit has been obtained. A parking permit shall become void 90 days after the date of issuance of the parking permit.
- (b) Applications for parking permits shall be obtained by the owner from the planning office. Applications shall be reviewed by, and may be approved with conditions by, the planning director. Parking of the structure shall not take place until the planning director or his designee, has issued the approved parking permit and parking permit placard.
- (c) A parking permit placard shall be attached to the side of the structure being parked that faces the abutting street and shall be visible to passing traffic. Structures whose parking permits have expired shall be deemed to be in violation of this chapter and shall also be deemed to be a public nuisance which may be subject to immediate abatement by the city.

(Ord. No. 560, § 153.063, 4-5-2016)

**Sec. 44-34. Grounds for moving or parking permit denial.**

More than two violations of this subchapter in a three-year period by the mover, owner, or manufactured home park is a sufficient basis for denial by the planning office of a moving or parking permit.

(Ord. No. 560, § 153.064, 4-5-2016)

**Secs. 44-35—44-60. Reserved.**

***ARTICLE III. ZONING DISTRICTS***

***DIVISION 1. GENERALLY***

**Sec. 44-61. Zoning districts and the zoning map.**

- (a) For the purpose of promoting the public health, safety, morals, convenience and the general welfare of the community, the City of Box Elder, South Dakota is divided into districts, each being of such number, shape, kind, area, common unity of purpose and adaptability of use that are deemed most suitable to carry out the purpose of this article.
- (b) The City's adopted zoning districts are as follows:

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<i>Name of Zoning District</i>	<i>District Code</i>
Agricultural district	AD
Park land	PK
Public land	PUB
General residential (low-density)	GR-1
General residential (moderate-density)	GR-2
Residential - mixed use	GR-3
Residential - manufactured (high-density)	GR-4
Light general commercial	GC
Highway service	HS
General light industrial	GLID
Heavy industrial	HID
Open space or floodway district	OS-1
Planned development	PD
Mixed use overlay district zone	MU
Air installation compatible use overlay zone	AICUZ

- (c) The City Council may adopt overlay districts to encompass one or more zoning districts or parcels of property to impose additional regulations to be taken into account during the land development process for land subject to a natural or manmade hazard or other development restraint. Each overlay district shall be named, its reason for creation stated, its boundaries defined, its regulations specified, and be adopted as a zoning amendment.
- (d) The location and boundaries of the zoning districts established by this chapter are denoted and defined as shown on the most current version of the City’s official zoning map.
- (e) The City’s official zoning map shall be kept and maintained by the City’s Planning Office and shall be available for inspection and examination by members of the public at all reasonable times as any other public record.

(Ord. No. 560, § 153.097, 4-5-2016)

**Sec. 44-62. Rules for interpretation of zoning district boundaries.**

Where uncertainty exists with respect to the precise location of any of the zoning district boundary shown on the zoning map, the following rules shall apply:

- (1) Boundaries shown as following or approximately following streets, highways, or alleys shall be construed to follow the centerlines of such streets, highways, or alleys.
- (2) Boundaries shown as following or approximately following platted lot lines or other property lines shall be construed to follow such property lines.
- (3) Boundaries shown as following or approximately following railroad lines shall be construed to follow the midline between the rails of such railroad lines.
- (4) Boundaries shown as following or approximately following the centerlines of streams, rivers, or other watercourses shall be construed to follow the channel centerlines of such watercourses.
- (5) Boundaries shown as following or approximately following the limits of political jurisdictions shall be construed as following such limits.

- (6) Where the application of these rules leaves a reasonable doubt as to the boundaries between two zoning districts, the regulations of the more restrictive district shall govern the entire parcel in question.
- (7) Whenever any dedicated public right-of-way or other public easement is vacated, the new lot line of the property to which the vacated portions of land accrue shall become the new boundary for the zoning district of the accruing land.

(Ord. No. 560, § 153.098, 4-5-2016)

**Sec. 44-63. Default zoning designations.**

- (a) **Annexed territories.** Any land annexed into the municipal boundaries of the City of Box Elder shall be designated into an appropriate zoning district at the time of annexation.
- (b) **Previously annexed territory.** Territory that has been annexed into the City prior to the adoption of this section, but for which no zoning district has previously been designated since the transitional district (NU) was applied, shall be zoned as shown on the currently adopted zoning map.

**Secs. 44-64—44-82. Reserved.**

*DIVISION 2. SPECIFIC DISTRICTS*

**Sec. 44-83. Agricultural district (AD).**

- (a) *General description.* This district is intended to protect agricultural lands and to preserve the natural beauty and open character of forested and other natural growth areas from incompatible land uses.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.
- (c) *Development Standards:*

AGRICULTURAL DISTRICT (AD)

Minimum Lot Size	40 Acres  Except for public utilities which may have a minimum lot size of 10,890 square feet or one-fourth (¼) acre.
Minimum Lot Frontage (Width)	200 Feet
Minimum Setbacks:	
Front Yard	30 Feet
Interior Side Yard	20 Feet
Exterior Side Yard	60 Feet
Rear Yard	60 Feet

Maximum Building Coverage Ratio	5%
Maximum Structure Height	35 Feet

- (d) *Off-street parking required.* See Article V. Off-Street Parking for additional requirements.
- (e) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.
  - (1) Exception: temporary structures. All temporary structures associated with festivals, carnivals, and other temporary uses placed on sites within the community's FIRM-rated area are required to:
    - a. Be on the site for fewer than fourteen (14) consecutive days; and
    - b. Be capable of being removed within four (4) hours.

(Ord. No. 560, § 153.100(A), 4-5-2016)

**Sec. 44-84. Park land zoning (PK).**

- (a) *General description.* This district is intended to be used for public recreation on publicly owned lands and with the intent to preserve the natural beauty and open character. This district may be found intermixed with other zoning districts. Note: intermixing of this zoning district shall not be construed as spot zoning.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.
- (c) *Development standards:*

PARK LAND ZONING (PK)

Minimum Lot Size	10,000 Square Feet
Minimum Lot Frontage (Width)	100 Feet
Minimum Setbacks:	
Front Yard	10 Feet
Interior Side Yard	10 Feet
Exterior Side Yard	10 Feet
Rear Yard	10 Feet
Maximum Building Coverage Ratio	10%
Maximum Structure Height	25 Feet

- (d) *Temporary structures.*
  - (1) Temporary canopies, tents, awnings, etc., may be set up on park lands.

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- (2) All temporary structures may not be erected for a period of more than two (2) days unless otherwise approved by the parks and recreation board or city council.
- (e) *Off-street parking required.* When park land exceeds ten thousand (10,000) square feet in area, one hard-surfaced parking space shall be provided for each additional one thousand (1,000) square feet of park area. See Article V. Off-Street Parking for additional regulations
- (f) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements. (Ord. No. 560, § 153.100(B), 4-5-2016)

**Sec. 44-85. Public land district (PUB).**

- (a) *General description.*
  - (1) This district will consist of land which is owned by a government entity and is not classified in another zoning district.
  - (2) This land may be intermixed among the other zoning districts. In this case, if intermixing takes place, it shall not be construed as spot zoning.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.
- (c) *Development Standards:*

PUBLIC LANDS DISTRICT (PUB)

Minimum Lot Size	10,000 Square Feet
Minimum Lot Frontage (Width)	100 Feet
Minimum Setbacks:	
Front Yard	N/A
Interior Side Yard	N/A
Exterior Side Yard	N/A
Rear Yard	N/A
Maximum Building Coverage Ratio	70%
Maximum Structure Height	60 Feet Or 4 ½ Stories

- (d) *Temporary structures.*
  - (1) Temporary canopies, tents, awnings, etc., may be set up on public lands with the permission of the City Council.
  - (2) All temporary structures may not be erected for a period of more than two (2) days unless otherwise approved by the City Council.
- (e) *Off-street parking required.* See Article V. Off-Street Parking for additional regulations.

- (f) *Floodplain requirements* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.
- (g) *Landscaping.* Landscaping shall be provided in quality and quantities as provided in this chapter.
- (Ord. No. 560, § 153.100(C), 4-5-2016)

**Sec. 44-86. General residential district I (GR-1) (low-density).**

- (a) *General description.*
- (1) This district is intended to be used for single-family residential development with low population densities. Other uses shall be reviewed by the City’s Planning Commission and City Council and may be permitted to provide the basic elements of balanced and attractive residential area.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.
- (c) *Development Standards:*

GENERAL RESIDENTIAL DISTRICT 1 (GR-1) (LOW-DENSITY)

Minimum Lot Size	10,000 Square Feet 1 Acre if not served by City water and sanitary sewer.
Minimum Lot Frontage (Width)	100 Feet
Minimum Setbacks:	
Front Yard	25 Feet
Interior Side Yard	10 Feet Structures 2 stories in height or that have an eave height of more than 18 feet above finished grade shall have 1 foot of side yard for each 2 feet in eave height above finished grade.
Exterior Side Yard	18 Feet
Rear Yard	25 Feet 10 Feet For Detached Accessory Structures
Maximum Building Coverage Ratio	35%
Maximum Structure Height	28 Feet (Eave Height) Or 2 ½ Stories 12 Feet (Eave Height) For Detached Accessory Structures

- (d) *Temporary structures.*
- (1) Temporary canopies, tents, awnings, etc., may be set up on a temporary basis, but in no case shall they be utilized on a permanent basis for storage or storage of motor vehicles.

- (2) Temporary structures may not be erected for a period of more than three (3) days unless otherwise approved by the City Council or utilized for personal greenhouses producing agricultural products for personal use, or temporary structures incidental to active on-site residential construction projects.
- (e) *Off-street parking required.* See Article V. Off-Street Parking for additional regulations.
- (f) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.

(Ord. No. 560, § 153.100(D), 4-5-2016)

**Sec. 44-87. General residential district II (GR-2) (moderate-density).**

- (a) *General description.* This is a residential district to provide for medium population density the principal uses of land is for one- and two-family residential uses. Certain uses which are more compatible with intensive residential uses than with commercial uses permitted. The City’s Planning Commission and City Council may permit the recreation, religious, education and other related uses in keeping with the residential character of the district on review.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.
- (c) *Development Standards:*

GENERAL RESIDENTIAL DISTRICT 2 (GR-2) (MODERATE-DENSITY)

Minimum Lot Size	7,000 Square Feet 1 Acre if not served by City water and sanitary sewer.
Minimum Lot Frontage (Width)	60 Feet 20 Feet For Townhouse
Minimum Setbacks:	
Front Yard	25 Feet 35 Feet Detached Accessory Building
Interior Side Yard	10 Feet 0 For Condominiums, Two-Family, Or Townhouse
Exterior Side Yard	18 Feet
Rear Yard	25 Feet 10 Feet For Accessory Buildings/Detached Accessory Structures
Maximum Building Coverage Ratio	40%
Maximum Structure Height	28 Feet (Eave Height) Or 2 ½ Stories 12 Feet (Eave Height) For Detached Accessory Structures

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Exception: Detached Accessory Structures Less Than 200 Square Feet 5 Feet
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- (d) *Temporary structures.*
- (1) Temporary canopies, tents, awnings, etc., may be set up on a temporary basis, but in no case shall they be utilized on a permanent basis for storage or storage of motor vehicles.
  - (2) All temporary structures may not be erected for a period of more than three (3) days unless otherwise approved by the City Council or utilized for personal greenhouses producing agricultural products for personal use, or temporary structures incidental to active on-site residential construction projects.
- (e) *Off-street parking.* See Article V. Off-Street Parking for additional regulations.
- (f) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.
- (g) *Townhome regulations within the GR-2 district.* The following regulations shall apply to any lot containing townhomes:
- (1) *Area regulations.*
    - a. *Front yard.* All lots shall have a minimum no less than twenty-five (25) feet from the front property line to the front of the structure.
    - b. *Side yards.* Interior lots may be zero (0) feet when the buildings are adjoined; however, when the buildings are not adjoined, all interior lots shall have a minimum of not less than ten (10) feet from the side property line to the structure. Structures which are two (2) or more stories in height or have an eave height of more than eighteen (18) feet above finished grade shall have one (1) foot of side yard for each two (2) feet of eave height above finished grade, but in no case less than ten (10) feet.
    - c. *Exterior side yards on corner lots.* All lots which have a side yard abutting a street shall have a minimum side yard setback of not less than eighteen (18) feet from the property line to the structure.
    - d. *Rear yard.* All lots shall have a minimum rear yard of no less than twenty-five (25) feet from the property line to the primary residential structure. Detached accessory structures and garages may be located no closer than ten (10) feet from the rear property line.
    - e. *Exception.* Detached accessory structures less than two hundred (200) square feet may be placed no closer than five (5) feet from the rear lot line.
    - f. *Lot width.* All lots shall have a minimum lot width no less than twenty (20) feet.
    - g. *Lot area.* All lots shall have a minimum lot area no less than three thousand five hundred (3,500) square feet.
    - h. *Maximum lot coverage.* All lots shall not have more than forty-five (45) percent of its total lot area covered by permanent structures.
    - i. *Height regulations.* No structure shall exceed two and one half (2½) stories or twenty-eight (28) feet in height to the eave.
  - (2) *Off-street parking.* A minimum of a 20-foot by 20-foot hard-surfaced off-street parking area must be provided for each single-family unit. All drives used for the parking of motor vehicles shall be hard-surfaced.
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(3) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.

(Ord. No. 560, § 153.100(E), 4-5-2016)

**Sec. 44-88. Mixed use residential (GR-3) (moderate-density district).**

(a) *General description.*

(1) This residential district is intended to promote and encourage the establishment and maintenance of suitable environments for urban residence in areas appropriate by location and character for the occupancy of high-density, multifamily dwellings. One of the important purposes of this district is to create adequate standards for residential development to prevent overcrowding and unhealthy housing conditions.

(b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.

(c) *Development Standards:*

MIXED USE RESIDENTIAL 3 (GR-3) (MODERATE-DENSITY DISTRICT)

Minimum Lot Size	10,000 Square Feet Apartment Buildings 2,000 Square Feet Per Dwelling Unit Whichever Is Greater
Minimum Lot Frontage (Width)	100 Feet 20 Feet For Townhouses
Minimum Setbacks:	
Front Yard	25 Feet
Interior Side Yard	10 Feet Structures 2 stories in height or that have an eave height of more than 18 feet above finished grade shall have 1 foot of side yard for each 2 feet in eave height above finished grade. 0 Feet For Condominiums, Two-Family, and Townhouses
Exterior Side Yard	18 Feet
Rear Yard	25 Feet 10 Feet For Detached Accessory Structures Exception: 5 Feet For Detached Accessory Structures Less Than 200 Square Feet
Maximum Building Coverage Ratio	45%
Maximum Structure Height	45 Feet (Eave) 18 Accessory Structures (Eave)

- (d) *Off-street parking.* See Article V. Off-Street Parking for additional regulations.
- (e) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.
- (f) *Townhouse regulations.* Townhouse development standards related to this district shall be the same as found in GR-2 zoning district.

(Ord. No. 560, § 153.100(F), 4-5-2016)

**Sec. 44-89. Residential - manufactured single-family-homes (GR-4) (high-density).**

(a) *General description.*

- (1) This district is to provide for high-density residential development. The principal uses shall be manufactured homes or combination of stick-built and manufactured homes placed on foundations. Those manufactured homes, which are mobile in nature shall have approved skirting and be functionally compatible with high intensive residential uses.
- (2) This district is primarily designed for the placement of individual manufactured homes which are not less than 16 feet in width and are 20 or fewer years in age, on individual platted lots or parcels of land, with not more than one manufactured home per platted parcel. In no case shall there be more than six lots per acre or no lot less than 7,000 square feet per lot.
- (3) Approved skirting shall consist of a solid border of wood, PVC plastic or similar material, which is weather-resistive and is installed around the perimeter of the unit from the bottom of the mobile home to four inches below grade, except for entry points, creating a weather-tight barrier. Approved skirting must be installed before the mobile home may be occupied.
- (4) No manufactured home shall be occupied unless supported on a concrete foundation that is installed as recommended by the manufacturer.

(b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.

(c) *Development Standards:*

RESIDENTIAL-MANUFACTURED SINGLE-FAMILY HOMES (GR-4) (HIGH-DENSITY)

Minimum Lot Size	7,000 Square Feet Must be served by City water and sanitary sewer.
Minimum Lot Frontage (Width)	75 Feet
Minimum Setbacks:	
Front Yard	25 Feet 35 Feet Accessory Structures
Interior Side Yard	10 Feet 20 Feet Between Manufactured Homes/Structures
Exterior Side Yard	18 Feet
Rear Yard	25 Feet 10 Feet For Detached Accessory Structures Exception: 5 Feet For Detached Accessory

	Structures Less Than 200 Square Feet
Maximum Building Coverage Ratio	45%
Maximum Structure Height	18 Feet (Eave Height) For Accessory Structures

- (e) *Off-street parking.* See Article V. Off-Street Parking for additional regulations.
- (f) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.  
(Ord. No. 560, § 153.100(G), 4-5-2016)

**Sec. 44-90. General commercial district (GC).**

- (a) *General description.* This district is established to regulate the commercial areas of the City. This district is established for personal and business services including general retail sales and merchandise.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.
- (c) *Development Standards:*

GENERAL COMMERCIAL DISTRICT (GC)

Minimum Lot Size	10,000 Square Feet
Minimum Lot Frontage (Width)	75 Feet
Minimum Setbacks:	
Front Yard	25 Feet
Interior Side Yard	0 Feet 25 Feet Abutting Residential
Exterior Side Yard	25 Feet
Rear Yard	0 Feet 30 Feet If Building Serviced From Rear 30 Feet Abutting Residential
Maximum Building Coverage Ratio	90%
Maximum Structure Height	50 Feet (Eave Height) Or 4 ½ Stories

- (d) *Off-street parking.* As regulated in Article V of this chapter. All areas utilized for vehicle travel or parking shall be approved material.
- (e) *Temporary structures.* Temporary structures may be allowed by the Planning Director for temporary storage, active on-site construction projects, or other similar uses.

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(1) Temporary structures shall not be placed closer than five (5) feet of any property line abutting a public right-of-way.

(2) No appendage such as overhangs, canopies, and supports, guide wires, poles, posts, stakes, signs, etc., may be placed closer than one (1) foot of any right-of-way.

(3) The Planning Director or their designee shall have the power to order the temporary structure, or any portion of the temporary structure which is within five (5) feet of any right-of-way removed immediately.

(4) Sight triangles on corners shall be maintained without exception.

(f) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.

(Ord. No. 560, § 153.100(H), 4-5-2016)

**Sec. 44-91. Highway service (HS).**

(a) *General description.*

(1) This district is established for the accommodation of those herein specified retail and business service activities that serve persons in automobiles traveling on streets and highways, and typically may be located along major street intersections or highway interchanges. These businesses generate a considerable volume of vehicular traffic originating within the community or traveling into the community.

(2) Utility lot. Any platted lot used exclusively for the placement of utilities, public works, wells, water storage, sewer systems, telecommunications stations, electrical substations, high-pressured gas stations, and any other utility services approved by the city council. Such lots are only intended to be improved with the utility and any structures needed in conjunction with the utility.

(b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.

(c) *Development Standards:*

HIGHWAY SERVICE (HS)

Minimum Lot Size	10,000 Square Feet
Minimum Lot Frontage (Width)	100 Feet
Minimum Setbacks:	
Front Yard	25 Feet
Interior Side Yard	15 Feet 25 Feet Abutting Residential, Requires 6' Opaque Or Ornamental Fence
Exterior Side Yard	30 Feet
Rear Yard	20 Feet 35 Feet If Building Serviced From Rear
Maximum Building Coverage Ratio	75%

Maximum Structure Height	60 Feet (Eave Height) Or 4 ½ Stories
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- (d) *Temporary structures.* Temporary structures may be allowed by the Planning Director for temporary storage, active on-site construction projects, or other similar uses.
  - (1) Temporary structures shall not be placed closer than five (5) feet of any property line abutting a public right-of-way.
  - (2) No appendage such as overhangs, canopies, and supports, guide wires, poles, posts, stakes, signs, etc., may be placed closer than five (5) feet of any right-of-way.
  - (3) The Planning Director or their designee shall have the power to order the temporary structure, or any portion of the temporary structure which is within five (5) feet of any right-of-way, removed immediately.
  - (4) Sight triangles on corners shall be maintained without exception.
- (e) *Off-street parking.* As regulated in Article V. of this chapter, all areas utilized for vehicle travel or parking shall be of approved materials.
- (f) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.(Ord. No. 560, § 153.100(I), 4-5-2016)

**Sec. 44-92. General light industrial district (GLID).**

- (a) *General description.*
  - (1) This industrial district is established to provide areas which the principal use of land is for manufacturing and assembly plants, processing, storage, large warehousing, wholesaling and distribution in which operations are conducted so that noise, odor, dust and glare area controlled.
  - (2) Utility lot. Any platted lot used exclusively for the placement of utilities, public works, wells, water storage, sewer systems, telecommunications stations, electrical substations, high-pressured gas stations, and any other utility services approved by the city council. Such lots are only intended to be improved with the utility and any structures needed in conjunction with the utility.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.
- (c) *Development Standards:*

GENERAL LIGHT INDUSTRIAL DISTRICT 1 (GLID-1)

Minimum Lot Size	1 Acre
Minimum Lot Frontage (Width)	150 Feet
Minimum Setbacks:	
Front Yard	30 Feet
Interior Side Yard	20 Feet
Exterior Side Yard	30 Feet

Rear Yard	20 Feet
Maximum Building Coverage Ratio	80%
Maximum Structure Height	35 Feet (Eave Height)

(d) *Temporary structures.* Temporary structures may be allowed by the Planning Director for temporary storage, active on-site construction projects, or other similar uses.

(1) Temporary structures shall not be placed closer than five (5) feet of any property line abutting a public right-of-way.

(2) No appendage such as overhangs, canopies, and supports, guide wires, poles, posts, stakes, signs, etc., may be placed closer than one (1) foot of any right-of-way.

(3) The Police Chief or Planning Director or their designee shall have the power to order the temporary structure, or any portion of the temporary structure which is within five (5) feet of any right-of-way, removed immediately.

(4) Sight triangles on corners shall be maintained without exception.

(e) *Off-street parking.* As regulated in Article V. of this chapter, all areas utilized for vehicle travel or parking shall be approved material.

(f) *Landscaping.* Landscaping will be required as provided in this chapter.

(g) *Floodplain requirements.* See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.

**Sec. 44-93. Heavy industrial district (HID).**

(a) General description. To establish areas for necessary industrial and related uses of such a nature that they require isolation from many other kinds of land uses, and to make provision for commercial uses which are necessary to service the immediate needs of people in their areas.

(b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.

(c) *Development Standards:*

**HEAVY INDUSTRIAL DISTRICT (HID)**

Minimum Lot Size	1 Acre
Minimum Lot Frontage (Width)	150 Feet
Minimum Setbacks:	
Front Yard	30 Feet
Interior Side Yard	20 Feet
Exterior Side Yard	30 Feet
Rear Yard	20 Feet

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Maximum Building Coverage Ratio	80%
Maximum Structure Height	35 Feet (Eave Height)

- (d) *Temporary structures.* Temporary structures may be allowed by the Planning Director for temporary storage, active on-site construction projects, or other similar uses.
  - (1) Temporary structures shall not be placed closer than five (5) feet of any property line abutting a public right-of-way.
  - (2) No appendage such as overhangs, canopies, and supports, guide wires, poles, posts, stakes, signs, etc., may be placed closer than one (1) foot to any right-of-way.
  - (3) The Police Chief or Planning Director or their designee shall have the power to order the stand, or any portion of the temporary structure which is within five (5) feet of any right-of-way, removed immediately.
  - (4) Sight triangles on corners shall be maintained without exception.
- (e) Off-street parking. As regulated in Article V. of this chapter, all areas utilized for vehicle travel or parking shall be approved material.
- (f) Floodplain requirements. See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.

**Sec. 44-94. Open space or floodway district (OS-1).**

- (a) *Description.*
  - (1) This district is for the protection of drainageways and floodways which permit the unimpeded flow of surface runoff without endangering life and health or causing property damage due to flooding by prohibiting structures in this district.
- (b) *Permitted, conditional, or prohibited uses.* See Appendix A Land Use Matrix.

(Ord. No. 560, § 153.100(M), 4-5-2016)

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**Sec. 44-95. Mixed use zoning district overlay zone (MU).**

- (a) Purpose. The mixed use zoning district overlay zone will be the most urban atmosphere within the City. Projects will be three-dimensional, with pedestrian oriented places that layer compatible land uses, public amenities, and utilities together at various scales and intensities. These variety of uses will allow for people to live, work, play, and shop in one place, which over time will make the area a destination for people from other neighborhoods. Mixed uses may include the following forms:
- (i) Vertical mixed use building, where different uses are combined and integrated within the same building.
  - (ii) Horizontal mixed use, which combines and integrates single-use buildings on distinct parcels in a range of land use within a typical one (1) block radius.
  - (iii) Mixed use walkable neighborhoods, where an infinite number of various possibilities may be achieved by combining vertical and horizontal use. Uses are typically mixed with an area that is located ideally within a five (5) to ten (10) minute walking center.
- (b) Concept plan and *development agreement required*. All projects within the MU overlay zone shall submit a concept plan and enter into a development agreement with the City. The concept plan and development agreement must be approved by the City Council concurrently with the rezone request. The concept plan and agreement shall include the square footage of all proposed uses and the number of proposed residential units. Colored concepts plans and exterior elevations shall be included as exhibits in the development agreement. The development agreement shall require that the commercial component of the project may not be omitted.
- (c) *Planning Commission and City Council Consideration*. In considering approval of the concept plan and development agreement for the MU overlay zone, the Planning Commission and City Council shall consider:
- (i) Design. The design, exterior materials, housing type and quality of buildings and their relationship to the site and their relationship to development beyond the boundaries of the development.
  - (ii) Streets, Traffic, Parking. Which streets shall be public and which shall be private, the entrances and exits to the development and the provisions for internal and external traffic circulation and off-street parking.
  - (iii) Landscaping, Screening. The landscaping and screening as related to the several uses with the development as a means of its integration into its surroundings.
  - (iv) Density. The residential density of the proposed development and its distribution as compared with the residential density of the surrounding lands, either existing or as indicated on the City's zoning map or Comprehensive Plan as being a desirable future residential density.
- (d) Permitted uses. The MU overlay zoning district shall be used in conjunction with the underlying zoning district, thereby permitting the same land uses as the underlying base zoning district, except those uses that may be specifically excluded by the City in the development agreement.
- (e) General regulations.
- (i) *Mixed uses required*. One hundred percent (100%) residential projects are prohibited.



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(ii) Site development standards. Site development standards such as minimum lot size, frontage, setbacks, coverage, and building heights may vary from the underlying zoning district development standards.

(1) Development standards are to be suggested by the developer with the final determination to be made by the City Council upon recommendation by the Planning Commission.

(2) Unless otherwise approved in the development agreement, the development standards for the underlying zoning district shall apply. Variation shall not be allowed unless the developer provides creative site design, design innovation, additional open space or amenities deemed by the Council to be in excess of the requirements of this Code.

(iii) *Building orientation.* Primary building orientation shall be toward the street. Buildings that are open to the public and are within thirty feet (30') of the street shall have an entrance for pedestrians from the street to the building interior. This entrance shall be designed to be attractive and functional, be a distinctive and prominent element of the architectural design, and shall be open to the public during business hours.

(iv) *Building aesthetics.* Buildings shall incorporate exterior lighting and changes in mass, surface, or finish to give emphasis to entrances. Wherever practical, buildings shall incorporate arcades, roofs, alcoves, porticos, and awnings that protect pedestrians from weather. Buildings shall provide a clear visual division between floors. The top floor of any building shall contain a distinctive finish, consisting of a roof, cornice, or other architectural termination.

(v) *Building equipment, refuse areas.* Trash storage areas, mechanical equipment, transformers, utility meters, and similar devices are not permitted to be visible from the street. Where site constraints would otherwise force these uses into visible locations, they shall be screened by decorative walls, earthen berms, landscaping, or architectural treatments capable of screening views from streets and sidewalks. In rooftop locations, mechanical equipment shall be screened by roof components, parapets, cornices, or other architectural features

(vi) *Common space on site amenities.* The project shall develop common space on site amenities proportionate to and in relation to the scale and resident demographics of the proposed project. Amenities include, but are not limited to:

- Water amenities: pools, hot tubs, steam rooms;
- Sport amenities: tennis, pickleball, basketball courts;
- Community gathering amenities: play structures, village greens, pavilions, outdoor kitchens; and
- Other amenities deemed appropriate by the Planning Commission and City Council.

(vii) *Utilities.* All new utility transmission lines shall be placed underground.

(viii) *Pedestrian and vehicle circulation and connectivity.* Public rights-of-way shall be wide enough to incorporate bike lanes and sidewalks. Whenever possible proposed developments in the MU overlay zone shall design walkways and trails to connect with larger area walkways and trail systems. Public seating and bicycle racks shall be provided near entrances to buildings or groups of buildings.

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- (ix) *Parking.* Parking shall be provided in accordance with the requirements of Article V of this chapter. Parking areas shall be located at the rear or side of buildings. Parking may not be located between a building and the street. Where feasible, pedestrian walkways shall be incorporated into parking lots of any size. Parking lots with more than one hundred (100) spaces shall be divided by landscaped areas including a walkway. Parking requirements may be reduced by the City Council upon recommendation of the Planning Commission if it can be shown that shared parking is a viable alternative with the development plan.
- (x) *Truck loading.* All truck loading (i.e. pick-up and deliveries) shall be provided at the rear or side of buildings.
- (xi) *Floodplain requirements.* Any development within the flood area must comply with the city flood damage prevention regulations as set forth in this Code.

#### **Sec. 44-96. Planned development district (PD).**

- (a) *Purpose.* The planned development district (PD) shall preserve the natural environment, encourage high quality development and innovative design, and ensure adequate public facilities and services for development.
- (b) *Intent.* The intent of the planned development (PD) overlay district is to permit a large or complex single or multi-use development that is planned as a single contiguous project and that is under unified control. It is further intended:
- (1) To allow deviations from the minimum, maximum, or location criteria from the underlying zoning district standards;
  - (2) To provide optional methods of land development and encourage imaginative design;
  - (3) To promote more economical and efficient use of land;
  - (4) To provide flexible zoning entitlements for projects that may be subdivided and developed in multiple phases;
  - (5) To establish a method for providing future connections between existing and proposed developments in order to achieve an integrated community with common open space, transportation, transit, and public services networks; and
  - (6) To allow for the flexibility to grant waivers or modification to City ordinances and development standards while promoting compatibility with adjacent land uses and public facilities.
- (c) *General provisions.*
- (1) All provisions of any existing experimental subdivisions approved by the City prior to the effective date of the ordinance from which this article is derived shall remain in effect.
  - (2) Where a conflict exists between an approved planned development and the regulations of the underlying zoning district, the approved planned development shall prevail.
  - (3) It is not the intent of the PD district to allow for the modification or waiver of City floodplain regulations.
- (d) *Application and approval process.* Proposed subdivisions utilizing the PD zone shall comply with the application and approval requirements outlined in Chapter 36 - Subdivisions, for standard conceptual plan, preliminary plan, minor plat, and final plat processes, as applicable.
- (e) *Development requirements.*

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(1) *Phasing.* The proposed development plans for a subdivision utilizing the PD district shall include all possible future phases. No additional phases shall be permitted beyond the original concept. Adjacent property developed similarly shall be a separate development and shall meet all requirements independently from any adjacent development.

(2) *Minimum lot area.* The minimum lot area for dwellings located within a subdivision utilizing the PD district may be reduced below the area normally required as recommended by the Planning Commission, as approved by the City Council. The proposed lot size shall be sufficient to meet the requirements of the state health department and the DANR for the provision of drinking water and sanitary sewer services, as applicable.

(3) *Minimum lot width and setbacks.* The minimum lot width and setback requirements may be reduced below the width and setbacks typically required as recommended by the Planning Commission, and as approved by the City Council. However, no required side yard shall be less than ten feet (10'), no required front or rear yard shall be less than twenty feet (20'), and no corner side yard shall be less than eighteen feet (18').

(4) *Use and height regulations.* Use and height regulations shall be the same for a subdivision utilizing the PD overlay as the underlying zoning district in which the subdivision is located.

(5) *Open and common space.*

(i) The proposed development shall provide a way that guarantees the development's open and common space will be maintained in perpetuity.

(ii) The development shall provide a minimum of twenty percent (20%) open space. A minimum of ten percent (10%) of the provided open space shall be common space. Open and common space shall not include streets, driveways, alleys, parking areas or similar.

(iii) Common spaces shall be fully landscaped and developed with approved amenities as identified in the City's parks master plan for the enjoyment and full use of all residents of the development and/or the public. Common space shall be preserved, maintained, and owned through the homeowner's association from the onset, or may be deeded to the City if the developer makes the request and the City Council, at their sole discretion, grants the request. Unless otherwise approved by the development agreement, landscaping shall be completed prior to the approval of the next consecutive phase of a phased subdivision.

(iv) Open space may include, but will not be limited to: agricultural areas, recreation areas or similar, including lands which are not suitable for development. Upon recommendation by the Planning Commission and approval by the City Council the developer may be required as a condition of plan and plat approval to record a perpetual conservation easement for certain types of open space.

(6) *Sidewalks and park strips.* The design and location of public sidewalks shall be located in the public right-of-way and in addition to the City's adopted engineering standards and specifications shall meet the following requirements:

(i) Park strips shall be a minimum of ten feet (10') wide.

(ii) Sidewalks shall meet the minimum standards for ADA accessibility. Meandering sidewalks shall be no closer than five feet (5') to the back of curb.

(7) *Trail System/Walking/Bike Paths.* The development shall contain trail/walking/bike paths and shall connect to the City's trails system per the City's parks master plan, when applicable. Trail/walking/bike paths shall meet the City's engineering standards and specifications.

(f) *Minor and major amendments.* A major amendment to a planned development shall require approval of the Planning Commission and City Council. Minor amendments shall require approval of the Planning Commission. Major amendments include:

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1. Change in the concept of the development.
  2. Change in use or character of the development.
  3. Change in type of approved dwelling unit.
  4. Increase in the number of dwelling units.
  5. Rearrangement of or additional lots, blocks, and building tracts.
  6. Change in the character or function of any street.
  7. Reduction or relocation of land area set aside for common open space.
  8. Increase to maximum building height.
  9. Decrease to minimum required setbacks or lot frontages.

Minor amendments include:

1. Increase to designated open space which does not constitute a major amendment.
2. Minor variations in layout, which do not constitute a major amendment.
3. Changes which do not alter the use or character of the development.

(Ord. No. 560, § 153.100(O), 4-5-2

**Secs. 44-97—44-120. Reserved.**

***DIVISION 3. AIR INSTALLATION COMPATIBLE USE OVERLAY ZONE (AICUZ)  
OVERLAY DISTRICT REGULATIONS***

**Sec. 44-121. Primary surface protection zone (PSZ).**

- (a) *General description.* The primary surface protection zone is intended to prevent height obstructions within each airfield's primary runway surface area plus the area under transitional and approach surfaces..
- (b) *Location.* This zone consists of an area extending outward from the runway centerline of EAFB runway 13/31 and of RCRA runway 14/32 for 3,700 feet from each end of each runway and 1,500 feet on either side of, and perpendicular to, each runway centerline.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFBe for further guidance.

(Ord. No. 560, § 153.101(A), 4-5-2016)

**Sec. 44-122. Transition surface protection zone (TSZ).**

- (a) *General description.* The transition surface protection zone is intended to prevent height obstructions in an area adjacent to the primary surface protection zone which lies under transitional and approach/departure surfaces to an elevation of 150 feet above end-of-runway elevation. The 150-foot elevation was chosen to provide a surface protection factor above structures of up to 100 feet in height.
- (b) *Location.* This zone consists of an area extending from the primary surface protection zone for EAFB runway 13/31 and of RCRA runway 14/32 for 7,500 feet along a line extending from the end of the primary surface protection zone and 500 feet on either side of, and perpendicular to, the primary surface protection zone.
- (c) *Uses permitted uses and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFBe for further guidance.

(Ord. No. 560, § 153.101(B), 4-5-2016)

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**Sec. 44-123. Clear zone (CLZ).**

- (a) *General description.* This airfield hazard district is established due to its very high aircraft accident potential and extremely high noise level. No structures, overhead lines, or new trees should be allowed in this zone. Activities that encourage or promote a gathering of people shall not be allowed.
- (b) *Location.* This zone consists of an area that is 3,000 feet square (3,000 feet by 3,000 feet) that is centered on the runway centerline of EAFB runway 13/31 and begins 200 feet from the end of this runway.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(C), 4-5-2016)

**Sec. 44-124. Accident potential zone one (APZ I) with greater than 79 dB(A) noise zone (180Z).**

- (a) *General description.* This airfield hazard district is established due to its high aircraft accident potential and high noise level. Activities that encourage or promote a gathering of people shall not be allowed in this zone. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* Accident potential zone one consists of an area that is 3,000 feet wide by 5,000 feet long that is centered on the runway centerline of EAFB runway 13/31 and begins at the outer edge of the clear zone.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(D), 4-5-2016)

**Sec. 44-125. Accident potential zone one (APZ I) with 75 to 79 dB(A) noise zone (175Z).**

- (a) *General description.* This airfield hazard district is established due to its high aircraft accident potential and high noise level. Activities that encourage or promote a gathering of people shall not be allowed in this zone. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* Accident potential zone one consists of an area that is 3,000 feet by 5,000 feet centered on the runway centerline of EAFB runway 13/31 and begins at the outer edge of the clear zone.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(E), 4-5-2016)

**Sec. 44-126. Accident potential zone two (APZ II) with greater than 79 dB(A) noise zone (280Z).**

- (a) *General description.* This airfield hazard district is established due to its aircraft accident potential and high noise level. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* Accident potential zone two consists of an area that is 3,000 feet by 7,000 feet long centered on the runway centerline of EAFB runway 13/31 and begins at the outer edge of accident potential zone one.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

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(Ord. No. 560, § 153.101(F), 4-5-2016)

**Sec. 44-127. Accident potential zone two (APZ II) with 75 to 79 dB(A) noise zone (275Z).**

- (a) *General description.* This airfield hazard district is established due to its aircraft accident potential and high noise level. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* Accident potential zone two consists of an area that is 3,000 feet by 7,000 feet long that is centered on the runway centerline of EAFB runway 13/31 and begins at the outer edge of accident potential zone one.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(G), 4-5-2016)

**Sec. 44-128. Accident potential zone two (APZ II) with 70 to 74 dB(A) noise zone (270Z).**

- (a) *General description.* This airfield hazard district is established due to its aircraft accident potential and high noise level. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* Accident potential zone two consists of an area that is 3,000 feet by 7,000 feet long that is centered on the runway centerline of EAFB runway 13/31 and begins at the outer edge of accident potential zone one.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(H), 4-5-2016)

**Sec. 44-129. Noise zone greater than 79 dB(A) (80Z).**

- (a) *General description.* This airfield hazard district is established due to its high noise level. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* This noise zone is located outside of the accident potential zones for EAFB runway 13/31 and is intended to include the area between the 80 dB(A) noise contour shown in the most current AICUZ Study for EAFB and the accident potential and clear zones.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(I), 4-5-2016)

**Sec. 44-130. Noise zone from 75 to 79 dB(A) (75Z).**

- (a) *General description.* This airfield hazard district is established due to its high noise level. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* This noise zone is located outside of the accident potential zones for EAFB runway 13/31 and is intended to include the area between the 80 and 75 dB(A) noise contours shown in the most current AICUZ Study for EAFB.

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- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(J), 4-5-2016)

**Sec. 44-131. Noise zone from 70 to 74 dB(A) (70Z).**

- (a) *General description.* This noise hazard district is established due to its high noise level from airfield operations or transportation corridors. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* This noise zone is located outside of the accident potential zones for EAFB runway 13/31 and is intended to include the area between the 75 and 70 dB(A) noise contours shown in the most current AICUZ Study for EAFB and is intended to include the area that extends outward for 50 feet from the right-of-way boundaries of Interstate 90 and of the railroad.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(K), 4-5-2016)

**Sec. 44-132. Noise zone from 65 to 69 dB(A) (65Z).**

- (a) *General description.* This noise hazard district is established due to its high noise level from airfield operations or transportation corridors. All new structures and existing structures that are altered or expanded within this zone shall comply with the City's adopted building code requirements for noise level reduction.
- (b) *Location.* This noise zone is located outside of the accident potential zones for EAFB runway 13/31 and is intended to include the area between the 70 and 65 dB(A) noise contours shown in the most current AICUZ Study for EAFB and is intended to include the area that extends outward between 50 feet and 200 feet from the right-of-way boundaries of Interstate 90 and of the railroad.
- (c) *Uses permitted and not allowed.* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.

(Ord. No. 560, § 153.101(L), 4-5-2016)

**Sec. 44-133. Inner approach/departure zone (IAZ).**

- (a) *General description.* This airfield hazard district is established due to its high aircraft accident potential and noise level. Activities that encourage or promote a gathering of people shall not be allowed.
- (b) *Location.* This zone consists of an area that is 4,000 feet by 10,200 feet that is centered on the runway centerline at the ends of RCRA runway 14/32.
- (c) *Uses not allowed. Note:* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.
- (1) Above-ground bulk storage of fuel and other hazardous materials.
  - (2) Aquaculture.
  - (3) Chicken or turkey farms.
  - (4) CAFOs.

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- (5) Commercial feed lots.
  - (6) Commercial wind energy systems.
  - (7) Community centers.
  - (8) Dairies.
  - (9) Fur farms.
  - (10) Gas stations.
  - (11) Golf courses.
  - (12) Gun and archery ranges.
  - (13) Landfills.
  - (14) Livestock auction yards.
  - (15) Open water treatment plants.
  - (16) Public swimming pools.
  - (17) Telecommunications facilities.
  - (18) Uses that create an allowed gathering density of more than 50 people.
  - (19) Uses that create an average gathering density of more than 25 people.
  - (20) Public assembly uses for entertainment, sports, or amusements, such as amphitheaters, arenas, auditoriums, fairgrounds, racetracks, or theaters.
  - (21) Public service uses such as schools, hospitals, nursing homes, and police or fire stations.
  - (22) Uses that create hazards to aircraft operations, such as uses that release substances that would impair pilot vision (steam, smoke, dust), produce light emissions, either direct or indirect, that would interfere with pilot vision, or produce electrical emissions that would interfere with aircraft communications or navigation systems.

(d) *Maximum density.* The maximum residential lot density within this district shall be one dwelling unit per ten acres.

(Ord. No. 560, § 153.101(M), 4-5-2016)

**Sec. 44-134. Circling traffic pattern protection zone (CTZ).**

- (a) *General description.* This airfield hazard district is established due to its aircraft accident potential and noise level. Activities that encourage or promote large gatherings of people shall not be allowed.
- (b) *Location.* This zone, located under the air traffic pattern of RCRA runway 14/32, consists of an area that is created by swinging arcs of 14,000 feet from the center of each end of the runway and connecting these arcs by drawing lines tangent to these arcs.
- (c) *Uses permitted on review.* Golf courses (allowed with a program to reduce wildlife attractiveness).
- (d) *Uses not allowed.* Note: See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.
  - (1) Aquaculture.
  - (2) Chicken or turkey farms.



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- (3) CAFOs.
  - (4) Commercial feed lots.
  - (5) Commercial wind energy systems.
  - (6) Dairies.
  - (7) Fur farms.
  - (8) Landfills.
  - (9) Livestock auction yards.
  - (10) Open water treatment plants.
  - (11) Uses that create an allowed gathering density of more than 450 people.
  - (12) Uses that create an average gathering density of more than 150 people.
  - (13) Public assembly uses for entertainment, sports, or amusements, such as amphitheaters, arenas, auditoriums, fairgrounds, racetracks, or theaters.
  - (14) Public service uses such as schools, hospitals, or nursing homes.
  - (15) Uses that create hazards to aircraft operations, such as uses that release substances that would impair pilot vision (steam, smoke, dust), produce light emissions, either direct or indirect, that would interfere with pilot vision, or produce electrical emissions that would interfere with aircraft communications or navigation systems.

(Ord. No. 560, § 153.101(N), 4-5-2016)

**Sec. 44-135. Aviation hazards zone (AHZ).**

- (a) *General description.* This airfield hazard district is established due to FAA recommendations to protect airfields from hazardous wildlife attractants and tall structures.
- (b) *Location.* This zone encompasses a five mile area around RCRA runway 14/32 and around EAFB runway 13/31.
- (c) *Uses permitted on review.* Golf courses (allowed with a program to reduce wildlife attractiveness).
- (d) *Uses not allowed.* *Note:* See Table A located in Division 3A of this article and the most current AICUZ Study for EAFB for further guidance.
  - (1) Aquaculture.
  - (2) Chicken or turkey farms.
  - (3) CAFOs.
  - (4) Commercial feed lots.
  - (5) Commercial wind energy systems.
  - (6) Dairies.
  - (7) Fur farms.
  - (8) Landfills.
  - (9) Livestock auction yards.
  - (10) Open water treatment plants.

(11) Uses that create hazards to aircraft operations, such as uses that release substances that would impair pilot vision (steam, smoke, dust), produce light emissions, either direct or indirect, that would interfere with pilot vision, or produce electrical emissions that would interfere with aircraft communications or navigation systems.

(e) *Maximum structure height.* Unless further restricted by the requirements of other overlay zones, applications for building or other permits for all structures exceeding 200 feet in height shall be accompanied by a copy of the decision of record by the FAA for the applicant's Form 7460-1, Notice of Proposed Construction or Alteration, and a copy of the permit issued by the state aeronautics commission for the proposed structure.

(Ord. No. 560, § 153.101(O), 4-5-2016)

**Secs. 44-136—44-149. Reserved.**

***DIVISION 3A. AICUZ OVERLAY DISTRICT REGULATIONS - TABLE A. USES PERMITTED AND NOT PERMITTED***

**Sec. 44-150. Table A. Uses Permitted and Not Permitted.**

Table A. Uses Permitted and Not Permitted

<i>Land Use</i>		<i>APZs</i>			<i>Noise Zones</i>			
<i>SLUC M No.</i>	<i>Name</i>	<i>CZ</i>	<i>APZ 1</i>	<i>APZ II</i>	<i>65-69 dB(A)</i>	<i>70-74 dB(A)</i>	<i>75-79 dB(A)</i>	<i>80+ dB(A)</i>
10	Residential							
11	Household units							
11.11	Single units: detached	N	N	Y1	A11	B11	N	N
11.12	Single units: semi-detached	N	N	N	A11	B11	N	N
11.13	Single units: attached row	N	N	N	A11	B11	N	N
11.21	Two units: side-by-side	N	N	N	A11	B11	N	N
11.22	Two units: one above the other	N	N	N	A11	B11	N	N
11.31	Apartments: walk-up	N	N	N	A11	B11	N	N
11.32	Apartments: elevator	N	N	N	A11	B11	N	N
12	Group quarters	N	N	N	A11	B11	N	N
13	Residential hotels	N	N	N	A11	B11	N	N
14	Mobile home parks or courts	N	N	N	N	N	N	N
15	Transient lodgings	N	N	N	A11	B11	C11	N
16	Other residential	N	N	N1	A11	B11	N	N
20-30	Manufacturing							
21	Food and kindred products: manufacturing	N	N2	Y	Y	Y12	Y13	Y14

22	Textile mill products: manufacturing	N	N2	Y	Y	Y12	Y13	Y14
23	Apparel and other finished products made from fabrics, leather, and similar materials: manufacturing	N	N	N2	Y	Y12	Y13	Y14
24	Lumber and wood products (except furniture): manufacturing	N	Y2	Y	Y	Y12	Y13	Y14
25	Furniture and fixtures: manufacturing	N	Y2	Y	Y	Y12	Y13	Y14
26	Paper and allied products: manufacturing	N	Y2	Y	Y	Y12	Y13	Y14
27	Printing, publishing, and allied industries	N	Y2	Y	Y	Y12	Y13	Y14
28	Chemicals and allied products: manufacturing	N	N	N2	Y	Y12	Y13	Y14
29	Petroleum refining and related industries	N	N	N	Y	Y12	Y13	Y14
31	Rubber and misc. plastic products: manufacturing	N	N2	N2	Y	Y12	Y12	Y12
32	Stone, clay, and glass products: manufacturing	N	N2	Y	Y	Y12	Y13	Y14
33	Primary metal industries	N	N2	Y	Y	Y12	Y13	Y14
34	Fabricated metal products: manufacturing	N	N2	Y	Y	Y12	Y13	Y14
35	Professional, scientific, and controlling instruments	N	N	N2	Y	A	B	N
39	Miscellaneous manufacturing	N	Y2	Y2	Y	Y12	Y13	Y14
40	Transportation, communications, and utilities							
41	Railroad, rapid rail transit, and street railroad transportation	N3	Y4	Y	Y	Y12	Y13	Y14
42	Motor vehicle transportation	N3	Y	Y	Y	Y12	Y13	Y14
43	Aircraft transportation	N3	Y4	Y	Y	Y12	Y13	Y14
44	Marine craft transportation	N3	Y4	Y	Y	Y12	Y13	Y14

45	Highway and street right-of-way	N3	Y	Y	Y	Y12	Y13	Y14
46	Automotive parking	N3	Y4	Y	Y	Y12	Y13	Y14
47	Communications	N3	Y4	Y	Y	A15	B15	N
48	Utilities	N3	Y4	Y	Y	Y	Y12	Y13
49	Other transportation, communications and utilities	N3	Y4	Y	Y	A15	B15	N
50	Trades							
53	Wholesale trade	N	N2	Y2	Y	A	B	N
54	Retail trade: building materials, hardware, and farm equipment	N	N2	Y2	Y	A	B	N
55	Retail trade: general merchandise	N	Y2	Y2	Y	A	B	N
56	Retail trade: food	N	N2	Y2	Y	A	B	N
57	Retail trade: automotive, marine craft, aircraft, and accessories	N	N2	Y2	Y	A	B	N
58	Retail trade: apparels and accessories	N	N	N2	Y	A	B	N
59	Retail trade; furniture, home furnishings, and equipment	N	N2	Y2	Y	A	B	N
60	Services							
61	Finance, insurance, and real estate services	N	N	Y6	Y	A	B	N
62	Personal services	N	N	Y6	Y	A	B	N
62.4	Cemeteries	N	Y7	Y7	Y	Y12	Y13	Y14,21
63	Business services	N	Y8	Y8	Y	A	B	N
64	Repair services	N	Y2	Y	Y	Y12	Y13	Y14
65	Professional services	N	N	Y6	Y	A	B	N
65.1	Hospitals, nursing homes	N	N	N	A*	B*	N	N
65.1	Other medical facilities	N	N	N	Y	A	B	N
66	Contract construction services	N	Y6	Y	Y	A	B	N
67	Governmental services	N	N	Y6	Y*	A*	B*	N
68	Educational services	N	N	N	A*	B*	N	N
69	Miscellaneous services	N	N2	Y2	Y	A	B	N
70	Cultural, entertainment, and recreational services							
71	Cultural activities (including churches)	N	N	N2	A*	B*	N	N

71.2	Nature exhibits	N	Y2	Y	Y	N	N	N
72	Public assembly	N	N	N	Y	N	N	N
72.1	Auditoriums, concert halls	N	N	N	A	B	N	N
72.11	Outdoor music shell, amphitheaters	N	N	N	N	N	N	N
72.2	Outdoor sports arenas, spectator sports	N	N	N	Y17	Y17	N	N
73	Amusements	N	N	Y	Y	Y	N	N
74	Recreational activities (including golf courses, riding stables, water recreation)	N	Y8, 9, 10	Y	Y*	A*	B*	N
75	Resorts and group camps	N	N	N	Y*	Y*	N	N
76	Parks	N	Y8	Y8	Y*	Y*	N	N
79	Other cultural, entertainment, and recreational activities	N	Y9	Y9	Y*	Y*	N	N
80	Resources production and extraction							
81	Agriculture (except livestock)	Y16	Y	Y	Y18	Y19	Y20	Y20, 21
81.5 to 81.7	Livestock farming and animal breeding	N	Y	Y	Y18	Y19	Y20	Y20, 21
82	Agriculture-related activities	N	Y5	Y	Y18	Y19	N	N
83	Forestry activities and related services	N5	Y	Y	Y18	Y19	Y20	Y20, 21
84	Fishing activities and related services	Y5	Y	Y	Y	Y	Y	Y
85	Mining activities and related services	Y5	Y	Y	Y	Y	Y	Y
89	Other resources production and extraction	Y5	Y	Y	Y	Y	Y	Y

Source: DOD 1977, FICUN 1980, and USURA 1965

Key:

SLUCM = Standard Land Use Coding Manual, USURA.

Y = Yes - Land uses and related structures are compatible without restriction.

N = No - Land use and related structures are not compatible and should be prohibited.

Yx = Yes with restrictions - Land use and related structures generally compatible, see notes indicated by the superscript.

Nx = No with exceptions - See notes indicated by the superscript.

NLF = Noise level reduction (NLR) (outdoor to indoor) to be achieved through incorporation of the noise attenuation measures into the design and construction of the structures.

A, B, or C = Land use and related structures generally compatible; measures to achieve NLR for A (DNL of 65 to 69 dB(A)), B (DNL of 70 to 74 dB(A)), C (DNL of 75 to 79 dB(A)) need to be incorporated into the design and construction of structures.

A\*, B\*, and C\* = Land use generally compatible with NLR; however, measures to achieve an overall noise level reduction do not necessarily solve noise difficulties and additional evaluation is warranted. See appropriate notes below.

\* = The designation of these uses as "compatible" in this zone reflects individual federal agencies and program considerations of general cost and feasibility factors, as well as past community experiences and program objectives. Localities, when evaluating the application of these guidelines to specific situations, might have different concerns or goals to consider.

Notes:

1. Suggested maximum density of one to two dwelling units per acre, possibly increased under a planned unit development where maximum lot coverage is less than 20 percent.
2. Within each land use category, uses exist where further deliberating by local authorities might be needed due to the variation of densities in people and structures. Shopping malls and shopping centers are considered incompatible use in any accident potential zone (CA, APZ I, or APZ II).
3. The placement of structures, buildings, or above-ground utility lines in the CZ is subject to severe restrictions. In a majority of the CZs, these items are prohibited. See AFI 32-7060, Interagency and Intergovernmental Coordination for Environmental Planning (USAF 1994a), and Air Force Joint Manual 32-8008, Airfield and Heliport planning Criteria (DOD 1994), for specific guidance.
4. No passenger terminals and no major above-ground transmission lines in APZ I.
5. Factors to be considered: labor intensity, structural coverage, explosive characteristics, and air pollution.
6. Low-intensity office uses only. Meeting places, auditoriums, and the like are not recommended.
7. Excludes chapels.
8. Facilities must be low-intensity.
9. Clubhouses not recommended.
10. Areas for gatherings of people are not recommended.
11. (a) Although local conditions might require residential use, it is discouraged in DNL of 65 to 69 dB(A) noise zone and strongly discouraged in DNL of 70 to 74 dB(A) noise zone. The absence of viable alternative development options should be determined and an evaluation should be conducted prior to approvals indicating a demonstrated community need for residential use would not be met if development were prohibited in these zones.  
(b) Where the community determines the residential uses must be allowed, measures to achieve outdoor to indoor NLR for the DNL of 65 to 69 dB(A) noise zone and the DNL of 70 to 74 dB(A) noise zone should be incorporated into building codes and considered in individual approvals.  
(c) NLF criteria will not eliminate outdoor noise problems. However, building location and site planning, and design and use of berms and barriers can help mitigate outdoor exposure, particularly from near ground level sources. Measures that reduce outdoor noise should be used whenever practical in preference to measures that only protect interior spaces.
12. Measures to achieve the same NLR as required for facilities in the DNL of 65 to 69 dB(A) noise zone must be incorporated in the design and construction of portions of these buildings where the

- public is received, office areas, noise-sensitive areas, or where the normal noise level is low.
13. Measures to achieve the same NLR as required for facilities in the DNL of 70 to 74 dB(A) noise zone must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise-sensitive areas, or where the then normal noise level is low.
  14. Measures to achieve the same NLR as required for facilities in the DNL of 75 to 79 dB(A) noise zone must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise-sensitive areas, or where the then normal noise level is low.
  15. If noise-sensitive, use indicated NLF; if not, the use is compatible.
  16. No buildings.
  17. Land use is compatible provided special sound reinforcement systems are installed.
  18. Residential buildings require the same NLR as required for facilities in the DNL of 65 to 69 dB(A) noise zone.
  19. Residential buildings require the same NLR as required for facilities in the DNL of 70 to 74 dB(A) noise zone.
  20. Residential buildings are not permitted.
  21. Land use is not recommended. If the community decides the use is necessary, personnel should wear hearing protection devices.

(Ord. No. 560, ch. 153, att., 4-5-2016)

**Secs. 44-151—44-154. Reserved.**

*DIVISION 4. SUPPLEMENTARY REGULATIONS*

**Sec. 44-155. Accessory uses, general.**

The uses of land, buildings and other structures permitted in each of the districts established by this article are designated by listing the principal uses permitted. In addition to such principal uses, this section shall regulate uses customarily incidental to any principal use permitted in the district.

- (1) *General provisions.* Each permitted accessory use shall:
  - a. Be customarily incidental to the principal use established on the same lot.
  - b. Be subordinate to and serve such principal use.
  - c. Be subordinate in area, extent and purpose to such principal use.
  - d. Contribute to the comfort, convenience or necessity of users of such principal use.
- (2) *Permitted accessory structures.* Accessory uses shall be permitted as specified in this chapter and such accessory uses shall be applicable to the principal use.

(Ord. No. 560, § 153.102(Q), 4-5-2016)

**Sec. 44-156. Accessory dwelling units (ADUs).**

- (a) Purpose. The purpose of this section is to establish use and development regulations for accessory dwelling units (ADUs). ADUs provide a portion of the needed supply of affordable housing within the City for individuals and families while also allowing them to live independently. These regulations are intended to ensure that ADUs do not disturb the single-family residential character of a neighborhood in the zones in

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which they are allowed, and to protect the privacy of, and mitigate negative impacts to adjacent property owners.

- (b) Scope. The requirements of this section shall apply to all ADUs. Such requirements shall not be construed to prohibit or limit other applicable provisions of this chapter, this code, and other State or Federal laws.
- (c) Permitted use. Subject to the development standards listed in this chapter, an ADU shall be allowed as a permitted use in the following zoning districts:
  - (i) GR-1: General residential (low-density)
  - (ii) GR-2: General residential (moderate-density)
  - (iii) AD: Agricultural
- (d) Development standards. The development standards set forth in this section shall apply to all ADUs located within the City.
  - (i) Accessory use; limit; setbacks and size. An ADU shall be accessory to the primary dwelling unit. Only one (1) ADU, internal or detached, is allowed per parcel or lot. An internal ADU shall not be allowed within a mobile or manufactured home.
    - (1) Setbacks and lot coverage limitations established for the primary dwelling unit in each applicable zone shall apply to all internal and detached ADUs.
  - (ii) Compliance with building codes required. ADUs shall meet all requirements of the currently adopted building codes including egress, and life safety requirements.
  - (iii) Ownership. An ADU shall not be sold separately or subdivided from the primary dwelling unit, parcel or lot. The property owner or an immediate family member shall be a resident of either the primary dwelling unit or the ADU. For the purpose of this section, the term "property owner" shall be defined as full time residency within the home by the bona fide property owner(s) as shown on the Pennington or Meade County tax assessment rolls.
  - (iv) Design standards:
    - (1) The ADU shall have a pitched roof unless the principal dwelling unit has a flat roof, in which case the ADU may either have a flat or pitched roof.
    - (2) An ADU shall incorporate at least one (1) of the exterior materials used in the primary dwelling unit for a minimum of twenty percent (20%) on all facades of the structure.
    - (3) The ADU shall maintain the same color of the primary dwelling unit for at least fifty percent (50%) on all facades of the structure.
    - (4) The installation of separate utility meters shall be prohibited.
    - (5) The ADU shall use the same on-site wastewater disposal system as the primary dwelling, except when a separate system is required by the County due to site constraints, failure of the existing system, or where the size or condition of the existing system precludes its use.
    - (6) The ADU shall be provided with its own entrance.
    - (7) The ADU must provide living areas for cooking, sleeping, and sanitation facilities separate from the principal dwelling unit.
    - (8) The ADU shall be smaller than the footprint of the primary dwelling unit and in no case shall exceed 1,200 square feet.
    - (9) ADU's on lots with a lot area of less than 6,500 square feet shall be located in the main structure only and shall not be located in a detached accessory unit.
    - (10) Parking for any ADU shall be provided on-site, and shall be in addition to the parking required for the primary dwelling unit. A minimum of one (1) parking space shall be provided for any ADU.
    - (11) Landscaping shall be provided and maintained to:
      - a) minimize impacts to neighboring properties;
      - b) retain the residential character of the neighborhood; and
      - c) provided a visual buffer for on-site parking in relation to adjacent properties and rights-of-way.



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- (12) Exterior lighting shall provide illumination directed downward. Light sources shall not be visible from adjacent properties.
  - (v) Address. The primary dwelling unit and ADU shall have the same address number. The ADU shall be referred to as unit "B". The address shall be posted in a visible location to facilitate response of emergency services.
  - (vi) Short term rental. An ADU shall not be used as a short term rental.
  - (e) Compliance with development standards.
    - (i) Properties with ADUs found to be in violation of the development standards set forth in this chapter shall be subject to all applicable remedies set forth in this chapter to ensure compliance.
    - (ii) As part of the Zoning Administrator's review, inspections of the property and structures may be required by the City's various departments.
  - (f) Transfer of ownership. Upon sale of the primary dwelling unit, an ADU may remain so long as the ADU is in full compliance with the City's ordinances.

#### **Sec. 44-157. Adult oriented businesses.**

- (a) No Adult Oriented Business (AOB) shall be located within 1,000 feet, measured from the closest points of the property lines and including areas within public rights-of-way, of any residential district or manufactured home park, day care center, day care home, nursing home, assisted living or other similar facility providing care for the elderly or disabled, any public or private school (including preschool, elementary school, middle school, secondary school, high school, instructional school, vocational school, trade school, college, or university), public park, public open space, arcade or game center, public library, church, synagogue, temple, or other house of worship.
  - (b) No AOB shall be located within 1,000 feet of another AOB.
  - (c) No AOB may remain open at any time between the hours of 2:00 a.m and 8:00 a.m on Monday through Saturday and between the hours of 2:00 a.m and 12:00 noon on Sunday.
  - (d) A violation of this section shall be a Class 1 misdemeanor and each day of violation shall constitute a separate offense.
- (Ord. No. 560, § 153.102(A), 4-5-2016)

#### **Sec. 44-158. Automobile service stations.**

The following regulations shall apply to all automobile service stations:

- (1) There shall be a forty foot (40') setback from all right-of-way lines to any building, pump or accessory use.
- (2) Service stations shall not be constructed closer than fifty feet (50') to any residential zoning district.
- (3) The minimum distance between the intersection of right-of-way lines at a corner lot and the driveway to a service station shall not be less than forty feet (40').
- (4) A raised curb at least six inches (6") in height shall be constructed on all street property lines, except at driveway openings.
- (5) The length of curb openings shall not exceed thirty feet (30').
- (6) When two (2) curb openings are giving access to a single street, they shall be separated by a minimum dimension of fifty feet (50') at both the edge of the pavement and the right-of-way line. Curb cuts for driveways shall not be located closer than twenty five feet (25') to any adjoining property line.
- (7) All stations offering for sale gasoline or similar products shall be monitored 24 hours each day by a camera system.

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(8) A masonry wall or solid fence shall be constructed when service station property abuts property zoned for residential purposes. Such wall shall be not less than six feet (6') in height, but no more than eight feet (8') in height.

(9) Collection method of water from the washing of automobiles shall be approved by Public Works Director or designee.

Water from the washing of automobiles shall be contained on site.

(10) Off-street parking. As regulated in article V of this chapter.

(11) Signs. As regulated in chapter 30.

(Ord. No. 560, § 153.102(T), 4-5-2016)

### **Sec. 44-159. Cannabis establishments.**

(a) In order to balance the various interests and manage the effects cannabis establishments have on adjacent land uses and to promote the public health, safety, and general welfare of the city, the common council adopts the following regulations, recognizing that it has a great interest in the present and future character of the city's residential, commercial and industrial neighborhoods. Adoption of these regulations is not intended to unreasonably restrict the opportunity of cannabis establishments to locate in the city but is for the purpose of preventing a concentration of certain cannabis establishments in any one area.

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

Cannabis (or marijuana) means all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

Cannabis cultivation facility means in addition to the definition in SDCL 34-20G-1, this term is further defined as a license holder that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

Cannabis dispensary means in addition to the definition in SDCL 34-20G-1, this term is further defined as a license holder that is a retail type 1 setting and acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

Cannabis establishment means a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Cannabis product manufacturing facility means in addition to the definition in SDCL 34-20G-1, this term is further defined as a license holder that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

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

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Cannabis testing facility means in addition to the definition in SDCL 34-20G-1, this term is further defined as a license holder legally authorized to analyze the safety and potency of cannabis.

License holder means a cannabis establishment that possesses a license under this division to operate the cannabis establishment for which the license was issued.

Public or private school means any preschool, elementary school, middle school, secondary school, or high school. The term also includes any daycare or childcare center.

Unlicensed cannabis establishment means an entity that would otherwise meet the definition of a cannabis establishment, but which is not legally licensed by the City of Box Elder and does not have a current and valid registration certificate issued by the South Dakota Department of Health.

(c) Regulations relating to cannabis cultivation facilities. No cannabis cultivation facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis cultivation facility is a permitted use in the general light industrial zoning district.

No cannabis cultivation facility may be located or operate within 1,000 feet of a public or private school or a residence. The 1,000-foot distance requirement for a residence does not apply to a residence located on the same lot as a cannabis cultivation facility.

(d) Regulations relating to cannabis testing facilities. No cannabis testing facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis testing facility is a permitted use in the general light industrial zoning district.

No cannabis testing facility may be located or operate within 1,000 feet of a public or private school.

(e) Regulations relating to cannabis product manufacturing facilities. No cannabis product manufacturing facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis product manufacturing facility is a permitted use in the general light industrial zoning district.

No cannabis product manufacturing facility may be located or operate within 1,000 feet of a public or private school or a residence.

(f) Regulations relating to cannabis dispensaries. No cannabis dispensary may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis dispensary is a permitted use in the general light industrial zoning district.

No cannabis dispensary may be located or operate within 1,000 feet of a public or private school.

(g) Unlicensed cannabis establishments are prohibited from being located or operating in any zoning district.

(h) For the purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing a cannabis establishment to the nearest point on the property line of a parcel containing a use listed in subsections (c) through (f).

(i) A cannabis establishment lawfully operating in conformity with this section does not violate this section if any of the uses in subsections (c) through (f) subsequently locates within 1,000 feet of the cannabis establishment.

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(j) It is unlawful to own, manage, or operate a cannabis establishment in a zoning district other than the zoning district permitted by the criteria of this section. A violation of this provision is subject to the general penalty provision in section 2-363. Each day of violation constitutes a separate offense.

(k) A recreational vehicle as defined in this chapter or a tent are not residences under this section.

( Ord. No. 678 , 9-21-2021)

#### **Sec. 44-160. Cemeteries.**

Cemeteries may be permitted in any zoning district under a conditional use permit and with the following regulations:

- (1) The site proposed for a cemetery shall not interfere with the development of a system of collector and larger streets in the vicinity of such site. In addition, such site shall have direct access to a thoroughfare.
- (2) Any new cemetery shall be located on a site containing not less than 20 acres.
- (3) All other structures including, but not limited to, mausoleums, permanent monuments or maintenance buildings shall be set back not less than 50 feet from any property line or street right-of-way line.
- (4) All graves or burial lots shall be set back not less than 25 feet from any property line or street right-of-way line.
- (5) All required yards shall be landscaped and maintained.

(Ord. No. 560, § 153.102(M), 4-5-2016)

#### **Sec. 44-161. Drive-in theaters.**

Drive-in theaters may be constructed in light general commercial (GC) and highway service (HS) zoned districts under a conditional use permit and when complying with the following regulations:

- (1) The site must have direct access to a major public road.
- (2) In addition to the required setbacks from streets and highways, all yards shall be planted and maintained as a landscaped strip.
- (3) Theater screen(s) shall not be visible from any public street within one thousand five hundred feet (1,500'). In addition, vehicles parked in the viewing area shall be screened on all sides by a wall, fence or densely planted evergreen hedge not less than six feet (6') in height.
- (4) Loading space for patrons waiting admission shall be equal to twenty percent (20%) of the capacity of the drive-in. All entrances and exits shall be separated and internal circulation shall be laid out to provide one-way traffic.
- (5) Concessions shall be limited to patrons of the establishment.
- (6) No central loudspeakers shall be permitted, unless utilized for emergency purposes only.
- (7) All parking areas and accessways shall be adequately lighted; provided, however, that such lighting shall be shielded to prevent any glare or reflection onto a public street or onto neighboring properties.
- (8) Amusement parks or "kiddy-lands" shall be limited to patrons of the establishment.

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(Ord. No. 560, § 153.102(N), 4-5-2016)

**Sec. 44-162. Fences.**

- (a) **Applicability.** Fences may be constructed in all zoning districts. No fences shall be constructed or maintained within, or in any way that constricts or blocks a floodway.
- (b) **Fence Height.** Fences less than or equal to six feet in height shall not require a building permit or approval from the zoning administrator prior to construction. However, fences taller than six feet in height shall not be constructed before the property owner obtains: (1) an approved conditional use permit; and (2) an approved building permit, unless other specific zoning requirements are applicable
  - (i) A fence in the front yard of any residential zoning district shall not exceed a maximum height of four feet. In the case of a corner lot, a fence shall not exceed four feet in height when located in any front or side yard which is directly adjacent to a public right-of-way.
- (c) **Materials.** Fences shall be constructed in a structurally sound manner from materials which are commonly used for fencing and shall not be constructed from railroad ties, wood pallets, tires, rubble, or similar salvaged material. No person shall construct, maintain, or cause to be constructed or maintained any fence of barbed wire, razor wire, or electric unless specifically authorized in an approved development plan, through special approval by the City, or if used to control the movement of permitted livestock.
  - (i) Approved fencing materials shall include but not be limited to: wood, brick, stone, metal, split railing, chain-link, wire, vinyl, ornamental iron work, or other similar materials as approved by the Zoning Administrator.
  - (ii) Permanent posts or props used to provide additional structural support shall not be allowed on the outside of the fence.
- (d) **Maintenance.** Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become or remain in a condition of disrepair including noticeable leaning, missing sections, broken supports, non-uniform height, or any other unsafe condition. Owners of fences that are not maintained to this standard of reasonable repair shall, upon notice by the City, be required to (1) repair said fence(s) or (2) demolish said fence(s) and properly dispose of related debris within 30 days. Failure to comply within 30 days shall result in appropriate code enforcement actions.

(Ord. No. 560, § 153.102(B), 4-5-2016)

**Sec. 44-163. Flood hazard areas.**

Flood hazard areas are designated by the Federal Emergency Management Agency and may occur in all zoning districts, as codified in article II of chapter 12, which provides supplementary regulations for flood hazard areas.

(Ord. No. 560, § 153.102(C), 4-5-2016)

**Sec. 44-164. Home occupations.**

All home occupations shall obtain a business license from the City of Box Elder before commencing operations and shall meet the following criteria and minimum standards. A customary home occupation is a gainful occupation or profession conducted by members of the family residing on the premises and conducted entirely within the dwelling. In connection with a home occupation, no stock in trade shall be displayed outside the dwelling, and no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential unit, including permitted accessory buildings.

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- (1) The home occupation shall be conducted entirely within the dwelling unit and shall be conducted by the residents of the dwelling unit. No more than two non-family employees are allowed.
  - (2) With the exception of bed and breakfasts, the area set aside for a home occupation shall not exceed 33 percent of the total floor area of the residence, including attached garages. The permissible floor area includes that space necessary for storage of goods or products associated with the home occupation.
  - (3) Merchandise offered for sale shall be clearly incidental to the home occupation, provided that orders may be taken for later delivery to off-premises locations.
  - (4) No toxic, explosive, flammable, combustible, corrosive, etiological, radioactive, or other hazardous material shall be stored in the residence.
  - (5) No mechanical equipment other than that ordinarily utilized within a residence for household or hobby purposes shall be allowed.
  - (6) No activity shall be conducted which would interfere with radio or television transmission or reception in the area, nor shall there be any offensive noise, smoke, dust, or heat noticeable beyond the premises.
  - (7) No home occupation shall require internal or external alteration of the residence or other visible evidence of the conduct of such home occupation.
  - (8) The operation of the home occupation shall not cause or encourage excess vehicular or pedestrian traffic not ordinarily associated with the residential area in which the home occupation is conducted.
  - (9) If the home occupation is the type in which classes are held or instructions given, there shall be no more than six students on the premises at any one time.
  - (10) With the exception of bed and breakfast and daycare, operation of a home occupation involving customer, student, or employee access shall be restricted to the hours between 8:00 a.m. and 9:00 p.m.
  - (11) The following occupations subject to the requirements of this section are permitted as customary home occupations:
    - a. Antiques; provided, however, that outdoor display is prohibited.
    - b. Artist, sculptor, and author.
    - c. Barber shop and beauty shop operated by only two members of the residence.
    - d. Bed and breakfast.
    - e. Daycare.
    - f. Dressmaker, milliner, seamstress, tailor, and interior decorator.
    - g. Professional office of a physician, dentist, lawyer, engineer, architect or accountant within a dwelling occupied by the same, provided that not more than one paid assistant shall be employed.
    - h. Teaching, including tutoring, musical instruction or dancing, but limited to two pupils per teacher at any given time.
    - i. Not more than 25 percent of the floor area in the structure can be used for customary home occupations.

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- j. Any other similar use which the city council deems to be a home occupation.

(Ord. No. 560, § 153.102(D), 4-5-2016)

**Sec. 44-165. Junkyard, salvage yards, and automobile wrecking yards.**

(a) *Location.* Because of the tendency for salvage yards to promote the breeding of vermin, no such operation shall be permitted closer than 300 feet from any established residential district.

(b) *Screening.* All outdoor storage of salvage and wrecking operations shall be conducted entirely within an enclosed opaque fence or wall, excepting driveway areas, having a minimum height of eight feet (8'). Storage between the street and such fence or wall is expressly prohibited. Any fence or wall erected for screening purposes shall be within the buildable area of the lot and shall be properly painted or otherwise maintained in good condition.

(c) *Off-street parking.* As regulated in article V of this chapter .

(e) *Ingress and egress.* The number of vehicular access driveways permitted on any single street frontage should be limited to:

(1) One driveway where the parcel to be used has a maximum street frontage of one hundred feet (100') or less.

(2) Two driveways where the street frontage exceeds one hundred feet (100').

(3) Driveways used for ingress and egress shall be limited to thirty feet (30') in width, exclusive of curb returns.

(Ord. No. 560, § 153.102(O), 4-5-2016)

**Sec. 44-166. Manufactured home developments; Manufactured home subdivisions (MHS).**

(a) This section shall apply to all new MHS and MHS in existence prior to January 1, 2016, if the MHS is proposing any alterations or additions of any manner.

(1) In addition to complying with applicable subdivision regulations, the following minimum criteria and standards shall be met for siting a new MHS:

a. The MHS shall be located at least one-fourth mile from Interstate 90.

b. The MHS shall be located at least 200 feet from railroad tracks.

c. The visibility of the MHS from Interstate 90 shall be screened by topography or by screening with multiple intervening rows of trees and shrubs.

d. The MHS shall be located adjacent to, and take access from, a collector or arterial street.

e. The MHS shall not be located in a flood hazard area.

f. The MHS shall not be located in an accident potential zone.

g. The MHS shall not be located in a high AICUZ noise zone (>70 dB(A)).

h. All individual lots within MHS are required to be platted. An application showing all lots, access roads and other improvements shall be reviewed as required by the City. All MHS plats shall be approved by the City prior to being filed with the county.

i. Existing MHS shall be located in the GR-4 zoning district.

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- j. The MHS shall be connected, at the owner's expense and to the City's specifications, to the City's water and sanitary sewer services.
- (2) The MHS shall be located on a well-drained site; properly graded to ensure rapid drainage of the site upon which lots are to be provided. MHS shall not be located in a flood hazard area.
  - (3) Each MHS shall be permitted to display on each street frontage at each entrance to the property from the public right-of-way: one (1) on-premises identification sign.
  - (4) There shall be paved off-street parking spaces provided for each lot, which shall be on the same lot as the home served, and may be located in the required front or side yard of the lot. The parking spaces for adjoining lots shall not be continuous.
  - (5) There shall be established and maintained within each MHS an automobile parking area for the use of guests. The number of off-street parking spaces within this area shall be equal to one parking space for every four lots.
  - (6) Internal streets within an MHS shall be paved to a width of not less than 22 feet with curb and gutter and shall have no on-street parking. When approved by the Planning Commission, guest parking may be waived when paved access roads are constructed no less than 42 feet in width from back-of-curb to back-of-curb.
  - (7) Internal streets within an MHS shall have a curved radii of at least 50 feet at the MHS entrances and at all curves.
  - (8) Internal streets within an MHS shall have rolled curbing and sidewalks that are at least five feet wide on both sides of the street. Paved walking paths may be substituted for the sidewalks with Planning Commission approval.
  - (9) All MHS shall provide two unobstructed accesses from within the MHS to the public street.
  - (10) All lots shall be provided with access to an approved internal street system.
  - (11) Homes that cannot be connected to a sanitary sewer shall not be permitted in an MHS.
  - (12) All MHS shall provide adequate lighting for all parking areas, streets, and sidewalks. An engineered street lighting plan shall be submitted to the City's Public Works Department for approval prior to construction.
  - (13) All MHS shall provide public or private park and play areas for residents at a ratio of 500 square feet for every 20 lots, and bus shelters for students. Parks and play areas must be provided level ground and not located with a drainage or flood hazard area. In no case shall a park/play area be less than 5,000 square feet.
  - (14) All MHS shall provide a paved, outdoor storage area, enclosed on all sides with a six-foot high opaque privacy fence, for use by its residents for the storage of licensed boats, recreational vehicles, etc. The number of parking spaces within this area shall be equal to one parking space for every four lots. Each parking space shall be not less than 500 square feet.
  - (15) No accessory structure larger than 200 feet shall be allowed on each lot within an MHS without a conditional use permit. (Exception: manufactured home office/maintenance structures.)
  - (16) No manufactured home within a MHS shall be used for commercial, industrial or other nonresidential uses. Exception: Home occupations in compliance with Sec. 44-157 of this code.
  - (17) All MHS access roads, parking areas, drainage structures, water service lines, and sewer service lines shall be maintained in a workmanlike manner that does not promote repeated quality-of-service complaints by MHS tenants and visitors to the City.
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- (18) All manufactured and factory-built homes shall be skirted within 30 days of being placed in an MHS. Failure to meet this requirement by the homeowner is deemed to be a public nuisance. Such public nuisances shall be sufficient grounds for the City to terminate water and sanitary sewer services to the home and to revoke the approved occupancy of the home.
  - (19) A minimum of six inches (6") of compacted gravel or other suitable pavement material shall be installed on each lot as a pad for the manufactured or factory built home that will be occupying the site. The size of each pad shall be no less than 20 feet by 40 feet (20' x 40'), but in no case shall be less than the size of the home occupying the lot.
  - (20) All lots shall be provided with a minimum four-foot-wide concrete walkway extending from the parking area to the front entrance of the manufactured or factory built home.
  - (21) Each lot shall be provided with, at minimum, a ten-foot by ten-foot (10' x 10') accessory structure for the storage of lawn care equipment, etc.

(Ord. No. 560, § 153.102(E), 4-5-2016)

#### **Sec. 44-167. On-site sewage disposal systems.**

Any use involving a principal structure which is not served by a sanitary sewer, when approved by the City's Public Works Director, shall have an approved on-site sewage disposal system, in addition to other requirements that may be imposed by the City. Plans and specifications for the on-site sewage disposal system shall be approved by the State of South Dakota's Department of Water and Natural Resources and appropriate local officials. The approval may be made contingent upon an agreement that the structure(s) will be connected to a sanitary sewer when plans indicate that such sewer will be extended or constructed and become available. The approval may further stipulate an increase in lot size to ensure appropriate septic field, drainage and relation to abutting development or any classified stream.

(Ord. No. 560, § 153.102(F), 4-5-2016)

#### **Sec. 44-168. Private day nurseries and kindergartens.**

(a) A fenced play area shall be provided. No portion of the fenced play area shall be located closer than 35 feet to any public street.

(b) In addition to the requirements above, the facilities, operation and maintenance shall meet the requirements of the department of social services.

(Ord. No. 560, § 153.102(P), 4-5-2016)

#### **Sec. 44-169. Recreational vehicles (RVs).**

(a) Camping - see Division 5 - Temporary Camping at a Residence

(b) Habitation of an RV when used in conjunction with active building permit.

(i) An RV may be used for temporary living quarters for not more than eighteen (18) months while the occupant thereof is constructing a permanent dwelling on the same property in the following zoning districts: Agricultural District (AD), General Residential (Low-Density) (GR-1), and General Residential (Mod-Density) (GR-2).

(ii) Construction of the dwelling shall start within sixty (60) days of the RV's placement.

(iii) Only one (1) RV shall be permitted on any parcel of land during the construction or repair of a permanent dwelling. A repair shall be considered for the purposes of this subsection when the repair will cause a condition that disallows the owner from safely occupying the inside of the home during the construction. Repairs

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that are minor and can be confined and completed safely within the interior while being occupied shall not be considered.

(c) RV's shall not overhang onto sidewalks or public rights-of-way, nor project into required sight triangles.

(Ord. No. 560, § 153.102(G), 4-5-2016)

### **Sec. 44-170. Sheds, storage, and other accessory buildings.**

The square footage of accessory buildings, sheds or storage buildings allowed in the zoning districts shown on Appendix A Land Use Matrix shall be included in the calculation of the maximum lot coverage. Such structures shall be kept in a neat workmanlike manner. No accessory structures, sheds, or storage buildings shall be allowed on a parcel in a residential zoning district until the principal residential use has been established. Accessory buildings, sheds, or storage buildings shall not be located in any required front yard.

(Ord. No. 560, § 153.102(I), 4-5-2016)

### **Sec. 44-171. Swimming pools.**

The following regulations shall apply to swimming pools:

(1) A private swimming pool shall be any pool or open tank not located within a completely enclosed building and containing or normally capable of containing water to a depth at any point greater than 1½ feet. Private swimming pools are permitted in any residential district, provided:

- a. The pool is intended and is to be used solely for enjoyment of the occupants of the property on which it is located and their guests.
- b. No swimming pool or part thereof, excluding aprons, walks and equipment rooms, shall protrude into any required front or side yards.
- c. The swimming pool area shall be so walled or fenced so as to prevent uncontrolled access by children from the street or from adjacent properties. The fence or wall shall be maintained in good condition.

(2) A community or club swimming pool not open to the public shall be any pool constructed by an association of property owners, or by a private club for use and enjoyment by members of the association or club and their families and guests. Community and club swimming pools shall comply with the following conditions and requirements:

- a. The pool is intended solely for the enjoyment of the members and families and guests of members of the association or club under whose ownership or jurisdiction the pool is operated.
- b. The pool and accessory structures thereto, including the areas used by the bathers, shall be not closer than 50 feet to any property line of the property on which it is located.
- c. The swimming pool and all of the area used by the bathers shall be so walled or fenced so as to prevent uncontrolled access by children from the street or adjacent properties. The fence or wall shall be not less than five feet in height and maintained in good condition. The area surrounding the enclosure, except for the parking spaces, shall be suitably landscaped with grass, hardy shrubs and trees, and maintained in good condition.

(Ord. No. 560, § 153.102(W), 4-5-2016)

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## **Sec. 44-172. Telecommunications facilities (TFs).**

- (a) All proposed support structures shall be designed to be the minimum height needed to meet the service objectives of the applicant. The maximum height of a TF shall be less than 100 feet above the pre-construction level of the grade adjacent to the support structure location. This height shall be an exception to the zoning district's maximum structure height. However, a variance may be granted to allow a maximum height of up to 150 feet if the applicant's engineer (PE) licensed in the State of South Dakota certifies in writing that such a height is the sole viable option available to site the TF within City limits.
- (b) The minimum setback between each TF support structure and all surrounding property lines, overhead utility or transmission lines, other TFs, wind turbine towers, electrical substations, public roads, and dwelling units shall be equal to no less than 1.1 times the system height (measured from the grade adjacent to the tower pad to the highest system component, including antennas).
- (c) The building permit application for a TF, in addition to the requirements of this code, shall include structure plans prepared by an engineer (PE) licensed in the State of South Dakota and a certification by the PE that the structure has been designed to withstand the wind, snow, and ice loads typical of this area. The building permit application shall be submitted with the CUP application for a new tower. The building permit application shall show the number and type of proposed antennas and their height above ground level, including the proposed placement of antennas on the support structure.
- (d) Existing TF shall be colocated if feasible. All new TF shall be designed and made available for colocation to discourage the proliferation of TF. If colocation is not feasible, the CUP applicant shall submit a written certification of why colocation is not a viable option and that explains the alternatives considered and why those alternatives were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing support structure is listed among the alternatives, the applicant must specifically address why the support structure is not a viable option.
- (e) The application shall be accompanied by a letter of authorization from the property owner granting the applicant the authority to apply for the permit.
- (f) A proposed TF support structure intended to be built as a monopole must accommodate at least three telecommunications providers, and have a site area surrounding the monopole of sufficient size to accommodate accessory equipment for at least three telecommunications providers.
- (g) A proposed TF support structure intended to be built as a tower must accommodate at least four telecommunications providers, and have a site area surrounding the tower of sufficient size to accommodate accessory equipment for at least four telecommunications providers.
- (h) All proposed TF support structures shall be designed as stealth telecommunications facilities.
- (i) All ground- or pad-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. If the TF is located in a flood hazard area, the equipment shall be located more than three feet above the base flood elevation at the site.
- (j) All accessory equipment, including any buildings, cabinets, or shelters, shall be used only to house equipment and other supplies in support of the operation of the TF or support structure. Any equipment not used in direct support of such operation shall not be stored on the site.
- (k) All TFs shall comply with the setback and yard requirements of their zoning districts. TFs may be located on a parcel containing another principal use on the same site.
- (l) The visual impact of all accessory equipment above ground level shall be mitigated by fencing or landscaping. A mitigation plan shall be submitted with the CUP application. Fencing and landscaping materials shall be installed and maintained in a workmanlike manner.

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(m) All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on any TF structure that is visible from any public road shall be prohibited.

(n) All electrical wires associated with a TF shall be buried underground.

(o) A TF support structure shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight feet above adjacent grade.

(p) A TF shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.

(q) A TF shall comply with all applicable state and local construction and electrical codes and the National Electrical Code.

(r) A TF shall not be installed until evidence has been provided to the planning coordinator that the FAA has been informed of the applicant's intent to install a TF.

(s) A TF that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. An abandoned TF shall be deemed a public nuisance.

(t) A COW may be placed at any location within the city without a CUP or building permit for not more than 200 days from the date of a declaration of an emergency by the mayor.

(u) A COW may be placed at any location within the city without a CUP or building permit for not more than 14 days to serve a community event declared as such by the council.

(Ord. No. 560, § 153.102(K), 4-5-2016)

#### **Sec. 44-173. Tiny homes.**

- (a) Purpose. The purpose of the section is to provide alternative and affordable housing options within specified areas in the City for the permitting of single family homes which are smaller than 400 square feet in size, while maintaining the desired character of the neighborhood.
- (b) Scope. The requirements of this section shall apply to all tiny homes located within the City. Such requirements shall not be construed to prohibit or limit other applicable provisions of this chapter, this code, and other State or Federal laws.
- (c) Conditional use. Subject to the development standards listed in this chapter, a tiny home shall be allowed as a conditional use in the following zoning districts:
  - (i) GR-4: Residential - manufactured (high-density)
- (d) Development standards. The development standards set forth in this section shall apply to all tiny homes:
  - (i) Setbacks and lot coverage limitations. A tiny home shall meet the same requirements as those outlined for a primary dwelling unit located in the GR-4 zoning district.
  - (ii) Compliance with building codes required. Tiny homes shall meet all requirements of the currently adopted building codes including egress, and life safety requirements.
  - (iii) Tiny homes shall be connected to an approved water supply source, sewer/septic, and power (i.e. electric or solar with battery backup) utilities.
  - (iv) Tiny homes shall be placed on a permanent foundation and all undercarriage, foundation system, and external elements below the finished floor shall be screened or constructed with architectural elements that complement the main structure.
  - (v) Tiny homes shall not be required to have a garage or carport. Off-street parking shall be provided in accordance with Article V. Off-Street Parking.

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- (vi) Tiny homes shall have a minimum of three (3) of the following design features:
    1. Upgraded entry feature (i.e. transom, side windows around the entry door, etc.);
    2. Exterior accessories (i.e. permanent shutters, fixed sunshade devices, etc.);
    3. Pitched roofline (4:12 pitch or greater);
    4. Dormers;
    5. Skylights;
    6. Porch or deck;
    7. Other design features as approved by the Zoning Administrator.
    8. The provision of more than one (1) item within the same category of design features may be counted independently towards the overall minimum requirements (i.e. including both shutters and a sunshade.)
  - (vii) Mechanical equipment shall be incorporated into the structure of tiny homes, or if placed on the ground shall be screened from view by solid fencing and/or decorative plantings. Mechanical equipment shall not be located on the roof.
- (e) Tiny home community/village requirements. A tiny home community/village shall be allowed as a conditional use in the Planned Development (PD) zoning district. In addition to meeting all requirements of the PD zoning district, the following requirements pertaining specifically to tiny home community/villages shall be met:
- (i) Each owner of a tiny home community/village shall designate a person or company to serve as the responsible agent. The responsible agent shall:
    1. Have access and authority to assume management of the community/village and take remedial measures.
    2. Always be available to respond to potential issues and violations related to these regulations in a timely manner. For the purposes of this section, a “timely manner” shall mean within 24 hours of notification by the City.
    3. The owner shall notify the Zoning Administrator in writing of any modification to the responsible agent within five (5) days of any such modification.
  - (ii) A ten (10) foot landscape buffer area shall be required where the tiny home community/village is adjacent to a public street/sidewalk.
  - (iii) A tiny home may not be located closer than ten feet (10’) to the property line. The minimum distance between tiny homes and/or attached/detached accessory structures shall be ten feet (10’).
  - (iv) Access to all tiny homes shall be from the interior of the tiny home community/village. There shall be no individual access to any tiny home from a public street.
    1. All interior drives or roadways within the tiny home community/village shall be paved with a hard surface and be a minimum width of thirty feet (30’) to provide for two-way traffic or as required by the Internal Fire Code, whichever is greater.
    2. The width of the roadway shall be exclusive of curbs and walkways, measured from the edge of pavement to the edge of the pavement.
  - (v) Off-street parking shall be required.
    1. Two (2) paved 10’ x 20’ parking spaces shall be required for each tiny home located within the tiny home community/village.
    2. One (1) paved 10’x20’ visitor parking space shall be required for each eight (8) tiny home located within the tiny home community/village.

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- (vi) Designated areas for storage (i.e. boats, recreational vehicles, trailers, vehicles, etc.) within the tiny home community/village shall be provided for the sole use of the residents of the community/village. Storage areas shall be completely screened by a six-foot (6') solid, decorative fence.
  - (vii) A minimum of 10% of the total area shall be designated as permanent open space.
    - 1. Where phases are proposed for the tiny home community/village, the percentage of open space in each phase shall meet or exceed the minimum total for the specified phase area.
    - 2. The open space shall be available through the use of easements to all residents of the development.
    - 3. Streets, driveways, parking areas, buffer areas, recreation vehicle storage, and buildings shall not be included in calculating the size of permanent open space.
  - (viii) The site plan shall provide for a system of pedestrian circulation within the community/village. The system shall connect with existing sidewalks, if any are adjacent to the property, and shall be designed to link residents with recreation facilities, school bus stops, etc.
    - 1. Pedestrian ways may take the form of sidewalks or walking paths with a minimum width of five feet (5').
  - (viiii) All utilities shall be placed underground. Placement of utilities, including master meters, shall meet all requirements of the City, as well as the respective utility companies.
  - (x) All refuse collection areas shall be completely enclosed via a solid six-foot (6') wall and view obstructing gate and located on a concrete surface. If the refuse collection area can be viewed directly from the exterior of the tiny home community/village from adjacent public rights-of-way, the enclosure shall also be screened with landscaping and plantings on its viewable sides.
    - 1. Refuse collection areas shall be readily accessible to refuse collection vehicles, without substantial encumbering of adjacent parking and vehicular access.
  - (xi) Provisions for on-site stormwater retention, drainage, and off-site stormwater drainage both entering and leaving the property shall be as required by the City's Engineer.
  - (xii) Common facilities and neighborhood amenities (i.e. recreational facilities, sports courts, laundry facilities, or similar) may be permitted provided that sufficient off-street parking is provided in addition to the required spaces noted above.
    - 1. Outdoor lighting shall be provided at sufficient levels to ensure public safety and shall be contained to the site.

#### **Sec. 44-174. Vacation home rental (VHR).**

(a) Purpose. The purpose of this section is to establish regulations and standards for owners of vacation home rental (VHR) properties within the City's jurisdiction for the protection of the public's health, safety, and welfare, and to minimize the detrimental impacts of such use to surrounding properties.

(b) All Vacation Home Rentals shall obtain a Business License from the City of Box Elder before commencement of business.

#### **Sec. 44-175. Yard, building setback and open space exceptions, generally.**

The following requirements are intended to provide exceptions or qualify and supplement, as the case may be, the specific district regulations set forth elsewhere herein:

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- (1) No yard, open space or lot area required for a building or structure shall, during its life, be occupied by any other building or structure except:
- a. Awnings and canopies, as provided for in the International Building Code.
  - b. Bay windows and chimneys, not to exceed two feet, in front and rear yards.
  - c. Driveways, curbs, sidewalks and steps; provided, however, steps or stairs to dwelling, non-enclosed, not to exceed four feet.
  - d. Fences, walls and hedges, subject to the regulations as set forth in this section.
  - e. Flagpoles.
  - f. Garbage disposal equipment, non-permanent.
  - g. Landscape features, planting boxes and recreational equipment.
  - h. Open fire escapes may extend into any required yard not more than five feet.
  - i. Parking spaces subject to the regulations set forth in article V of this chapter.
  - j. Signs, subject to the regulations set forth in chapter 30.
  - k. Terraces (open) and porches (non-enclosed) not to exceed six feet in front or rear yards.
  - l. Trees, shrubs, flowers and other plants subject to the vision requirements in this section.
  - m. Eaves and overhangs may extend up to 24 inches into any required yard.
- (2) The following regulations provide for the maximum safety of persons using sidewalks and streets, and for the maximum enjoyment of the use of property:
- a. On any corner lot where a front and side yard is required, no opaque wall, fence, sign, structure, or any plant growth which obstructs sight lines at elevations between 3½ feet and ten feet above the crown of the adjacent roadway shall be placed or maintained within a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of 25 feet along the front and side lot lines and connecting the points so established to form a sight triangle on the area of the lot adjacent to the street intersections. See sight triangle definition.
  - b. In any required front yard no fence, wall, hedge, or yard ornament shall be permitted above the height of four feet.
- (3) The purpose here is to clarify certain conditions pertaining to the use of lots and access points.
- a. In residential districts, if 25 percent or more of the lots on one side of the street between two intersecting streets are improved with buildings all of which have observed an average setback line of greater than 25 feet, and no building varies more than five feet from this average setback line, then no building shall be erected closer to the street line than the minimum setback so established by the existing buildings; but, this regulation shall not require a front yard of a greater depth than 50 feet.
  - b. Division of a lot. No recorded lot shall be divided into two or more lots by platting or metes and bounds description unless such division results in the creation of lots each of which conforms to all of the applicable regulations of the district in which the property is located. No reduction in the size of a recorded lot below the minimum requirements of this article shall be permitted.

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c. Dwellings on small lots. Where there are existing recorded lots which do not meet the minimum lot area requirement and are under separate ownership, single-family dwellings only may be constructed as long as side yards shall be not less than five feet, the sum of the side yards shall not be less than ten feet, and as long as all other requirements, except lot size, are met.

d. Principal uses without buildings. Where a permitted use on land involves no structures, such use, excluding agricultural uses, shall nonetheless comply with all yards and minimum lot area requirements applicable to the district in which it is located, and any other license or permit applicable to that particular use shall be obtained.

e. An attached or detached private garage which faces on a street shall not be located closer than 25 feet to the street right-of-way line. Where the garage faces a side street on a corner lot, this distance shall be no less than 18 feet.

(Ord. No. 560, § 153.102(S), 4-5-2016)

**Secs. 44-176—44-205. Reserved.**

*DIVISION 5. TEMPORARY CAMPING AT A RESIDENCE*

**Sec. 44-206. Purpose.**

The purpose of these provisions is to establish and regulate temporary non-public camping activities or camping not otherwise subject to state regulation within the City. Any homeowner seeking to provide temporary non-public camping as described in this division shall be subject to the requirements of this division. Nonprofit organizations and licensees exempted from state campground license requirements by SDCL 34-18-20 that conduct non-public camping activities within the City shall be subject to the requirements of this division.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-207. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Camper* means an individual.

*Camping unit* means any trailer, tent camper, camper, camping cabin, tent, recreational park trailer, self-contained recreational vehicle or other equipment that may be used by the traveling public at individual campsites located at campgrounds or areas used by the public as campgrounds.

*Campsite* means a specific parcel of land in a campground intended for occupancy and use by a camping unit or units.

*Residential parcel* means a plot of land within the City shown on the equalization office records to be taxed as one parcel, containing a single-family home, used or occupied by the owner as a residence year-round together with any accessory buildings, and including such open spaces as may be required under the provisions of this division, having its principal frontage on a public highway, road, street or private road or right-of-way as meets the requirements of zoning and subdivision regulations in city ordinances.

*Temporary camping*, as used in this section, means camping for a period not to exceed 15 consecutive days within any 30-day period.



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*Temporary structure* means any structure, building, enclosure, weather shelter or provision of water, electrical sewer or other utility services which is not placed on a foundation and is utilized for a period of less than 30 days.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-208. Activity authorized.**

Any non-public camping on a residential parcel, or public camping limited to no more than three camping units, occurring within the City, shall require that the property owner limit those activities in compliance with the requirements of this division unless otherwise licensed by the state. Any non-public campsite or public camping with one camping unit shall be located only on a residential parcel having a single-family home, and shall only be for use by camping units, and shall not include the use of any temporary structure. No camping shall be permitted on any undeveloped lot, parcel, or nonresidential parcel adjoining the residential parcel as defined herein, or on any other unimproved or vacant lot or nonresidential parcel.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-209. Density limitations.**

No temporary non-public camping activities permitted by this division shall authorize more than three (3) camping units to stay on any residential parcel. In addition to meeting all setback requirements stated in this division, non-public camping activities shall be located at one campsite on the residential parcel.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-210. Setback from public streets, sidewalks and lot lines.**

Any camping unit located within a campsite as permitted by this division shall have a front setback at least twenty five (25) feet from the back of the sidewalk or the front lot line and shall be located so as to allow a ten (10) foot access lane to an entry door of the residence. Any camping unit allowed by this division shall not be located within twenty five (25) feet of any public right-of-way, any easement dedicated for public use, or any publicly owned property.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-211. Campsite area.**

The campsite area is defined as the area excluding a combination of all setback and access requirements on the subject residential parcel. All camping units, equipment, storage containers, food and beverage items, temporary sanitation facilities, cooking area and related material or equipment shall be located within this campsite area. Only one campsite area per residential parcel shall be allowed.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-212. Parking.**

The homeowner shall provide sufficient off-street temporary parking for all those persons provided temporary non-public camping on that residential parcel.

(Ord. No. 560, § 153.102(X), 4-5-2016)

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**Sec. 44-213. Soil and groundcover requirements.**

The soil must provide sufficient slope to ensure that no drainage or runoff caused by camping activities will go onto the adjoining property. Groundcover shall be grass, landscaping or hardscape.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-214. Water services and plumbing.**

No permanent separate, nonresidential water supply or service facilities shall be permitted to be constructed or located outside the residence on the parcel. During the period of temporary non-public camping, the homeowner may provide temporary water service from the residence as may otherwise be permitted on a construction site by other provisions of the city ordinances

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-215. Electrical systems.**

No permanent separate, nonresidential electrical service facilities shall be permitted to be constructed or located outside the residence on the parcel. During the period of temporary non-public camping, the homeowner may provide a temporary electrical service as permitted on a construction site by the IBC as adopted under other provisions of the City ordinances.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-216. Wastewater disposal, gray water disposal and portable toilets.**

- (a) No permanent separate, nonresidential waste water or gray water facilities shall be located outside the residence on the parcel where the campsite is located. During the period of temporary non-public camping, the homeowner may provide temporary self-contained portable toilet facilities of the type required to be provided on a construction site by other provisions of the city ordinances No waste water or gray water resulting from temporary camping shall be permitted to be disposed of in any storm sewer drainpipe or other drainage.
- (b) All waste water and gray water shall be disposed of only at an approved dump station or similar facility open to the public.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-217. Toilet and bathing facilities.**

No permanent separate, nonresidential toilet and bathing facilities shall be permitted to be located outside the residence on the parcel. All waste water or gray water resulting from any temporary toilet or bathing facilities for camping shall be disposed of only at an approved dump station or similar facility open to the public, or by the use of a temporary type facility permitted on a construction site by the IBC as adopted under other provisions of the city ordinances and plumbing code adopted by the state.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-218. Fire protection/prevention.**

The open fire requirements of this Code shall remain in effect at all times at the residential parcel at which any temporary non-public camping may occur. No open fire of any kind shall be permitted during the period in which a burning ban is in effect within the city.

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(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-219. Barbeque pits, fireplaces, stoves, cooking fires, etc.**

During the period of temporary camping, only a temporary, contained fire structure of a type permitted by other provisions of this Code shall be allowed.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-220. Garbage and rubbish storage, disposal and vermin control.**

The homeowner shall provide the necessary temporary sanitation and garbage service of the type permitted.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Sec. 44-221. Camping cabins.**

Storage sheds, camping cabins as defined in SDAR 44:02:12:24, or any temporary structure intended for similar or like use, shall not be permitted at any temporary campsite as defined in this section.

(Ord. No. 560, § 153.102(X), 4-5-2016)

**Secs. 44-222—44-252. Reserved.**

*DIVISION 6. SUPPLEMENTAL REGULATIONS FOR RV, CAMPGROUND AND  
RECREATIONAL VEHICLE PARKS*

**Sec. 44-253. Definitions.**

- (a) *RV, campground and recreational vehicle parks means* a parcel of land that is intended to provide for permanent and seasonal campgrounds and recreational vehicle parks. Facilities within this designation shall be offering for rent spaces for overnight camping and for overnight parking of recreational vehicles such as camping trailers, motorhomes and coaches. Any facility designated herein shall comply with all applicable laws and regulations, including any state department of health requirements for the operation of a campground, recreational vehicle park or other such facility.
- (b) *Setbacks* shall be the distance from any facility's property line to camping or parking sites and shall not include access roads or driveways.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-254. Permitted uses.**

- (a) Recreational vehicle parks.
- (b) Small retail convenience stores providing products and services normally associated with a campground or recreational vehicle park.
- (c) Recreational vehicle dumping sites which are connected to the City's wastewater collection system and which have been approved by the City Public Works Director and appropriate fees are paid.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

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**Sec. 44-255. Uses permitted on review.**

Temporary vending for a period not to exceed 14 calendar days per year in conjunction with a specific event may be permitted on review.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-256. Area regulations.**

- (a) A campground or recreational vehicle park shall have a minimum area of two acres.
- (b) Retail and temporary vending area shall not exceed a total of 2,000 square feet or one percent of the gross area of the campground or recreational vehicle park, whichever is greater.
- (c) Any facility shall have a minimum front setback of twenty five (25) feet from the public right-of-way.
- (d) Any facility shall have a minimum side yard setback of ten (10) feet. If the side yard abuts a public right-of-way such as a side street, it shall have a minimum side yard setback of twenty five (25) feet. If the side yard abuts any residential zoning, it shall have a minimum side yard setback of fifty (50) feet.
- (e) Any facility shall have a minimum rear yard setback of ten (10) feet. If the rear yard abuts any residential district, it shall have a minimum rear yard setback of twenty five (25) feet.
- (f) Any facility shall have a minimum of one hundred (100) feet of frontage on a dedicated public right-of-way.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-257. Height regulations.**

No structure shall exceed 2½ stories in height.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-258. Off-street parking.**

Each facility or campground within this district shall provide sufficient on-premises parking, maneuvering, and loading space so that all parking, maneuvering and loading of camping units incidental to the use of the facility is undertaken without the use of any public right-of-way, street, alley or any private property not a part of the facility.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-259. Utility requirements.**

Each campground, recreational vehicle park or any other such type facility located within this district shall be connected to the City's water supply, municipal wastewater collection system, and will be serviced by a private waste collection agency.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-260. Screening.**

Each campground, recreational vehicle park or any other such type facility located within this designation, which abuts a residential district shall provide a screening in the form of a solid fence or hedge, no less than six feet in height, or provide for other appropriate means of shielding the facility from the adjacent residential properties.

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Plans for compliance with this screening requirement shall be approved by the Planning Commission and City Council prior to beginning construction of the facility.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-261. Signage.**

Total signage not exceeding one square foot of surface for each one lineal foot of lot frontage shall be allowed. Signs erected in conjunction with a facility permitted by this chapter shall comply with any and all applicable provisions of chapter 30.

(Ord. No. 560, § 153.102(Y), 4-5-2016)

**Sec. 44-262. Floodplain requirements.**

See Chapter 12, Article II. Flood Damage Prevention and Control for requirements.

(a)

**Secs. 44-263—44-287. Reserved.**

***ARTICLE IV. WIND ENERGY CONVERSION SYSTEMS (WECS) (WIND FARMS)***

***DIVISION 1. GENERALLY***

**Sec. 44-288. Scope and purpose.**

The purpose of this article is to ensure that the placement, construction and permitting of any wind energy conversion system (WECS) facility that is within the jurisdictional boundaries of the City, is consistent with the City's land use policies and is subject to reasonable conditions that will protect the public health and safety.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-289. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means any person filing an application under this article.

*Commercial wind energy system facility (CWES) (wind farm)* means an electrical generating facility, placed on 80 acres or more, whose main purpose is to supply electricity; consisting of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

*Engineering certification* means that for all commercial wind generators or meteorological towers, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the commercial wind generators or meteorological towers is within accepted professional standards, given local soil and climate conditions.

*Facility owner* means the entity having an equity interest in the wind generator facility, including his respective successors and assigns.

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*Hub height* means the distance measured from the surface of the tower foundation to the height of the wind turbine hub, to which the blade is attached.

*Meteorological tower* (temporary or permanent), for the purposes of this WECS ordinance, means those towers which are erected primarily to measure wind speed and directions plus other data relevant to siting or proposed WECS. Meteorological towers do not include towers and equipment used by airports, the state department of transportation, National Weather Service or other similar applications to monitor weather conditions. Meteorological towers, whether temporary or permanent, must meet FAA requirements.

*Non-participating landowner* means any landowner except those on whose property all or a portion of a WECS is located pursuant to an agreement with the facility owner or operator.

*Occupied building* means a residence, school, hospital, church, public library or other building used for public gathering that is occupied or in use when the permit application is submitted.

*Operator* means the entity responsible for the day-to-day operation and maintenance of the WECS.

*Rural wind turbines* means small to medium size wind energy systems installed for on-site use on agricultural zoned property for supplying electricity or other uses, not to exceed 200 feet in height.

*Small residential wind turbine/small wind energy system (SWES)* means small wind energy systems installed to reduce the on-site consumption of utility supplied electricity. For property sizes between three acres to ten acres the tower height shall be limited to 60 feet and property sizes of greater than ten acres up to 40 acres shall have a maximum tower height of 80 feet.

*Tower height* means the height above grade of the fixed portion of the tower, excluding the wind turbine itself.

*Turbine* means the parts of the WECS including the blades, generator and tail.

*Turbine height* means the distance measured from the surface (grade) of the tower foundation to the highest point of the turbine rotor plane.

*Wind energy conversion system (WECS)* means an electrical generating facility comprised of one or more wind turbines and accessory facilities, including, but not limited to, power lines, transformers, substations and meteorological towers that operates by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid. The term "WECS" is synonymous for wind turbine or wind generator.

*Wind turbine* means a wind generator conversion system that converts wind generator into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.  
(Ord. No. 560, § 153.102(Z), 4-5-2016)

#### **Sec. 44-290. Application.**

This article applies to all wind generators, wind generator facilities and temporary or permanent meteorological towers proposed to be constructed or placed after the effective date of the ordinance from which this article is derived, and also applies to stand-alone wind turbines constructed primarily for residential or rural use.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

#### **Sec. 44-291. Permitted use.**

A WECSr shall be considered a permitted use if approved by the City Council with proper documentation required by this article.

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- (a) The maximum height of a WECS shall be less than 75 feet above the pre-construction level of the grade adjacent to the tower location. This height shall be an exception to the zoning district's maximum structure height.
  - (b) The vertical distance from the adjacent grade to the tip of the wind turbine blade when the blade is at its lowest point must be at least 25 feet.
  - (c) The owner of a WECS shall take such reasonable steps as are necessary to prevent, mitigate, and eliminate shadow flicker (the shadow cast by the rotating blade of the WECS) on an occupied building on adjacent property.
  - (d) The owner of a WECS shall minimize or mitigate interference with electromagnetic communications, such as radio telephone, microwave, or television signals caused by the WECS.
  - (e) A WECS shall not generate more than 60 dB of sound, as measured at the closest portion of the nearest inhabited dwelling when the wind speed is less than 20 miles per hour.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Secs. 44-292—44-315. Reserved.**

*DIVISION 2. PERMITS*

**Sec. 44-316. Permit requirement.**

- (a) No WECS, or addition to a WECS shall be constructed or located within the jurisdictional boundaries of the City, unless a permit has been issued to the facility owner or operator approving construction or alteration of the WECS under this division.
- (c) Any physical modification to an existing and permitted WECSy that materially alters the size, type and number of wind turbines or other equipment shall require a permit modification under this division. Like kind replacements shall not require a permit modification.
- (d) WECSs shall only be placed on agricultural zoned property of 40 acres or more.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-317. Permit application.**

- (a) The permit application shall demonstrate that the proposed WECS will comply with this division.
- (b) The application shall contain the following:
  - (1) A narrative describing the proposed WECS, including an overview of the project; the project location; the approximate generating capacity of the WECS; the approximate number, representative types and height or range of heights of wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities. Meteorological tower applications must include a decommissioning time table for data collection. Temporary meteorological towers will be permitted for a maximum duration of five (5) years.
  - (2) An affidavit or similar evidence of agreement between the property owner and the facility owner or operator demonstrating that the facility owner or operator has the permission of the property owner to apply for necessary permits for construction and operation of the WECS.
  - (3) Identification of the properties on which the proposed WECS will be located, and the properties adjacent to and within a 1,000-foot radius where the WECS will be located.

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- (4) A site plan showing the planned location of each wind turbine (or meteorological tower), property lines, setback lines, access road and turnout locations, substations, electrical cabling from the WECS to the substations, ancillary equipment, buildings, and structures, including meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
  - (5) Documents related to decommissioning of all equipment.
  - (6) Other relevant studies, reports, certifications and approvals as may be reasonably requested by the City to ensure compliance with this division.
  - (7) A copy of the agreement between the facility owner and the affected local power company, (if applicable).
- (c) Within 30 days after receipt of a permit application, the Planning and Zoning Office will determine whether the application is complete and advise the applicant accordingly.
  - (d) The applicant must appear before the City Council at the regularly scheduled meeting. The applicant shall participate in the hearings and be afforded an opportunity to present the project to the public and the City Council, and answer questions about the project. The public shall be afforded an opportunity to ask questions and provide comment on the proposed project.
    - (1) Neighbors within a 1,000 feet of the property of the proposed WECS must be notified by certified mail at least 10 calendar days in advance of any City Council meeting along with a return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction and also:
      - a. Given the telephone number and address of the facility owner or operator; and
      - b. Informed of his right to participate in the city common council proceedings.
    - (2) A list of the property owners who received the notice, together with copies of the certified receipts for the notice sent to the listed property owners.
    - (3) Notice shall also be provided by the applicant to all communication tower operators within two miles of the proposed WECS location of the applicant's intent.
  - (e) Within 30 days after the close of hearing or at the hearing, the City Council will make a decision whether to issue or deny the permit application.
  - (f) Throughout the permit process, the applicant shall promptly notify the City of any changes to the information contained in the permit application.
  - (g) Changes to the pending application that do not materially alter the initial site plan may be adopted without a renewed public hearing.
- (Ord. No. 560, § 153.102(Z), 4-5-2016)

**Secs. 44-318—44-337. Reserved.**

***DIVISION 3. DESIGN AND INSTALLATION OF WECS***

**Sec. 44-338. Design safety certification.**

The design of the WECS shall conform to applicable industry standards, including those of the American National Standards Institute. The applicant shall submit an engineering certification for all commercial wind generators or meteorological towers, the manufacturer's engineer or another qualified engineer shall certify that



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the turbine, foundation and tower design of the wind generators or meteorological tower is within accepted professional standards, given local soil and climate conditions.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-339. Construction code.**

To the extent applicable, the WECS shall comply with all applicable state and local construction codes.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-340. Controls and brakes.**

All WECS shall be equipped with an electronic shut-down or with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) or mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-341. Electrical components.**

- (a) All applicants intending to install an interconnected WECS shall notify the appropriate utility company. Off-grid systems shall be exempt from this requirement.
- (b) All electrical components of a WECS shall conform to the National Electrical Code and to relevant and applicable local, state and national codes, along with the standards set forth by the affected local power company.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-342. Visual appearance; power lines.**

- (a) Wind turbines shall be a non-obtrusive color such as white, off-white or gray and shall remain painted or finished in the color or finish that was originally applied by the manufacturer unless otherwise stipulated in the CUP.
- (b) WECS shall not be artificially lighted, except to the extent required by the Federal Aviation Administration (FAA) or other applicable authority that regulates air safety, or the City Council.
- (b) WECS shall not display advertising, except for reasonable identification of the turbine manufacturer, facility owner and operator. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on any WECS structure that is visible from any public road shall be prohibited.
- (c) On-site transmission and power lines between wind turbines shall, to the maximum extent practicable, be placed underground. All ground- or pad-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access. If the WECS is located in a flood hazard area, the equipment shall be located more than three feet above the base flood elevation at the site.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

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**Sec. 44-343. Warnings.**

A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-344. Climb prevention/locks.**

WECS shall not be climbable up to 15 feet above ground surface. All access doors to wind turbines or meteorological towers and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-345. Decommissioning.**

Any and all WECSs which are not used for 12 successive months shall be deemed abandoned, a public nuisance, and shall be dismantled, including excavating and removing concrete footings to a depth of four feet and all materials must be removed from the property at the expense of the facility owner or property owner. Facility owners of WECSs must provide a copy of financial surety and/or an insurance certificate which will cover the decommissioning of each WECS at the facility or wind farm, to the City Finance Office. For every WECS that is decommissioned or removed within the jurisdictional boundaries of the City, the facility or tower operator or owner must notify in writing to the City their intent to decommission or remove the system or tower, within 14 calendar days of the date the equipment or tower is to be decommission or removed by certified mail and must include a copy of the permit along with the written notification.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Secs. 44-346—44-363. Reserved.**

*DIVISION 4. SETBACKS FOR WECS*

**Sec. 44-364. Occupied buildings.**

Wind turbines shall be set back from structures, including the nearest occupied building or another wind turbine, a distance not less than 1.1 times the turbine height. The setback distance shall be measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building. Wind turbines or meteorological towers shall be set back from the nearest occupied building located on a non-participating landowner's property a distance of not less than five times the hub height, (or in the case of a meteorological tower, the entire height) as measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-365. Property lines.**

All wind turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements per related zoning district or 1.1 times the turbine height or the total height of the meteorological tower, whichever is greater. The setback distance shall be measured to the center of the wind turbine or the meteorological tower base.

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(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-366. Public roads.**

All wind turbines shall be set back from the nearest public road a distance of not less than 1.1 times the turbine height or for meteorological towers, the total height of the tower, as measured from the right-of-way line of the nearest public road to the center of the wind turbine or meteorological tower base or the minimum setbacks stated for the zoning district, whichever is greater.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-367. Applicable FAA regulations.**

WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to commercial or private airports including the Rapid City Regional Airport and Ellsworth Air Force Base.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Secs. 44-368—44-392. Reserved.**

*DIVISION 5. USE OF PUBLIC ROADS FOR WECS*

**Sec. 44-393. Documentation; bond; damage.**

- (a) The applicant shall identify all state and local public roads to be used within the jurisdictional boundaries of the City to transport equipment and parts for construction, operation or maintenance of the WECS. The City, highway authority, or a qualified third party engineer authorized by the City shall document road conditions prior to construction. The same parties shall document road conditions again 30 days after construction is complete or as weather permits.
- (b) The City shall require that the roads to be used be bonded by the applicant.
- (c) Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense and repairs must be approved by the city highway authority.
- (d) The applicant shall demonstrate that it has appropriate financial assurance to insure the prompt repair of damaged roads either through a bond or an irrevocable letter of credit.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Secs. 44-394—44-414. Reserved.**

*DIVISION 6. LOCAL EMERGENCY SERVICES FOR WECS*

**Sec. 44-415. Project summary; emergency response plan.**

The applicant shall provide a copy of the project summary and site plan also to local emergency services, including volunteer fire departments. Upon request, the applicant shall cooperate with the City and other emergency services to develop and coordinate implementation of an emergency response plan for the WECS

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Secs. 44-416—44-443. Reserved.**

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***DIVISION 7. REGULATIONS FOR RURAL WIND TURBINES (NONCOMMERCIAL) AND  
SMALL RESIDENTIAL WIND TURBINES/SMALL WIND ENERGY SYSTEMS (SWES)***

**Sec. 44-444. Purpose.**

It is the purpose of this division to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.

(Ord. No. 560, § 153.102(Z), 4-5-2016)

**Sec. 44-445. Permitted use.**

Small wind energy systems (SWES) shall be a permitted use on any lot consisting of at least three (3) acres where structures are allowed; subject to certain requirements as set forth below:

- (1) *Tower height.* For property sizes between three acres to ten acres, the tower height shall be limited to sixty (60) feet, and property sizes of greater than ten acres up to thirty nine (39) acres shall have a maximum tower height of eighty (80) feet, and for property sizes from forty (40) acres or more for rural wind generators, the maximum tower height is one hundred twenty (200) feet
- (2) *Setback.* No part of the wind system structure, including guy wire anchors, may extend closer than 1.1 times the hub height in feet to the property boundaries or structures of the installation site.
- (3) *Noise.* SWES shall not exceed fifty five (55) dB(A) for lot sizes of three to nine (3-9) acres, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or severe windstorms.
- (4) *Approved wind turbines.* Small wind turbines and rural wind generators must have been approved under the emerging technologies program recognized by the American Wind Energy Association.
- (5) *Compliance with adopted building code.* Building permit applications for small and rural wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings.
- (6) *Compliance with adopted National Electrical Code.* Building permit applications for small and rural wind energy systems shall meet the National Electrical Code and the local power company's requirements.
- (7) *Utility notification.* No small or rural wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement. It is the purpose of this regulation to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity. Small wind energy systems shall be a permitted use on any lot consisting of at least three acres zoned agricultural, commercial or highway service per zoning district title and where structures are allowed; subject to certain requirements as set forth below:
- (8) *Evidence that the proposed height of the wind turbine tower does not exceed the height recommended by the manufacturer or distributor of the system shall be provided to City officials upon request.*

(Ord. No. 560, § 153.102(Z), 4-5-2016)

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**Secs. 44-446—44-473. Reserved.**(Ord. No. 560, § 153.102(Z), 4-5-2016)

*DIVISION 10. PENALTIES FOR VIOLATION*

**Secs. 44-529—44-549. Reserved.**

***ARTICLE V. OFF-STREET PARKING***

**Sec. 44-550. Off-Street parking requirements, generally.**

In all districts, at any time any building or structure is erected or enlarged, altered or increased in capacity, there shall be provided hard-surfaced off-street parking spaces for automobiles in accordance with the following requirements:

- (1) All church structures existing at the effective date of the ordinance from which this article is derived shall be allowed to increase their present seating capacity by 25 percent without increasing their present off-street parking facilities.
- (2) Off-street parking for other than residential use shall be either on the same lot or within six hundred (600) feet of the building it is intended to serve measured from the nearest point of the building to the nearest point of the off-street parking lot; provided, however, churches may establish joint parking facilities not to exceed 50 percent of the required spaces, with institutions and agencies that do not have a time conflict in parking demand. The joint parking facilities shall be located no farther than four hundred (400) feet from the church sanctuary.
- (3) Residential off-street parking space shall consist of a hard-surfaced parking area, driveway, garage or combination thereof, and shall be located on the lot it is intended to serve.
- (4) For uses not specifically mentioned herein, off-street parking requirements shall be interpreted by the City Council.
- (5) Any area once designated as required off-street parking shall not be changed to any other use unless and until equal facilities are provided elsewhere.
- (6) Off-street parking in connection with the operation of an existing building or use, which existed at the effective date of this ordinance shall not be reduced to an amount less than hereinafter required for a similar new building or use.
- (7) Two or more buildings or uses may collectively provide the required off-street parking, in which case the required number of parking spaces shall be not less than the sum of the requirements for the several individual uses computed separately.
- (8) The required off-street parking shall be for occupants, employees, visitors and patrons and shall be limited in use to motor vehicles. The storage of merchandise, motor vehicles for sale or the repair of vehicles on such parking area is prohibited unless otherwise permitted by the zoning district.
- (9) Every company car, truck, tractor and trailer normally stored at commercial and industrial sites shall be provided with off-street parking space in an area reserved for the use as determined by the City Council.
- (10) In cases of dual functioning of off-street parking where operating hours do not overlap, the City Council may grant an exception.
- (11) The minimum number of off-street parking spaces shall be determined in accordance with the following:

Table 153.102(A) Table of Parking Spaces

<i>Required Uses</i>	<i>Parking Spaces Required</i>
Adult foster care home; community living home; care home	One (1) space for each (2) two patient beds, plus five (5) additional spaces for every twenty five (25) beds or fraction thereof over a minimum of twenty five (25) beds.
Amusement and recreation business	One (1) space for every five (5) people up to the maximum number of people to be accommodated by the facility.
Automobile repair services; repair garage; automobile wrecking/junkyards; junkyard/salvage yards	One (1) space for every two (2) employees, plus one (1) space for each 10,000 square feet of lot area, or two (2) spaces for each 100 square feet of floor area, whichever is the greater.
Automobile service station	One (1) space for each employee, plus two (2) spaces for each service/wash bay or one (1) space for each 200 square feet of floor space..
Banks; office; charitable and philanthropic institution	One (1) space per 200 square feet of floor area
Personal services;	Two (2) spaces per barber or beauty shop chair.
Boardinghouse; bed and breakfast	One space (1) for every two guests.
Cannabis testing facility; contractor shop or storage yard; leather and hide tanning and finishing; industry, light; industry, medium, milk plant, mining operations; surface mining; research laboratory	One (1) space for every three hundred fifty (350) feet of gross floor area.
Church	One (1) space per three seats; or one (1) space per 72 inches of pew space, or one (1) space per thirty (30) square feet of floor area of auditorium, whichever is greater.
Clinics; animal clinic; body piercing establishment; tattoo establishment	Three (3) patient parking spaces per staff doctor, plus one (1) space per staff doctor, plus two (2) spaces per three (3) other employees.
Clubhouse, private clubs or lodge; commercial gathering places for smoking, such as hookah lounges, vape lounges or similar gathering establishments	One (1) space per three (3) members based on the design capacity of the facility.
Community facility; recreation facility	One (1) space per three (3) patrons, based on the design capacity of the facility.
College/University	One (1) space per three (3) students plus two (2) spaces per three (3) employees.
Day care center	Two (2) parking spaces per three (3) teachers and employees normally engaged in or about the building or grounds, plus one (1) off-street loading space per eight (8) pupils.
Dormitories	One (1) space per every three (3) residents.
Dwelling (detached, single-family); clergy residence	Two (2) spaces per dwelling unit.
Dwelling unit, accessory (internal, detached); tiny home	One (1) space per dwelling unit.
Dwelling (attached, multifamily); condominium	One and one-fourth (1 ¼) spaces per dwelling unit for the first twenty (20) units, plus one and one half (1 ½)

	space for each dwelling unit exceeding twenty (20) units.
Educational institutions	Serving ages 15 and below, two (2) spaces per classroom. Serving ages 16 and above, ten (10) spaces per classroom. Auditoriums: in addition to above requirements one (1) space per three (3) seats.
Handicap parking spaces (all establishments)	One (1) space for every twenty (20) parking spaces or as per Federal ADA regulations, whichever is greater. At a minimum, one (1) space shall be provided.
Hospital; freestanding emergency medical care facility; chemical dependency treatment facility; inpatient psychiatric facility	One (1) space per three (3) patient beds, exclusive of bassinets, plus one (1) space for each two (2) employees, including nurses, on the maximum working shift, plus adequate area for parking emergency vehicles.
Hotels; motel; motor court; motor hotel; motor lodge	1 space per each room or suite
Mortuaries or funeral parlors	Five (5) spaces per parlor or chapel unit, or one (1) space per four (4) seats, whichever is greater.
Neighborhood shopping centers; retail cluster shopping center; shopping center	There shall be a ratio of four (4) square feet of parking (including driveways required for ingress and egress and circulation) to each one (1) square foot of store area.
Nursery, retail; building material display and sales; medical cannabis dispensary; laundromat; pharmacy, retail or service establishment, supermarket	One (1) space per two hundred (200) square feet of retail floor space
Public Building	One (1) space per three hundred (300) square feet of floor area, plus one (1) space per each three (3) employees. Every governmental vehicle shall be provided with a reserved off-street parking space.
Public libraries	One (1) space for each four hundred (400) square feet of floor space.
Restaurant; tavern	One (1) space per 2000 square feet of floor space.
Wholesale trade; business service; business service type, heavy; nursery wholesale; public grain warehouse; medical cultivation facility; radio or television broadcasting station; cannabis product manufacturing facility; lumberyard; sawmill; self storage facility; warehouse, public storage	One (1) space per two hundred (200) square feet of building office space plus one (1) space per one thousand (1,000) square feet of additional gross floor area.

(Ord. No. 560, § 153.102(AB), 4-5-2016)

**Sec. 44-551. Parking requirements for uses not specified.**

- (a) Where the parking requirements for a use are not specifically defined herein, the parking requirements for such use shall be determined by the Planning Director. Such determination may be based upon Parking Generation published by the Institute of Transportation Engineers (ITE).
- (b) Where new construction is proposed in a commercial or industrial district, but no definite use is specified, parking requirements shall be calculated as follows:

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- (1) In any commercial district: five (5) parking spaces per one thousand (1,000) square feet gross floor area.
  - (2) Industrial district: One and three quarters (1¾) parking spaces per one thousand (1,000) square feet gross floor area.
- (c) When a use is to be initiated or changed in any vacant or occupied building or portion thereof, the parking required for the combined uses shall be reviewed by the Planning Department, based upon this chapter and "Parking Generation," published by the Institute of Transportation Engineers (ITE). The determination of the Planning Department shall establish the total number of parking spaces required.

(Ord. No. 560, § 153.102(AB), 4-5-2016)

#### **Sec. 44-552. Off-street parking lot layout, construction and maintenance.**

Wherever the required off-street parking requires the building of a parking lot, and wherever a parking lot is built, such parking lot shall be laid out, constructed of approved hard-surfaced materials and maintained in accordance with the following regulations:

- (1) Except for parcels of land devoted to one- and two-family uses, all areas devoted to off-street parking shall be so designed and be of such size that no vehicle is required to back into a public street to obtain egress.
- (2) Each parking space shall be not less than two hundred (200) square feet in area and shall be a definitely designated stall adequate for one motor vehicle.
- (3) In any determination of parking requirements as set forth in this section, where the resultant figure contains a fraction, any fraction less than one-half may be dropped and any fraction one-half or more shall be counted as one parking space.
- (4) Clearly defined driveways used for ingress and egress shall adhere to the City of Box Elder Construction Standards
- (5) All areas devoted to permanent off-street parking as required under this section shall be of an approved hard-surface construction and maintained in such a manner that no dust will result from continuous use.
- (6) The parking lot shall be properly drained to eliminate surface water, and where required have the proper storm drainage system installed or a retention area if storm drainage is not accessible.
- (7) Where the parking lot abuts side lot lines of a residential district, there shall be established a setback line ten feet (10) from such side lot line.
- (8) Where the parking lot is contiguous to a residential district which has common frontage in the same block with the parking lot, there shall be established a setback line of twenty five (25) feet from the right-of-way lot line. The ground in the front buffer strip shall be prepared and shall be planted with trees, shrubs and grass.
- (9) Where the parking lot lies across the street and opposite a residential district, wherein the lots front on such street, there shall be established a setback line twenty five (25) feet from the right-of-way lot line. The ground in the front buffer strip shall be prepared and shall be planted with trees, shrubs and grass.
- (10) Where the parking lot abuts rear property lines of a residential district, there shall be established a setback line twenty five (25) feet from the rear lot line. The ground in the front buffer strip shall be prepared and shall be planted with trees, shrubs and grass.



- (11) Where parking is to be provided in the front yard of a multiple-family dwelling, there shall be established a setback line fifteen (15 )feet from the right-of-way lot line. The land between the setback line and the lot line in a parking lot is for the purpose of this article called a buffer strip. The ground in the front buffer strip shall be prepared and shall be planted with trees, shrubs and grass.
- (12) Plans for the layout of a parking lot containing more than twenty (20) parking spaces, must be approved by the Planning Commission.
- (13) The City Council shall have the authority to approve off-street parking in any district which is more restrictive than that required for the major land use it is intended to serve subject to the preceding conditions. (Ord. No. 560, § 153.102(AB), 4-5-2016)

**Sec. 44-553. Storage and parking of trailers and commercial vehicles.**

- (a) General provisions and purpose - the following regulations are established to allow flexibility for property owners in the parking of trailers and commercial vehicles while achieving public safety goals.
- (b) Parking standards in residential districts:

Type of Vehicle	Storage Location	Minimum Distance from the Front of the Lot Line	Minimum Distance from the Back of the Sidewalk	Minimum Distance from the Back of the Curb	If No Curb or Sidewalk, Minimum Distance from Right Of Way
Camper (5th Wheel & Travel Trailer)	Side or rear yard.	10 feet	5 feet	15 feet	15 feet
Pop-up Camper (When Fully Stowed)	Side, rear yard, or driveway.	No minimum	5 feet	15 feet	15 feet
Enclosed Cargo Trailer	Side, rear yard.	10 feet	5 feet	15 feet	15 feet
Open Trailer	Side, rear yard, or driveway.	No minimum	5 feet	15 feet	15 feet
Semi-Tractor or Motorhome	Side or rear yard.	10 feet	5 feet	15 feet	15 feet
Food, Box, Dump, or Straight Trucks	Side or rear yard.	10 feet	5 feet	15 feet	15 feet
Boat on a Trailer	Side or rear yard.	10 feet	5 feet	15 feet	15 feet

- (c) For the purpose of measurements, accessories, and materials fixed or carried upon such vehicles or trailers, including boats, shall be considered part of the vehicle or trailer.
- (d) On corner lots, distances apply to both street frontages. Sight triangles shall not be impeded.

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(e) In no case shall a commercial vehicle used for hauling gasoline, liquified petroleum, hazardous materials, explosives or similar products be permitted for storage and parking in a residential zoning district.

(Ord. No. 560, § 153.102(AB), 4-5-2016)

**Sec. 44-554. Off-street loading and unloading requirements.**

- (a) In all districts and on the same premises with every building, structure or part thereof, erected and occupied for manufacturing, storage, warehouse goods, display, a department store, a wholesale store, a market, a hotel, a hospital or other uses similarly involving the receipt or distributions of vehicles or materials or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading and unloading service adjacent to the opening used for loading and unloading in order to avoid undue interference with public use of the streets or alleys.
- (b) Off-street loading and unloading spaces shall be provided as follows:
- (1) One (1) off-street loading and unloading space shall be provided for buildings up to and including 10,000 square feet of floor area, plus one (1) additional off-street loading and unloading space for each additional 20,000 square feet of floor area up to and including 100,000 square feet.
  - (2) There shall be provided an additional off-street loading and unloading space for each additional 40,000 square feet of floor area in excess over 100,000 square feet.
  - (3) Where trailer trucks are involved, such loading and unloading space shall be an area not less than 12 feet by 100 feet with a 14-foot height clearance and shall be designed with appropriate means of truck access to a street or alley as well as adequate maneuvering area.
  - (4) All areas devoted to permanent off-street loading and unloading as required under this section shall be of a sealed hard-surfaced construction, and shall be maintained in such a manner that no dust will result from continuous use.

(Ord. No. 560, § 153.102(AB), 4-5-2016)

**Secs. 44-555—44-571. Reserved.**

***ARTICLE VI. NONCONFORMING USE OF LAND OR NONCOMPLYING STRUCTURES***

**Sec. 44-572. Continuance of nonconforming uses and noncomplying structures.**

- (a) Any otherwise lawful use of land or structure existing at the time of adoption of this ordinance may be continued, maintained, and repaired except as otherwise provided.
- (b) Maintenance, repairs, and structural alterations may be permitted to be made to nonconforming structures or to a building housing a nonconforming use with approved permits.

(Ord. No. 560, § 153.103(A), 4-5-2016)

**Sec. 44-573. Extension of nonconforming uses in structures.**

Except as otherwise required by law, a structure or use legally established prior to the adoption date of the ordinance from which this article is derived may be maintained unchanged. In other than criminal proceedings, the owner, occupant, or user shall have the burden to show that the structure, lot, or use was lawfully established.

(Ord. No. 560, § 153.103(B), 4-5-2016)

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**Sec. 44-574. Existing recorded nonconforming lots.**

Where there are existing recorded lots in the City which do not meet minimum lot size requirements including lot area, lot width and lot length, and are under separate ownership, residential buildings may be constructed as long as side yards setbacks are not less than five feet (5') wide and the rear yard setback is not less than fifteen feet (15') deep. Front yard setback requirements must be met. However, no recorded lot shall be divided into two (2) or more lots unless the resulting lots conform to all current size regulations of the zoning district in which the lot is located.

(Ord. No. 560, § 153.103(C), 4-5-2016)

**Sec. 44-575. Termination of nonconforming uses and noncomplying structures.**

Except as hereinafter provided, a nonconforming use or noncomplying structure that has been abandoned or discontinued for more than one year (365 days)), shall not hereafter be reestablished.

(Ord. No. 560, § 153.103(D), 4-5-2016)

**Sec. 44-576. Destruction, damage, or obsolescence of structure.**

The right to operate and maintain any nonconforming use shall terminate whenever the structure or structures in which the nonconforming use is operated and maintained are damaged, destroyed, or become obsolete or substandard beyond the limits hereinafter established for the termination of nonconforming structures.

(Ord. No. 560, § 153.103(E), 4-5-2016)

**Sec. 44-577. Enlargement or extension of nonconforming uses or noncomplying structures.**

Except as provided, any nonconforming use shall not be enlarged or extended. A nonconforming structure in which only permitted uses are operated may be enlarged or extended with approved permits if the enlargement or extension can be made in compliance with all of the provisions of this article established for structures in the zoning district in which the nonconforming structure is located.

(Ord. No. 560, § 153.103(F), 4-5-2016)

**Sec. 44-578. Restoration of damaged noncomplying structures.**

A nonconforming structure damaged in any manner and from any cause whatsoever to the extent of not more than fifty (50) percent of its replacement cost may be restored, provided restoration is completed within one (1) year of the date of damage.

(Ord. No. 560, § 153.103(G), 4-5-2016)

**Sec. 44-579. Changes in nonconforming uses.**

A change of use of a nonconforming use of a structure or parcel of land shall not be made except to that of a conforming use. Where such change is made, the use shall not thereafter be changed back to a nonconforming use.

(Ord. No. 560, § 153.103(H), 4-5-2016)

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**Sec. 44-580. Open land nonconforming use.**

All additions to nonconforming structures and parking areas shall conform to the requirements of this article. Additions to structures housing nonconforming uses that increase the area of a nonconforming use shall not be made.

(Ord. No. 560, § 153.103(I), 4-5-2016)

**Sec. 44-581. Grandfathering existing parcels.**

Platted parcels of land in existence prior to January 1, 2016, will be grandfathered in, for the purpose of replacing or upgrading an existing manufactured home located on the parcel of land. Residents are encouraged to install a newer manufactured home. However, the grandfather clause does permit existing manufactured homes to be removed and replaced on parcels as described above. Replacement homes shall be twenty (20) or fewer years of age and may not be less than the sixteen (16) feet in width. The structure shall be intended to be a single-family dwelling, designed to be a permanent residence, that is manufactured after January 1, 1994, and meets or exceeds the 1994 Federal Manufactured Home Construction and Safety Act (42 USC 5401 and 24 CFR 3280).

(Ord. No. 560, § 153.103(J), 4-5-2016)

**Secs. 44-581—44-610. Reserved.**

**ARTICLE VII. ADMINISTRATION AND ENFORCEMENT**

**DIVISION 1. GENERALLY**

**Sec. 44-610. Temporary Zoning Ordinances.**

- (a) If the City is conducting or in good faith intends to conduct studies within a reasonable time or had held or is holding a hearing for the purpose of considering a comprehensive plan, the City Council in order to protect the public health, safety, and general welfare may adopt as emergency measures a temporary zoning ordinance and map, and a temporary subdivision ordinance, the purpose of which are to classify and regulate uses and related matters as constitutes the emergency.
- (b) Before adoption or renewal of the emergency measure, the City Council shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the municipality.
- (c) An emergency ordinance shall be limited to one year from the date it becomes effective and may be renewed for one year. In no case shall the ordinance be in effect for more than two years.

**Sec. 44-611. Fees.**

Fees for all permits required herein, fees required for filing of appeals, and fees for applications for amendments to this chapter shall be established and amended from time to time by the City Council in the City's Master Fee Schedule

(Ord. No. 560, § 153.108, 4-5-2016)

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**Sec. 44-612. Penalties.**

It is unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure, or to use any land in violation of any regulation in this article. Any person, association or corporation who violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of any provision of this code shall be assessed a civil penalty by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the City. A continuing violation of this code constitutes a separate and distinct violation each day that the violation exists. Penalties assessed by an administrative citation shall be collected in accordance with the City's master fee schedule.

Violations of this chapter may also constitute Class 2 misdemeanors. In addition to any fine or penalty assessed by the court, any violator found guilty shall pay all court costs and expenses involved in the case. Compliance therewith may also be enforced by injunction at the suit of the city or the owner or owners of real estate within the district affected by the regulation of this article.

(Ord. No. 560, § 153.109, 4-5-2016)

**Sec. 44-613. Conflicts with other laws.**

In the interpretation and application of the provisions of this article, these provisions shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety and the general welfare. Whenever the requirements of this article are a variance with the requirements of other lawfully adopted rules, regulations or ordinance, the most restrictive, or that imposing the higher standards shall govern.

(Ord. No. 560, § 153.111, 4-5-2016)

**Sec. 44-615. Amendments.**

The regulations, restrictions, boundaries and options set forth in this article may be amended, supplemented, revised or repealed from time to time as conditions warrant, subject to the following conditions:

- (1) *Applications.*
  - a. An application for an amendment shall be filed with the City's Planning and Zoning Office. Amendments may be instituted by either the property owner or by the City Council.
  - b. The above-mentioned application, when instituted by a property owner, shall be obtained from the Planning and Zoning Office and shall contain the written consent of the owners of 60 percent of the equity in the lots situated within 300 feet from any part of such proposed district measured by excluding streets and alleys.
  - c. Applications are not required for the City Council to implement zoning amendments.
- (2) *Public hearing.*
  - a. Upon application, the Planning and Zoning Commission shall file with the City Council, a preliminary report and shall hold hearings, notice of which shall be published one week prior to the date of making the preliminary report to the City Council and shall schedule a hearing with the foregoing notice requirement before it files its final report with the City Council.
  - b. The City Council may adopt any changes in the regulations, restrictions or boundaries after having published notice of hearing at least one week prior to the date of adoption of any amendments in this chapter as notice of the time and place where all persons interested shall be given a full, fair and complete hearing. The ordinance, if adopted, shall be adopted as other ordinances with the same publication requirements.

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- (3) *Time limit.* All proposed amendments shall be decided by the City Council within 30 days of the public hearing.
- (4) *Standards for amendments.* The following conditions shall be met for all amendments:
- a. The proposed amendment shall be necessary because of substantially changed or changing conditions of the area and districts affected.
  - b. The proposed amendment shall be consistent with the intent and purposes of this article.
  - c. The proposed amendment shall not adversely affect any other part of the City, nor shall any direct or indirect adverse effects result from such amendment.
  - d. The proposed amendment shall be consistent with the comprehensive plan as adopted by the City, including, but not limited to, the major road plan, land use plan, community facilities plan and other portions of the comprehensive plan.

(Ord. No. 560, § 153.107, 4-5-2016)

**Secs. 44-616—44-633. Reserved.**

*DIVISION 2. VARIANCES*

**Sec. 44-634. Purpose.**

The purpose of the variance is to modify the strict application of the specific requirements of this article in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, when such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle that is preventing an owner from using his lot as the zoning regulations intended, while still meeting the intent of this division.

(Ord. No. 560, § 153.105(A), 4-5-2016)

**Sec. 44-635. Procedure, generally.**

After a ruling by the Planning Director, a property owner may make an application to the Board of Adjustment for a variance. The application shall be submitted to the Planning Director. The application shall consist of an application form, a non-refundable variance application fee, and such supporting information as deemed appropriate by the Planning Director.

(Ord. No. 560, § 153.105(B), 4-5-2016)

**Sec. 44-636. Application.**

The application shall show the location and intended use of the site, the names of the property owners and existing land uses within 300 feet, and any other material pertinent to the request which the Board of Adjustment may require. The person requesting the variance has the burden of showing:

- (1) That the granting of the variance will not be contrary to the public interest.
- (2) That the literal enforcement of the article will result in unnecessary hardship.
- (3) That by granting the variance contrary to the provisions of this chapter, the spirit of this chapter will be observed.

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(Supp. No. 1)

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- (4) That by granting the variance, substantial justice will be done.

(Ord. No. 560, § 153.105(C), 4-5-2016)

**Sec. 44-637. Public hearing; decision by Board.**

The Board shall hold a public hearing on the variance request, having first given ten days' notice of the time and place of such hearing by publication in the city's legal newspaper. The board shall consider and rule on the variance within 30 days of such public hearing and in accordance with the standards provided below.

(Ord. No. 560, § 153.105(D), 4-5-2016)

**Sec. 44-638. Standard for variances.**

In granting a variance, the Board shall ascertain that the following criteria are met:

- (1) Variances shall be granted only where special circumstances or conditions (such as exceptional narrowness, topography, or siting) fully described in the findings of the board, do not apply generally in the zoning district.
- (2) Variances shall not be granted to allow a use otherwise excluded from the particular zoning district in which the use is requested.
- (3) For reasons fully set forth in the findings of the Board, the circumstances or conditions are such that the strict application of the provisions of this article would deprive the applicant of all reasonable use of his land. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land.
- (4) Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.
- (5) The granting of any variance shall be in harmony with the general purposes and intent of this article and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the city's comprehensive plan.

(Ord. No. 560, § 153.105(E), 4-5-2016)

**Sec. 44-639. Appeals**

- (a) See Chapter 2, Article VIII, Division 2 for appeal process.

(Ord. No. 560, § 153.105(F), 4-5-2016)

**Sec. 44-640. Court review of Board.**

- (a) Court review of a decision of the Board will be conducted pursuant to SDCL §11-4-25 et seq.

(Ord. No. 560, § 153.105(G), 4-5-2016)

**Secs. 44-641—44-668. Reserved.**

*DIVISION 3. CONDITIONAL USES*

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**Sec. 44-669. Conditional uses permitted on review.**

The following procedure is established to integrate property and the uses permitted on review with other land uses located in the district. These uses shall be reviewed by the Planning Commission and authorized or rejected by the City Council under the following procedure.

(Ord. No. 560, § 153.106, 4-5-2016)

**Sec. 44-670. Scope.**

- (a) Conditional uses are listed for each zoning district, and are declared to possess characteristics which require special consideration in order to ensure compatibility with other uses in the zoning district within which they are proposed. A conditional use should become harmonious or compatible with neighboring uses through the application and maintenance of qualifying conditions, and located in specific locations within a zoning district, but shall not be allowed under general conditions of the zoning district as stated in regulations.
- (b) An approved conditional use permit shall be obtained from the Planning Department before construction begins or a new use is established.

(Ord. No. 560, § 153.106, §153.107, 4-5-2016)

**Sec. 44-671. Application.**

- (a) A property owner, registered agent, or a designated representative may apply for a conditional use using forms available from the City’s Planning and Zoning office. If the request is by a designated representative, the designation shall be in writing, signed by the property owner, and filed with the application.
- (b) A conditional use permit (CUP) application shall be filled out completely and submitted to the Planning and Zoning Office for review in accordance with the adopted submittal deadlines before a regularly scheduled Planning Commission meeting, at which the application will be reviewed. The application shall include at a minimum the following:
  - (1) The application form;
  - (2) Non-refundable application and notification fees;
  - (3) Location and legal description of the property;
  - (4) Intended use of the site;
  - (5) Position, size and use of all structures, improvements and facilities to be constructed/reconstructed;
  - (6) Location of all points of ingress and egress and internal traffic circulation pattern;
  - (7) If applicable, landscape, lighting and drainage plans;
  - (8) Parking plan;
  - (9) Such other architectural and engineering data as may be required by the Planning Director, Planning Commission or City Council;
  - (10) Site plans and maps;

(Ord. No. 560, § 153.106, 4-5-2016)



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**Sec. 44-672. Notice.**

Upon completion of all materials required for a conditional use, the City shall provide written notice of the applicant's intentions and analysis of the impact of the proposal to owners of parcels in the area required to receive notice. The notice shall include the scheduled date when the item will be discussed in front of the Planning Commission or City Council. The notice shall state that any recipient opposed to the proposed application shall notify the Planning and Zoning Office in writing; and that without giving notice as directed to the City of their objection, the property owner will be understood to have no objection to the application. In addition to the application fee, the applicant shall be responsible for the cost of notice by certified mail to all owners of parcels;(Ord. No. 560, § 153.106, 4-5-2016)

**Sec. 44-673. Public hearing.**

- (a) Upon receipt of an application, the Planning and Zoning Office shall give notice of public hearing within 35 days. Such notice of the time and place of such hearing shall be published in the legal newspaper of the City, ten (10) days prior to that public hearing.
- (b) The City's Planning and Zoning Office shall require the applicant to give notice to all property owners affected or property owners within 300 feet of the applicant's property. The form and content of the notice shall be as prescribed by the Planning Director, Planning Commission, or City council. (c) The Planning Commission shall then hold a hearing and review the application and make its recommendation related to the conditional use permit (CUP) and conditions thereof, to the City Council within 30 days of the hearing.
- (d) The City Council shall then make its determination on the application within 30 days of the date of recommendation by the Planning Commission.

(Ord. No. 560, § 153.106, 4-5-2016)

**Sec. 44-674. Consideration/restrictions.**

- (a) In the exercise of its approval, the Planning Commission or City Council may impose such conditions regarding the location, character or other features of the proposed use or buildings as it may deem advisable in the furtherance of the general purposes of this chapter.
- (b) The Planning Commission or City Council may require conditions and safeguards as deemed necessary to protect and enhance the health, safety, and welfare of the surrounding area; affirm that the proposed use is necessary or desirable and provides a service or facility that contributes to the general well-being of the community; and that such use will comply with the regulations and conditions specified in this article for such use.
- (c) The Planning Commission may recommend to the City Council that the CUP be approved without conditions, be approved with conditions or denied as deemed necessary to protect and enhance the health, safety, and welfare of the surrounding area, affirm that the proposed use is necessary or desirable and provides a service or facility that contributes to the general well-being of the community, and that such use will comply with the regulations and conditions specified in this article for such use. .
- (d) Review of each CUP application shall consider, at a minimum, the following criteria:
  - (1) The request is consistent with applicable provisions of the comprehensive plan and city ordinances.
  - (2) The request shall not adversely affect adjacent properties.
  - (3) The request is compatible with the existing or allowable uses of adjacent properties.

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- (4) The request can demonstrate that adequate public facilities, including, but not limited to, roads, drainage, potable water, sanitary sewer, electrical power, and police/fire protection, exists or will exist to serve the requested use at the time such facilities are needed.
  - (5) The request can demonstrate adequate provisions for the maintenance of the use or associated structures.
  - (6) The request has minimized, to the degree possible, adverse effects on the natural environment.
  - (7) The request does not create undue traffic congestion.
  - (8) The request will not adversely affect the public health, safety, or welfare.
  - (9) The request conforms to all applicable provisions of this chapter.
  - (10) The requested use may be subject to periodic review by the planning commission to examine the effectiveness of the imposed conditions, the need for additional mitigating conditions, or the need for continued periodic review.

(Ord. No. 560, § 153.106, §153.099, 4-5-2016)

#### **Sec. 44-675. Issuance of permit.**

Upon completion of the necessary application, hearing and approval of the City Council, the Planning and Zoning Office shall issue the building permit or allow the approved use, subject to all applicable rules, regulations and conditions.

(Ord. No. 560, § 153.106, 4-5-2016)

#### **Sec. 44-676. Validity of plans, conditions, restrictions, etc.**

(a) All approved plans, conditions, restrictions and rules made a part of the approval of the City Council shall constitute certification on the part of the applicant that the proposed use shall conform to such regulations at all times.

(b) A conditional use permit shall be considered exercised when the use has been established or when a building permit has been issued and substantial construction accomplished. When such a building permit is abandoned or discontinued for a period of one (1) year, it shall not be reestablished without authorization by the City Council.

(Ord. No. 560, § 153.106, §153.099, 4-5-2016)

#### **Sec. 44-677. Revocation.**

A use approved under this section may be revoked by the City Council for cause. The City shall provide notice of the date, place, and time of the public hearing for the revocation by certified mail sent to the owner of the use/property considered for revocation and to all property owners within 300 feet, exclusive of rights-of-way.

Pursuant to §11-4-4.6 of SDCL, any conditional use permit granted shall be considered a lawful use. No conditional use will be prohibited due to changes on neighboring land which occurred after the application for the conditional use is received. No conditional use shall be made nonconforming due to changes on neighboring land which occurred after the application for the conditional use is granted unless the conditional use is not pursued by the applicant for a period of more than one year.

(Ord. No. 560, § 153.106, 4-5-2016)

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**Sec. 44-678. Request to review.**

Upon receipt of a valid written complaint filed by a person directly affected, or upon determination by the Planning and Zoning Office that cause exists to review the use permit, the Planning Director may request that the City Council conduct a formal review of the approved use. A valid written complaint shall contain the following:

- (1) A description of the activity that is taking place not allowed by the existing zoning or not authorized in the original approval, and is not a routine activity normally associated with the surrounding land uses (e.g., trash pickup, mail delivery, etc.).
- (2) That the activity produces noise, odor, vibration, or traffic patterns not disclosed at the time the use permit was applied for.
- (3) The effects identified in subsection (2) of this section; are detrimental to the health, safety and welfare of the complainant and the public.

(Ord. No. 560, § 153.106, 4-5-2016)

**Sec. 44-679. Transfer of use permit.**

- (a) A use permit may be transferred to another owner, according to the conditions described in the use permit on review definitions.
- (b) A written narrative shall be provided to the Planning Director explaining the nature of the new use, along with all related plans that describe in adequate detail anticipated changes.
- (c) Use permits issued before the effective date of the ordinance from which this article is derived shall be governed by the approvals and conditions given at the time of approval.

(Ord. No. 560, § 153.106, 4-5-2016)

**Sec. 44-680. Denial of request.**

In the event the request for a use on review is denied by the City Council, re-application shall not be permitted for a period of one year, unless the Planning Director determines that the request has substantially changed.

(Ord. No. 560, § 153.106, 4-5-2016)

**Sec. 44-681. Special provisions for properties zoned residential (GR-1, GR-2, GR-3).**

The intent of these special provisions is to allow the creative re-use of residential structures for nonresidential purposes. Considering properties' character, each applicant must demonstrate how it will preserve the unique or historic residential qualities of the existing building and the landscape setting of the lot. The following may be permitted through the application procedure outlined above. No changes in use are permitted without recommendation of the Planning Commission and concurring approval by the City Council.

- (1) *Use permit categories.* All requests for a use permitted on review must be uses that fall into at least one of the following categories:
  - a. Educational facilities (defined as a building where instruction or training is provided for a vocation, skill, hobby or job).
  - b. Offices and professional services (defined as a building that contains one or more separate rooms or suites which the occupants or tenants use for purposes of doing business transactions or professional work either with the public or in private).

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- c. Specialty retail (defined as sales of goods and services in an establishment that offers a product or service with unique or historic aspects of the building or neighborhood are an integral part of the business conducted therein).
  - d. Outdoor sales are not permitted.
  - e. Tourist/visitor accommodations (defined as a building containing sleeping rooms and support facilities that are offered to the public for rent for less than two-week intervals). Bed and breakfasts as defined by the City's zoning regulations are permitted.
  - f. None of the uses listed in subsections (1)a through e of this section shall be interpreted as to allow an adult oriented business as defined or otherwise regulated by ordinances of the City.

(2) *Site development standards.*

- a. All uses of the site and building must be contained within a structure.
- b. All uses shall operate generally between the hours of 8:00 a.m. to 7:00 p.m., with the exception of tourist/visitor accommodations, and uses that can demonstrate compatibility with the adjacent neighborhood if other hours are desired. These hours of operation shall include all deliveries and must be disclosed in the request for the use permit.
- c. Development standards of the underlying zoning district apply for setbacks, height, lot coverage, etc.
- d. If trees or vegetation must be removed as part of the proposed use of the property, this must be disclosed at the time of application. This requirement shall not be interpreted to prevent property owners from removing trees damaged by storms or emergency conditions.
- e. Parking between the City street and public sidewalk is allowed without a variance for 50 percent of the site frontage. Stalls must be paved and sidewalks must be provided if they do not exist. In no case will parking be allowed on the street unless parking is allowed on the street otherwise stated in city ordinance.
- f. All refuse must be contained and fully screened within a fence enclosure between trash pickup days.
- g. All storage must be within an enclosed building, wall or fence and completely screened from view of adjacent properties.
- h. Outdoor activity areas, play yards, etc., must be completely screened from view of adjacent private residential properties by a fully opaque fence or wall of sufficient height to screen the activity. All outdoor activity shall be disclosed at the time of application.
- i. Internal changes in use within a structure are permitted without an amendment to the use permit, provided they do not result in an intensification of the use of the property.
- j. One sign identifying the business is permitted, of a maximum of 32 square feet. No off-site advertising is permitted on the parcel possessing a use permit.
- k. Other buffers as recommended by the Planning Director and Planning Commission and required by the City Council.

(Ord. No. 560, § 153.106, 4-5-2016)

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**Sec. 44-682. Uses already in existence.**

Use permits issued before the effective date of the ordinance from which this article is derived shall be governed by the approvals and conditions given at the time of approval.

(Ord. No. 560, § 153.106, 4-5-2016)

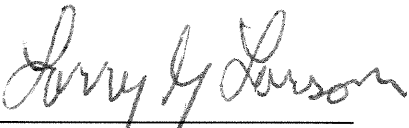
**Sec. 44-683. Court review of City Council.**

(a) Court review of a decision of the City Council will be conducted pursuant to SDCL §11-4-25 et seq.

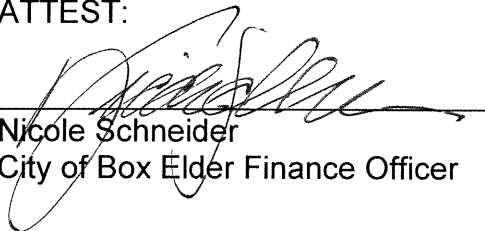
(Ord. No. 560, § 153.106, 4-5-2016)

**APPENDIX A. LAND USE MATRIX**

Dated this 17<sup>th</sup> day of January 2023.

  
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City of Box Elder

ATTEST:

  
\_\_\_\_\_  
Nicole Schneider  
City of Box Elder Finance Officer

First Reading: 01/03/2023  
Second Reading: 01/17/2023  
Published: 01/27/2023  
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