

**Revised Ordinances**

**of the**

**City of Salem,**

**South Dakota**

**2006**

Compiled by the South Eastern Council of Governments  
under the direction of the City Council

These ordinances are a compilation and incorporation of ordinances adopted since Ordinance #397 of the City of Salem, except appropriation ordinances, levying ordinances for the issuance of bonds, zoning and subdivision ordinances, and other special ordinances of like character.

Such ordinances not included within this revision and still having force and effect may be found in the original book of ordinances in the office of the Municipal Finance Officer.

Reference has been made for each Section whenever applicable to appropriate state statutes from South Dakota Codified Laws.

In the construction of this ordinance, the following definitions shall apply, unless otherwise provided:

|                          |  |
|--------------------------|--|
| “City” or “Municipality” | The City of Salem, South Dakota.   |
| “City Council”           | The governing body of the City.  |
| “He”, “His”, or “Him”    | Words imparting masculine gender shall extend and be implied to females and to firms, partnerships, associations, corporations, organizations, and other legally recognized entities, as well as to males. |
| "May"                    | Permissive.  |
| "Person"                 | Any individual, firm, partnership, association, corporation, organization, or other legally recognized entity.   |
| “Shall”                  | Mandatory.   |

# COMPILED ORDINANCES OF SALEM

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**TITLE 1  
ADMINISTRATIVE CODE**

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Chapter 1.03 - Fire Department  
Chapter 1.04 - Municipal Liquor Store  
Chapter 1.05 - Finance Regulations*

**CHAPTER 1.01 - MUNICIPAL EMPLOYEES**

- 1.0101 Appointment of Officers. At the regular meeting of each July, there shall be appointed a Finance Officer, Chief of Police, Foreman, Water and Sewer Superintendent, Zoning Administrator, City Engineer, Health Officer and such other officers as may be provided by ordinance to hold office until the appointment and qualifications of successors. All such appointments shall be made by the Mayor with confirmation by the City Council. The City Council may by resolution enter into a contract pursuant to SDCL 9-14-23 with an attorney to provide legal services to the City as the City Attorney. (SDCL 9-14-3)
- 1.0102 Salaries. The salaries of all appointive officers and employees of the City shall be approved by the City Council by special ordinance or resolution. The Finance Officer shall be bonded in such sum to be approved by the City in accordance with state law, conditioned for the faithful performance of the duties of such office. (SDCL 9-14-1, SDCL 9-14-28)
- 1.0103 Employment Policies. All policies regarding personnel regulations and benefits of the City shall be included in the Personnel Policy Manual, which shall be filed with the Finance Officer and available to all personnel.

**CHAPTER 1.02 - MAYOR AND CITY COUNCIL**

- 1.0201 Composition. The City Council shall consist of the Mayor, elected at large and six aldermen two to be elected from each ward. The Mayor shall be elected to serve a 2-year term and each City Council member shall be elected for a term of 2 years. (SDCL 9-8-4)
- 1.0202 Regular Meetings. On the first Monday after the fourth day of each month, at 7:00 p.m., the City Council shall meet at the City Hall or other designated place, to consider, take under advisement, and act upon such business as may come before it. (SDCL 9-8-8) (Ord. #462)
- 1.0203 Special Meetings. Special meeting of the City Council may be called by the Mayor or by any member of the City Council. The call of the special meeting shall be made in writing, signed by the person issuing such call and filed with the Auditor and entered upon the records. Such call shall state the time, place and object of the special meeting.

When a call of a special meeting has been filed, it shall be the duty of the Auditor to immediately prepare such written notice of special meeting and to deliver copies to each member of the City Council who may be located with reasonable diligence within the municipality. The Auditor shall also cause such written notice of the special meeting to be posted in a conspicuous place at the regular meeting place of the City Council and at one other conspicuous place within the municipality.

Special meeting shall be conducted according to the regular rules of procedure adopted by the City Council, and as governed by statute. (Ord. # 408)

1.0204 Supervision of Departments. The Mayor, with the approval of the Council, at the first meeting in July of each year, shall appoint one or more members of the Council to act in a supervisory capacity in the Departments of Water, Street, Police, Fire and any other departments of the City, and such Councilmen, so appointed shall have supervision over the Department to which they are named as supervisors and shall from time to time and as requested by the Council, report as to the condition and matters in said department.

1.0205 Compensation - Mayor and City Council. The Mayor and Councilmen are to be allowed compensation as set by resolution of the City Council. Compensation of the Mayor and Councilmen as herein set forth shall be paid at such times as may be decided upon by the Council.

#### **CHAPTER 1.03 - FIRE DEPARTMENT**

1.0301 Establishment. There shall be established for the City a Volunteer Fire Department which shall consist of a Chief, Assistant Chief, Secretary-Treasurer, and such other members as may be from time to time determined by the Fire Department. (SDCL 9-33-13)

1.0302 Constitution and Bylaws. The Fire Department may adopt such constitution and bylaws and rules for its regulation and government subordinate to the ordinances of the City, as it may deem best calculated to accomplish the object of its organization.

1.0303 Members. The members of the Fire Department shall be able bodied persons of good moral character duly elected by a majority of the active members of the Fire Department.

1.0304 Terms of Office. The Chief, 1<sup>st</sup> Assistant Chief, and 2<sup>nd</sup> Assistant Chief shall be the head of the Fire Department and shall hold office for a term of one year and until their successors shall be elected and qualified. The Secretary/Treasurer shall be elected each year.

1.0305 Appointment of Officers. The officers shall be nominated by the active members of the Fire Department and elected by a majority of members present at the annual meeting of the Fire Department at the monthly November working meeting and will assume their duties at 12:01 AM on January 1<sup>st</sup> of the following year; the names of such officers shall be reported to the City Council and confirmed by them.

1.0306 Meetings. The Fire Department shall meet at least once a month upon call of the Fire Chief and any member not responding to such call unless absent from the City, or upon

other good cause shown to the satisfaction of the Chief of the Fire Department may be dismissed from said Department.

- 1.0307 Appropriation. The City Council shall in its annual appropriations appropriate such amounts as they may deem necessary for the purpose of maintaining such Fire Department including equipment, ladders, trucks, hoses and other apparatus and providing such necessary articles of clothing as they may deem necessary for the members of said Department. (SDCL 9-33-12)
- 1.0308 Equipment. The equipment, trucks, implements and all apparatus shall be kept at such place as may be provided and directed by the City Council and shall at all times be ready for immediate use. (SDCL 9-33-11)
- 1.0309 Duties of Chief. The Fire Chief shall have sole charge and control over all the members of the Fire Department at fires. The Chief shall, at all times, have the general direction and management of all hoses, chemicals, engines, and other apparatus belonging to the Department.
- 1.0310 Fire Zone. The Chief, or acting Chief in command, may prescribe limits around any fire, and it shall be unlawful for any person, except those who reside therein, or firemen, law enforcement officers and those given admission by any officer of the Fire Department, to enter therein.
- 1.0311 Investigation of Cause of Fire. The Chief shall inquire into and investigate the cause of each fire that occurs in the City as soon as possible, and make a record of such proceedings and file the same or a copy thereof with the Secretary of the Fire Department.
- 1.0312 Financial Estimate. The City Finance Officer, in conjunction with the Fire Department Chief, shall prepare in detail on or before the first day of August in each year, an estimate of the entire cost and expense of providing and maintaining the Fire Department during the current fiscal year, and shall present such estimate to the City Council with an annual budget estimate for the following year.
- 1.0313 Command in Absence of Chief. If the Chief is absent from any fire call, the 1st Assistant Chief or, in his absence, the 2nd Assistant Chief shall take charge of the organization and shall have and exercise all the powers of Chief.
- 1.0314 Vacancy. In case of a vacancy occurring in the office of Chief, the Assistant Chief shall discharge the duties of the Chief until such vacancy is filled.

#### **CHAPTER 1.04 - MUNICIPAL LIQUOR STORE**

- 1.0401 Management and Operation. The Municipal Liquor Store shall be under the direct supervision of the City Council and shall be operated by a manager to be appointed by the Mayor with the approval of the Council at its first meeting in May of each year. The compensation of the manager shall be fixed by either Ordinance or Resolution of the City Council and the bond of the manager in the amount of \$5,000 shall be furnished by the City Council and conditioned for the proper performance of duties and for the accounting of all monies and property belonging to the City that may come into his

possession or under his control.

- 1.0402 Reports. The operator of the Municipal Liquor Store shall, in accordance with Chapter 35-3, South Dakota Codified Law, and as directed by the City Council, furnish reports at such stated intervals as may be directed showing all sales, purchases, and transactions of all kinds and descriptions occurring in the conduct of said business. Such reports shall be filed with the Finance Officer at the time and in the manner as directed by the City Council.
- 1.0403 Receipts Deposited with Finance Officer. All receipts of the Municipal Liquor Store shall be deposited with the Finance Officer who shall keep such receipts in a separate account which shall be disbursed only upon direction of the City Council.
- 1.0404 Hours and Conduct of Business. The Municipal Liquor Store will not be open any sooner than 9:00 a.m. nor later than 1:00 a.m., Monday through Saturday and shall at all times be regulated as provided by ordinance and by Title 35, South Dakota Codified Law.
- 1.0405 Municipal Operating Agreement Permitted. Nothing shall prevent the City from entering by resolution into an operating agreement pursuant to Chapter 35-4-199 South Dakota Codified Law.

#### **CHAPTER 1.05 - FINANCE REGULATIONS**

- 1.0501 Revenues and Special Funds. All money belonging to the City from taxation licenses finest Permits, the operation of utilities or from any other source, shall be Paid into the Cite- treasury and the City Council shall designate by ordinance to what fund or funds such money shall be applied. The Finance Officer shall keep full, true and just accounts of all financial affairs of the City and shall keep such accounts and furnish in such form and in such manner from time to time as required by the South Dakota Department of Revenue. (SDCL 9-14-18)
- 1.0502 Records Retention and Destruction. The Records Retention and Destruction Schedule Manual, authorized for South Dakota municipalities by the Office of Records Management, Bureau of Administration, State of South Dakota, shall be adopted by the City Council, and a printed copy of such manual shall be filed with the Finance Officer.

#### **CHAPTER 1.06 – CITY ADMINISTRATOR**

- 1.0601 Creation of Office. The office of the city administrator is hereby created.
- 1.0602 Appointment of City Administrator. The city administrator shall be appointed by the mayor with the consent of a majority vote of the governing body for an indefinite term. The administrator shall be chosen by the governing body solely on the basis of executive and administrative qualifications with special reference to actual experience in or knowledge of accepted practice in respect to the duties of the office hereinafter set forth. No member of the governing body shall receive such appointment during the term for which the member shall have been elected, or within one year after the expiration of the

member of the governing body's term.

- 1.0603 Removal of Administrator. The mayor with the consent of the governing body may remove the city administrator at any time by a majority vote of its members. If requested, a public hearing shall be granted by the governing body within 30 days following notice of removal. During the interim the governing body may suspend the administrator from duty, but shall continue the administrator's salary until the removal becomes final.
- 1.0604 Powers and Duties of City Administrator. To be the chief administrative officer of the City and be responsible to the City Council for the proper administration of all affairs of the City. To see that all laws, ordinances, and resolutions are duly enforced. To carry out various administrative duties assigned by the Council, manage personnel activities and policies, coordinate city administration to various city departments and assist the zoning administrator. To directly oversee the activities of the Administrative and General Clerks, The administrator shall be required to:
- A. Perform administrative functions as directed by the City Council. In conjunction with the Finance Officer, maintain custody of official documents and join with the Mayor in executing legal documents on behalf of the City.
  - B. Attend all City Council meetings and help finance officer in preparation of agendas, public notices, correspondence, publications, etc.
  - C. Assist in the operations of the City office. Includes effective handling of public calls and visits, coordination with City departments regarding citizen concerns. Plan, organize, direct, supervise or coordinate with all City service department heads (Streets, Water, Sewer, Police, Armory, Parks, Pool and Summer Recreation). In conjunction with the Finance Officer, assist with the coordinated activities of the city clerical and administrative support workers. This includes water and sewer billing and to assist Finance Officer as needed.
  - D. Administer and interpret City zoning and subdivision regulations in conjunction with the Zoning Administrator. Answer questions from the public as to what is allowed by the codes. Bring to the Zoning Administrator building permit requests and help Zoning Administrator advise Planning Commission if permit as applied for meets all existing regulations. Make provisions for on site inspections for compliance with City zoning regulations and coordinate activities with the Zoning Administrator and Planning Commission.
  - E. Act as personnel officer for the City of Salem. Assure all City employee personnel records are maintained and updated regarding any actions involving city employees. Ensure that the policies found in the City's personnel manual concerning personnel administration are followed and enforced in all City department operations. Ensure that all City personnel receive a formal and documented annual evaluation/review. Oversee all City employee hiring/firing management review with the approval of the City Council. This personally includes an annual review of each department head.
  - F. Review, analyze, and suggest improvements to the City's business and organizational systems to assist in operating more efficiently and effectively.

Conduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies and prepare operations and procedures manuals and marketing and promotional materials.

- G. Engage in promoting or creating goodwill for the City by writing or selecting favorable publicity material and releasing it through various communications media. Prepare and arrange displays, make speeches and perform related publicity efforts. Formulate policies, direct activities, and plan/organize public relations activities for the City. Handles escalated customer/resident complaints.
- H. Promote economic development for the City of Salem by working with direction of City Council, Economic Development Corporation and Progressive Salem Association. Participate in appropriate local, regional, and statewide development associations. Pursue grants and handle all procedures that pertain to federal or state grants.

1.0605 Bond. The administrator shall furnish a surety bond to be approved by the governing body, said bond to be conditioned on the faithful performance of all the administrator's duties. The premium of the bond shall be paid by the City.

1.0606 Compensation. The city administrator shall receive such compensation, as the governing body shall fix.

**TITLE 2**  
**BOUNDARIES, WARDS AND VOTING PRECINCTS**

*Chapter 2.01 - Boundaries*

*Chapter 2.02 - Wards and Voting Precincts*

**CHAPTER 2.01 - BOUNDARIES**

2.0101 Boundaries. The corporate limits of the City shall be declared to be such as have been legally established and amended by law and ordinances of the City as shown on the official map on file in the office of the Finance Officer. Such map shall be incorporated in this ordinance by reference and adopted as the official map showing the boundaries and limits of the City. (SDCL 93-2, SDCL 9-4-1)

**CHAPTER 2.02 - WARDS AND VOTING PRECINCTS**

2.0201 Wards and Voting Precincts. The City shall be divided into three wards, which shall be designated respectively as Wards One, Two and Three.

First Ward will encompass all that portion of the City lying south of the east-west Railroad right-of-way.

Second Ward will encompass all that portion of the City lying east of Main Street and north of the east-west Railroad right-of-way.

Third Ward will encompass all that portion of the City west of Main Street and north of the east-west Railroad right-of-way.

For voting purposes the polling location for all three wards shall be the City's Armory.

**TITLE 3  
HEALTH AND SANITATION**

*Chapter 3.01 - Nuisances*

*Chapter 3.02 - Collection of Garbage*

*Chapter 3.03 - Licensure of Commercial Garbage Haulers*

*Chapter 3.04 - City Burn Pit*

**CHAPTER 3.01 - NUISANCES**

3.0101 Prohibited and Defined. No person shall create, commit, maintain or permit to be created, committed or maintained any nuisance as defined herein, within the City. The following specific acts, conditions and things are, each and all of them hereby declared to constitute nuisances:

- A. Depositing, maintaining or permitting to be maintained or to accumulate upon any public or private property, any household wastewater, sewage, garbage, refuse, rubbish, offal, excrement, decaying fruit, vegetables, fish, meat, bones; any fowl, putrid, or obnoxious liquid substance; any chemical, or hazardous material; or putrescible and nonputrescible animal or vegetable wastes or solid wastes, or any other waste material which constitutes or tends to create a danger to public healthy safety or welfare. (SDCL 9-32-109 34A-7-9)
- B. The accumulation of manure, garbage or anything whatsoever which may be breeding areas for flies, mosquitoes or rodents. (SDCL 9-32-10)
- C. Permitting weeds to grow to maturity on any private property, including but not limited to, Canada thistle, sunflowers, ragweed, cocklebur, burdock, black mustard, sweet clover, and bullthistle. Also, allowing the dense growth of any vegetation including brush or grass, without proper trimming or mowing, which may constitute a health, safety, or fire hazard. (SDCL 9-32-12)
- D. For the owner of a dead animal to permit it to remain undisposed of longer than twenty-four (24) hours after its death. (SDCL 9-29-13)
- E. Any excavation trench, open basement, or sink hole in which stagnant water is permitted to collect or which may jeopardize the life, limb or safety of the general public. (SDCL 9-29-13)
- F. Throwing or letting fall on or permitting to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel or wood while engaged in handling or removing any such substance. (SDCL 9-32-10)
- G. Keeping or maintaining any building or enclosure where livestock or fowl are kept unless a special permit is requested and such is approved by the City Council. (SDCL 9-29-13)
- H. Open Burning/Bonfires: Burning, causing or permitting to be burned upon any

private or public property any dirt, filth, manure, garbage, sweepings, wood, ashes, paper, waste or rubbish of any kind. The following other types of open burning shall be permissible for a specific purpose when conducted in conformity with the subsections set forth below:

1. Fires set for the elimination of a fire hazard which cannot be abated by any other means when authorized by the Fire Chief of the City Volunteer Fire Department and the City Council.
2. Fires purposely set by city maintenance personnel for the purposes approved by the City Council and authorized by the Fire Chief of the City Volunteer Fire Department.
3. Fires contained in an approved incinerator so constructed, operated, or used so that sparks, cinders, ashes, smoke or fumes there from shall not become injurious or dangerous to the health, comfort or to the property of individuals or the public, nor materially impair the comfort of persons or the value of property within the city.

I. Maintaining, or causing or permitting the same, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building if such conditions or defects thereby annoy injure or endanger the comfort, repose, healthy or safety of others, or if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the public or its occupants are jeopardized:

1. Whenever any building or structure is (i) vacant and unoccupied for the purpose for which it was erected and; (ii) the building is unfit for occupancy as it fails to meet minimum housing standards and; (iii) the building has remained substantially in such condition for a period in excess of six (6) months.
2. Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence thereby depresses the market value of surrounding properties. (SDCL 9-29-13)

3.0102 Littering in Public Places. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the City except in authorized public or private receptacles. The following further identifies acts and conditions that constitute nuisances and are therefore prohibited:

A. No person shall sweep into or deposit in any gutters streets or other public place within the City, the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property or places of business shall keep the sidewalk in front of such Premises free of litter.

For purposes of this Ordinance, a public nuisance shall also include snow and ice when deposited or allowed to accumulate in conflict with the provisions of this Section.

- B. No persons, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place or upon private property within the City.

No person shall drive or move any truck or other vehicle within the City unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place.

- C. No person shall throw or deposit litter on any occupied open or vacant private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being deposited upon any streets sidewalk or other public place or upon any private property.

3.0103 Abandoned, Wrecked, Dismantled or Discarded Vehicles. For purposes of this section, the following terms, phrases, words and their derivations shall have the meaning given herein:

A. Definitions

1. "City" is the City of Salem.
2. "Motor Vehicle" is any vehicle which is self-propelled (or designed to be towed by a self-propelled vehicle) and designed to travel along the ground or in the water and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, farm machinery, construction equipment, pull trailers, go-carts, golf carts, boats, campers and trailers.
3. "Junked Motor Vehicle" is any motor vehicle, as defined by definition (2) herein, the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned, or discarded. The absence of a current license on any motor vehicle shall be deemed to be strong evidence in support of a finding that the same is a junked motor vehicle within the meaning of this section, or a vehicle which constitutes an immediate health, safety, and fire or traffic hazard.
4. "Abandoned Vehicle" is any vehicle, as defined by definition (2) herein, which is left unattended or stored on any public property(s) defined by definition (7) herein, in the same or substantially same place within the city for a longer period than twenty-four (24) hours.
5. "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.
6. "Private Property" shall mean any real property within the city which is privately owned and which is not public property as defined in this section.
7. "Public Property" shall mean any street, alley or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned

property or facility.

- B. Regulation. The presence of an abandoned, discarded, wrecked, burned, dismantled, inoperable, junked or partially dismantled vehicle or parts thereof on private property or public property is hereby declared a public nuisance, which may be abated as such in accordance with the provisions of this article. It is unlawful to keep or place any of the above-described vehicles or vehicle parts:
1. Upon public streets or property except on any emergency basis; or
  2. Upon the private property of any person owning, in charge of, or in control of any real property within the city, whether as an owner, tenant, occupant, lessee or otherwise for longer than fourteen (14) days unless it is within a fully enclosed building or structure. A tarpaulin, tent or other similar temporary structure shall not be deemed to satisfy the requirements of this section.
  3. In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept or located on any premises.
- C. Exceptions. This section shall not apply to:
1. One inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. In the event this inoperable vehicle is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway longer than fourteen (14) days.
  2. Filling stations, automobile repair shops or any other motor vehicle related businesses in compliance with applicable city ordinances may place inoperable vehicles being repaired or offered for sale on the premises.
  3. Junkyards operated and maintained in compliance with applicable city ordinances.
- D. Removal Notice and Procedure. A notice in writing shall be served upon the occupant of and/or owner of record of the land where the junked motor vehicle exists and on the registered owner of the offending junked motor vehicle if such owner can be located in the exercise of reasonable diligence notifying each of them of the existence of the junked motor vehicle and requiring its removal within fourteen (14) days of the date specified in the notice.
1. The notice may be served by the Finance Officer or by a police officer upon any person entitled to notice as herein provided by personal service as required by South Dakota statute for the service of a summons or by mailing a copy of said notice by registered or certified mail with a return receipt request and addressed to such person at his or her last known post office address, with postage prepaid.
  2. The notice shall require the removal of the junked motor vehicle within the time specified in this section. The notice shall also advise the person receiving the notice of the right to a hearing as provided within this section. The notice shall state the location of where the junked motor vehicle will be stored if it is

subsequently impounded and the costs to be paid by the owner thereof to recover the junked motor vehicle.

Upon proper notice and opportunity to be heard, the owner of the junked motor vehicle or the owner of record of the land or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the event of removal and disposition of the junked motor vehicle by the city, those persons receiving a notice to remove the junked motor vehicle shall be jointly and severally liable for any un-recovered expenses incurred by the city for the removal, storage, and disposition of the junked motor vehicle.

- E. Request for Hearing. The person or persons to whom the notices are directed, or their duly authorized agents, may file a written request for hearing before the governing body of the City of Salem within the fourteen (14) day period of compliance prescribed within this section for the purpose of defending the charges by the city. Written requests shall be filed with the Finance Officer, who shall then arrange a hearing before the governing body for the purpose of determining whether the motor vehicle described in the notice of removal, issued pursuant to this section, is a junked motor vehicle.
- F. Procedure for Hearing. Unless otherwise agreed by and between the interested parties, the hearing shall be held as soon as practicable after the filing of the receipt, and the person or persons to whom the notices are directed shall be advised of the time and place of said hearing at least ten (10) days in advance thereof. At any such hearing the city and the person or persons to whom the notices have been directed may introduce such witnesses and evidence as either party deems necessary. Based on the evidence presented at the hearing, the governing body will either affirm the decision of the Finance Officer or Police Officer and order that the junked motor vehicle be removed by one or all of the parties in interest within a period not to exceed fifteen (15) days after the date of the order of the Council or reverse the decision of the Finance Officer or Police Officer and dismiss the proceeding.
- G. Removal on Default. If the violation described in the notice has not been remedied within the fourteen (14) day period allowed for compliance and no hearing has been requested by any person entitled thereto, then the city attorney shall commence a civil action pursuant to SDCL 21-10-5 to remove the junked motor vehicle.
- H. Removal after Civil Action. If the notice of hearing requesting a hearing as hereinabove provided has been timely filed, hearing has been held, and the existence of the violation has been affirmed by the city council of Salem, and the junked motor vehicle is not removed with a fifteen (15) day period or other time period ordered by the governing body, then the city attorney shall commence civil action pursuant to SDCL 21-10-5 to remove the junked motor vehicle.

3.0104 Diseased Vegetation. Any owner, occupant or person in charge of any property under the jurisdiction of the City shall remove at his or her own expense any trees, brush, wood, or debris infected with Dutch Elm disease or other infestations or infectious disease found thereon when so notified by the City to do so. The City Council shall cause to be mailed to such owner, occupant or person, written notice that they may appear before said City Council at an appointed time not less than fourteen (14) days

from the date of mailing of said written notice to show cause why said trees, brush, wood, or debris should not be declared a public nuisance.

At said meeting the City Council may resolve and declare the same to be a public nuisance and may order its removal by said owners occupant or person within twenty-one (21) days from the date of service of said resolution and order on said owners occupant or person. Any diseased vegetation which is removed shall be properly disposed of by burning or burying in a designated disposal site. (SDCL 9-32-12)

- 3.0105 Nuisances How Abated. The City Council shall give written notice or cause written notice to be given to any person creating, permitting, or maintaining any nuisance to abate such nuisance forthwith and if any person shall neglect or refuse to do so within a reasonable time after such notice, they shall be deemed guilty of a violation of this Chapter. The City Council shall cause to be removed or abated any such nuisance upon the expiration of a reasonable time after the serving of such notice; and the City may recover the expenses so incurred from the person maintaining such nuisance in a civil suit instituted for such purpose, or may levy an assessment against the property and collect the same.

The City Council shall cause to be published all assessments for costs of removal or abatement of nuisances together with a notice that said assessments shall be considered by the City Council at the regular October meeting of each year, at which time and place any person may appear and be heard. Such notice shall be published once in the official newspaper and at least ten (10) days prior to the October meeting.

Within ten (10) days after the assessment has been approved by the City Council, a certified copy of the same shall be filed with the Finance Officer, and shall be due and payable to the City. If the assessment is not paid within sixty (60) days of filings a penalty cost of ten (10) percent shall be added in addition to an annual interest rate at the highest legal rate allowed by law on the unpaid balance. (SDCL 9-29-13)

## **CHAPTER 3.02 - COLLECTION OF GARBAGE**

- 3.0201 Storing Garbage Prior to Collection. All garbage shall be placed in either sealed water-tight bags or inside garbage containers except leaves and grass which are to be just bagged, and set to the curb or accessible alley on days of pickup.

Whenever the premises in which garbage and rubbish accumulates are adjacent to a street or alley, the garbage and rubbish containers for such premises shall be kept in a location convenient and accessible to such street or alley if premises are not adjacent to a street or alley, the garbage and rubbish containers shall be kept on the premises in such a location that they will be readily accessible to the nearest street or alley without being unsightly.

The proprietor or operator of each duplex, apartment house, or similar multiple family dwelling shall furnish and maintain for the use of the tenants a sufficient number of garbage containers to hold all garbage and rubbish that accumulates upon such premises in the course of a weeks or he shall require the tenants upon said premises to furnish such containers. The place where the garbage and rubbish containers are

located shall be kept clean and in a sanitary condition at all times.

Every owner or person in charge of any restaurant, hotel, grocery store, wholesale or food processing establishment or any other business or commercial place having garbage or rubbish shall furnish and provide for use in connection therewith a garbage or refuse container. Such container shall have covers for all openings and shall be emptied often enough to prevent the same from giving off any odor or stench.

- 3.0202 Private Operators. The collection of garbage and refuse in the City shall be made by private contractors or operators who shall be subject to all local ordinances as well as all state and federal regulations.
- 3.0203 Permit Required. Private contractors or operators involved with the collection of garbage or refuse in the City shall apply for an annual permit to the City Council. Any permit approved and issued may be revoked by the City Council for violations of laws, regulations or stipulations governing such operations. Such application shall include the operators permit number for disposal in an approved sanitary landfill.
- 3.0204 City Not Liable. The City shall not be liable for any expense incurred through the failure of a contractor or operator or his agents and employees to operate and maintain collection services in a proper and efficient manner, and for any actions that may result from, or be attributed to such services performed. (SDCL 9-32-11)
- 3.0205 Equipment. Every garbage collector shall use equipment which will not permit any leakage or spilling and such truck or trailer shall be so covered so that trash, garbage, rubbish or waste will not be dropped or spilled in transit to any place in the City, and any violation of this Section shall be sufficient cause for revocation of the collectors permit, and in addition thereto he shall be guilty of a misdemeanor and subject to fine.
- 3.0206 Rates. The following residential rates for the purpose of collecting, hauling and disposing of garbage, rubbish, and waste material (including appliances, furniture, hot water heaters, etc., and excluding lead acid batteries, oil and solvents, herbicides or pesticides, paint cans with over 1" of paint in them, grass clippings, leaves and trees) shall be paid monthly to the City of Salem by the occupant of every dwelling house, apartment or building used or occupied for residential purposes.

The recycling of plastic, aluminum, tin containers, newspaper, computer paper and cardboard are required in the City of Salem. The recyclable items will be picked up on the first and third Wednesday of the month with no limit on the number of items. The recyclables shall be sorted in the following manner:

- A. Newspaper: with advertising and inserts that come with paper.
1. Place in brown paper grocery sack
  2. Clean dry paper only, no contaminated paper, plastic bags or rubber
  3. Do not tie with string or twine
- B. Aluminum, Steel and Plastic
1. Place in clear garbage bag
  2. Food and beverage cans:
    - a. Empty and rinse, pinch top of cans or flatten. Labels do not need to be

- removed.
- b. No paint cans, aerosol cans, dirty foil, pie or food trays, pesticide or herbicide containers
- 3. Plastic Containers:
  - a. Necks must be smaller than body to recycle
  - b. Remove and throw away lids
  - c. Empty completely, rinse and flatten
  - d. No oil containers, styrofoam containers, egg cartons, yogurt or butter tubs, toys, caps, lids, buckets, flower pots, plastic bags, pesticide or antifreeze containers.
- 4. Corrugated Cardboard:
  - a. Only clean cardboard with corrugations between layers
  - b. Empty, flatten, remove staples and packing material and tie in a bundle
  - c. No paperboard boxes such as juice boxes, milk cartons, egg cartons, cereal, cake mix, tissue or shoe boxes. No wax coated or soda and beer cartons or pizza boxes.
- 5. Computer and Office Paper
  - a. Place in clear plastic bag

As of April 29, 2004 it was no longer lawful to dispose of electronics in the Sioux Falls Landfill; therefore, the recycling of electronic equipment is required in the City of Salem. Electronic equipment is split into the following categories:

**C. Large Electronics**

Desktop PC's, monitors, laptop pc's, main frame computers ups systems, printers, tv's (including console units). Vcr's (laser disc and dvd players), pinball machines, typewriters, word processors, copy machines, fax machines, scanners, stereo receivers

**D. Small Electronics**

Cell phones, pagers, pda's, handheld video games, calculators, small mp3 players, small cd and cassette players, small radios, small walkie talkies, digital and electronic cameras

Electronics may be set out for collection on regularly scheduled recycling days, but will require a sticker.

The following are the monthly rates and special rates for garbage collection within the City of Salem:

| <b>SERVICE</b>      | <b>RATE</b> | <b>PER</b> |
|---------------------|-------------|------------|
| Residential         | \$ 14.95    | Month      |
| Apts w/out Dumpster | \$ 7.77     | Month      |
| Apts with Dumpster  | \$ 6.56     | Month      |
| Commercial Rate     | \$ 5.29     | Yard       |
| Dumpster Rate       | \$ 9.00     | Month      |

|                   |          |      |
|-------------------|----------|------|
| Appliances        | \$ 10.00 | Unit |
| Extra Garbage     | \$ 1.25  | Bag  |
| Small Electronics | \$ 1.25  | Item |
| Large Electronics | \$ 15.00 | Item |

The monthly rate for residential and apartments includes the curb side pick up of the recyclable items (excluding appliances and electronic equipment), but limits the number of regular garbage bags or cans (up to 50# each) to TWO (2) per week for residential, and ONE (1) per week for apartments without dumpster. Furniture can be the “second” bag of the allowed 2-bag limit, if it’s 50lb or less.

Apartments with dumpsters will be picked up as necessary but not less than once a week; pickups for businesses are to be determined according to each one’s specific need and negotiated between the contractor and business.

The city will retain 25 cents of the residential and apartment rates to cover city expenses and the \$1.00 reduced fee granted to the elderly persons living alone and on social security.

Extra garbage, electronic equipment, and appliances must be tagged, and all Freon must be removed from appliances before they will be picked up.

All garbage bills are due the first day of the month and shall become delinquent after the 10th day causing a \$5.00 penalty to be charged.

### CHAPTER 3.03 - LICENSURE OF COMMERCIAL GARBAGE HAULERS

3.0301 Definitions. For the purposes of this ordinance, the following terms shall have the meanings indicated, unless the context clearly indicates otherwise:

- A. “Chief Elected official”. The Mayor, authorized under South Dakota Codified Laws as the chief elected or presiding official of the Governing Board of the City.
- B. “Commercial Garbage Hauler”. Any individual, corporation, organization or business that collects or transports any type of solid waste for other parties. Entities which transport their own solid waste, and entities which transport waste solely for reuse or recycling but not for disposal are not included in this definition.
- C. “Commercial Garbage Hauler License or License”. A license required of commercial garbage haulers by McCook County, as established in McCook County Ordinance #444.
- D. “Solid Waste” (SD 34A-6-1.3). Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid liquid, semi-solid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities, but does not include mining waste in connection with a mine

permitted under title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

- 3.0302 License Required. It shall be unlawful for a commercial garbage hauler to use the streets or roads within the Municipality of Salem for the collection, removal or disposal of any solid waste, without first having obtained a Commercial Garbage Hauler License from McCook County.
- 3.0303 Regulations and Performance Standards. When operating within the Municipality of Salem, a commercial garbage hauler shall comply with all rules, regulations and performance standards established by McCook County, as well as any applicable regulations of the Municipality of Salem. Such rules, regulations and performance standards include, but are not limited to, the requirements for a volume-based rate structure and for the collection of recyclable materials, as established by McCook County and/or the Municipality of Salem. In no event shall this Section be interpreted to mean that the Municipality of Salem may not impose rules, regulations and performance standards in addition to those established by McCook County.
- 3.0304 Saving Clause. In the event that any part of this ordinance is declared, by a duly authorized court of law, to be unconstitutional, in conflict with South Dakota Codified Laws, or in conflict with the Administrative Rules of South Dakota, such part of this ordinance shall become null and void. In the event of such a finding against a part of this ordinance, the remainder of this ordinance shall continue to be effective.

#### **CHAPTER 3.04 - CITY BURN PIT**

- 3.0401 Location. The City Council shall select and establish as dumping (burn pit) grounds suitable lots or parcels of land either within or outside the City limits; and until otherwise ordered, all straw, manure, leaves, ashes, and other rubbish which may be removed from public or private premises shall be drawn to and deposited upon said dumping grounds; and all material which can be burned shall be burned at such locations and in such manner as may be directed by the City.
- 3.0402 Use of. The City dumping grounds may not be used for the purposes of burying dead carcasses or carrion. Also, no metal or other non-burnable materials shall be deposited at the dumping grounds.
- No person, firm or corporation except residents of the City shall use said dumping grounds unless a permit to do so is secured from the City Council.
- 3.0403 Fee for Use. All City residents using or needing access to the City Restricted Use Site (Burn Pit) shall make payment of \$10.00 for a windshield sticker for each vehicle used; all non-resident businesses contracting with Salem City residents shall make payment of \$75.00 for use of same site. (Ord. # 522)

3.0404 Signs. The City shall erect at such dumping grounds adequate signs directing places where refuse shall be deposited and the manner in which it shall be disposed of; and any disregard of such signs shall be considered a violation of this Ordinance.

3.0405 Penalty. Anyone disposing of prohibited materials in the City's Restricted Use Site are in violation of the regulations set forth by the Environmental Protection Agency.

The City shall impose a fine of \$200.00 for anyone guilty of such violation; and for any non-resident person, firm, or corporation who without proper authorization, use the City Burn site to dump refuse.

## TITLE 4 LICENSES

*Chapter 4.01 - General Provisions*  
*Chapter 4.02 - Transient Merchants, Peddlers*  
*Chapter 4.03 - Alcoholic Beverages*  
*Chapter 4.04 - Pawnbrokers*

### CHAPTER 4.01 - GENERAL PROVISIONS

4.0101 Licenses Required. It shall be unlawful for any person, persons, firm or corporation to engage in any activity for which a license is required without first having obtained such licenses as hereinafter provided. The City Council may at any time expand the general provisions of this Chapter by requiring any person, persons, firm or corporation engaging in any trades business or occupation within the City which is not specified by this ordinance to obtain a licenses as deemed necessary.

4.0102 Application for License. Any person, persons, firm or corporation wishing to obtain a license as herein provided, shall make written application to the City Council stating the name of the applicants address, purpose of the activity the length of time for which said license is wanted and the particular place at which said license is to be used.

Fees for all licenses shall be fixed by the City Council where not specified in this Chapter, and all license fees shall be paid in full at the time of application in such manner as approved by said Council.

4.0103 License Expiration. Any annual licenses granted under the provisions of this Chapter shall expire on the 31st day of December next following the granting thereof, except as otherwise provided, and shall not be granted for any sum less than the annual rates and there shall be no rebate made on the termination of said callings vocations or kind of business for which said license was issued.

4.0104 Revocation. The City Council shall have the authority at any time to suspend or revoke any license granted under the provision of this Chapter whenever said Council shall be satisfied upon written complaint that such callings vocations or kind of business for which said license has been issued, has been made or conducted in an improper or illegal manner, and in case of such revocations the City Council may refund to the holder of such license such proportionate amount of money paid therefore as said Council shall deem just.

4.0105 Issuance of License. Except as otherwise provided, all licenses shall be issued by the Finance Officer after issuance of the license has been approved by the City Council and the applicant shall have complied with all requirements for issuance of such license. Unless otherwise provided, all licenses shall be signed by the Finance Officer and shall have affixed thereto the official seal of the City.

4.0106 Record of Licenses. The Finance Officer shall keep a record of all licenses issued by the City stating when and to whom issued, for what purpose and for what length of time,

the amount of money paid for said licenses and the place where such activity is to be carried on. (SDCL 9-34-1)

## **CHAPTER 4.02 - TRANSIENT MERCHANTS, PEDDLERS**

### **4.0201 Definitions.**

The word “peddler” as used in this chapter shall mean any person, whether a resident of this city or not, traveling from place to place, from house to house, or from street to street for the purpose of selling or soliciting for sale of goods, wares, merchandise, or services, other than agricultural products produced or processed in this state by seller; and shall also mean and include any person transacting a temporary business within the city. The word “peddler” shall include the terms “solicitor”, “transient or itinerant merchant or vendor” or “transient or itinerant photographer.”

The word “vendor” means any person engaged in the selling or offering for sale of food, beverages, merchandise or service on the public streets or sidewalks, from a stand or motor vehicle or from their person.

The word “stand” means any table, showcase, bench, rack, pushcart, wagon, or any other movable vehicle or device, which may be moved without the assistance of a motor and which is not licensed and registered by the state department of commerce and regulation, used for the displaying, storing or transporting of articles offered for sale by a vendor.

The word “temporary business” shall not include bona fide garage or rummage sales which are not conducted at the same location more than four times per year; the duration of each sale shall not exceed four days.

Central Business District means the core area, which is that area bounded by Main Street from Drake Avenue to Essex Avenue, and to Highway 81 from Essex Avenue to Drake Avenue.

### **4.0202 Exceptions to Chapter.** The provisions of this chapter shall not apply to the following:

- A. Solicitations, sales or distributions made by charitable, education, or religious organizations which have registered with the city clerk’s office on forms provided by that office.
- B. Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.
- C. Members of professions licensed by the state which have continuing education requirements.

### **4.0203 Refusing to Leave.** It shall be unlawful for any peddler who enters upon premises owned or leased by another to refuse to leave the premises after having been notified by the owner or possessor of the premises, or his agent, to leave the premises.

### **4.0204 Entrance to Premises Restricted.** It shall be unlawful for any peddler to enter upon any private premises when the premises are posted with a sign stating “No Peddlers Allowed”,

“No Soliciting” or words to that effect.

- 4.0205 Misrepresentation. It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the goods, wares, merchandise or services.
- 4.0206 Hours of Operation. It shall be unlawful for any peddler to engage in the business of peddling between the hours of 9:00 p.m. and 8:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.
- 4.0207 Prohibited Conduct. Any peddler selling or soliciting for sale goods, wares, merchandise or services by traveling from place to place, house to house, or street to street shall not remain in any one place for a period longer than necessary to make a sale after having been approached or stopped for that purpose. Peddling in the Central Business Area is prohibited.
- 4.0208 Peddlers Permit Required. It shall be unlawful for any person to be engaged in the business as a peddler as defined in this chapter within the corporate limits of the city without first obtaining a permit to do so.
- 4.0209 Application. The application for a permit required by the provisions of this chapter shall:
- A. Contain a statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or Code; the nature of the offense; the punishment or penalty assessed therefore, if previously convicted; and the place of conviction.
  - B. Whether the applicant, upon any sale or order, shall demand, accept or receive payment, or deposit of money in advance of final delivery.
  - C. The period of time and location(s) the applicant wishes to engage in business within the city.
  - D. The local, and permanent, address and telephone number where the applicant may be reached while doing business within the city.
  - E. The local, and permanent, address and the name of the person, if any, that the applicant represents.
  - F. The kind of foods, goods, wares, merchandise or services the applicant wishes to engage in such business within the city.
  - G. The last five cities or towns wherein the applicant has worked before coming to this city.
  - H. Such other relevant information as the police department may require for the investigation of the applicant.

- 4.0210 Bond Required. Every peddler before receiving a license shall file in the office of the city finance officer a bond in the penal sum of \$1,000.00 conditioned for the faithful performance and payment of obligations of the peddler arising in connection with the business, and for payment of all claims or damages for which the peddler arising in connection with the business, and for payment of all claims or damages for which the peddler may become liable through fraud, deceit or otherwise in the course of business as a peddler.
- 4.0211 False Information. It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit required by this chapter.
- 4.0212 Fingerprints, Photographs. At the request of the city finance officer, the applicant for a permit by this chapter shall submit to fingerprinting and photographing by the police department.
- 4.0213 Permit Fee. Before any permit shall be issued under the provisions of this chapter, the applicant shall pay a fee of \$100.00.
- 4.0214 Issuance Restricted. No peddler's permit shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit whether acting for himself or as an agent or representative of another.
- 4.0215 Display of Permit. Every peddler having a permit issued under the provisions of this article and doing business within the city shall display his permit upon the request of any person, and failure to do so shall be unlawful.
- 4.0216 Vendor License. It shall be unlawful for a vendor or temporary business to sell or offer for sale any food, beverage, merchandise or service in a building, on any street or sidewalk in the central business district within the city without first obtaining a vendor's license and paying the required permit fee (4.0213).
- 4.0217 Application for Vendor Licenses. The license required by section 4.0216 shall be issued in accordance with section 4.0209 of this chapter and shall also include:
- A. The name, home and business address of the applicant and the name and address of the owner, if other than the applicant of the vending business, stand or motor vehicle to be used in the operation of vending business.
  - B. A description and photograph of schematic drawing of the stand or motor vehicle to be used in the operation of the business, including a license and registration number of any motor vehicle used in the operation of the business.
  - C. Before commencement of operations, proof of an insurance policy, issued by an insurance company and licensed to do business in the state, protecting the licensee and city from all claims or damages to property and bodily death and attorney's fees, which may arise from the operations under or in connection with the license. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city.
- 4.0218 Issuance of Licenses. The city finance officer shall prepare a list of designated vending

locations in the central business district. All businesses fronting designated vending locations shall have a first right of refusal to obtain a vending license for the designated location in front of their business. If more applications are received than there are designating vending locations as determined by the city council, the applications, if approved, shall be awarded the locations in the order of their application. If a license is denied, the applicant shall be provided with a statement of the reasons for denial, which reasons shall be entered in writing on the application. An applicant may request a hearing upon denial of the license request. A license to vend on the sidewalk shall specify the location from which vending is permitted, shall only be valid for vending at that location and is nontransferable.

4.0219 Vending Outside Central Business District. Vending outside the central business district is permitted upon receipt of a peddler's license.

4.0220 Prohibited Conduct.

- A. Store, park or leave any stand overnight on any street or sidewalk or park any motor vehicle other than in a lawful parking place, in conformance with city and state parking regulations.
- B. Sell food or beverages for immediate consumption unless he has available for public use his own or a public litter receptacle which is available for his patrons' use.
- C. Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by him.
- D. Use any device that is designed to amplify sound for the purpose of making verbal solicitations.
- E. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the stand or motor vehicle.
- F. Set up, maintain or permit the use of any table, crate, carton, rack or any other device to increase the selling or display capacity of his stand or motor vehicle where such items have not been described in his application.
- G. Solicit or conduct business with persons in motor vehicles.
- H. Sell anything other than that which he is licensed to vend.
- I. Vend without the insurance coverage specified in section 4.0217(C).
- J. No vendor selling from a stand on the sidewalk in the central business district shall vend at any location which is not approved by the city council or allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property without the owner's permission.

4.0221 Special Events. Any vendor's license granted for the central business district shall be preempted during the operation of recognized special events being conducted in the central business district. A person in charge of a special event shall obtain a vendor's license prior to holding any special event. Such special event vending license shall be granted subject to compliance with any conditions or requirements placed on it by the finance officer. Recognized special events are as follows:

- A. Those special events presented to and approved by the city council and made public three months before the special event date.
- B. Those special events that are conducted in the central business district by a bona fide nationally chartered veterans, religious, charitable, educational or fraternal

organization, local civic or service club, political party or volunteer fire department or political committee on behalf of a candidate for a political office, which exists under the laws of the state.

- 4.0222 Size Requirements for Vending Stands. All vending stands shall be inspected by the finance officer or one of her representatives to check that the vendor's stand size shall match that of the licensed location.
- 4.0223 Display of License. All vendor licenses shall be displayed at all times during the operation of the vending business.
- 4.0224 Advertising. No advertising, except the posting of prices, shall be permitted on any stand or motor vehicle, except to identify the name of the product or the name of the sidewalk vendor.
- 4.0225 Renewal of License. All licenses required in this Chapter are valid for the entire licensing period, excluding special events, unless revoked or suspended prior to expiration. An application to renew a license shall be made no later than 30 days before the expiration of the current license.
- 4.0226 Denial, Suspension and Revocation of License. Any license required in this chapter may be denied, suspended or revoked for any of the following causes:
- A. Fraud, misrepresentation or false statements contained in the application of license.
  - B. Fraud, misrepresentation of false statements made in the course of carrying on the business for which the license was issued.
  - C. Conduct of the licensed business or its representatives in such a manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
  - D. Conduct of the business or its representatives in violation of any city or state tax and licensing laws.
  - E. Conducting the business licensed hereunder in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- 4.0227 Appeal. Any person aggrieved by the denial, suspension and/or revocation of license shall have the right to appeal to the City Council. Such appeal shall be taken by filing with the Finance Officer within ten (10) days after notice of the decision, a written statement showing the grounds for the appeal. The Finance Officer shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to such person in writing setting forth the grounds of the complaint and the time and place of the hearing. This notice shall be mailed or delivered personally to the licensee/applicant at least five (5) days prior to the hearing date.
- 4.0228 Penalties. Any person violating any of the provisions of this Chapter, shall, upon conviction thereof be punished by fine not to exceed one hundred dollars (\$100) or by imprisonment not to exceed thirty (30) days or both, and such fine and imprisonment for each day of operation in violation of this Chapter shall be deemed a separate offense. (Ord. #521)

## CHAPTER 4.03 - ALCOHOLIC BEVERAGES

- 4.0301 License Required. No person shall sell offer for sale, keep for sale, exchange, distill, manufacture, produce, bottle, blend, or otherwise concoct, within the City any alcoholic beverage as defined by statutes without having a license therefore as required by South Dakota Laws. (SDCL 9-29-7)
- 4.0302 Application and License Fees. In any instances in which applications may qualify, applications for licenses for the sale of alcoholic beverages in the City shall be submitted as prescribed by South Dakota Laws. (SDCL 35-4-2)
- 4.0303 License Restrictions. Applications for on sale, off sale, or malt beverage licenses shall have the necessary fees attached upon being submitted to the City as required by the South Dakota Laws, and the granting and retention of licenses will be as provided by the South Dakota Laws, and local regulations. (SDCL 35-2)
- 4.0304 Method of Billing. All holders of a license to sell malt beverage shall pay monthly to the City a sum of five percent (5%) of the actual cost price for all malt beverages purchased for sale by said licenses.

All malt beverage licenses shall receive their deliveries and pay for said deliveries at their own establishments. After each delivery a copy of all invoices for said establishments will be delivered to the Salem City Liquor Store by the distributors.

On the first day of every month licensees will be billed for the 5% which is payable by the 15th. Penalty for non-payment by the 15th will be 10% of the total bill.

- 4.0305 Location of Business. The City Council shall not issue any licenses to any person(s), business or group where the location of such a business would not be considered desirable in accordance with South Dakota Laws, and local regulations. (SDCL 35-2-6.1, SDCL 35-26.2)
- 4.0306 Violations. Any person, firm, or licensee in violation of any of the provisions of this Chapter shall be deemed guilty of a misdemeanor. For failure to correct any offense when applicable after conviction each day of failure to do so shall constitute an additional separate offense. Whenever any person shall as clerk, servant, agent, or employee of any other person or establishment violates any of the provisions of this Chapter he shall also be deemed as guilty as a principal. Failure to comply with all existing requirements including the provisions in this Chapter, shall provide cause for revocation of any licenses granted under the provisions of South Dakota Laws. (SDCL 35-2-10)

## CHAPTER 4.04 - PAWNBROKERS

- 4.0401 License and Fee. No person shall engage in the business of a Pawnbroker without having first obtained a license therefore, upon application of the City Council. The licensing fee shall be fifty dollars (\$50.00) per annum.
- 4.0402 Definition. Any person who loans money on deposit or pledge of personal property, or

other valuable thing, or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price, or who loans money secured by pledge of personal property by taking possession of the property or any part thereof so pledged, or who deals in the buying and selling of personal property in conjunction with the foregoing, is hereby declared to be a Pawnbroker.

4.0403 Records Required. All Pawnbrokers within the City of Salem shall keep a record of all loans made and all articles received as security, and all articles purchased out-right for resale. The Pawnbroker will be required to receive the following information:

Full name, date of birth, present address, phone number, height, weight, sex, color of hair, color of eyes, right thumb print, and date and time articles received.

This information must be verified by an official driver's license or state issued identification bearing the picture and signature of the person identified. The Pawnbroker shall document the State from which the identification was issued and the type of identification the number from the identification card, and the expiration date thereof.

The Pawnbroker will be required to fill out completely the pawn form approved by the Chief of Police of the City of Salem, which will be in triplicate, and of which the original copy will be given to the Salem Police Department. This original must be legible and contain all the information needed to properly identify the item or items pawned or purchased out-right for resale as required by the Salem Police.

A copy of the records required in subsection C.2. of this ordinance, on the prescribed or approved form, shall be delivered into the possession of the Salem Police Department within seven (7) days from the date of purchase of receipt. A Pawnbroker may exclude from the copy of the record delivered to the Police Department the amount paid for the article or loaned against the article.

4.0404 Holding Period Required. All articles personal property purchased or received by a Pawnbroker within the City of Salem through a regulated transaction shall be identifiable to the record of that transaction, and shall be held on the licensed premises of the Pawnbroker, or some other secure location within the City, and shall not be disposed of nor altered from the form in which it was received, for a period of seventy-two (72) hours, not counting Sundays or Holidays, from the time a record of the Section is received by the Police Department; except that the 72 hour holding period for purchased or received articles shall not apply to the return of any such articles or the original owner thereof by re-purchase or redemption from pawn; provided that the records of the transactions are maintained as otherwise provided by this Ordinance. If the record of such transaction is sent to the Police Department through U.S. mail, it shall be presumed that receipt of same by the Police Department occurred twenty-four (24) hours from the time of mailing, for the purposes of computing said holding period. A member of the Police Department shall indicate on each such record the date and time of receipt thereof. Any such article purchased or received by a Pawnbroker may be altered or disposed of prior to the expiration of the holding period, if first inspected by the City Police Chief and the alteration or disposition is approved.

4.0405 Inspection. The records and business premises of all Pawnbrokers within the City of

Salem shall be open for inspection by the Chief of Police and McCook County Sheriff at all reasonable times for the purpose of prevention of frauds, the promotion of the public health and safety, and to assure compliance with applicable regulations. (Ord. #479)

## TITLE 5 OFFENSES

*Chapter 5.01 - Offenses Against Public Welfare*  
*Chapter 5.02 - Animals*  
*Chapter 5.03 - Fireworks and Firearms*  
*Chapter 5.04 – Minors*  
*Chapter 5.05 – Public Nudity and Regulating Strip Dancing*

### CHAPTER 5.01 - OFFENSES AGAINST PUBLIC WELFARE

- 5.0101 Disorderly Conduct. A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisances he willfully does any of the following acts in a public place:
- A. Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger of life, limb or health.
  - B. Commits an act in a violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged.
  - C. Causes, provokes or engages in any fights brawl or riotous conduct so as to endanger the life, limb, health or property of another, except in exhibitions duly authorized and licensed by law.
  - D. Interferes with another's pursuit of a lawful occupation by acts of violence.
  - E. Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way or place when ordered to do so by a law enforcement officer or other authorized official.
  - F. Is in a public place under the influence of an intoxicating liquor or drug in such a condition as to be unable to exercise care for his own safety or the safety of others.
  - G. Resists or obstructs the performance of duties by a law enforcement officer or other authorized official.
  - H. Incites, attempts to incite, or is involved in attempting to incite a riot.
  - I. Addresses abusive language or threats to any law enforcement officers or any other authorized official of the City who is engaged in the lawful performance of his duties, or any other person when such words have direct tendency to cause acts of violence. Words merely causing displeasure annoyance or resentment shall not be prohibited.
  - J. Damages, befouls, or disturbs public property or the property of another so as to

create a hazardous unhealthy or physically offensive condition.

- K. Makes or caused to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other person, nearby, or near to any public highway, road or common, whereby the public peace is broken or disturbed or the traveling public annoyed.
- L. Fails to obey a lawful order to disperse by a law enforcement officer or other authorized official where one or more persons are committing acts of disorderly conduct in the immediate vicinity and the public health and safety is eminently threatened.

As used above, the following definitions shall apply:

- A. "Public Place". Any place to which the general public has access in the right resort for business entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the use of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.
- B. "Riot". A public disturbance involving (i) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of another person or to the person or any other individual or (ii) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger off or would result in, damage or injury to the property of any other person or to the person of any other individual.
- C. "Inciting riots". Shall meant but is not limited to, urging or instigating other persons to riots but shall be deemed to mean the mere oral or written advocacy of ideas or expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness or the right to commit, any such act or acts.

This Section shall not be construed to suppress the right of lawful assembly, picketing, public speaking or lawful means of expressing public opinion not in contravention with other laws. (SDCL 9-29-2 and 22-13-1)

5.0102 Open Containers. It shall be unlawful to drink any beer or alcoholic beverage or to possess any glassy can or other container containing beer or any alcoholic beverage on which the seal has been broken, in any public place, vacant building, automobile, street, alley, sidewalk or place of amusement or business establishment not authorized to sell beer or alcoholic beverages unless approved by the City Council. (SDCL 35-1-5.39, SDCL 35-1-9.3)

5.0103 Injury or Removal of Public or Private Property. No person shall willfully, maliciously, wantonly, negligently or otherwise injure, deface, destroy, or remove real property or

improvements thereto or moveable or personal property belonging to the City or to any person in the City. (SDCL 22-34-1)

5.0104 Tampering in General. No person in the City shall tamper with, injure, deface, destroy or remove any sign, notice, marker, fire hydrant, topographical survey marker or monument or any other personal property erected or placed by the City. (SDCL 22-34-1)

5.0105 Indecency. It shall be unlawful for any person within the City to:

- A. Knowingly disseminate distribute or make available to the public any obscene materials.
- B. Knowingly engage or participate in any obscene performance made available to the public.
- C. Knowingly engage in commerce for commercial gain with materials depicting and describing explicit sexual conduct, nudity, or excretion utilizing displays, circulars, advertisements, and other public sales efforts that promote such commerce primarily on the basis of the prurient appeal.
- D. Appear in any public state in a state of dress intended to make any indecent exposure of his or her person. (SDCL 9-29-9)

As used in this Section, the following definitions shall apply:

- A. "Obscene" - To the average person applying contemporary community standards taken as a whole, that the predominant appeal of the matter appeals to the prurient interests and (i) depicts or describes patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (ii) depicts or describes patently offensive representations or descriptions of masturbation, excretory functions or lewd exhibits of the genitals; and which, taken as a whole, lacks serious literary artistic political or scientific value.
- B. "Prurient Interest" - Shameful or morbid interest in nudity, sex or excretion which goes substantially beyond customary limits of candor in description or representation.
- C. "Material" - Any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figures or any recordings transcription or mechanical chemical or electrical reproduction or any other articles equipment or machines.
- D. "Dissemination" - To transfer possession of, with or without consideration.
- E. "Knowingly" - Being aware of the character and content of the material.
- F. "Promote" - To cause, permit, procure, counsel or assist.

5.0106 Indecent Exposure Or Simulation Thereof Prohibited.

- A. It is unlawful for any person or premises with or without a license for the sale of alcoholic beverages, which is to include a license authorized to sell low-point beer, while in the presence of any other person:
  - 1. To fail to conceal, with a fully opaque covering, the sexual parts of his or her body, to include the genitals, pubic area and anus of any person, or the nipple and areola of the female breast.
  - 2. To expose any device, costume or covering which gives the appearance of, or simulates, the genitals or pubic area of the male or female body, or the nipple or areola of the female breast.
  - 3. To allow erotic dancing which simulates sexual activity or which violates contemporary community standards.
- B. It is unlawful for any person or premises with or without a license for the sale of alcoholic beverages, which is to include a licensee authorized to sell low-point beer, to cause, allow or permit any person on said licensed premises to violate the provisions of Section (1) of this Ordinance.
- C. Shows such as male strippers, female strippers, topless or bottomless waitresses, erotic performers or similar type shows shall be considered by the City Council to be a violation of this Ordinance.
- D. Any licensee in alcoholic beverages who violates this Ordinance shall be subject to the suspension or revocation of his, her or its license for such violation whether or not a separate ticket for such violation has been issued. It is the intent of the City Council that the holding of such show shall be a violation of the ordinance and the City Council will schedule a hearing for suspension or revocation of the license independently of any proceedings of a criminal nature under this Ordinance.
- E. Any person or premises with or without a license to sell alcoholic beverages in violation of this Ordinance, shall be fined in a sum not exceeding Two Hundred Dollars (\$200.00) or be imprisoned not exceeding thirty (30) days or punished by both such fine and imprisonment. (Ord. #461)

**CHAPTER 5.02 - ANIMALS**

5.0201 Running at Large Prohibited. No owner of any dog, cat, or other animal held as a domestic pet in the City shall permit such animal to run at large at any times and any such animal found at large may be impounded as hereinafter provided. Upon impounding the owner of such animal may at any time within three (3) working days after the same shall have been impounded reclaim the animal by paying a twenty-five (25) dollar pick-up fee plus five (5) dollars for each day the animal was impounded in order to cover the expenses of keeping such animal. If any animal so impounded shall not be reclaimed within three (3) working days and all efforts to locate the owner have failed, the City is authorized to destroy, sell, or otherwise dispose of such animal.

Any owner allowing their animal to run at large as defined in the provisions of this Sections if convicted shall be guilty of a misdemeanor.

5.0202 Impoundment. The City Council shall be authorized to enter into a contract with some person, association or Humane Society to establish, operate, and maintain an Animal

Pound for the City. Such contract shall provide for the enforcement of this Chapter for the impounding destroying and disposal of animals for a schedule of fees to be charged for services rendered and for a monthly amount to be paid by the City. The City may, in lieu of the provisions of this Section, maintain its own impoundment area or quarters, under the supervision of the City Council or local law enforcement officials.

No person shall hinder, delay, or obstruct any law enforcement officer or other authorized official when engaged in capturing securing or impounding any animal or animals.

5.0203 Compulsory Immunization of Animals for Rabies. Every dog, cat, or other animal held in the City, six months of age or older, shall be immunized against rabies by a licensed veterinarian. Immunization against rabies shall be given at such intervals to guarantee immunity and the minimum time period between vaccinations shall be determined by the available vaccine and based upon the recommendations and approval of the State Veterinarian.

Any owner acquiring a dog, cat or other animal by purchase, gift, birth or otherwise shall have such animal immunized against rabies within one month following acquisition or when such animal reaches the age of six months.

Any animal impounded shall not be released to any person until such animal has been immunized against rabies, provided, however, no animal so impounded shall be immunized if the owner can present a certificate of a current immunization having been previously performed.

All veterinarians or other qualified persons designated to immunize animals against rabies shall provide the owner at the time of immunization with a certificate or metallic tag showing the date of the immunization.

Whenever metallic tags are so given for immunizations, such metallic tags shall be worn by all animals on a collar, harness, or chain when off the premises of the owner.

5.0204 Responsibility of Owner to Place Animal for Observation. When any person owning or harboring a dogs cat or other animal has been notified that said animal has bitten or attacked any person, the owner shall within twenty-four (24) hours place the animal under the care and observation of a law enforcement officer or a licensed veterinarian for a period not less than ten (10) days.

At the end of the ten (10) day observation period, the animal shall be examined by a licensed veterinarian and if cleared by the veterinarian may be reclaimed by the owner upon paying the expenses incident thereto.

Any animal impounded or placed for observation showing active signs of rabies, suspected of having rabies, or known to have been exposed to rabies, shall be confined under competent observation for such time as may be deemed necessary to determine a diagnosis.

No person shall knowingly harbor or keep any animal infected with rabies or any animal known to have been bitten by an animal known to have been infected with rabies.

Any person within the City receiving information or reports of suspected rabies in wild animals or domestic animals shall report such information to a law enforcement officer.

Whenever law enforcement officer or other authorized official shall have determined that there is danger of the existence or spread of rabies in the City, such facts shall be made known to the City Council. The Council, upon receipt of said facts, may by proclamation, in the interest of public safety and general welfare of the citizenry, order all animals muzzled when off the premises of the owner. Forty-eight (48) hours after the approval of said proclamation all animals found off the premises of the owner unmuzzled shall be seized and impounded or may be immediately destroyed if all reasonable efforts to seize said animals fail. All animals seized and impounded shall be held for animals seized and impounded shall be held for observation as hereinbefore provided for not less than ten (10) days, and if cleared by a licensed veterinarian may be claimed by the owner upon paying the expenses incidental thereto. Any animal not claimed may be disposed of as hereinbefore provided.

5.0205 Vicious Animals. An animal is declared to be vicious within the meaning of this Section when it shall have bitten any person when the fact that there has been no provocation to incite such action has been reasonably established, or when a propensity to attack or bite human beings shall exist and is known, or ought reasonably to be known by the owner.

No vicious animal shall be allowed off the premises of its owner unless muzzled or on a leash, and in charge of the owner or a member of the owner's immediate family over sixteen (16) Years of age.

Any vicious animal which is found off the premises of the owner, other than provided herein, shall be seized by a law enforcement officer or other authorized official and be delivered to the Animal Pound. When reasonable efforts to seize such animal fail and it is deemed advisable such action as is necessary can be taken to dispose of said animal. If impounded upon establishment of the vicious character of said animal, the owner shall be notified to dispose of the animal.

Any owner who allows a vicious animal to be in violation of the provisions of this Section shall be guilty of a misdemeanor and if convicted will be guilty of a further violation each day that such condition is allowed to exist or goes uncorrected. (SDCL 9-29-12)

5.0206 Disturbance of Peace by Animals. The owner of an animal shall not allow such animal to disturb the peace and quiet of the neighborhood also construed to mean the City, through barking or any other manner possible. Upon complaint such owner will be notified by a law enforcement officer and said owner shall abate such nuisance. If convicted upon failure to abate such nuisance said owner will be guilty of further violations for each day that such condition is allowed to exist or goes uncorrected.

5.0207 Cruelty to Animals. No person shall willfully or negligently maltreat or abuse or neglect in a cruel or inhumane manner any animal or fowl. It shall be unlawful for any person to willfully or maliciously administer or cause to be administered poison of any sort whatsoever to any animal, on the property of another, with the intent to injure or destroy such animal, or to willfully or maliciously place any poison or poisoned food where the

same is accessible to any such animal. (SDCL 9-29-11)

- 5.0208 Tags Required. All dogs over two (2) months of age that are kept, harbored or maintained by their owners in the City shall be licensed and registered each year. Dog licenses shall be issued by the Finance Officer upon payment of a license tax of five (5) dollars.

Before any license shall be issued under this Section, the applicant shall furnish a certificate of vaccination issued by a veterinarian licensed to practice within this State evidencing the vaccination of the dog for which the license is desired and that the dog has been vaccinated against rabies and that such vaccination will be good for the license Year.

The owner shall state at the time application is made for such license and upon printed forms provided for such purpose his name and address, and the name, breed, color and sex of each dog owned or kept by him. The provisions of this Section shall not be intended to apply to dogs whose owners are nonresidents temporarily within the City, nor to dogs brought into the city for the purpose of participating in any dog shows nor to "seeing eye" dogs properly trained to assist blind persons when such dogs are actually being used by blind persons for the purpose of aiding them in going from place to place.

Upon payment of the license fees, the Finance Officer shall issue to the owner a license certificate and metallic tag for each dog so licensed which shall have stamped thereon the number for which it was issued corresponding with the number on the certificate. Every owner shall be required to provide each dog with a collar to which the license tag must be affixed, and shall see that the collar and tag are constantly worn. In case a dog tag is lost or destroyed a replacement tag will be issued by the Finance Officer upon presentation of a receipt showing the payment of the license fee for the current year, and the payment in the amount of the City's cost of the replacement tag. Dog tags shall not be transferable from one dog to another and no refunds shall be made on any dog license fee because of death of the dog or the owner, leaving the City before expiration of the license period.

Every license issued under this Section shall be valid from the first day of January until the thirty-first (31st) day of December next following. If any dog is required to be licensed less than three (3) months before the last day of December, the owner shall be given a tag for the following year.

- 5.0209 Stray, Abandoned, or Unkept Animals. No person shall harbor or keep any stray animals within the City. Animals known to be strays shall be reported to a law enforcement officer immediately. (SDCL 9-29-12)

- 5.0210 Definitions. For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

- A. At-large. An animal shall be declared to be "running from the premises and not under the control of the owner, servant or a member of his immediate family by a leash.
- B. Leash. A cord, thong, or chain by which an animal is accompanying it.

- C. Owner. Any person harboring or keeping an animal and of who is head of the household the residence or the owner or manager in charge of the establishment or premises at which an animal remains or returns to, is the owner of the animal within the meaning of this chapter.

### **CHAPTER 5.03 - FIREWORKS AND FIREARMS**

- 5.0301 Fireworks Prohibited. The use, throwing, lighting, firing, display, or sale of fireworks within the City shall only be authorized in accordance with SDCL 34-37. The provisions of this Section shall not apply to any person, firm or corporation duly- licensed by the City Council in accordance with Chapter 4.01 of this ordinance to discharge fireworks for Public entertainment at any public celebration in the City. (SDCL 9-33-1, SDCL 34-37)

No fireworks are to be used, exploded set off or fired at any time within the City limits unless a special permit is approved by the City Council.

- 5.0302 Carrying Concealed Weapons. No person shall carry concealed about his person, or display in a threatening manners any dangerous or deadly weapon including but not limited to, any pistol or other firearm without a permits brass knuckle or knuckles of other materials or any sandbag, dagger, bowie knife, dirk knife, or other dangerous or deadly weapon, or any instrument or device which when used is likely to produce death or great bodily harm. Any law enforcement officer may wear or carry such weapons as may be necessary and proper for the discharge of his official duties. (SDCL 22-14-8, 22-14-9, 22-14-10)
- 5.0303 Discharging Weapon. No person shall willfully discharge any pistol, gun, revolver or other firearm, including BB or pellet gun, within the City limits, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensues unless authorized by the City Council.

### **CHAPTER 5.04 - MINORS**

- 5.0401 Curfew Hours and Exceptions. It shall be unlawful for any person under the age of eighteen (18) years to be on the streets, alley, or public grounds of the City between the hours of 12:00 p.m. (midnight) and 4:00 a.m. on the following days unless accompanied by parents, legal guardian or some adult person over eighteen (18) years of age having the care and control of said persons or unless such person shall be upon some necessary errand by written permission of a parent, and except approved school functions and activities, and said person so permitted to be outdoors shall have with him or her such written permission and shall upon request exhibit the same to any law enforcement officer.
- 5.0402 Responsibility of Officers. It shall be the duty of any law enforcement officer of the City to arrest and detain any person who violates any of the provisions of this Chapter and to keep such person detained until his or her parents, guardian or person in control will appear before such officer or other authorized personnel to answer to the charge of

having violated this Chapter.

- 5.0403 Responsibility of Parents or Guardians. It shall be unlawful for the parents, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) Years to knowingly permit such a minor to be or remain in or upon the public streets, alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, vacant lot, or other unsupervised public place, within the City between the hours of 12:00 midnight and 4:00 a.m. of the following day, except if the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor or when the minor is upon an emergency errand or legitimate business directed or authorized by his or her parent, guardian or other adult person having the care and custody of the minor.
- 5.0404 Purchase, Possession or Consumption of Alcoholic Beverages Prohibited. No person under the age of twenty-one (21) years shall purchase or attempt to purchase or possess or consume alcoholic beverages; nor shall any person misrepresent his/her age for the purpose of purchasing or attempting to purchase such alcoholic beverages. (SDCL 35-9)
- 5.0405 Furnishing of Beverage Prohibited. No person or alcoholic beverage licensee shall sell or give for use as a beverage any alcoholic beverage to any person under the age of twenty-one (21); unless it is done in the immediate presence of a parent or guardian or spouse over twenty-one (21) years of age, except a person under the age of eighteen (18) years and in an alcoholic beverage licensed establishment. (SDCL 35-9-I)

#### **CHAPTER 5.05 – DYNAMIC ENGINE BRAKING**

- 5.0501 Dynamic Engine Braking Device. It shall be unlawful to operate a dynamic engine braking device on any motor vehicle in the City of Salem, South Dakota, except for the aversion of imminent danger. This device converts the internal combustion engine to an air compressor for the purpose of braking without the use wheel brakes.
- 5.0502 Penalty. The City may impose a fine of \$100.00 to any person who operates a dynamic engine braking device within the City of Salem, South Dakota.

#### **CHAPTER 5.06 – PUBLIC NUDITY AND REGULATING STRIP DANCING**

- 5.0601 It is a violation of this ordinance for any person, in a public place within the City of Salem, to knowingly or intentionally:
- A. Engage in sexual intercourse; or
  - B. Engage in deviant sexual conduct; or
  - C. Appear in a state of nudity; or
  - D. Fondle the genitals of himself, herself or another person.

5.0602 Definitions.

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

Nudity and state of nudity mean the showing of the bare human male or female genitals, anus or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of the areola; or the showing of the covered male genitals in a discernibly turgid state.

Public place means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, nightclubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place. The term "public place" shall not include movie theatres, theatres used for production of legitimate theatre and theatrical productions, enclosed single sex and unisex public restrooms, enclosed single sex and unisex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals and similar places in which nudity or exposure is necessary and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor shall it include a person appearing in a state of nudity in a modeling class operated by:

- A. A proprietary school, licensed by the state; a college, junior college or university supported entirely or partly by taxation; or
- B. A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation, or an accredited private college.

5.0603 It shall be unlawful for any adult use to be established, operated, or maintained within five hundred (500) feet of a residential district, a church, a school, or public park, as measured from the closest point of the property lines.

5.0604 It shall be unlawful for any person or entity maintaining, owning or operating any public place to operate and knowingly, or with reason to know, permit or allow any person to appear nude in such place or to permit unlawful touching as prohibited in section 5.0505 hereof.

5.0605 It shall be unlawful for any male or female dancer, stripper or performer to engage in any physical contact with patrons or customers while dancing or performing, to include, but not limited to, placing of money in the dancers' or strippers' wearing apparel. All such dancers or performers shall be confined to a stage or designated area separate and apart from the seating area for patrons and customers.

- 5.0606 It shall be unlawful for any person owning, maintaining, operating or leasing any public place, to use or be present in areas partitioned or screened from public view that are designed to be occupied together or alone by any person or persons on the premises of such establishment for sexual contact or private dancing performances.
- 5.0607 It shall be a violation of this Ordinance for any person or entity to refuse admittance without fee to any law enforcement officer at any time when patrons or customers remain in such premises.
- 5.0608 No person under eighteen (18) years of age shall be permitted access to any public place which shall permit nude dancing, which otherwise complies with the provisions hereof.
- 5.0609 The contents of this Ordinance shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.
- 5.0610 Penalty. A violation of this Ordinance shall be punishable by a fine of up to two hundred (\$200) dollars, or thirty (30) days in jail, or both, for each offense.
- 5.0611 Operation of an establishment in violation of this Ordinance shall constitute a public nuisance, and, in addition to all other remedies provided herein, the City Attorney may, by civil process, seek permanent abatement of such nuisance.
- 5.0612 If any provision or section of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder of this Ordinance.

**TITLE 6**  
**STREETS, SIDEWALKS AND PUBLIC PLACES**

|                |   |
|----------------|---|
| <i>Chapter</i> | <i>6.01 - Street Names and Addresses</i>          |
| <i>Chapter</i> | <i>6.02 - Streets, Sidewalks, Curb and Gutter</i> |
| <i>Chapter</i> | <i>6.03 - Snow Removal</i>                        |
| <i>Chapter</i> | <i>6.04 - Moving Buildings</i>                    |
| <i>Chapter</i> | <i>6.05 - Municipal Trees</i>                     |
| <i>Chapter</i> | <i>6.06 - Municipal Parks</i>                     |

**CHAPTER 6.01 - STREET NAMES AND ADDRESSES**

- 6.0101 Names of Streets and Avenues. The names of all streets and avenues in the City shall be fixed and adopted in accordance with the official map of the City on file in the Finance Office. All east-west thoroughfares shall be designated as avenues and all north-south thoroughfares shall be designated as streets. Any such act of naming establishing or vacating any street, alley or other public way in the City shall be so designated on such map.
- 6.0102 Houses and Business Places Must be Numbered: Every person who is or may hereafter become the owner or renter of any house, residence, store, shop or other business building, situated on any lot fronting on any of the streets or avenues of the City of Salem shall number with 3" minimum numbers effective January 1, 1993 the same over the main entrance thereof.
- 6.0103 The Dividing Line of Numbering on all Streets and Avenues: East and West shall be Main Street. The dividing line for numbering on all streets and avenues running North and South shall be the railroad right-of-way. All streets and parts of streets running West from Main Street shall be designated by prefixing to the names thereof the word "West" and all streets and parts of streets running East from Main Street shall be designated by prefixing to the names thereof the word "East". In like manner all streets and parts of streets running South from the railroad right-of-way shall be designated by prefixing to the names thereof the word "South" and all streets and parts of streets running North from the railroad right-of-way shall be designated by prefixing to the names thereof "North".
- 6.0104 Numbering Lots. One number shall be apportioned to every subdivision of twenty-five feet along all the thoroughfares of the city whether the same be occupied by buildings or not. Provided, however, that in case any block or blocks or any lot or lots will not divide perfectly into subdivisions of twenty-five feet, one whole number shall be assigned to the fractional part thereof.

In case more than one building is erected in a single space of twenty-five feet the same may be numbered by placing thereon the regular number which appeared on the building formerly situated in the space or the number which would otherwise be allotted to the space and on the second building to be erected thereon the regular number plus the fraction, one-half.

- 6.0105 Numbering Intervals. All buildings shall be numbered consecutively in units and tens and all blocks consecutively in even hundreds. All numbering on East and West thoroughfares shall begin at the dividing line at Main Street and proceed outward to the limits of the City placing odd numbers on the South side and even numbers on the North side of each thoroughfare. All numbering on North and South thoroughfares shall begin at the dividing line at the railroad right-of-way and proceed outward to the limits of the City placing odd numbers on the West side and even numbers on the East side of each such thoroughfare.

The number of the first block on each side of the street proceeding from a dividing line shall be 100; the second shall be 200 and so on, and each block shall be numbered consecutively to the outer limits of the City. The number on the first building on the South side of an East and West street, and on the West side of a North and South Street shall be 101, and the first number on the opposite side thereof shall be 102. The first number on the second block shall be 201, and the first number on the opposite side thereof shall be 202, and so on consecutively along all the streets and avenues throughout the City.

## **CHAPTER 6.02 - STREETS, SIDEWALKS, CURB AND GUTTER**

- 6.0201 Street Surfacing. Any initial hard surfacing of streets shall be at the expense of the owners of the property abutting the street(s) to be surfaced with materials to be approved by the City Council. Total cost of the street improvements including legal, engineering, grading and any other costs related to the improvement shall be paid by the City. (SDCL 945-31)

For street oiling projects, the City will pay all related costs.

- 6.0202 Street Excavations. No person shall make or cause to be made any excavation except as hereafter provided, in or under any street, sidewalk, alley, or public ground or remove any earth, soil, paving, gravel or materials therefrom without first having obtained approval from the Street Superintendent and obtaining an Excavation Permit from the City. No excavation will be allowed in the city streets between October 15<sup>th</sup> and April 15<sup>th</sup>; unless it is an emergency or the Council approves excavation due to favorable weather conditions. All excavation started between April 15<sup>th</sup> and October 15<sup>th</sup> shall be properly filled before the October 15<sup>th</sup> deadline. The only time the above does not apply is when the City is doing the work and acting as general contractor, such as, water main replacement and/or breaks unless, contracted out.

- 6.0203 Excavation Permits. Application for such approval shall state where such excavation is to be made, the extent thereof, and the purpose of such excavation. Notification must be made to the City no less than 24 hours in advance of digging. Applications for excavations other than emergency situations may require a deposit in such sum as deemed necessary by the City Council to ensure the proper replacement and refilling of any such excavation or to cover the costs of any damages which may be caused by such excavation. Any required deposit shall be paid to the City before approval of an application is made and any unused portion of said deposit shall be refunded to the applicant upon recommendation of the City Council.

- 6.0204 Excavation Repairs. Applicant shall be responsible for all locates and for the removal and disposal of excess dirt, oil, concrete or likes thereof that are the result of the excavation of a street, sidewalk, alley or any public ground. Approval for any excavation covered by this Chapter shall be issued only upon the express condition that the applicant shall put street, sidewalk, alley or public ground back to original condition, backfill dirt in ditch in uniform 12" layers, with each layer compacted to 97% of the maximum density obtainable at optimum moisture content, including no less than 12" of gravel in any ditch with gravel in uniform six inch (6") layers, with each layer compacted to 97% of the maximum density obtainable at optimum moisture content, patch in cold mix or other appropriate mat on all oiled streets. Repair any curb and gutter or any other concrete or soil disturbed in digging. Applicant shall furnish all material needed to repair street, sidewalk, alley or public ground back to its original condition. If applicant cannot obtain needed cold mix to patch street, then contractor can PURCHASE needed material from the CITY, with the CITY delivering the material to job site. If the excavation of the street requires an appropriate MAT to put the street back to its original condition and the applicant cannot obtain this material at the time of excavation, then the contractor must inform the city, then fill and pack the ditch to original level. At this time the city personnel will inspect the ditch or cut in order to estimate ALL costs associated with repairing the street to its original condition. The applicant will pay this cost at this time and then the City will complete the work at such time matting material is available.
- 6.0205 Excavation Inspections. It shall be the duty of authorized City Personnel to inspect all authorized excavation work at any stage of construction and to ensure compliance with approved requirements. If all back filling, refilling or surfacing is not completed in accordance with approved requirements notice thereof in writing shall be given to the applicant who shall put the same in proper order within a maximum of ten (10) days. If the applicant fails after such notice to complete all requirements the City Council may authorize the necessary repairs and such applicant shall pay the costs thereof, and until he pays the costs no other permit shall be issued to him or to any person in his behalf.
- 6.0206 Excavation Barriers. Any person receiving approval to make excavations in or upon any street, alley, sidewalk or public ground shall, during the progress and continuance of the work, erect and maintain around the same both day and night suitable guards, fences, flares, and signals so as to prevent injury to persons, animals, or vehicles on account of such excavations. No open trench shall be left open for any more time than considered absolutely necessary or reasonable.
- 6.0207 Sidewalks. Unless otherwise determined by the City Council, the property line shall be six (6) inches inside of the sidewalk. Sidewalk construction shall include base material of three inches in thickness, of approved materials. Sidewalks shall be no less than three and one-half inches in thickness, of Portland Cement Construction, and not less than four feet nor more than five feet wide in residential areas, with slope toward street of one-fourth inch per foot. When considered necessary and advisable for the peace, welfare, and safety of the people, the City Council may direct that new sidewalk be constructed and assessed to any abutting property owner in accordance with SDCL 9-46.

When existing sidewalk is removed for any reason it shall be replaced, according to the provisions of this section. Sidewalk is required when the abutting property has sidewalk.

6.0208 Driveway Approaches. No driveway approaches shall protrude or extend into the streets beyond the curb line, unless otherwise so authorized by the City Council. Concrete driveway approaches shall be of four-inch Portland Cement Construction, with the slope gradual to accommodate modern vehicles. On gravel thoroughfares driveway approaches constructed shall permit flow of surface water without drainage interference and shall permit proper blading and maintaining of streets.

6.0209 Curb and Gutter. All residential and commercial type construction totaling five-thousand (5,000) dollars or more shall, at the owner's expenses install curb and gutter, adjacent to the property where such construction occurs, within one year from the time such construction is completed. (SDCL 9-45-5) curb and gutter shall be of Portland Cement Construction, not less than 3,000 PSI with curb six (6) inches in widths and extending six (6) inches above the gutter. Gutter shall be of six and one-half (6.5) inch thickness extending twenty-four (24) inches into the street.

The City Council shall reserve the right to direct that curb and gutter be constructed and the cost assessed against any abutting property owner.

6.0210 Permits. When constructed separately from an over all construction project, property owners or their agents shall submit applications for permits for approval by the City Council for sidewalks, driveway approaches, curbs, or curb and gutter. When these improvements are constructed simultaneously or as one project, only one application is necessary to include all improvements and where any or all are part of new construction projects, only one permit for the overall construction shall be issued. All improvements installations and engineering recommendations shall be in conformance with specifications or recommendations approved by the City Council.

6.0211 Barrier-Free Construction. Whenever any person, firm or corporation makes new installations of sidewalks, curbs or gutters, in both business and residential areas, it shall be required that they install ramps at crosswalks so as to make the transition from street to sidewalk easily negotiable for handicapped persons in wheelchairs, and for blind persons. All such ramps shall be constructed or installed in accordance with design specifications according to the most current American National Standards Specifications published by the American National Standards Institute. (SDCL 9-46-1.1, SDCL 9-46-1.2)

## **CHAPTER 6.03 - SNOW REMOVAL**

6.0301 Duty to Remove. It shall be the duty of the owner, tenant, or person in possession of any property abutting on any sidewalk to keep such sidewalk free from snow and to cause any accumulated snow to be removed within forty-eight (48) hours after the termination of any snowfall, or snow accumulation.

6.0302 Disposal of Snow. It shall be the duty of the property owner, tenant, or person in possession of any public or private driveway, parking lot or parking area to dispose of accumulated snow upon such property in such manner that any snow when removed shall not be deposited upon any sidewalk within or upon any public street or alley, after such public street or alley has been cleared of snow by the grading of such snow away

from the curb or the picking up and carrying away of such snow by the City or in a manner that will obstruct or interfere with the passage or vision of vehicle or pedestrian traffic.

- 6.0303 Removal Costs Assessed. In the event any owner, tenants or person in possession of any property shall neglect or fail to or refuse to remove such snow or ice within the time provided, any authorized officer of the City may issue a citation for such violation and the City Council may authorize such removal with the costs to be assessed against the abutting property owner. (SDCL 9-30-5)

#### **CHAPTER 6.04 - MOVING BUILDINGS**

- 6.0401 Permit Required. No person shall move any building or part of any building into, along, or across any public street, alley, or grounds in the City without first having obtained a moving permit. Such permit may be obtained from the Finance Office. Violation of the provisions of this section shall be punishable by a fine of one hundred dollars (\$100.00). (SDCL 9-30-2)
- 6.0402 Applications. Written application for a moving permit shall be filed with the Finance Officer, and shall include the name of the applicant the name of the owner of the building a description of the lot on which such building is standing and the lot to which it is to be moved, if located in the City, the route along which it is proposed to move such building and the length of time which may be consumed in such moving. Any application so filed shall be considered by the City Council for approval and any other conditions to be complied with by the applicant shall be stated.
- 6.0403 Surety Bond. No license shall be granted until the applicant files with the Finance Officer a copy of the insurance policy of person or company moving the building for liability coverage running to the City in the penal sum to be established by the City Council, with sufficient surety, and conditioned that the applicant will promptly repair and make good, to the satisfaction of the Council, any and all damage to any pavement, sidewalk, crosswalk, hydrant, street, alley, or other property, done or caused by himself or his employees in moving such building or part thereof, or in connection with the moving thereof. The applicant shall indemnify and save harmless the City against any and all liability for damages, costs and expenses arising or which may arise or be incurred in favor of any person by reason of any negligence or misconduct or act on his part or the part of his agents or employees in connection with the moving of said building or part thereof, or the use of any public ground for such purpose.
- 6.0404 Standing Buildings. No building or part of a building being moved, shall be allowed to stand still in any public street or any public ground for more than twenty-four (24) consecutive hours.
- 6.0405 Permission of Property Owners. No moving license granted by the City shall authorize the holder thereof to break, injure, or move any telephone, electric light, power or cable TV wire or pole, or to cut, trim or otherwise interfere with any property without the written permission of the owner or owners thereof. (SDCL 9-34-1)

## CHAPTER 6.05 - MUNICIPAL TREES

- 6.0501 Authority and Jurisdiction. The City Council shall have the authority and jurisdiction of regulating the planting, maintenance and removal of trees on streets and other publicly owned property to insure the public safety and to preserve the aesthetics of such public sites. The City Council shall have the authority to determine the type and kind of trees to be planted upon municipal streets or in parks, and may assist in the dissemination of news and information regarding the selection planting, and maintenance of trees within the corporate limits or within the area over which the City has jurisdiction whether the same be on private or public property, and to make recommendations from time to time as to desirable statutes concerning the tree program and activities for the City.
- 6.0502 Duties of Property Owners. It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersections, except where such services are provided for by utility firms. The minimum clearance of any overhanging portion thereof shall be ten (10) feet whenever practicable, and twelve (12) feet over all streets except truck thoroughfares where the clearances shall be fourteen (14) to sixteen (16) feet, unless otherwise determined by the City Council.
- It shall also be the duty of any person or persons owning or occupying real property upon which property there may be trees to remove and dispose of tree(s) if diseased or dead.
- 6.0503 Abuse of Trees. Unless otherwise specifically authorized by the City Council, no person shall intentionally damage, cut, carve, transplant or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous liquid or solid substance which is harmful to such tree to come in contact with theme or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.
- 6.0504 Permission to Deposit Materials. No person shall deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, and fertilizer to the roots of any tree growing therein, except by permission of the City Council.
- 6.0505 Removal of Hazards. Where any tree branches or hedges protrude or overhang on any thoroughfare within the City so as to be determined as in violation with this Chapter or affecting motor vehicle traffic and good maintenance practices, notification shall be given by the City Council to the property owner to remove such obstructions or undesirable branches or hedges within a prescribed time period. If not completed within such time, the City Council may take immediate action to have such items removed with all costs assessed to the property owner. (SDCL 9-38-2)

## CHAPTER 6.06 - MUNICIPAL PARKS

- 6.0601 Hours Parks Open to Public. City parks shall be open to the public everyday from 6:00

a.m. to 10:00 p.m. and to 10:30 p.m. at the City ballfields when evening games are scheduled and played. It shall be unlawful for anyone to go into any area of any City Park after closing hours and before opening hours the next day, or when any area has been declared to be closed by the City Council.

6.0602 Glass Containers Prohibited. It shall be unlawful for anyone to bring or otherwise deposit any containers made of glass into any City park.

6.0603 Open Fires Prohibited and Exception. No person shall start any fire in any City park except in those places where barbecue grills have been placed by the City or when portable barbecue grills are used and then only for the cooking and preparation of food. Every person who starts or uses such acceptable fires shall completely extinguish the fire before leaving the park.

**TITLE 7  
TRAFFIC CODE**

|                |  |
|----------------|--|
| <i>Chapter</i> | <i>7.01 - General Provisions</i>       |
| <i>Chapter</i> | <i>7.02 - Operation of Vehicles</i>    |
| <i>Chapter</i> | <i>7.03 - Vehicle Equipment</i>        |
| <i>Chapter</i> | <i>7.04 - Speed Restrictions</i>       |
| <i>Chapter</i> | <i>7.05 - Parking, Stopping</i>        |
| <i>Chapter</i> | <i>7.06 - Trucks</i>                   |
| <i>Chapter</i> | <i>7.07 - Snowmobiles</i>              |
| <i>Chapter</i> | <i>7.08 Motorcycles</i>                |
| <i>Chapter</i> | <i>7.09 - Miscellaneous Provisions</i> |

**CHAPTER 7.01 - GENERAL PROVISIONS**

- 7.0101 Duty to Enforce. It shall be the duty of law enforcement officers to enforce these traffic regulations and all of the state vehicle laws applicable to street traffic in the City, to make arrests for traffic violations to investigate accidents and to cooperate with other officials in the administration of these traffic laws. (SDCL 9-29-19)
- 7.0102 Directing Traffic. Law enforcement officers shall direct traffic in conformance with traffic laws and ordinances provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, Fire Department Personnel may direct traffic as conditions may require. (SDCL 32-28-10, SDCL 32-31-6)
- 7.0103 Obedience to Enforcement. No person shall refuse or fail to comply with any lawful orders, signal or direction of any law enforcement officer, or refuse to submit to any lawful inspection or fail to comply with the provisions or requirements of any warning ticket issued under this Title. (SDCL 9-29-19)
- 7.0104 Compliance with Directions of Peace Officer. The driver of a motor vehicle shall comply with any lawful order, signal or direction of a peace officer; submit to any lawful inspection under this chapter, and comply with the provisions or requirement of a warning ticket issued by a peace officer. A violation of this section is a Class 2 misdemeanor. Venue of a violation of this section shall be in the county where such offense takes place, or in which such warning ticket is issued and delivered, and, in the event such county is unorganized, trial shall be had in the county to which it is attached for judicial purposes. (SDCL 32-21-30)
- 7.0105 Exemptions to Authorized Emergency Vehicles. The provisions of this Title regulating the movement, parking, and standing of vehicles shall not apply to authorized emergency vehicles while the operator of such vehicle is operating the same in an emergency in the necessary performance of public duties. This exemption shall not, however, exempt the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. (SDCL 32-26-15)
- 7.0106 Application to Workers and Equipment. The provisions of this Title shall not apply to persons, motor vehicles and other equipment while actually engaged in work upon the

surface of a street, but shall apply to such persons and vehicles when traveling to or from such work; provided however, such persons and vehicles shall not indiscriminately block traffic, but shall allow reasonable room on the traveled portion of the street for other vehicles to pass. (SDCL 32-26-16)

- 7.0107 Authority to Install Traffic Control Devices. The City Council shall place and maintain traffic control signs, signals, and devices when and as required under this Title to make effective the provisions of said Title, and may place and maintain such additional traffic control devices as may be necessary to regulate traffic. (SDCL 32-14-5)
- 7.0108 Street Equipment and Personnel as having Right-of-Way. Street equipment and personnel in the performance of their duties of maintaining the street shall have the preference of right-of-way and shall be permitted to drive upon the left-hand side of the traveled portion of the street for the purpose of dumping materials, for repairing the street and also for smoothing the road surface. Street equipment shall, at all times, display a flashing or revolving light to warn the traveling public. However, street equipment may not indiscriminately block traffic, but shall allow reasonable room on the traveled portion of the street for other vehicles to pass. The equipment may not be bound by the provisions of this chapter to turn to the right when meeting other vehicles or allowing them to pass when work requires such equipment to remain on the other side of the traveled portion of the street. The equipment is subject to the laws of travel as provided in this chapter, unless the performance of maintenance work requires otherwise. (SDCL 32-26-16)
- 7.0109 Definitions. When in this Title the following terms are used they shall have the meanings respectively ascribed to them in this Section.
- A. "Authorized Emergency Vehicle" - Vehicles of any fire department, police vehicles, and such ambulances and emergency vehicles of municipal department or public service corporations as are designated or authorized by the City Council.
  - B. "Law Enforcement Officer" - Any police officer or other law enforcement personnel approved by the City Council to enforce the provisions of the ordinances of the City.
  - C. "Motor Vehicle" - Every vehicle, as herein defined, which is self-propelled.
  - D. "Operator" - Any person who is in actual physical control of a vehicle.
  - E. "Parking" - The standing of a vehicle whether attended or unattended upon a roadway or street otherwise than temporarily for the purpose of and while actually engaged in loading or unloading or in obedience to traffic regulations or traffic signs and signals.
  - F. "Vehicle" - Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway.
- 7.0110 Obedience to Traffic Control Devices. The operator of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed or held in accordance with the provisions of this Title unless otherwise directed by a law

enforcement officer subject to the exceptions granted the driver of an authorized emergency vehicle in this Chapter. (SDCL 32-28-10)

## **CHAPTER 7.02 - OPERATION OF VEHICLES**

- 7.0201 Driver's License Required. It shall be unlawful for any person except those expressly exempted in SDCL 32-12-28 to drive or operate upon any of the streets or highways within the City any motor vehicle without first having secured and having in their possession a valid license or permit to do so. (SDCL 32-12-22)
- 7.0202 Allowing Unauthorized Person to Use Vehicle. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under this chapter or in violation of any of the provisions of this chapter. (SDCL 32-12-72)
- 7.0203 Unauthorized Use of Vehicle under Restricted License. It is a Class 2 misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him. (SDCL 32-12-74)
- 7.0204 Possession of Commercial Driver's License or Commercial Driver's Instruction Permit. No person may drive a commercial motor vehicle on the highways of this state unless the person holds and has in immediate possession a commercial driver's license with applicable endorsements valid for the vehicle the person is driving or is driving under a commercial driver's instruction permit. (SDCL 32-12-82)
- 7.0205 License Plates. No person shall operate or drive a motor vehicle within the City without having conspicuously displayed thereon number license plates as required by state law, securely fastened and which shall be kept free from mud, dirt or other obstruction so that the numbered license plates shall be clearly legible by other persons upon the highway/street. (SDCL 32-5-2.4)
- 7.0206 Drive on Right Side of Street. Upon all streets the operator of a vehicle shall drive the same upon the right half of the street and shall drive a slow-moving vehicle as closely as possible to the right-hand edge or curb of a street unless it is impractical to travel on such side of the street, and except when overtaking and passing another vehicle subject to the limitations applicable to overtaking and passing set forth in this Title. (SDCL 36-26-1)
- 7.0207 Vehicles Shall Not Be Driven on Sidewalk.
- A. The operator of any Motor vehicle shall not drive within any sidewalk area, except for the removal of snow and at a permanent or temporary driveway.
  - B. The operator of any non self-propelled vehicle shall not drive within any sidewalk area Zoned Central Business, except at a permanent or temporary driveway.
  - C. Any vehicle manufactured for and used by the Handicap to assist in walking, is not covered in this Chapter.
- 7.0208 Operation of Vehicles on Approach of Authorized Emergency Vehicle. Upon the approach of any authorized emergency vehicle or vehicles giving audible signal by lights

or siren, the operator of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb of the street, clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle or vehicles shall have passed, unless otherwise directed by a law enforcement officer. (SDCL 32-31-6)

- 7.0209 Stop Required Upon Approaching Stopped Emergency Vehicle Using Signals. Upon approaching from any direction any stopped authorized emergency vehicle making use of visual signals meeting the requirements of this chapter, the driver of every other vehicle shall come to a complete stop before he reaches the stopped emergency vehicle and may, unless otherwise directed, proceed with caution only after he has ascertained that it is safe to do so. (SDCL 32-31-6.1)
- 7.0210 Following Fire Apparatus as Misdemeanor. It is a Class 2 misdemeanor for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or to drive into or park such vehicle within the block where the fire apparatus has stopped in answer to a fire alarm. (SDCL 32-31-7)
- 7.0211 Driving Over Fire Hose Prohibited. No vehicle may be driven over any unprotected hose of a fire department when laid down on any street, private road or driveway to be used at any fire or alarm of fire, without the consent of the fire department official in command. (SDCL 32-31-8)
- 7.0212 Backing Around Corners or into Intersection Prohibited. The driver of a vehicle may not back the vehicle unless such movement can be made with safety and without interfering with other traffic. (SDCL 32-30-20)
- The driver of a vehicle may not back the vehicle upon any shoulder or roadway of any controlled-access highway. (SDCL 32-30-21)
- 7.0213 Reckless Driving. Any person who drives any vehicle upon a street, avenue, or alley carelessly and heedlessly in disregard of the rights or safety of others, or without due cautions and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving. (SDCL 32-24-1)
- 7.0214 Careless Driving. Any person who drives any vehicle carelessly and without due cautions at a speed or in a manner so as to endanger any person or property, not amounting to reckless driving as defined in the previous Section, shall be guilty of careless driving. (SDCL 32-24-8)
- 7.0215 Exhibition Driving. Any person who drives any vehicle within the limits of the City in such a manner that creates or causes unnecessary engine noise, tire squeal, skid or slide upon acceleration or stopping; or that simulates a temporary race, or that causes the vehicle to unnecessarily turn abruptly or away shall be guilty of exhibition driving. (SDCL 32-24-9)
- 7.0216 Operation of Improperly Repaired or Adjusted Vehicle. No person shall drive or move on any street/highway any motor vehicle, unless the equipment upon the vehicle is in good working order and adjustment and the vehicle is in such safe mechanical condition as

not to endanger the driver or other occupant or any person upon the street/highway. (SDCL 32-31-27)

- 7.0217 Right-of-Way at Intersection. The right-of-way rule as between vehicles at intersections is hereby declared as follows:
- A. The operator of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has fully entered the intersection.
  - B. When two vehicles approach an intersection at approximately the same time, the operator of the vehicle at the left shall yield the right-of-way to the vehicle on the right. (SDCL 32-26-13)
  - C. The operator of any vehicle traveling at an unlawful speed shall forfeit any right-of-way which he or she may otherwise have hereunder. (SDCL 32-26-12)
- 7.0218 U-Turn at Intersection. At any intersection where warned by a traffic control sign displaying the words "No U-Turn," it shall be unlawful for the operator of a vehicle to turn such vehicle at the intersection in a half circle so as to proceed in the opposite direction.
- 7.0219 Right-of Way, Left Turn. The operator of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. The operator having so yielded and having given a signal when and as required may make such left turn and the operators of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn. (SDCL 32-26-19)
- 7.0220 Turning Around in Midblock Prohibited. The operator of a vehicle shall not turn such vehicle so as to park or travel in the opposite direction except at an intersection. (SDCL 32-26-25)
- 7.0221 Action Required at Stop Sign. Except when directed to proceed by a law enforcement officer or traffic control signal, every operator of a vehicle approaching a stop intersection indicated by a stop sign shall come to a full stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the operator shall yield the right of-way to any vehicle which has entered or is approaching the intersection from another highway and shall not proceed into the intersection until certain that such intersecting roadway is free from oncoming traffic which may affect safe passage. (SDCL 32-29-2.1)
- 7.0222 Action Required at Yield Sign. The operator of a vehicle approaching an authorized sign bearing the word "Yield" or "Yield Right-of-Way" shall in obedience to such sign slow down to a speed reasonable for the existing conditions or shall stop if necessary and shall yield the right-of-way to any pedestrian legally crossing the roadway on which such operator is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. Said operator having so yielded may proceed and the operators of all other vehicles approaching the intersection

shall yield to the vehicle so proceeding. (SDCL 32-29-3)

- 7.0223 Stop Required Before Operator Entering From Alley, Building or Private Road. The operator of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance road or driveway, or in the event there is no sidewalk areas shall stop at the point nearest the street to be entered where said operator has a view of approaching traffic thereon. (SDCL 32-29-2.2)
- 7.0224 Pedestrian's Right-of-Way. The operator of any vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at the end of a block, except at intersections where the movement of traffic is being regulated by law enforcement officers or traffic control signals. Whenever any vehicle has stopped at a marked crosswalk or at any intersection to permit a pedestrian to cross a roadways it shall be unlawful for the operator of any other vehicle approaching from the rear to overtake and pass such stopped vehicle. (SDCL 32-27-1)
- 7.0225 Lane Driving Required – Changing Lanes. On a roadway divided into lanes, a vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety. (SDCL 32-26-6)
- 7.0226 Passing Oncoming Vehicles to Right – Yielding One-half of Highway. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one-half of the main-traveled portion of the roadway as nearly as possible. (SDCL 32-26-3)
- 7.0227 Entering Controlled-Access Highway. No person may drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority. (SDCL 32-26-10)
- 7.0228 Entry of Highway from Alley, Building or Private Road. The driver of a vehicle about to enter or cross a public highway from an alley, building, private road or driveway shall yield the right-of-way to all vehicles approaching on such public highways. (SDCL 32-26-14)
- 7.0229 Yielding Right-of-Way to Emergency Vehicles. The driver of a vehicle upon a highway shall yield the right-of-way to police and fire department vehicles and ambulances if they are operated upon official business and the drivers give an audible signal by bell, siren or exhaust whistle. The provisions of this section do not relieve the driver of a police, fire department vehicle or ambulance from the duty to drive with due regard for the safety of all persons using the highway nor does it protect the driver of any such vehicle from the consequence of an arbitrary exercise of such right-of-way. (SDCL 32-26-15)
- 7.0230 Overtaking Vehicles – Passing to Left Required – Cutting in Front Prohibited. The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left thereof. The driver of an overtaking vehicle shall pass at a safe distance to the side of an overtaken vehicle and may not cut in front of the latter until safely clear of the overtaken vehicle. (SDCL 32-26-26)

- 7.0231 Driving to Left on Approach to Intersection, Grade Crossing, Bridge or Tunnel. No vehicle may be driven on the left side of the roadway when approaching within one hundred feet of or traversing any intersection or railroad grade crossing or when the view is obstructed within one hundred feet of any bridge, viaduct or tunnel. (SDCL 32-26-36)
- 7.0232 Passing in No-Passing Zone. The driver of a vehicle may not overtake and pass any other vehicle proceeding in the same direction when traveling in a no-passing zone on highways or bridges when either marked by signs or lines on the roadways. (SDCL 32-26-37)
- 7.0233 Following too Closely. The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and condition of the highway. (SDCL 32-26-40)
- 7.0234 Flashing Red or Yellow Signal. If an illuminated flashing red or yellow signal is used in a traffic sign or signal, vehicular traffic shall obey such signal as provided by SDCL 32-28-7 and SDCL 32-28-8. (SDCL 32-28-6)
- 7.0235 Backing Prohibited on Controlled-Access Highway. The driver of a vehicle may not back the vehicle upon any shoulder or roadway of any controlled-access highway. (SDCL 32-30-21)

#### **CHAPTER 7.03 - VEHICLE EQUIPMENT**

- 7.0301 Warning Tickets. Any authorized law enforcement officers upon reasonable belief that a vehicle is being operated in violation of any provision of this Title or applicable state law or is in such unsafe condition as to endanger any person, may require the driver of the vehicle to stop and submit to inspection of the vehicle and its equipment license plates and registration cards and is hereby authorized to issue a warning ticket to any driver whose vehicle is in such violation. Such warning ticket shall clearly designate the provisions which are being violated and shall provide for notification to law enforcement officials when such violation is corrected not later than 10 days after issue of warning ticket. (SDCL 32-21-29)
- 7.0302 Lights Required. A motor vehicle in motion, during the period from half an hour after sunset to half an hour before sunrises shall display at least two (2) lighted lamps on the front and one on the rear of such motor vehicle, such lamps to conform to the state law; provided that a motorcycle or a motor bicycle shall be required to display but one lighted lamp in front and one in the rear. (SDCL 32-17-1 and SDCL 32-17-24)
- 7.0303 Headlights Dimmed. Whenever a motor vehicle, except a moped equipped with a single beam headlamp as provided in SDCL 32-17-24.1, is being operated upon a highway, or a portion thereof, which is sufficiently lighted to reveal a person on the highway at a distance of two hundred feet ahead of the vehicle, the driver shall tilt the beam downward. Whenever a motor vehicle meets another vehicle or overtakes another vehicle proceeding in the same direction on any highway, the driver shall tilt the beams of the headlamps downward, provided that at all times, as required in SDCL 32-17-4, at least two lights shall be displayed on the front of and on opposite sides of every motor

vehicle other than a motorcycle. (SDCL 32-17-7)

- 7.0304 Warning Devices. Every motor vehicle operated or driven in the City shall be provided with a suitable or adequate horn or other device for signaling which shall be in good working order at all times such vehicle is operated on the streets of the municipality and capable of emitting a sound audible under normal conditions from a distance of 200 feet. (SDCL 32-15-11)
- 7.0305 Emergency Vehicle Warning Device. Every law enforcement and Fire Department vehicle and every ambulance used for emergency calls shall be equipped with lights and siren. It shall be unlawful for any other vehicle to be equipped with such equipment. (SDCL 32-15-12)
- 7.0306 Red and Blue Lights. Except as to law enforcement or Fire Department vehicles or tow trucks or wreckers operating under such circumstances as may be provided by law, any person who drives or moves any vehicle in the City with any red or blue light thereon visible from directly in front or to the sides thereof shall be guilty of a misdemeanor. (SDCL 32-17-21 and SDCL 32-17-45)
- 7.0307 Brakes. Every motor vehicle shall be provided with foot pedal brakes in good working order and sufficient to control such motor vehicle at all times when same is in use. (SDCL 32-18-1)
- 7.0308 Mufflers. No person shall drive a motor vehicle on any street within the City unless such vehicle is equipped with an exhaust system and muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke. It shall be unlawful for any person to use a muffler cut-out on any motor vehicle within the City. (SDCL 32-15-17)
- 7.0309 Projecting Loads. No person shall drive any vehicle upon any street with any load or part of a load projecting more than four (4) feet beyond the rear end or front ends or more than two (2) feet beyond the sides of the body, or carrying part of such vehicles unless there be attached to the extreme ends and sides of such projecting load a red flag or red light as required by SDCL 32-22-6 plainly discernible to other drivers and clearly indicating the projecting parts of such load.
- 7.0310 Weight and Size of Vehicle and Loads. No person shall drive or operate any motor vehicle upon any street the gross weight of which including the load or the size of which do not comply with the requirements of SDCL 32-22-3, 32-22-16, 32-22-5, and 32-22-14 of the state law governing such vehicle.
- 7.0311 Windshields Must be Unobstructed. It shall be unlawful for any person to drive any motor vehicle upon any street with the front windshield obstructed or with any signs posters or other non-transparent material upon the front, side, or rear windows of such motor vehicle as required by SDCL 32-15-2.4 and 32-15-2.5 other than a certificate or other paper required to be so displaced by law or other temporary driving instruction placed thereon by the manufacturer.
- 7.0312 Protection of Load. No motor vehicle shall be driven or moved on any street unless such vehicle is so constructed or loaded as to prevent any of its load from dripping, sifting,

leaking or otherwise escaping therefrom except that sand may be dropped for the purpose of securing tractions or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway. No person shall operate on any street any vehicle with any load unless said load and any covering is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway. (SDCL 32-15-18)

- 7.0313 Construction and Adjustment of Headlamps. The headlamps of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in SDCL 32-17-7, they shall at all times mentioned in SDCL 32-17-4 and under normal atmospheric conditions and on a level road produce a driving light sufficient to render clearly discernible a person two hundred feet ahead. However, headlamps may not protect a glaring or dazzling light to person in front of such headlamps. Any vehicle equipped with a four lamp headlight system shall have all lamps lighted on high beam, if such system was designed by the manufacturer to require all four headlamps be lighted, and shall have the two low beam lamps lighted on low beam when headlamps are lighted as required in SDCL 32-17-4. Every motor vehicle, except those excluded in SDCL 32-17-1, shall be equipped with a high beam indicator lamp which shall be lighted whenever the vehicle headlamps are on high beam position. (SDCL 32-17-5)
- 7.0314 Requirements Respecting Adjustment of Headlamps. Headlamps shall be deemed to comply with the provisions of SDCL 32-17-5 prohibiting glaring and dazzling lights, if none of the main bright portion of the headlamp beam rises above a horizontal plane passing through the lamp centers parallel to the level road upon which the loaded vehicle stands, and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle. (SDCL 32-17-6)
- 7.0315 Tow Truck or Wrecker Defined – Use of Amber Flashers. Unless the context otherwise requires, a “tow truck or wrecker” is any motor vehicle which is specially equipped to tow, haul or push disabled automobiles, trucks or tractors for commercial considerations, or operated by any person, for the purpose of towing or servicing any automobiles, trucks or tractors owned by him. Any tow truck or wrecker may be equipped with and use an amber rotary beacon light or lights or other amber flashing or blinking light or lights of the type or similar to the type of such lights used on emergency vehicles in this state. The amber lights may be used by a tow truck or wrecker only when actually engaging, towing, hauling or pushing a disabled motor vehicle, or when ordered by a law enforcement officer for safety purpose to warn other motorists of the presence of the tow truck or wrecker. (SDCL 32-17-10)
- 7.0316 Spot Lamps –Aiming and Adjustment. Any motor vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle. (SDCL 32-17-19)
- 7.0317 Adjustment of Other Lamps. Any device other than headlamps, spot lamps, or auxiliary driving lamps, which projects a beam of light of an intensity greater than twenty-five candle powers shall be so directed that no part of the beam will strike the level of the surface on which the vehicles stands at a distance of more than fifty feet from the vehicle. (SDCL 32-17-20)

- 7.0318 Lights on Parked Vehicles. Whenever a vehicle is parked or stopped upon a highway whether attended or unattended during the times mentioned in SDCL 32-17-4, there shall be displayed upon such vehicle one or more lamps projecting a white or amber light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle and projecting red light visible under like conditions from a distance of five hundred feet to the rear, except that no lights need be displayed upon any such vehicle when parked within the corporate limits of a municipality. (SDCL 32-17-27)
- 7.0319 Vehicles Required to be Equipped with Portable Flares, Lights or Reflectors. Every motor truck, tractor, truck tractor, farm tractor, road tractor or road patrol, or any and all combinations thereof, including trailers and semitrailers, and all vehicles exceeding a width at any point of eighty inches operated on the public highways of this state whether operated for commercial purposes or otherwise, shall be equipped at all times with at least three portable flares, or red electric lights or red reflectors or emergency reflective triangles, in workable condition which, when lighted and placed as provided in SDCL 32-17-29, are plainly visible for a distance of five hundred feet. No flame-producing flare or emergency signal may be used when the vehicle is transporting explosives, flammable liquids, flammable gases, or when the vehicle is a cargo tank used for transporting such flammable products. A violation of this section is a Class 2 misdemeanor. (SDCL 32-17-28)
- 7.0320 Time During Which Flares Must be Displayed. Every operator of a motor truck, tractor, truck tractor, farm tractor, road tractor or road patrol, or any combination thereof, including trailers and semitrailers, and all vehicles exceeding a width at any point of eighty inches, shall, immediately upon bringing his vehicle to a stop upon the traveled portions of any public highway, place three flares, red electric lights, red reflectors or emergency reflective triangles on the roadway. If traffic on the roadway moves in two directions, one of these devices shall be placed at least one hundred feet in the front, one at least one hundred feet to the rear, and one alongside the stopped vehicle. Upon a one-way roadway or divided highway, one of these devices shall be placed at least one hundred feet to the rear, one at least two hundred feet to the rear, and one alongside the stopped vehicle. The flares, red electric lights, red reflectors or emergency reflective triangles shall be of such type of construction as will furnish continuous light for a period from sunset to sunrise at all times of the year. It is the responsibility of the driver or the person in charge of the vehicle to remove the vehicle in the most expeditious manner. Any vehicle found parked in violation of this section may be immediately removed to a place of safekeeping as directed by a police officer. Any vehicle removed pursuant to this section shall be disposed of as directed by SDCL sections 32-30-15, 32-30-16.1 and 32-30-18. [SDCL 32-17-29]
- 7.0321 Pneumatic Tires with Metal Studs Permitted – Limitation. Notwithstanding any of the provisions of SDCL 32-19-2 and SDCL 32-22-21 and SDCL 32-22-22, no person may operate during the time period of May first to September thirtieth of each year, upon the highways of this state, a motor vehicle equipped with pneumatic tires in which there are embedded metal studs or wires of tungsten steel or other similar metal. However, any motor vehicle may be operated during the time period extending from October first to April thirtieth, and a school bus or a fire-fighting vehicle with a gross vehicle weight of

over five thousand pounds owned or operated by any unit of local government may be operated anytime with such metal studs. [SDCL 32-19-3]

- 7.0322 Chains or Cables Required in Addition to Coupling - Fifth Wheel and Kingpin Coupling. Every trailer which shall be towed on the public highways at a speed in excess of twenty miles per hour shall be coupled to the towing vehicle by means of a safety chain, chains, cables, or equivalent devices in addition to the regular trailer hitch or coupling. This requirement does not apply to a semitrailer having a connecting device composed of a fifth wheel and kingpin assembly meeting the requirement of the interstate commerce commission, nor to a pole, pipe, casing, log or piling dolly. [SDCL 32-19-9]

#### **CHAPTER 7.04 - SPEED RESTRICTIONS**

7.0401 Establishment of Speed Zones.

- A. The City Council is authorized and empowered to determine and establish upon any public street in the City or any part thereof, limited speed zones which speed limit shall constitute the maximum speed at which any person may drive or operate any vehicle upon such zones, street or highway or portion thereof so zoned, and on which highway the maximum speed permissible in the zone has been conspicuously posted by signs authorized by the Council. (SDCL 9-31-1, 9-31-3, and 32-25-7)
- B. The beginning of such limited speed zones shall be indicated by signs showing the speed limits.

7.0402 Maximum Limits Generally. Except as may otherwise be provided by the City Council, it shall be unlawful for any person to operate or drive any vehicle at a rate of speed greater than the following: (SDCL 9-31-3)

- A. Fifteen (15) miles per hour within any business district.
- B. Ten (10) miles per hour on any alley.
- C. Twenty (20) miles per hour within any residential district.
- D. Highway construction zones with conspicuously posted signs. (SDCL 32-25-19.1)
- E. The appropriate legal maximums established by state law on all other unmarked streets and highways within the City shall be effective.

7.0403 School Zones. It shall be unlawful for any person to operate or drive any vehicle at a speed greater than fifteen (15) miles per hour when passing a school during the recess or while children are going to or leaving school during opening or closing hours for such school. (SDCL 32-25-14)

7.0404 Traffic Fines. All traffic violations and fines will follow and be regulated by the South Dakota State Bond Schedule and will include fines and costs as set by the Transportation Commission. (SDCL 32-25-7)

## CHAPTER 7.05 - PARKING, STOPPING

- 7.0501 Obstruction of Traffic. No vehicle shall be operated or allowed to remain upon any street under the jurisdiction of the City in such a manner as to form an unreasonable obstruction to traffic. Whenever any law enforcement officer finds a vehicle which constitutes an obstruction to traffic, such officer shall be authorized to provide for the removal of such vehicle by towing, if necessary, at owner's expense, with no liability to the City. (SDCL 32-30-2)
- 7.0502 Prohibited Parking After Snowfall. In the event of two (2) or more inches of snows thus creating the necessity for the blading and/or removal thereof from City streets, it shall be unlawful for any person to park a vehicle or allow a vehicle to remain parked on any public street within the City beyond six (6) hours following the initial two (2) inch accumulation of snow.
- 7.0503 Ticketing and Towing Vehicles. Any authorized law enforcement official shall be authorized to ticket and tow away, or have removed and towed away by any commercial towing service, any vehicle illegally parked in any place where such parked vehicle creates or constitutes a traffic hazard, blocks the use of a fire hydrant, or obstructs or may obstruct the movement of any emergency or snow removal vehicle, or in any way is in violation with the provisions of the TITLE. Vehicles towed away for illegal parking shall be stored in a place designated by the City Council and shall be returned to the owner or operator of such vehicle upon payment of a penalty of twenty-five (25) dollars plus towing charges, within twenty-four (24) hours after the time such vehicle was removed, plus ten (10) dollars for each additional 24 hours or fraction thereof.
- 7.0504 Abandoned Vehicles. The abandonment of a motor vehicle or other vehicle or any part thereof on any street in the City shall be subject to action and penalties as provided for in this Title and under Chapter 3.0103. The abandonment of a motor vehicle or other vehicle or any part thereof on private or public property, other than a street, in view of the general public, anywhere in the City shall be prohibited except as specifically allowed under Chapter 3.0103. A motor vehicle or other vehicle or any part thereof so abandoned on private property may be authorized for removal by or upon the order of the City Council after a waiting period of seven (7) days after notice is given to the property owner(s). (SDCL 32-30-12.1)
- 7.0505 Towing Costs. When a vehicle is removed from either public or private property as authorized by order of the City Council, the owner of the vehicle shall be responsible for all towing costs in addition to the fees provided in Section 7.0503 hereof. In addition the City shall not be liable for any damages to property or persons incurred as a result of such towing or storage.
- 7.0506 Parking Prohibited in Certain Places. At any time it shall be unlawful to permit any vehicle to stop, stand, or park in any of the following places, except where necessary to avoid conflict with other traffic or in compliance with the directions of a law enforcement officer or traffic control device (SDCL 32-30-6):
- A. In any intersection.
  - B. In a crosswalk.

- C. Within fifteen (15) feet of a fire hydrant.
- D. At any place where the vehicle would block the use of a driveway.
- E. Within twenty (20) feet of the driveway entrance of the fire station and on the side of the street opposite the entrance to such station within seventy-five (75)feet of such entrance.
- F. On any sidewalk.
- G. At any place where official signs prohibit parking.

- 7.0507 General Parking Restrictions. It shall be unlawful to park any motor vehicle on any private property without the consent of the owner of the property.
- 7.0508 No Parking Areas. The City Council shall cause signs to be posted in all areas where parking is limited or prohibited, indicating such limitations or prohibitions, except that yellow curb painting may be used to indicate "No Parking" in certain street areas. (SDCL 9-31-1)
- 7.0509 Stopping or Parking on Rural Highway Prohibited. No person may stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main-traveled portion of any highway, outside of a business or residence district, when it is practical to stop, park or leave such vehicle standing off of the paved or improved or main-traveled portion of the highway. [SDCL 32-30-1]
- 7.0510 Standing or Parked Vehicles. No person may park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear or unobstructed width of not less than twenty feet upon the main-traveled portion of such highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of two hundred feet in each direction upon such highway. [SDCL 32-30-2]
- 7.0511 Position of Parking on Two-Way Road. Except as otherwise provided in §§ 32-30-2.2 to 32-30-2.4, inclusive, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or edge of the roadway. [SDCL 32-30-2.1]
- 7.0512 Unauthorized Parking in Handicapped Space. The owner of any vehicle not displaying a serially numbered certificate or special license plate parked in a parking space on public or private property designated as reserved for the physically handicapped commits a Class 2 misdemeanor. [SDCL 32-30-11.4]

**CHAPTER 7.06 - TRUCKS**

- 7.0601 Vehicles with Gross Vehicle Weight of 26,000. All motor vehicles which have a GVW of 26,000 or more shall travel only on streets designated as "Truck Routes" and said vehicles can be parked only at such areas as have been specifically marked or designated for such use by the Street Committee Chairman. No parking of motor vehicles with GVW of 26,000 or more shall be allowed on any street, alley, or public right-of-way with the City, whether zoned Commercial, Industrial, or Residential.

The City Finance Officer shall, upon application, grant permits for vehicles with GVW of 26,000 or more to travel upon the City's streets other than designated "Truck Routes"

only when necessary. (SDCL 9-31-2).

- 7.0602 Permit fee. A \$200.00 annual permit fee shall be payable to the City Finance Officer upon issuance. In addition to the permit fee, any street damage done to city streets shall be paid by the permittee.
- 7.0603 One Time Fee. Provides for a fee of \$35.00 for a "ONE-TIME" project 5 CONSECUTIVE DAY PERMIT, with an option for a 3 consecutive day extension for an additional \$10.00. In addition to the permit fee, any street damage done to city streets shall be paid by the permittee.
- 7.0604 Penalties for Violation. Any person violating any provision of this ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than two hundred dollars (\$200.00) or by imprisonment not to exceed thirty (30) days in the City Jail, or by both such fine and imprisonment.
- 7.0605 Seperability. If any section, subsection, sentence, clause, or phrase of the Ordinance be declared by a court of competent jurisdiction, such decisions shall not affect the validity of the ordinance as a whole, or any other part thereof.

#### **CHAPTER 7.07 - SNOWMOBILES**

- 7.0701 Definitions. The following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them:
- A. Operate shall mean to control the operation of a snowmobile.
  - B. Owner shall mean any person, other than a lienholder, having the property in or title to a snowmobile and entitled to the use or possession thereof.
  - C. Private property shall mean and include any and all real property, or land within the City which has not been opened or dedicated for public use or as a public thoroughfare.
  - D. Snowmobile shall mean any engine-driven vehicle of a type which utilizes sled type runners, wheels, or skis with an endless belt tread or similar means of contact with the surface upon which it is operated.
- 7.0702 Operators License Required. No driver shall operate a snowmobile on a public street in the City without having in their possession a valid driver's license. (SDCL 32-12-22)
- 7.0703 Registration and Titling of Snowmobiles. The title issuance, excise tax, vehicle registration and dealer licensing provisions of SDCL 32-3 to 32-6B, inclusive, apply to snowmobiles. In addition, all snowmobiles used on public lands, private lands and any frozen public waters within the territorial limits of this state shall be licensed pursuant to § 32-5-90 or have a permit as provided in § 32-20A-15.1. Any snowmobile used by a resident of the state on property owned by him is exempt from the licensing requirements. Any super modified snowmobile built exclusively for organized track racing events on raceway facilities is exempt from the title registration and licensing

requirements. Upon the sale of each new snowmobile by a snowmobile dealer, the dealer or applicant shall deliver to the county treasurer of the applicant's residence the snowmobile manufacturer's statement of origin, the required fees and taxes and completed vehicle title registration forms for the snowmobile. If the snowmobile has not been sold by a licensed snowmobile dealer, the snowmobile owner is responsible for registering and titling the snowmobile, and for the payment of any fees and taxes. [SDCL 32-20A-15] Any snowmobile used on any public street/highway or public land within the city of Salem shall be required to show proof of insurance.

- 7.0704 Traffic Laws Applicable. The operator of a snowmobile is required to obey the same traffic laws of the state and ordinances of the City, including street and road signs, as the operators of all other motorized vehicles are required to obey. (SDCL 32-20A-9)
- 7.0705 Hours of Operation. No person shall operate a snowmobile on private property of their own or another or upon public highways, streets and alleys within the City between the hours of 11:00 p.m. and 7:00 a.m. the following day. (SDCL 32-20A-9)
- 7.0706 Permission of Property Owner Required for Operation. No person shall operate a snowmobile on private property of another without the express permission to do so by the owner or occupant of such property. (SDCL 32-20A-9)
- 7.0707 Operation on Public Ground and Streets Prohibited. No person shall operate a snowmobile on any public school grounds, public sidewalks, park property, park, roads, playgrounds, and recreational areas within the City. Snowmobiles may be operated over snow-covered highways, streets, and alleys within the City limits but only for emergency use as defined in 7.0711 or when the operator must travel upon such for purposes of leaving the City and/or when returning to his residence from outside the City. The operator when using any public street, highway or alley in accordance with the above restrictions, shall use the most expeditious and direct route. (SDCL 32-20A-9)
- 7.0708 Restriction of Use on Interstate Highways and Railroads. No snowmobile may be operated upon or across an interstate highway, except that it may cross in the ditch of an underpass or on the extreme right of an overpass. No snowmobile may be operated, other than by a law enforcement officer or a railroad employee in the lawful discharge of duties, upon any railroad right-of-way, except that it may be driven directly across a railroad crossing after stopping and yielding the right-of-way to approaching railroad traffic. [SDCL 32-20A-5]
- 7.0709 Crossing Streets at Right Angles. Persons operating snowmobiles are permitted to cross streets at right angles but only may do so after stopping and yielding the right-of-way to all approaching traffic and crossing as closely as possible to an intersection or approach. (SDCL 32-20A-7)
- 7.0708 Speed. No person shall operate a snowmobile at a speed greater than is reasonable or proper, under all existing circumstances. (SDCL 32-20A-2)
- 7.0709 Careless, Reckless or Negligent Operation Prohibited. No person shall operate a snowmobile in a careless, reckless or negligent manner so as to be likely to endanger the person or property of another or to cause injury or damage thereto. (SDCL 32-20A-2)

- 7.0712 Notice and Report of Certain Accidents to Department. The operator of a snowmobile on public lands, frozen public waters or private lands leased for public snowmobile use shall, in the case of a collision or an accident with damage to a snowmobile or other property in excess of five hundred dollars, give notice to, and file with, the department of game, fish and parks a full description of the collision or accident upon forms provided by the department and available from any state, county or local law enforcement agency. If the collision or accident resulted in death or injury to a person requiring medical attention, the operator shall file within forty-eight hours. If the collision or accident resulted in damage to a snowmobile or other property in excess of five hundred dollars, he shall file within ten days. If the operator is unable to file, then someone acting for him may file. The secretary of game, fish and parks may investigate the circumstances of such accidents. [SDCL 32-20A-19]
- 7.0713 Loud Noises Prohibited. No person shall operate a snowmobile in such manner as to create any loud unnecessary or unusual noise likely to disturb or interfere with the peace and quiet of any other person. (SDCL 32-20A-9)
- 7.0714 Emergency Use. (SDCL 32-20A-9)
- A. The City Council may declare that road or weather conditions are such as to constitute emergency travel conditions authorizing use of a snowmobile.
  - B. A snowmobile may also be used when such vehicle is necessary as an emergency vehicle to protect the health, safety and welfare of any individual.
  - C. The operator of a snowmobile under emergency conditions shall be subject to all existing traffic ordinances of the City and traffic laws of the State.
- 7.0715 Equipment Required. All snowmobiles operated in the City shall have the following equipment: (SDCL 32-20A-9, 32-20A-10, and 32-20A-2)
- A. Mufflers which are properly attached and which reduce the noise of operations of the vehicle to the minimum noise necessary for operating the vehicles and no Person shall use a muffler cutout, bypass or similar device on such vehicle.
  - B. Adequate brakes in good working condition.
  - C. A safety or “deadman” throttle in operating condition such being a device which when pressure is removed from the accelerator the throttle causes the motor to disengage from the driving tract.
  - D. At least one headlight and one tail light in good working condition.
  - E. A brightly colored vehicle identification flag hung or suspended at least six (6) feet high and is firmly attached to the snowmobile.
- 7.0716 Unattended Vehicles. No owner or operator of a snowmobile shall leave or allow the snowmobile to be or remain unattended on public property or streets while the motor is running, or where the keys for starting the vehicle are left in the ignition. (SDCL 32-20A-

9)

- 7.0717 Sidewalk Operation Prohibited. No person shall operate a snowmobile upon any public sidewalk in the City. (SDCL 32-20A-9)
- 7.0718 Operation Under the Influence. The operator of a snowmobile shall be deemed the driver or operator of a motor vehicle and be subject to South Dakota law relating to driving while under the influence of intoxicating liquor, drugs, or otherwise therein provided and such operator shall be punishable for any violation of such laws. (SDCL 32-20A-14)
- 7.0719 Towing. No person operating a snowmobile shall tow any person or object behind such snowmobile except when such person or object is situated upon a conveyance which is attached to such snowmobile by means of a rigid hitch or towbar. (SDCL 32-20A-9)
- 7.0720 Exception. Notwithstanding the provisions of any other Section, any governmental official in charge of public school ground, park property, playgrounds, public golf courses or parking lots shall have authority to supervise and regulate events or programs conducted thereon or to designate areas under his charge and supervision as recreation areas that he shall deem available for use of snowmobiles and the hours of such use. (SDCL 32-20A-9)

#### **CHAPTER 7.08 – MOTORCYCLES**

- 7.0801 Special Qualifications – Operation of Motorcycle. No person may operate a motorcycle, except a moped as defined in SDCL 32-20-1 or a licensed all-terrain vehicle as provided by SDCL 32-20-13, on the public streets or highways without a motor vehicle driver's license or permit upon which a state testing officer has certified that such person is qualified to operate such motorcycle. However, the operator of a moped or licensed all-terrain vehicle shall have a valid motor vehicle operator's license or permit. The department may waive the testing requirements upon completion of a motorcycle safety course approved pursuant to SDCL 32-20-14. [SDCL 32-20-2]
- 7.0802 Protective Helmet Required for Minor. No person under eighteen years of age may operate or ride upon a motorcycle on the public streets or highways of this state unless the person wears a protective helmet of a type meeting department of transportation motor vehicle safety standard 218 as in effect on January 1, 1984. No person may operate a motorcycle with any person under the age of eighteen as a passenger if the passenger is not wearing a protective helmet. [SDCL 32-30-4]
- 7.0803 Motorcycle Operation Between Lanes Prohibited. No person may operate a motorcycle between adjacent lanes of traffic, or between adjacent lines or rows of vehicles. [SDCL 32-20-9.3]
- 7.0804 Restriction to Two Abreast. No person may operate a motorcycle more than two abreast in a single lane. [SDCL 32-20-9.5]

#### **CHAPTER 7.09 - MISCELLANEOUS PROVISIONS**

- 7.0901 Clinging to Moving Vehicles. No person traveling upon any bicycle, motorcycle, coaster, sled, roller skates, or any other tow vehicles shall cling to or attach himself or such vehicle to any other moving vehicle upon any street.
- 7.0902 Riding on Outside of Vehicle. No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers.
- 7.0903 Tampering with Vehicles. Any person who shall tamper with the motor vehicle of another, with intent to injure the same or cause inconvenience to the owner thereof, or who shall take and operate the motor vehicle of another without the consent of the owner or person lawfully in charge thereof, under such circumstances as not to constitute larceny, shall be guilty of a misdemeanor.
- 7.0904 Immediate Notice of Accident. The operator of a vehicle involved in an accident resulting in injury to or death of any person, or resulting in any property damage, shall immediately by the quickest means of communication give notice of such accident to a law enforcement officer. (SDCL 32-34-7)
- 7.0905 When Driver Unable to Report. An accident report shall not be required from any person who is physically incapable of making such report during this period of incapacity. Whenever the operator of a vehicle is physically incapable of making such report or is physically incapable of giving an immediate notice of an accident and there is another occupant in the vehicle at the time of the accident capable of doing so, such occupant in the vehicle at the time of the accident shall cause to be given the notice not given by the operator. (SDCL 32-34-8 and 32-34-9)
- 7.0906 Duty to Give Information, Render Aid. The operator of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his names address and if applicable the license number of the vehicle he is driving and his operator's or chauffeur's license to the person struck or the driver or occupant or person attending any vehicle collided with. The operator shall also render to any person injured in such accident reasonable assistance including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. (SDCL 32-34-3)
- 7.0907 Personal Injury. The operator of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 7.0906. (SDCL 32-34-7)
- 7.0908 Property Damage. The operator of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 7.0906. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said

requirements under such circumstances shall be guilty of a misdemeanor. (SDCL 32-34-6)

- 7.0909 Unattended Vehicle, Property. The operator of any vehicle which collides with any vehicle or other property which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner, of the vehicle striking the unattended vehicle or shall attach securely in a conspicuous place in or on the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. Such driver shall without unnecessary delay notify a law enforcement officer of such accident. Every such stop shall be made without obstructing traffic more than is necessary. (SDCL 32-34-4)
- 7.0910 Duty Upon Striking Fixtures. The operator of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a street shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's license and shall make report of such accident when and as required in Section 7.0908.
- 7.0911 Duty Upon Striking Animal. The operator of any vehicle which collides with any dog or domestic animal causing injury thereto shall stop and attempt to ascertain the owner of such animal and notify a law enforcement officer of such accident.
- 7.0912 Manner of Arrest. Except in cases of driving while intoxicated or under the influence of intoxicating liquor, or any stupefying or exhilarating drug, and except in the more serious and aggravated cases of speeding or careless and reckless driving and except when reasonably necessary to secure appearance, a person charged with a violation of this Title by a law enforcement officer need not be arrested in the regular manner but may first be given an opportunity after notice to appear voluntarily to answer for such traffic violation.
- 7.0913 Notice to Appear. A person charged with violation of this Title by notice shall be given notice to appear before the court of competent jurisdiction at the time or within the time stated in such notice, and that in event of failure to do so a warrant will be issued for his arrest.

The notice shall state the name, description and address of the offender, if known, the nature and date of the offense and a description of the vehicle involved in the violation by trade name and license number. The notice shall be signed by the law enforcement officer executing it.

The notice shall be made in triplicate one copy to be given to the owner or driver charged with the offense or to be left in or upon the automobile or vehicle involved in the violation, one copy to be filed with the law enforcement officer and one copy to be filed with the court.

If the person charged with the offense is available he shall be given an opportunity to sign an agreement to appear to answer the charge at the time and place specified in the notice which form of agreement shall be a part of the notice, and if he shall refuse to sign

such agreement then he shall be placed under arrest for the offense in the manner otherwise provided by law.

- 7.0914 Appearance and Deposit for Fine. A person who has received a notice of traffic violation shall at or within the time specified in such notice, appear before the court of competent jurisdiction to answer to the charge set forth therein according to the procedure of that court.

In cases of non-moving violations and cases of failure to stop at a stop street, sign or signal which are not serious and aggravated cases, the person charged shall appear at the office of the Clerk of Courts and upon making the deposit for fine as authorized by the court and a statement authorizing the Clerk of Courts to enter his plea of guilty to the offense he shall not be required to appear in court.

- 7.0915 Attest on Failure to Appear. Upon the failure of a person to appear in response to a notice of traffic violation he shall be subject to arrest in the manner otherwise provided by law.

- 7.0916 Immediate Report to Police Authority when Persons Entitled to Receive Information are Disabled. If none of the persons specified in § 32-34-3 are in condition to receive the information to which they otherwise would be entitled, and no police officer is present, the driver of any vehicle involved in such accident, after fulfilling all other requirements of § 32-34-3, insofar as possible on his part to be performed, shall forthwith report such accident to the nearest office of a duly authorized police authority and submit thereto the information specified in § 32-34-3. [SDCL 32-34-3.1]

- 7.0917 Duty to Stop After Accident with Unattended Vehicle or Property. The driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to such other vehicle or property shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle or other property of his name, address and the name and address of the owner and the license number of the vehicle he is driving or shall attach securely in a conspicuous place in or on such vehicle or other property a written notice giving his name, address and the name and address of the owner and the license number of the vehicle he is driving and shall without unnecessary delay notify the nearest office of a duly authorized police authority. Every such stop shall be made without obstructing traffic more than is necessary. [SDCL 32-34-4]

- 7.0918 Duty to Give Immediate Notice of Accident to Peace Officer. The driver of any motor vehicle involved in an accident resulting in bodily injuries or death to any person or property damage to an apparent extent of five hundred dollars or more to any one person's property or one thousand dollars per accident shall immediately, by the quickest means of communication, give notice of such accident to the nearest available peace officer who has jurisdiction. [SDCL 32-34-7]

- 7.0919 Throwing Match or Burning Object from Vehicle as Misdemeanor. Any person who shall drop or throw from any vehicle or other means of transportation any burning match, cigarette, cigar, ashes of pipe, or other burning substance of any kind is guilty of a Class 2 misdemeanor. [SDCL 34-35-8]

- 7.0920 Littering from Motor Vehicle Prohibited. No person shall dump, deposit, drop, throw, discard or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public or private property or upon or into any river, lake, pond, stream or body of water in this state except as permitted by law, nor shall any person transport by any means garbage or refuse from any dwelling, residence, place of business, farm or other site to and deposit such material in, around or on top of trash barrels or other receptacles placed along public highways or at roadside rest areas. [SDCL 34A-7-7]
- 7.0921 Consumption or Possession of Alcoholic Beverage in Vehicle. It is a Class 2 misdemeanor for any person occupying a motor vehicle located upon a public highway or the right-of-way of a public highway to consume any alcoholic beverage or have a package or any receptacle containing an alcoholic beverage in that person's possession unless the seal of the original package remains unbroken or the alcoholic beverage is so removed from the passenger area of the motor vehicle that no occupant of the motor vehicle has access to it. [SDCL 35-1-9.1]
- 7.0922 Misdemeanor to Consume or Mix Alcoholic Beverages in Public Place Other Than Licensed On-Sale Premises - Exception. It is a Class 2 misdemeanor for any person to consume any intoxicating liquor or to mix or blend any alcoholic beverage with any other beverage, regardless of whether the beverage is an alcoholic beverage, in any public place, other than upon the premises of a licensed on-sale dealer where the alcoholic beverage was purchased from the dealer for on-sale purposes. For purposes of this section "public place" means any place, whether in or out of a building, commonly and customarily open to or used by the general public and any street or highway. However, this section does not apply if the county commissioners or the governing body of the municipality, charged with the approval of alcoholic beverage license issuance, in their respective jurisdictions, shall give prior authorization for persons to consume or blend alcoholic beverages, but not to engage in the sale thereof, in or upon property described by the authorizing governmental subdivision, which property is publicly owned, or owned by a nonprofit corporation. The permit period shall not exceed twenty-four hours, and hours of authorized consumption shall not exceed those permitted for on-sale licensees. [SDCL 35-1-5.3]

**TITLE 8  
WATER AND SEWER**

*Chapter 8.01 - General Provisions  
Chapter 8.02 - Water Provisions  
Chapter 8.03 - Sewer Provisions  
Chapter 8.04 - Sewer and Water Rates  
Chapter 8.05 – Storm Sewer and Drainage System Fee*

**CHAPTER 8.01 - GENERAL PROVISIONS**

- 8.0101 Utility Service - Application Required. Any person desiring any utility service furnished by the City, including water or sewer service, shall make application for the same to the City Council. Such application shall contain the applicant's name, address and the uses for which such service is desired. A separate application shall be made for each premise to be served. The applicant shall abide by the rules and regulations established by the City relative to utility service in effect at the time of such application and as they may be revised from time to time in addition to conditions and agreements as the City Council shall deem advisable.
- 8.0102 Same - Not Available to Debtors. The City may decline or fail or cease to furnish utility service to any person who may be in debt to the City for any reasons except ad valorem taxes and special assessments.
- 8.0103 Termination of Service. The City shall have the right to disconnect or refuse to connect any municipal utility service for the following reasons:
- A. Failure to meet the applicable provisions of law.
  - B. Violation of the rules and regulations pertaining to utility services.
  - C. Nonpayment of bills.
  - D. Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.
  - E. Tampering with any meter, seal, or other equipment controlling or regulating the supply of utility service.
  - F. Theft or diversion and/or use of service without payment therefore.
  - G. Vacancy of premises.

The City shall give the municipal utility service customer at least ten (10) days notice before termination of municipal utility service. At any time before the date of termination a customer may dispute the correctness of all or part of the amount shown on the utility bill or the determination that a violation of this Section has occurred giving rise to

termination hereunder. A customer shall not be entitled to dispute the correctness of all or a part of the amount shown on the municipal utility bill if all or a part of the amount shown were the subject of a previous dispute under this Section.

- 8.0104 Provisions for Termination of Service. The City shall terminate municipal utility service hereunder only during the hours of 9:00 a.m. to 3:00 p.m. Monday through Thursday except no termination shall be permitted on a legal holiday.

Once the City has initiated this termination of service provision, the resident utility user will, at least ten (10) days prior to the date of termination of utility services be personally contacted by the City or if unable to be personally contacted will, by letter, be notified of the reason for termination and the day and approximate time such utility service will be terminated. Such utility user shall also be notified of his/her right to a hearing on the termination before the City Council. Termination of service shall not occur until after such contact has been made with the resident utility user.

The utility user may at any time prior to the termination notify the City Finance Officer of his/her request to meet with the City Council to discuss why such utility service should not be terminated. A final decision on termination of service will then be made by the City Council at this hearing.

Municipal utility service shall be continued for a single thirty (30) day period upon receipt of a physician's certificate or notice from a public health or social service official that disconnection of municipal utility service will aggravate an existing medical emergency of the customer or another permanent resident of the customer's premises.

- 8.0105 Termination After Customer Disputes. Until the date of the City Council's decision the City shall not terminate the utility service of the customer.

Once a decision is reached, the City shall notify the individual either personally or by mail of the Council's decision and if applicable:

- A. Amount to be paid or violation under this Section;
- B. Date of notice of termination;
- C. Date of termination which shall be at least five (5) days after notice;
- D. Notice that unless the City receives complete payment of the amount shown, or if a different violation of 8.0103 and it is not corrected prior to the date of termination municipal utility service shall be terminated.

- 8.0106 Service Taps - Extensions. Before the Finance Officer may grant a permit to any person, firm, or corporation to tap into the City water and sewer systems, said applicant shall remit the following charges:

|                           |          |
|---------------------------|----------|
| One Inch water tap (1") - | \$300.00 |
| Sanitary sewer hookup -   | \$ 50.00 |

For these fees, the City water superintendent shall inspect the contractor's tap at the

water main after excavation has been completed by the permit holder; supervise lay of pipe and inspect the installation of the curb stop and curb box which must be located in the City street right-of-way, any exception must be approved by the City Water Superintendent.

Contractor must tap sewer main according to City specs, and do all labor involved in tapping sewer main. Contractor is responsible for all damages incurred during project, and back filling according to City specifications.

Tapping of any water or sewer main for the purpose of making connection shall be done by contractor and shall be inspected by authorized personnel of the City. Distribution or collection mains shall be provided at the discretion of the City Council, in streets, avenues, or alleys abutting the property to be served. Water facilities for hookups shall be provided, unless otherwise specified by the City Council, to the curb line from the distribution or collection main. Extension of distribution or, collection mains shall be only as specified by the Council in its discretion.

Any property owner may petition for a new hookup or connection to any City water and sewer line. The City Council, in its discretion may allow such connection or hookup provided that the petitioning property owner pays the cost for said hookup or connection from the point it joins the City distribution or collection main for the total frontage to the petitioning property owners lot line.

- 8.0107 Hookup Fees. An initial hookup fee, as regularly determined and set by resolution of the City Council, shall be paid by all applicants for each new service connection. The applicant shall also pay all costs, including piping, fixtures, digging, and appurtenances necessary to produce the connections as well as the costs of a qualified plumber making the installation. Payments to the City for water and sewer hookups shall be made prior to turning on such service. Persons shall give notice of desire to tap any main at least twenty-four (24) hours before the tap is to be made except in an emergency. All new connections for water and sewer service shall be inspected and approved by the Maintenance Superintendent.
- 8.0108 Extension of Lines. The City may serve a water or sewer customer outside the municipal corporate limits solely at the discretion of the City Council. Said water and sewer lines shall be constructed and maintained by the customer with all parties connecting onto such lines being regulated and charged connection fees and other fees as set forth and regulated by the City.
- 8.0109 Private Lines. Private water or sewer mains shall not be installed in the City unless authorized by the City Council. For the purpose of this Section, the phrase "private water and sewer mains" shall be construed to include any rural water pipelines, pipes or waterlines, or any individual sewage disposal systems.
- 8.0110 Responsibility of Property Owners. Persons served by City water and sewer shall keep all piping, fixtures, stop valves, heaters, and other apparatus for the use of water or sewer (including meters) in good repair and protected from freezing. The property owner shall be responsible for and pay the charges for replacement of any corroded or damaged piping, fixtures, stop valves, heaters, or other apparatus for the use of water or sewer, and for any charges for the repair or replacement of water meters, occasioned by

the negligence of the property owner or user, or the freezing, overheating, or other external damage to any water meters. The property owner and/or water user shall place and maintain a brass stop inside the basement of any building where water is to be used at the lowest point practicable on the service pipe entering the building and as close as practicable to the wall through which the pipe enters, and easily accessible so that the water may be turned on or off by the user or occupant. Service connection repairs to the curb stop shall be the responsibility of the property owner.

- 8.0111 Excavation Requirements. All excavations required for the installation of water and sewer facilities shall be open trench work or ditch, unless otherwise approved by the City Council. City Personnel shall be allowed to inspect the work at any stage of constructions and in any event, the applicant for the permit shall notify the Maintenance Superintendent when the work is ready for final inspection and before underground portions are covered.
- 8.0112 Liability of City. The City shall not be liable for any damage to the property of any customer of any water and sewer service furnished by the City due to backflow of the sewage system, failure of water supply, interruption of services or from any cause outside the direct control of the City.
- 8.0113 Right of Entry. Any person authorized by the City shall have free access at any time to all premises supplied with any water and sewer service by the City for the purpose of examination in order to protect the utility services from abusive use.
- 8.0114 Damages Trespass of Equipment. It shall be unlawful for any persons not having authority to do so, to open any water hydrant or tamper with any water or sewer service furnished by the City to consumers, or to in any other way molest, damage or trespass upon any equipment or premises belonging to the City connected with any such service.
- 8.0115 Unlawful Use. No person, other than authorized Personnel of the City, shall connect, turn on, turn off or disconnect any water and sewer service offered by the City, or remove, replace or repair any equipment connected to any such service.
- 8.0116 Violations. The City may, in its discretion, notify any person violating any provision of this Title with written notice stating the nature of the violation and providing a reasonable time for the correction thereof, but such notice shall not be necessary for the prosecution of any violators hereof. Any person, whether receiving such notice or not violating any provision of this Title shall be liable to the City for any expenses loss, or damage, occasioned the City by reason of such violation. All provisions of this Title shall be subject to applicable state and federal law. (SDCL 9-47, SDCL 9-48)

## **CHAPTER 8.02 - WATER PROVISIONS**

- 8.0201 Water Meters. Water meters shall be installed in all new and existing buildings using municipal water service or as otherwise authorized by the City Council. The Water and Sewer Superintendent shall install, replace, and repair household water meters, defined as the standard 5/8 inch pipe size water meter or as otherwise approved by the City Council.

8.0202 Inspection of Meters. Any person authorized by the City Council to read water meters or make inspections shall be allowed free access at all reasonable hours to any building or premises where water is used. If such persons are not allowed such access, the City, in its discretion may estimate the water use, shut off the water, make additional charges, or take other action not inconsistent with the law.

8.0203 Testing Meters. The owner of property may have his or her water meter tested by making written request to the Finance Officer.

In case any meter fails to register properly upon testing, the amount overcharged or undercharged for water during such period shall be estimated by the City Council, such estimate to be based on the average amount registered during a like period.

8.0204 Water Lines How Laid. All service lines shall be at least six (6) feet below the established grade of the street, avenue, or alley in which they shall be laid, and in all places at least six (6) feet below the surface of the ground, unless otherwise authorized by the City Council. Contractor or plumber shall install a back-flow prevention device on all new water service connections. All plumbing fixtures, piping, or apparatus shall be installed with such material as to withstand safely the perils surrounding their conditions of operation and use, and shall meet both inside and outside South Dakota Plumbing Codes.

When service pipes are found disconnected at the corporation stop at any main, they may be reconnected only by the City or on its order. No water main or service may be laid in the same trench with gas mains or other foreign conduits. Special permission may be granted, however, when deemed advisable by the City Council, for laying of water lines in trenches with sewer lines, and then only with the placement of water lines well above sewer lines to prevent subsequent possible contamination of water mains.

8.0205 Water Line Requirements. All water mains shall be at least six (6) inch PVC (or meet current South Dakota State Plumbing Codes), with gasketed joints, service lines shall be a minimum of one inch PVC or polly to the property line and PVC to the meter, and hydrants shall be at least six (6) inch, with two or three way openings unless otherwise approved by the City Council.

8.0206 Payment of Water Rates. City residents will be required at the first of each month, to read their own water meter and record such reading on forms as provided by the City. The reading and subsequent payment will be due by the tenth of each month and will be payable to the City.

If the City has not received the water meter reading and payment by the tenth of the month and has not in anyway been notified of reasons why such reading and payment has not been provided, then the City will initiate the termination of service provision for that user in accordance with Section 8.0104.

Also, all monthly water bill payments received after the tenth day of the month will be considered delinquent and the user will be assessed a delinquent payment charge of ten (\$10.00) dollars which will be added to their regular bill.

8.0207 Water Rates.

- A. The water consumers inside the City limits shall pay the following water rates to the City of Salem, South Dakota per calendar month.

RESIDENTIAL AND COMMERCIAL

Flat Fee \$5.00 minimum charge  
Charge per cubic ft. \$0.03 per cubic ft.

Provided however, that in no case shall the water bill for any calendar month be less than \$5.00 per month, which is the minimum monthly rate.

- B. COMMERCIAL USERS OVER 48,000 CUBIC FEET ANNUALLY

Flat Fee \$8.00 minimum charge  
Charge per cubic ft. \$0.0225 per cubic ft.

Provided however, that in no case shall the water bill for any calendar month be less than \$8.00 per month, which is the minimum monthly rate.

The High End Commercial users will be established by their previous year's usage. If over 48,000 cu. Ft. is used in the previous year, the above rates will be used the next year. Once a rate is determined, it will be in effect for the entire year. The usages of the Commercial accounts will be analyzed each year.

- C. The following water rates shall be paid by water consumers outside the city limits of the City of Salem, South Dakota for water received from the City water mains:

RESIDENTIAL AND COMMERCIAL

Flat Fee \$8.00 minimum charge  
Charge per cubic ft. \$0.03 per cubic ft.

Provided however, that in no case shall the water bill for any calendar month be less than \$8.00 per month, which is the minimum monthly rate.

- D. Rules:

1. Read meter on the 1st day of each month.
2. Bills must be paid by the 10th of the month.
3. If notification is NOT made to the City by the 10th, \$5.00 delinquent charge will be assessed.
4. If bill is not paid by the 20th of each month, water will be shut off and a charge of \$10.00 will have to be paid before resumption of service.

(Ord. # 515 & 517)

8.0208 Reconnection After Termination. In the event that any water service is terminated and shut off for nonpayment of a bill, every property owner shall have the right to have the same reconnected only upon the payment of the amount due, and in addition to a reconnection fee. Such fee shall be determined by the City Council, however, it shall not be less than ten (10) dollars.

8.0209 Voluntary Discontinuance of Service. Persons wishing to discontinue the use of any

water service shall give a five (5) day notice thereof to the Finance Officer. Failure to do so shall render them liable for the payment of all bills until such notice has been given.

- 8.0210 Interruption of Service. The users of any water service furnished by the City may be notified that the supply of such utility may be temporarily shut off at any time. Notice shall be given, if feasible, of the contemplated shut off and immediately upon finding the supply shut off it becomes the duty of the premises to take prompt precautions to prevent damages.
- 8.0211 Restricting Use. The City Council reserves the right to at any time restrict or prevent the use of any water service furnished by the City during periods of emergency or circumstances demanding such restriction or prevention of use.
- 8.0212 Joint Water Users Liable. In case two or more users are supplied with water from the same service pipe, if any of the parties fail to pay the water charge when due, or to comply with any rule of the City, the City reserves the right to shut off the water from the whole service until such charge is paid, or the rules strictly complied with, and it is expressly stipulated that no claim for damage or otherwise may be made against the City by any user whose water charge has been paid, or who has complied with the rules of said City, because of such shut off, it being expressly stipulated that the necessity for such shut off shall be deemed to be the joint act of all served through such service.
- 8.0213 Use Assumed. All premises connected to any water service of the City shall be assumed to be using such service and the owner or occupant shall be charged therefore as long as such premises shall remain connected to the water service of the City. (SDCL 9-47)
- 8.0214 Water Deposits. All water users shall make a deposit as follows before water services will be connected:

|                             |          |
|-----------------------------|----------|
| RESIDENTIAL RENTAL UNITS    | \$100.00 |
| ALL OTHER RESIDENTIAL UNITS | \$ 60.00 |
| ALL COMMERCIAL UNITS        | \$ 60.00 |

Said deposits will be held in trust until service has been discontinued at which time deposits will be refunded or used to pay the final water bill.

### **CHAPTER 8.03 - SEWER PROVISIONS**

- 8.0301 Definitions.
- A. "Biochemical Oxygen Demand (BOD)". The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter.
- B. "Building drain". That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (15 Meters) outside the inner face of the building wall.

- C. "Building sewer". The extension from the building drain to the public sewer or other place of disposal, also called house connection.
- D. "Combined sewer". A sewer intended to receive both wastewater and storm or surface water.
- E. "Easement". An acquired legal right for the specific use of land owned by others.
- F. "Floatable oil". Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
- G. "Garbage". The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.
- H. "Industrial wastes". The wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.
- I. "Natural outlet". Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
- J. "pH" shall mean the logarithm of the reciprocal of the hydrogen concentration. The concentration is the weight of hydrogens, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen concentration of  $10^{-7}$ .
- K. "Properly shredded garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.
- L. "Public sewer" shall mean a common sewer controlled by a governmental agency or public utility.
- M. "Sanitary sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
- N. "Sewage" is the spent water of a community. The preferred term is "wastewater." (Sec 24)
- O. "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.
- P. "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect

the collection system and/or performance of the wastewater treatment works.

- Q. "Storm drain" (sometimes termed "storm sewer") shall mean a drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.
- R. "Superintendent" shall mean the superintendent of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the city of Salem, or his authorized deputy, agent, or representative.
- S. "Suspended solids" shall mean total suspended matter that either floats on the surface of or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.
- T. "Unpolluted water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.
- U. "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any ground-water, surface water, and storm water that may be present.
- V. "Wastewater Facilities" shall mean the structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.
- W. "Wastewater treatment works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."
- X. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.
- Y. "Hearing board" shall mean that board appointed according to provision of Article VIII.

8.0302 Use of Public Sewers Required.

- A. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the jurisdiction of city, any human or animal excrement, garbage, or other objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of said city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent

provisions of this ordinance.

- C. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.
- D. The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city, is hereby required at the owner(s) expense to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within (360 days) after date of official notice to do so, provided that said public sewer is within (150 feet) of the property line.

8.0303 Private Wastewater Disposal.

- A. Where a public sanitary or combined sewer is not available under the provisions of Article II, Section 4, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.
- B. Before commencement of construction of a private wastewater disposal system the owner(s) shall first obtain a written permit signed by the superintendent. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the superintendent. A permit and inspection fee of (\$25 00) twenty-five dollars shall be paid to the city at the time the application is filed.
- C. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within (48) hours of the receipt of notice by the superintendent.
- D. The type, capacities, location, and layout of a private wastewater disposal system shall comply with all recommendations of the department of public health of the State of South Dakota. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than (43,560) square feet (square meters). No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- E. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Article III, Section 4, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

- F. The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city.
- G. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer.

8.0304 Sanitary Sewers, Building Sewers and Connections.

- A. No unauthorized person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent.
- B. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner(s) or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgement of the superintendent. A permit and inspection fee of (25.00) dollars for a residential or commercial building sewer permit and (\$50.00) dollars for an industrial building sewer permit shall be paid to the city at the time the application is filed.
- C. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the city from any loss or damage that may directly be occasioned by the installation of the building sewer.
- D. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the city does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection before mentioned.
- E. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this ordinance.
- F. The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.
- G. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all building in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such

building drain shall be lifted by an approved means and discharged to the building sewer.

- H. No person(s) shall make connection of roof down spouts, foundation drains, sump pumps, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the superintendent for purposes of disposal of polluted surface drainage. Furthermore, water from down spouts, foundation drains, sump pumps, or other sources of surface run off or ground water shall be directed to the street or a designated waterway.
- I. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No.9. All such connections shall be made gas tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.
- J. The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent or his representative.
- K. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.
- L. New sewer mains installed by a developer or private party must be video camera checked and viewed by the Sewer Superintendent before the City will assume any responsibility.

8.0305 Use of Public Sewers.

- A. No person(s) shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, groundwater, roof runoff, subsurface drainage, or cooling water to any sewer, except storm water runoff from limited areas, which storm water may be polluted at times, may be discharged to the sanitary sewer by permission of the superintendent.
- B. Storm water other than that exempted under Section 1, Article V and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the superintendent and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the superintendent, to a storm sewer, combined sewer, or natural outlet.
- C. No person(s) shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:

1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas;
2. Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, constitute a hazard in or have an adverse effect on the waters receiving any discharge from the treatment works;
3. Any waters or wastes having a pH lower than (5.5), or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater works.
4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshing entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

D. The following described substances, materials, waters, or waste shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The superintendent may set limitations lower than the limitations established in the regulations below if in his opinion such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability the superintendent will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sanitary sewer which shall not be violated without approval of the superintendent are as follows:

1. Wastewater having a temperature higher than 150E Fahrenheit (65E Celsius).
2. Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils, or product of mineral oil origin
3. Wastewater from industrial plants containing floatable oils, fat or grease.
4. Any garbage that has not been properly shredded (see Article 1, Section 13,). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
5. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the superintendent for such materials.
6. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the superintendent.

7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations,
  8. Quantities of flow, concentrations, or both which constitute a "slug" as defined herein
  9. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
  10. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- E. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 4 of this Article, and which in the judgement of the superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may:
1. Reject the wastes,
  2. Require pretreatment to an acceptable condition for discharge to the public sewers,
  3. Require control over the quantities and rates of discharge, and/or
  4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 10 of this article. When considering the above alternative the superintendent shall give consideration to the economic impact of each alternative on the discharger. If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent.
- F. Grease, oil, and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in Section 4 (c), or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the superintendent. Any removal and hauling of the collected materials not performed by owner(s) personnel must be performed by currently licensed waste disposal firms.

- G. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner(s) at his expense.
- H. When required by the superintendent, the owner(s) of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the superintendent. The structure shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.
- I. The superintendent may require a user of sewer services to provide information needed to determine compliance with this ordinance.  
These requirements may include:
  - 1. Wastewater discharge peak rate and volume over a specified time period.
  - 2. Chemical analyses of wastewater.
  - 3. Information on raw materials, processes, and products affecting wastewater volume and quality.
  - 4. Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control.
  - 5. A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
  - 6. Details of wastewater pretreatment facilities.
  - 7. Details of systems to prevent and control the losses of materials through spills to the municipal sewer.
- J. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the superintendent.
- K. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment.

8.0306 Prohibited Acts. No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person(s) violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

8.0307 Powers and Authority of Inspectors.

- A. The superintendent and other duly authorized employees of the (city) bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing pertinent

to discharge to the community system in accordance with the provisions of this ordinance.

- B. The superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.
- C. While performing the necessary work on private properties referred to in Article VII, Section 1, above, the superintendent or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the city employees, and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Article V, Section 8.
- D. The superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

8.0308 Hearing Board. A Hearing Board shall be appointed as needed for arbitration of differences between the superintendent and sewer users on matters concerning interpretation and execution of the provisions of this ordinance by the superintendent. The cost of the arbitration will be divided equally between the municipality and the sewer user.

One member of the board shall be a registered professional engineer; one member shall be a practicing sanitary engineer; one member shall be a representative of industry or manufacturing enterprise; one member shall be a lawyer; and one member shall be selected at large for his interest in accomplishing the objectives of this ordinance.

8.0309 Penalties.

- A. Any person found to be violating any provision of this ordinance except Article VI shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- B. Any person who shall continue any violation beyond the time limit provided for in Article IX, Section 1, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding (\$100.00) dollars for each violation.

Each day in which any such violation shall continue shall be deemed a separate offense.

- C. Any person violating any of the provisions of this ordinance shall become liable to the city for any expense, loss, or damage occasioned the city by reason of such violation.

8.0310 Validity. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

#### **CHAPTER 8.04 - SEWER AND WATER RATES**

8.0401 Purpose. The purpose of this ordinance shall be to generate sufficient revenue to pay all costs for the operation and maintenance of the complete wastewater system. The costs shall be distributed to all users of the system in proportion to each user's contribution to the total loading of the treatment works. Factors such as strength (BOD and TSS), volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

8.0402 Determining The Total Annual Cost of Operation and Maintenance. The City of Salem, or its City Engineer, shall determine the total annual costs of operation and maintenance of the wastewater system which are necessary to maintain the capacity and performance, during the service life of the treatment works, for which such works were designed and constructed. The total annual cost of operation and maintenance shall include, but need not be limited to, labor, repairs, equipment replacement, maintenance, necessary modifications, power, sampling, laboratory test, and a reasonable contingency fund.

8.0403 Determining Each User's Wastewater Contribution Percentage. The City of Salem, or its City Engineer, shall determine for each user or user class the average daily volume of wastewater discharged to the wastewater system, which shall then be divided by the average daily volume of all wastewater discharged to the wastewater system to determine such user's Volume Contribution Percentage. The amount used as the total average daily volume of wastewater shall exclude infiltration and inflow. The City of Salem or its City Engineer, shall determine for each user or user class the average daily poundage of 5-day 20-degree Centigrade Biochemical Oxygen Demand (BOD) discharged to the wastewater system which shall then be divided by the average daily poundage of all 5-day BOD discharged to the wastewater system to determine such user's BOD Contribution Percentage.

The City of Salem, or its City Engineer, shall determine for each user or user class the average daily Total Suspended Solids (TSS) poundage discharged to the wastewater system which shall then be divided by the average daily poundage of all TSS discharged

to the wastewater system, to determine such user's TSS Contribution Percentage. The Volume Contribution Percentage, BOD Contribution Percentage and TSS Contribution Percentage for each user or user class shall be multiplied by the annual operation and maintenance costs for wastewater treatment of the total volume flow, total 5-day 20-degree centigrade BOD and TSS, respectively.

- 8.0404 Determining A Surcharge System For Users With Excess BOD and TSS. The City of Salem, or its City Engineer, will assess a surcharge rate for all non-residential users discharging wastes with BOD and TSS strengths greater than the average residential user. Such users will be assessed a surcharge sufficient to cover the cost of treating their above-normal strength wastes. Normal strength wastes are considered to be 200 ppm BOD and 200 ppm TSS. The surcharge rate structure for such above-normal strength waste dischargers is attached (Appendix A).
- 8.0405 Determining Each User's Wastewater Service Charge. Each non-residential user's wastewater treatment cost contributions as determined in Sections 3 and 4 shall be added together to determine such user's annual wastewater service charge. Residential users may be considered to be one class of user and an equitable service charge may be determined for each user based on an estimate of the total wastewater contribution of this class of user. The governing body may classify industrial, commercial, and other non-residential establishments as a residential user, provided that the wastes from these establishments are equivalent to the wastes from the average residential user with respect to volume, total suspended solids, and BOD. Each user's wastewater treatment cost contribution will be assessed in accordance with the attached rate schedule.
- 8.0406 Wastewater Facilities Replacement Fund. A reserve fund called the Wastewater Facilities Replacement Fund is hereby established within the wastewater utility fund for the purpose of providing sufficient funds to be expended for obtaining and installing equipment, accessories and appurtenances during the useful life (20 years) of the wastewater treatment facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed.
- 8.0407 Payment of the User's Wastewater Service Charge and Penalties. The City shall submit an annual statement to the user for the user's annual wastewater service charge or one-twelfth of the user's annual wastewater service charge may be included with the monthly water and/or wastewater utility billing. The City shall add a penalty of \$5.00 per month if the payment is not received by the City within 10 days. Should any user fail to pay the user wastewater service charge and penalty within 20 days of the due date, the City may stop the wastewater service to the property.
- 8.0408 Review of Each User's Wastewater Service Charge. The City shall review the total annual cost of operation and maintenance as well as each user's Wastewater Contribution Percentage not less often than every two years and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are abstained to adequately operate and maintain the wastewater treatment works. The City shall apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly. If a significant user, such as an industry has completed in-plant modifications which would change that user's Wastewater Contribution Percentage, the user can present, at a regularly scheduled meeting of the

governing body, such factual information and the City shall then determine if the user's Wastewater Contribution Percentage is to be changed. The City shall notify the user of its findings as soon as possible.

8.0409 Notification. Each user will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to wastewater treatment services.

8.0410 Wastes Prohibited From Being Discharged to the Wastewater Treatment System. The discharge of any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly, or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works is hereby prohibited.

Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the sanitary sewer treatment works shall pay for such increased costs.

8.0411 Prohibition of Clear Water Connections. No person shall make connection of roof down spouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

8.0412 Proper Design and Construction of New Sewers and Connections. The size, slope, alignment, materials of construction of all sanitary sewers and sewer connections, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City of Salem and the State of South Dakota. In the absence of code provision or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

8.0413 Surcharge Rate Schedule For above Normal Strength Wastes. The City of Salem will levy a surcharge rate for all non-residential users discharging wastes with BOD (Biochemical Oxygen Demand) and TSS (Total Suspended Solids) strengths greater than the average residential user. The rate will be determined at the time the application for sanitary sewer service is filed and will be enough to cover the costs of treating said above normal strength wastes.

8.0414 Rate Schedule.

- A. Residential sewer users inside City limits are hereby charged \$17.00 per month for sewer service.
- B. Multiple dwellings and commercial users inside City limits are hereby charged forty percent (40%) of the monetary amount of the water bill but not less than \$17.00 per month.

Multiple dwellings and commercial users who have Sprinkler Systems will be charged an average sewer rate from their January, February & March bills for their June, July and August usage.

- C. Residential sewer users outside City limits are hereby charged \$19.00 per month.
- D. Multiple dwellings and commercial users outside City limits are hereby charged fifty percent (50%) of the monetary amount of the water bill but not less than \$19.00 per month. (Ord. # 524)

8.0415 Validity. All ordinances or parts of ordinances in conflict herewith are hereby repealed. The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

#### **CHAPTER 8.05 – STORM SEWER AND DRAINAGE SYSTEM FEE**

8.0501 Purpose. The purpose of this ordinance is to establish a charge against real property within the City, for the operation, maintenance, and capital expenses of the storm sewer and drainage system.

8.0502 Fee. The storm sewer and drainage system fee shall be a flat rate of \$2.00.

8.0503 Collection. The storm sewer and drainage system fee established in section 8.0502 shall be a monthly charge.

8.0504 Fund Established. The storm sewer and drainage system fees paid to the City Hall shall be deposited in a separate fund to be known as the Storm Sewer and Drainage System Fund. This fund shall be used to pay the cost of financing the operation, maintenance or construction of the storm sewer and drainage system.

8.0505 Annual Review. The unit financial charge in this division shall be reviewed annually and shall be revised as necessary to keep revenues reasonably in balance with anticipated expenditures. Excess funds may be carried forward from year to year in order to build sufficient funds for large storm sewer and drainage system projects, which are scheduled or programmed for the new future. In addition, funds may be carried over to provide sufficient monies for unanticipated repairs, replacements or maintenance of the storm sewer and drainage system.

8.0506 Penalty. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred (200) dollars or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment.

8.0507 Separability. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid, the constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby. (Ord. 498, Amended Ord. 507)

**TITLE 9  
PLANNING AND ZONING**

*Chapter 9.01 - Planning Commission  
Chapter 9.02 - Zoning and Subdivision Regulations  
Chapter 9.03 - Uniform Building Code  
Chapter 9.04 - Plumbing and Electrical Work  
Chapter 9.05 - Flood Damage Prevention*

**CHAPTER 9.01 - PLANNING COMMISSION**

9.0101 Created. There is hereby created a municipal planning commission, which shall be referred to as the Planning Commission.

9.0102 Composition. The Planning Commission shall consist of five members appointed by the Mayor and approved by the City Council. One member shall be a City Council member, and one shall be the Zoning Administrator. The City Council member shall be appointed and serve for, the duration of his/her Council term. The Zoning Administrator shall serve during his/her tenure. Other members shall serve five year terms, except when the Planning Commission is first appointed, one member shall be appointed for three years, another for four years, and the third for five years, to provide an overlapping of tenure. All members of the Planning Commission shall serve as such without compensation.

The Zoning Administrator shall serve as Chairman, and the Planning Commission shall elect a Vice-Chairman and Secretary from among its members for a term of one year with eligibility for re-election. The Planning Commission shall hold one regular meeting each month and such additional meetings as called by the Chairman. The Planning Commission shall adopt rules for the transaction of business and keep a record of its actions, which shall be a public record. The Planning Commission may appoint such employees as it may deem necessary for its work, and may also contract with planners, engineers, architects and other, consultants for such services as it may require; provided, however, such appointments and contracts shall be approved by the City Council.

9.0103 Powers and Duties. The Planning Commission may exercise the powers granted in SDCL 11-4 and 11-6, and acts amendatory thereof, not only within the corporate limits of the city, but also within an area of up to three miles of the corporate limits as provided by law.

9.0104 Comprehensive Plan. It shall be the duty of the Planning Commission to prepare a comprehensive plan for the development of the city, including to make or cause to be made careful and comprehensive studies of present conditions and future growth of the City, including any land outside the City which bears relation to the comprehensive plan. The comprehensive plan shall be made with the general purpose of guiding and accomplishing coordinated and harmonious development of the City and its environment.

No amendment to such adopted comprehensive plan shall be made without such

proposed change first being submitted to the Planning Commission for its recommendation.

- 9.0105 Zoning and Subdivision Regulations. It shall be the duty of the Planning Commission to recommend the boundaries of zoning districts and appropriate regulations to be enforced therein, in accordance with the comprehensive plan. All applications and proposals for changes in or amendments to the zoning regulations shall first be submitted to the Planning Commission for its recommendations before approval by the City Council.

It shall be the duty of the Planning Commission to recommend regulations governing the subdivision of land within its jurisdiction. No amendments or changes there to shall be made without recommendation by the Planning Commission. All plans, plats, or re-plats of subdivisions of land within the jurisdiction of this ordinance, or amendments to the regulations, shall first be submitted to the Planning Commission for its recommendation before approval by the City Council.

The City Council may provide for the Planning Commission to act as a Board of Adjustment to make special exceptions or grant variances to the terms of the zoning regulations.

## **CHAPTER 9.02 - ZONING AND SUBDIVISION REGULATIONS (See Appendix I)**

### **CHAPTER 9.03 - UNIFORM BUILDING CODE**

- 9.0301 Adoption. The Uniform Building Code, 1982 Edition, published by the International Conference of Building Officials, and supplemented by the One and Two Family Dwelling Code, 1983 Edition, published by the Council of American Building Officials, shall be adopted by the City. A printed copy of such Uniform Building Code and the One and Two Family Dwelling Code shall be filed with the Finance Officer as an original ordinance.
- 9.0302 Conflicts. In the event of any conflict between the provisions of these codes, State law or City ordinance, rule or regulation, the provisions of State law or City ordinance, rule or regulation shall prevail and be controlling.
- 9.0303 Building Official. The Maintenance Superintendent shall act as the Building Official unless otherwise appointed by the City Council. It shall be the duty of the Building Official to enforce all regulations relative to the construction, alteration, removal, and demolition of buildings and structures, to approve all permits authorized by the building codes, and to make all necessary inspections as required.
- 9.0304 Application for Permits. Application for all permits required by the building codes shall be submitted to the Building Official, who shall endorse approval or disapproval thereof, and shall file such application with the Finance Officer.
- 9.0305 Permit Fees. No permit shall be issued unless the appropriate fee, based on the entire cost of construction, is paid to the City as follows:

Up to \$1,000 - \$5.00  
1,000 to 5,000 - \$15.00  
5,000 to 20,000 - \$25.00  
20,000 to 50,000 - \$35.00  
Over 50,000 - \$50.00  
(SDCL 9-33-4, 33-4.1, 33-4.2 and 33-6)

## **CHAPTER 9.04 - PLUMBING AND ELECTRICAL WORK**

9.0401 Registration Required. No person shall engage in or do any work as a plumbing or electrical contractor, plumber or electrician, or apprentice in the City unless registered to do so with the South Dakota State Plumbing Board or State Electrical Board pursuant to SDCL 36-16 and 36-25. A copy of such registration shall be filed with the Finance Officer. Nothing in this Section shall prohibit any person from doing plumbing or electrical work which complies with the provisions of the minimum standards prescribed by the South Dakota State Plumbing Board or State Electrical Board on property owned and occupied by him or her or on premises where he or she may be employed in full time maintenance work, provided that such plumbing or electrical work is still subject to all other applicable ordinances and regulations. (SDCL 9-34-12)

## **CHAPTER 9.05 - FLOOD DAMAGE PREVENTION**

9.0501 Statutory Authorization. The Legislature of the State of South Dakota has in SDCL 7-18:14 & 15 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of Salem, South Dakota does ordain as follows:

A. Findings of Fact

1. The flood hazard areas of City of Salem are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditure for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

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

1. To protect human life and health;
2. To minimize expenditure of public money for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;

5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
8. To ensure that those who occupy the areas of special flood hazards assume responsibility for their actions.

C. Methods of reducing flood losses. In order to accomplish its purposes, this ordinance includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and,
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

9.0502 Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

- A. "Area of special flood hazard". The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.
- B. "Base flood". The flood having a one percent chance of being equaled or exceeded in any given year.
- C. "Development". Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving excavation or drilling operations located within the area of special flood hazard.
- D. "Flood" or "flooding". A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters and/or
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
- E. "Flood Insurance Rate Map (FIRM)". An official map of a community on which the

Federal Emergency Management Agency has delineated areas of special flood hazard designated as Zone A.

- F. "Manufactured home". A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. This term also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.
- G. "Structure". A walled and roofed building or manufactured home that is principally above ground.
- H. "Substantial improvement". Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
  - 1. before the improvement or repair is started, or
  - 2. if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the, building commences, whether or not that alteration affects the external dimensions of the structure.The term does not, however, include either:
  - 1. any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
  - 2. any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

9.0503 General Provisions.

- A. Lands to which this ordinance applies. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of City.
- B. Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map (FIRM), dated 4-15-1986, is adopted by reference and declared to be part of this ordinance.. The FIRM is on file at City Hall.
- C. Compliance. No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of this ordinance and other applicable regulations.
- D. Abrogation and greater restrictions. This ordinance is not intended to repeal, adrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- E. Interpretation. In the interpretation of this ordinance, all provisions shall be:
  - 1. Considered as minimum requirements;
  - 2. Liberally construed in favor of the governing body; and,

3. Deemed neither to limit nor repeal any other powers granted under State statutes.
- F. Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas, of special flood-hazards or uses permitted within such areas will be, free from flooding, or flood damages. This ordinance shall not create liability on the part of City of Salem, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

9.0504 Administration.

- A. Establishment of development permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.2. Application for a development permit shall be made on forms furnished by the President of Planning Commission may include, but not be limited to:
- Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically the following information is required:
1. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
  2. Elevation in relation to mean sea level to which any structure has been flood proofed;
  3. Certification by a registered professional engineer or architect that the flood proofing methods for any non-residential structure meet the flood proofing criteria in Section 5.2-2; and,
  4. Description of the extent to which any watercourse will be altered or relocated as result of proposed development.
- B. Designation of the planning commission. The Pres./Planning Commission is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.
- C. Duties and responsibilities of the planning commission. Duties of the Planning Commission shall include but not be limited to:
1. Permit Review
    - a. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
    - b. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
    - c. Review all development permits to determine if the proposed

development adversely affects the flood carrying capacity of the area of special flood hazard. For the purposes of this ordinance, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent over bank areas.

- (1) If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further consideration
- (2) If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer's certification) for the proposed development shall be required.
- (3) If the proposed development is a building, then the provisions of this ordinance shall apply.

2. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 3.2, BASIC FOR ESTABLISHING THE AREA OF SPECIAL FLOOD HAZARD, the Planning Commission shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring that new construction, substantial improvements, or other development in Zone A are administered in accordance with Section 5.2, SPECIFIC STANDARDS.

3. Information to be Obtained and Maintained

- a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- b. For all new or substantially improved flood proofed structures:
  - (1) Verify and record the actual elevation (in relation to mean sea level) to which the structure has been flood proofed.
  - (2) Maintain the flood proofing certifications required in Section 4.1(3).
- c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

4. Alteration of Watercourses

- a. Notify adjacent communities and the Dept. of Water and Natural Resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries

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

9.0505 Provisions for Flood Hazard Reduction.

- A. General Standards. In all areas of special flood hazards, the following standards are required:
1. Anchoring
    - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
    - b. All manufactured homes must be; elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. Specific requirements may be:
      - (1) over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with manufactured homes less than 50 feet long requiring one additional tie per side.
      - (2) frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;
      - (3) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and,
      - (4) any additions to the manufactured home be similarly anchored.
  2. Construction Materials and Methods
    - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
    - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
    - c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  3. Utilities
    - a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
    - b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
    - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination

4. Subdivision Proposals
  - a. All subdivision proposals shall be consistent with the need to minimize flood damage;
  - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
  - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
  - d. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).
  
5. Encroachments. Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.
  
- B. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 4.3-2, Use of Other Base Flood Data, the following standards are required:
  1. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation.
  2. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
    - a. be flood proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
    - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certifications shall be provided to the official as set forth in Section 4.3-3(2). (Ord. #415)

**TITLE 10**  
**UTILITY FRANCHISES**

*Chapter 10.01 - Community Antenna Television System*  
*Chapter 10.02 - Telephone System*  
*Chapter 10.03 - Natural Gas System*

**CHAPTER 10.01 - COMMUNITY ANTENNA TELEVISION SYSTEM**

- 10.0101 Definitions. For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in present tense include the future, words in the singular number include the plural number.
- A. "City" shall mean the City of Salem, South Dakota.
  - B. "City Commission" shall mean the City Commission of Salem, South Dakota.
  - C. "Cable Television System," "Cable System" or "CATV" shall mean a system utilizing coaxial cable and certain electronic and other components which deliver to subscribing members of the public various communications services.
  - D. "FCC" shall mean Federal Communications Commission.
  - E. "Person" shall mean any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
  - F. "Grantee" shall mean Hanson Communications, Inc., or its successor in accordance with the provisions of this Franchise.
  - G. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Franchise by Grantee.
  - H. "Cable Television Reception Service" shall mean the simultaneous delivery by the Grantee to television receivers or any other suitable type of audio-video communications receivers of the signals of over-the-air television broadcast stations licensed by the Federal Communications Commission and authorized to be carried over said system; and such additional closed-circuit channels at the

option of Grantee.

- 10.0102 Qualifications of Grantee and Grant of Nonexclusive Authority. Whereas the City has approved of the legal, character, financial, technical and other qualifications of the Grantee and the adequacy and feasibility of the Grantee's construction arrangements as part of a full public proceeding affording due process, including notice to all interested persons and members of the public of the line extension provisions hereof, there is hereby granted by the City to the Grantee a nonexclusive franchise right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a Cable Television System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth.
- 10.0103 Duration and Acceptance of Franchise. The Franchise granted the Grantee herein shall terminate of fifteen (15) years from date of the adoption of this "Hanson Communications Community Antenna Television Franchise Ordinance," subject to renewal for periods of reasonable duration on the same terms or conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the City and as are consistent with the requirements of Rule 76.31 of the Federal Communications Commission. No renewal hereof shall be granted unless authorized by the City following a public hearing. Grantee shall be awarded a franchise renewal provided its application shows that its CATV service during the preceding franchise period has reflected a good-faith effort to serve the needs and interests of its service area.
- 10.0104 Compliance with Applicable Laws, Regulations, Ordinances and Codes.
- A. The Grantee shall at all times operate and maintain its Cable Television System in full compliance with the rules, regulations and standards of the FCC.
  - B. The Grantee shall at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City and to any such reasonable regulations as the City shall hereafter provide.
- 10.0105 Territorial Area Involved. This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise.
- 10.0106 Liability and Indemnification. Grantee shall at all times keep in effect the following types of insurance coverage:
- A. Workers Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Salem.
  - B. Property Damage Liability insurance to the extent of Fifty Thousand Dollars (\$50,000.00) as to any person and One Hundred Thousand Dollars (\$100,000.00)

as to any one person and Three Hundred Thousand Dollars (\$300,000.00) as to any one accident.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workers Compensation law which may be caused by the erection maintenance use or removal of any of their attachments poles, or other undertakings within the City, or by any action of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workers Compensation laws in effect that may be applicable to Grantee. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder.

10.0107 Operation and Maintenance of System.

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

B. The Grantee shall provide for safe, adequate and prompt service for its facilities.

10.0108 Service to Schools and City. The Grantee shall provide service to elementary or secondary school locations within the City with one terminal junction for educational purposes upon request by the City or the school system and at no cost to the City or to the school system. This shall mean only an energized cable to such buildings. The cost of any internal wiring shall be borne by the institution.

Grantee shall also provide the City connections to three buildings to be selected by the City Council of the City, without charge and one junction terminal to each of said buildings at a location therein to be selected by the City.

10.0109 Emergency Use of Facilities. In the case of any emergency or disaster the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster.

10.0110 Safety Requirements. The Grantee shall at all times employ ordinance care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

10.0111 New Developments. It shall be the policy of the City liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to

serve its customers; provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

10.0112 Limitations of Rights Granted.

- A. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places, and said poles or fixtures shall be removed by Grantee whenever in the opinion of the City Council of the City of Salem the same restrict or obstruct the operation or location of any future streets or public places in the City of Salem.
- B. All transmission and distribution structures lines and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any installations of the City or of a public utility serving the City, or to interfere with new improvements the City may deem proper to make.
- C. In the maintenance and operation of their television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction or addition to their facilities Grantees shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by Grantees in the course of their operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness shall be clearly designated by warning lights.
- D. In case of disturbance of any street, sidewalk, alley, public way, or paved areas the Grantee shall, at its own cost and expense and in manner approved by the City Council, replace and restore such street, sidewalk, alley, public ways or paved area in as good a condition as before the work involving such disturbance was done.
- E. If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relate, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- F. All installations of equipment shall be of permanent natures durable and installed in accordance with good engineering practices, and of sufficient height to complete with all existing City regulations ordinances and state laws so as not to interfere in any manner with the right of the public or individual property owners and any equipment installed in a public way or place shall not interfere with the usual travel on such public way or usual use of such public place by the public and during the construction, repair, or removal thereof, shall not obstruct or impede traffic.

- G. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
  - H. The Grantee shall have the authority to trim trees overhanging upon the streets, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
  - I. In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground the Grantee shall in the future place its wires, cables or other like facilities underground to the maximum extent to halt existing technology reasonably permits the Grantee to do so.
  - J. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street or public place, any property of Grantee when required by the City by reason of traffic conditions, safety, street, vacation freeway, and street construction change or establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity or other structure of public improvement; provided, however, that Grantee shall in all such cases have the privileges to abandon any property of Grantee in place as hereinafter provided.
  - K. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property have been installed in any street or public place without complying with the requirements of this ordinance or the rights granted hereunder have been terminated canceled or have expired, Grantee shall promptly remove from the Streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
  - L. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.
- 10.0113 Removal of Facilities Upon Request. Upon termination of service to any subscriber the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.
- 10.0114 Transfer of Franchise. The rights granted under this ordinance may be assigned or

transferred by the Grantee, provided, however, that the proposed assignee or transferee must show financial responsibility to the satisfaction of the City and must agree to comply with the provisions of this ordinance. The City's acceptance of the financial responsibility of the assignee or transferee shall not be unreasonably withheld.

- 10.0115 Payment to the City. During the term of the franchise granted hereunder and so long as Grantee or its successors or assigns operate the Cable Television System, commencing from the date of institution of service to subscribers, Grantee shall pay to the City annually three percent (3%) of the "annual gross subscriber revenue", as defined herein, of said Cable Television System as compensation for the said franchise.

"Gross subscriber revenues". Those revenues derived from the monthly service charge paid by subscribers for basic cable Television reception service. Subscriber revenues shall not include any state or federal taxes relating to services provided by or fees charged by Grantee, or revenues received as installation charges and fees for reconnecting, inspection, repairs or modifications of any installations.

Such payments by Grantee to City shall be in lieu of any occupation tax, license tax, or similar levy, and shall be paid annually. Nothing herein contained, however, shall in any way relieve Grantee or its assigns or successors from the obligation of paying property taxes to the City of Salem or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the State of South Dakota on the operation of the Grantee. Such payment also does not affect the responsibility of Grantee to collect state and local sales tax on the service provided.

Grantee shall file with the City, within ninety (90) days after the expiration of any fiscal year of Grantee during the term of the rights granted hereunder, a statement prepared by a Certified Public Accountant showing the gross subscriber revenue as defined herein. It shall be the duty of Grantee to pay to the City within fifteen (15) days after the time for filing such statement. In no event shall any such payments be due and payable until the system is actually in operation with paying subscribers.

- 10.0116 Erection, Removal, and Common Use of Poles.

- A. No poles or other wire-holding structures shall be erected by the Grantee without prior approval from the City Engineer with regard to locations heights type or any other pertinent aspect. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council determines that the Public convenience would be enhanced thereby.
- B. There is hereby granted to the extent that the City is authorized to so do, the right and authority to Grantee to lease, rent, or in another manner obtain the use of towers, poles, lines, cables, and other equipments and facilities from any and all holders of public licenses and franchises within the corporate limits of the City of Salem to use such towers, poles, lines, cables, and other equipment and facilities subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City of Salem that all other holders of Public licenses and franchises within the corporate limits of the City shall cooperate with Grantee to allow Grantee's joint usage of their poles and pole-line facilities whenever possible

or wherever such usage does not interfere with the normal operation of said poles and pole-lines so that the number of new or additional poles constructed by Grantee within the City may be minimized.

- C. Grantee shall grant to the City, free of expense, joint use of any and all poles owned by them for any proper municipal purpose acceptable to Grantee, insofar as it may be done without interfering with the free use and enjoyment of Grantee's own wires and fixtures, and the City shall hold Grantee harmless from any and all claims, actions, causes of actions or damages caused by the placing of the City's wires or appurtenances upon the poles of Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of its poles Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.

10.0117 Rates.

- A. Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including installation charge.
- B. Before making any changes in the rates and charges to subscribers for basic CATV services Grantee shall file in writing with the Finance Officer of the City a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City Council takes no action to set the proposed rate changes for hearing or takes no other action to delay such changes, said proposed rate changes may become effective upon the expiration of the 30-day notice.
- C. If the City Council sets the proposed rate change for hearing, said proposed rate changes will not become effective until the City Council has taken action by means of a resolution.
- D. This provision does not limit the right of Grantee to pass along to the subscribers state and local sales tax or any specific copyright fees.

10.0118 Complaint Procedures. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the City Auditor for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position. The City Auditor shall attempt to resolve the complaints, but if this cannot be achieved, he shall submit a recommendation to the City Council recommending: (1) the complaint be dismissed, or (2) corrective action be taken by Grantee. Appeal from the Commission's action may be made to the appropriate judicial or administrative forum.

10.0119 Compliance With FCC Franchise Standards. Pursuant to applicable FCC standards the following recitations and provisions are set forth:

- A. Grantee's legal, character, financial, technical and other qualifications and the adequacy and feasibility of its construction arrangements, have been approved by the City Council of the City of Salem after consideration in a full public proceeding, affording due process to all interested parties.
- B. The initial franchise period shall be fifteen (15) years in duration and renewal franchise periods shall also be fifteen (15) years in duration.
- C. The City Council has specified guidelines in charging rates. No changes in rates charged to subscribers shall be made except as they shall be deemed approved by the City Council as provided herein.
- D. The franchise fee shall be no more than three percent (3%) of Grantee's "gross subscriber revenues" per year from cable television operations in the City.

10.0120 Unauthorized Cable Tapping. It shall be unlawful for any person or persons to obtain any Cable Television services from any cable television company or any firm or private person by installing, rearranging or tampering with any facilities or equipment of said Cable Television Company unless the same is done with the knowledge of and with the permission of the Cable Television Company. Any person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor.

10.0121 Separability.

- A. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- B. Should any provision of this Franchise be inconsistent or at variance with any rule, regulation or police, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction such provision shall be invalid, but the remaining provisions hereof shall not be affected thereby.

10.0122 Publication. Grantee shall pay to the City a sum of money sufficient to reimburse it for all expenses incurred by it in connection with the publication and passage of this ordinance and the rights granted to Grantee hereunder. Such payment shall be made by Grantee to City within thirty (30) days after City shall furnish Grantee with a written statement of such expense.

The Grantee shall assume the cost of publication of this Franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of this Franchise.

10.0123 Ordinances Repealed. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

## CHAPTER 10.02 - TELEPHONE SYSTEM

10.0201 Northwestern Bell Telephone Company, a corporation its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the City of Salem, South Dakota, for a term of twenty (20) years from, the effective date hereof, for the purpose of constructing maintaining and operating a general telephone and telegraph system within the City.

That the rights herein granted are subject to the exercise of the police power as the same now is or may hereafter referred upon said City.

## CHAPTER 10.03 - NATURAL GAS SYSTEM

10.0301 DEFINITIONS. The following terms shall mean:

- A. "Company". Minnegasco, a division of Arkla, Inc., a Delaware corporation, its successors and assigns.
- B. "Gas". Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.
- C. "Public Ground". All streets, alleys, public ways, utility easements and public grounds of the Municipality as to which it has the right to grant the use to the Company.

10.0302 FRANCHISE GENERALLY.

- A. Grant of Franchise. There is hereby granted to the Company, for a period of 20 years, the right to import, manufacture, transport, distribute and sell gas for public and private use in the Municipality, and for these purposes to construct, operate, repair and maintain in, on, over, under and across the Public Ground of the Municipality, all facilities and equipment used in connection therewith, and to do all things which are necessary or customary in the accomplishment of these objectives, subject to zoning ordinances, other applicable ordinances, permit procedures, customary practices, and the provisions of this franchise.
- B. Effective Date; Written Acceptance. This franchise shall be in force and effect from and after its passage and publication as required by law, and its acceptance by the Company in writing filed with the Finance Officer within 20 days after publication.
- C. Nonexclusive Franchise. This is not an exclusive franchise.
- D. Publication Expense. The expense of publication of this ordinance shall be paid by the Company.
- E. Default. If the Company is in default in the performance of any material part of this franchise for more than 90 days after receiving written notice from the Municipality of such default, the Municipal Council may, by ordinance, terminate all rights granted hereunder to the Company. The notice of default shall be in writing and

shall specify the provisions of this franchise under which the default is claimed and state the basis therefor. Such notice shall be served on the Company by personally delivering the notice to an officer thereof at its principal place of business in South Dakota.

If the Company is in default as to any part of this franchise, the Municipality may, after reasonable notice to the Company and the failure of the Company to cure the default within a reasonable time, take such action as may be reasonably necessary to abate the condition caused by the default, and the Company agrees to reimburse the Municipality for all its reasonable costs.

Nothing in this section shall bar the Company from challenging the Municipality's claim that a default has occurred. In the event of disagreement over the existence of a default, the burden of proving the default shall be on the Municipality.

#### 10.0303 CONDITIONS OF USE.

- A. Use of Public Ground. All utility facilities and equipment of the Company shall be located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of Public Ground, and shall be subject to those permit conditions the Municipality has adopted for all utilities.
- B. Restoration. Upon completion of any work requiring the opening of any Public Ground, the Company shall restore the same, including paving and its foundations, to as good condition as formerly, insofar as reasonably possible. The restoration shall be completed as promptly as weather permits, but if the Company shall not promptly perform and complete the work, the Municipality shall have the right to do so at the expense of the Company; and the Company shall, upon demand, pay to the Municipality the reasonable cost of the work performed by the Municipality.
- C. Relocation of Utility Facilities. The Company shall promptly, with due regard for seasonal working conditions, permanently relocate its facilities or equipment whenever the Municipality orders such relocation. If the relocation is a result of the proper exercise of the police power in grading, regrading, changing the location or shape of or otherwise improving any Public Ground or constructing or reconstructing any sewer or water system therein, the relocation shall be at the expense of the Company. If the relocation is not a result of the proper exercise of the police power, the relocation shall be at the expense of the Municipality. If such relocation is done without an agreement first being made as to who shall pay the relocation cost, such relocation of the facilities by the company shall not be construed as a waiver of its right to be reimbursed for the relocation cost. If the Company claims that it should be reimbursed for such relocation costs, it shall notify the Municipality within thirty (30) days after receipt of such order. The Municipality shall give the Company reasonable notice of plans requiring such relocation.

Nothing contained in this subsection shall require the Company to remove and replace its mains or to cut and reconnect its service pipe running from the main to a customer's premises at its own expense where the removal and replacement or

cutting and reconnecting is made for the purpose of a more expeditious operation for the construction or reconstruction of underground facilities; nor, shall anything contained herein relieve any person from liability arising out of the failure to exercise reasonable care to avoid damaging the Company's facilities while performing any work in any Public Ground.

- D. Relocation When Public Ground Vacated. The vacation of any Public Ground shall not operate to deprive the Company of the right to operate and maintain its facilities therein. Unless ordered under Section 3.3, the Company need not relocate until the reasonable cost of relocating and the loss and expense of relocating resulting from such relocation are first paid to the Company. When the vacation is for the sole benefit of the Municipality in the furtherance of a public purpose, the Company shall relocate at its own expense.
- E. Street Improvements, Paving or Resurfacing. The Municipality shall give the Company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the Municipality will start the work and, if more than one street is involved, the order in which this work is to proceed. The notice shall be given to the Company a sufficient length of time, considering seasonable working conditions, in advance of the actual commencement of the work to permit the Company to make any additions, alterations or repairs to its facilities the Company deems necessary.

10.0304 INDEMNIFICATION. The Company shall indemnify, keep and hold the Municipality, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, maintenance, repair, removal, or operation of the Company's property located in, on, over, under, or across the Public Ground of the Municipality, unless such injury or damage is the result of the negligence of the Municipality, its elected officials, employees, officers, or agents. The Municipality shall not be entitled to reimbursement for its cost incurred prior to notification to the Company of claims or actions and a reasonable opportunity for the Company to accept and undertake the defense.

If a claim or action shall be brought against the Municipality under circumstances where indemnification applies, the Company, at its sole cost and expense, shall defend the Municipality if written notice of the claim or action is promptly given to the Company within a period wherein the Company is not prejudiced by lack of such notice. The Company shall have complete control of such claim or action, but it may not settle without the consent of the Municipality, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Municipality, and the Company in defending any action on behalf of the Municipality shall be entitled to assert every defense or immunity that the Municipality could assert in its own behalf.

10.0305 ASSIGNMENT. The Company, upon notice to this Municipality shall have the right and authority to assign all rights conferred upon it by this franchise to any person. The assignee of such rights, by accepting such assignment, shall become subject to the

terms and provisions of this franchise.

- 10.0306 CHANGE IN FORM OF GOVERNMENT. Any change in the form of government of the Municipality shall not affect the validity of this franchise. Any governmental unit succeeding the Municipality shall, without the consent of the Company, automatically succeed to all of the rights and obligations of the Municipality provided in this franchise.
- 10.0307 SEPARABILITY. If any portion of this franchise is found to be invalid for any reason whatsoever, the validity of the rest of this franchise shall not be affected.
- 10.0308 NOTICES. Any notice required by this franchise shall be sufficient if, in any case of notice to the Company, it is delivered to Minnegasco, Attention William E. Grey; and, in the case of the Municipality, it is delivered to Attention: Mayor.

**TITLE 11  
TAXATION**

*Chapter 11.01 - Municipal Sales Tax*

**CHAPTER 11.01 - MUNICIPAL SALES TAX**

- 11.0101 Purpose. The purpose of this chapter is to provide additional needed revenue for the municipality of Salem, McCook County, South Dakota, by imposing a municipal retail sales and use Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.
- 11.0102 Effective Date and Enactment of Tax. From and after the first day of January 2006, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 2%) on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Salem, McCook County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto. Tax will not be applied to items specifically exempt under SDCL 10-52-11 and SDCL 10-52-12 and such other items specifically exempted by State Law.
- 11.0103 Use Tax. In addition there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchased from and after the first of January, 2006, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL 10-46, and acts amendatory thereto.
- 11.0104 Collection. Such tax is levied pursuant to authorization granted by SDCL 10-52 and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue and Regulation of the State of South Dakota shall lawfully prescribe.
- 11.0105 Interpretation. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto and the South Dakota Use Tax, SDCL 10-46 and acts amendatory hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.
- 11.0106 Penalty. Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more that \$200 or imprisoned in the municipal jail for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

11.0107 Separability. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid, the constitutionality of the remainder of the ordinance and applicability thereof to other person or circumstances shall not be affected thereby. (Ord. # 527 & 529)

**TITLE 12  
GENERAL PROVISIONS**

*Chapter 12.01 - Penalties and Repealing Clause*

**CHAPTER 12.01 - PENALTIES AND REPEALING CLAUSE**

12.0101 Penalty in General. Except in cases where a different and additional penalty is imposed by this ordinance or by some existing provision of law, every violation of any of the provisions of this ordinance shall be punishable by a fine not exceeding one hundred dollars (\$100.00) or by imprisonment for a period not exceeding thirty (30) days or by both such fine and imprisonment. Each day a violation of the provisions of this ordinance is allowed to continue shall constitute a separate violation. (SDCL 9-19-3)

Conflicts. All prior ordinances and parts of prior ordinances in conflict with the provisions of this Ordinance are hereby repealed. Should any provision(s) of this Ordinance be in conflict with any provision of state law, the provision of state law shall be controlling.

Separability. Should any provision(s) of this ordinance be declared unconstitutional or otherwise invalid by a court of proper jurisdiction, it shall not effect the remainder thereby.

12.0102 Conflicting Ordinances Repealed. All ordinances and parts of ordinances in conflict with the provisions of this ordinance or relating to the subject matter of this ordinance and not re-enacted as part of this ordinance are hereby repealed; provided however, that nothing herein shall be construed as repealing any special ordinances appropriation ordinances levying ordinances for the issuance of bonds, or other special ordinances of like character nor shall this ordinance repeal or modify the provisions of any ordinance heretofore adopted by the City unless provisions of this ordinance in effect, either modify repeal or amend such ordinances.

12.0103 Unconstitutionality. Should any section, sub-section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason the remainder of this ordinance shall not be affected there by.

12.0104 Publication and Effect. This ordinance shall take effect upon its adoption and publication of the notice of such adoption as provided by SDCL 9-19-17.