

CITY OF VALLEY SPRINGS

REVISED MUNICIPAL ORDINANCES [SDCL 9-19-16]

2007

**Prepared by the South Eastern Council of Governments
at the direction of the City Council**

CITY OF VALLEY SPRINGS

ORDINANCE #294

AN ORDINANCE IN REVISION OF THE MUNICIPAL ORDINANCES

BE IT ORDAINED BY THE CITY OF VALLEY SPRINGS, SOUTH DAKOTA:

Pursuant to SDCL 9-19-16, this Ordinance in Revision of the Municipal Ordinances of the City, revising regulations as set forth in the document titled "Revised Municipal Ordinances", is hereby read, approved, and adopted as follows:

First Reading:	April 10, 2007
Second Reading and Adoption:	May 8, 2007
Publication Dates:	May 16, 2007 & May 23, 2007
Effective Date:	June 12, 2007 (20 days after publication)

Neal Scadden, Mayor

ATTEST: Sandy Severtson, Finance Officer

MUNICIPAL SEAL:

CITY OF VALLEY SPRINGS

NOTICE OF ADOPTION

AN ORDINANCE IN REVISION OF THE MUNICIPAL ORDINANCES

Notice is hereby given Ordinance #294, an Ordinance in Revision of the Municipal Ordinances of the City of Valley Springs, was duly adopted by the City Council and shall become effective June 12, 2007, according to South Dakota law.

The Ordinance revises the Municipal Ordinances of the City heretofore adopted, and repeals all ordinances or parts of ordinances in conflict therewith. The Ordinance does not repeal special ordinances, appropriation ordinances, levying ordinances for the issuance of bonds, and other special ordinances of like character. Such ordinances not included in the revision and still having force and effect may be found in the Finance Office.

A copy of the Revised Municipal Ordinances is available for public inspection at City Hall during regular Finance Office hours.

Sandy Severtson
Finance Officer

Publish: May 16, 2007 & May 23, 2007

SUMMARY AND GENERAL INFORMATION

This Ordinance in Revision of the Municipal Ordinances of the City of Valley Springs, South Dakota, revises the ordinances heretofore adopted, except special ordinances, appropriation ordinances, levying ordinances for the issuance of bonds, and other special ordinances of like character. Such ordinances not included in this revision and still having force and effect may be found in the Finance Office.

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

"City" or "the City"	The City of Valley Springs, South Dakota.
"City Council" or "Council"	The governing body of the City.
"he", "his" or "him"	Words imparting masculine gender shall extend and be implied to females and to any firm, partnership, association, corporation, organization, and other legally recognized entity, as well as to males.
"May"	Permissive.
"Person"	Any individual, firm, partnership, association, corporation, organization, or other legally recognized entity.
"S.D." or "state"	The State of South Dakota.
"SDCL"	South Dakota Codified Law.
"Shall"	Mandatory.

Reference to SDCL has been made for each section or subsection, where applicable, indicated by numbers in parentheses.

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TITLE 1 - ADMINISTRATIVE CODE
[MUNICIPAL OFFICERS AND EMPLOYEES SDCL 9-14]

Chapter 1.01 - Officers

Chapter 1.02 - Mayor and City Council

Chapter 1.03 - Finance Regulations

CHAPTER 1.01 - OFFICERS

- 1.0101 Appointment of Officers. At the first regular meeting after the annual election in each year, there shall be appointed a Finance Officer and such officers as may be provided by ordinance, to hold office until the appointment and qualification of successors. All such appointments shall be made by the Mayor with approval of the City Council. The City Council may, by resolution, enter into a contract pursuant to SDCL 9-14 with an attorney to provide legal services to the City as the City Attorney. (9-14-1, 3)
- 1.0102 Salaries. The salaries of all appointed officers and employees of the City shall be fixed by resolution and shall be paid bi-weekly unless otherwise provided. The Finance Officer shall be bonded in such sum to be approved by the City Council, conditioned for the faithful performance of the duties of such office. (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 Mayor - Duties. The Mayor shall preside at all meetings of the City Council but shall have no vote except in case of a tie. He shall perform such other duties as may be prescribed by laws and ordinances and ensure that such laws and ordinances are faithfully executed. He shall have the power to sign or veto any ordinance or resolution passed by the City Council, and the power to veto any part or item of an ordinance appropriating money. (9-8-1, 3)
- 1.0202 Meetings. Regular meetings of the City Council shall be held at the place designated by the Mayor on the second Tuesday of each month at 6:45 p.m. If a regular meeting day shall fall upon a holiday, the regular meeting shall be held on the day following.
- 1.0203 Special Meetings. Special meetings may be held at the call of the Mayor or by any two Council members at any time, to consider such matters as may be mentioned in the call for the meeting. (9-8-8)
- 1.0204 President and Vice-President of Council. At the first regular meeting after the annual election in each year and after the qualifications of the newly elected council

members, the City Council shall elect from among its members a president and vice-president, who shall hold their respective offices for the municipal year.

The president of the City Council, in the absence of the Mayor, shall be presiding officer of the City Council and during the temporary disability or absence of the Mayor from the City, shall be Acting Mayor and possess all of the powers of the Mayor. In the absence or disability of the Mayor and president of the City Council, the vice-president shall perform the duties of the Mayor and president of the Council. (SDCL 9-8-7)

- 1.0205 Compensation. The Mayor shall receive annual compensation in the amount of one hundred twenty-five dollars (\$125.00), payable quarterly, plus forty dollars (\$40.00) per meeting. Members of the City Council shall receive annual compensation in the amount of seventy-five dollars (\$75.00), payable quarterly, plus thirty-five dollars (\$35.00) per meeting.
- 1.0206 Supervision of Departments. The Mayor, with approval of the City Council, shall appoint each year members of the Council to act in a supervisory capacity in each of the areas of fire, rescue, and police; revenue and finances; utilities; and streets and public property, and such council members, so appointed, shall have supervision over the area of responsibility and shall as requested by the Council, report as to the condition and matters in said area.
- 1.0207 Elections and Terms. The term of council members, which includes a mayor and commissioner, shall be five (5) years beginning the first official meeting in May after their election.

CHAPTER 1.03 - FINANCE REGULATIONS

- 1.0301 Purchase of Supplies. All materials and supplies shall, when received, be checked by the persons receiving the same, and a bill showing the name of the creditor and each article with the price thereof shall be filed with the Finance Officer. (SDCL 9-14-18)
- 1.0302 Revenues and Special Funds. All money belonging to the City from taxation, licenses, fines, permits, the operation of waterworks, or from any other source, shall be paid into the city 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 Department of Revenue of the State of South Dakota. (SDCL 9-14-18)

TITLE 2 - BOUNDARIES, WARDS AND VOTING PRECINCTS

[INCORPORATION OF MUNICIPALITIES SDCL 9-3]

[ELECTIONS SDCL 12-1]

[PRECINCTS AND POLLING PLACES SDCL 12-14]

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 9-3-2)

CHAPTER 2.02 - WARDS AND VOTING PRECINCTS

2.0201 Wards and Voting Precincts. The City shall consist of one voting precinct and members of the commission shall be elected at large.

TITLE 3 – HEALTH AND SANITATION
[SANITATION AND HEALTH MEASURES SDCL 9-32]

Chapter 3.01 – Nuisances

Chapter 3.02 – Collection of Garbage & Recyclables

Chapter 3.03 – Dangerous Building

CHAPTER 3.01 – NUISANCES

3.0101 Definitions. For the purpose of this Chapter, the following terms are hereby defined.

- A. "Garbage" – The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
- B. "Solid Waste" – 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, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities...including, but not limited to wood and other construction materials, appliances, yard waste, tires, scrap iron, chemicals or fuel. (SDCL 34A-6-1.2)
- C. "Wastewater" – 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 groundwater, surface water and storm water that may be present.
- D. "Abandoned property" – Any junk car, car bodies or equipment of any type, except in an authorized junk yard, or any accumulations of other unsightly trash or junk which would constitute a health hazard, a rodent harborage, a breeding area for insects or rodents, a dangerous place for children to play in and around or which tends to be unsightly and which does or tends to lower the value of adjacent real property because of its unsightliness.
- E. "Abandoned vehicle" – Any vehicle that is left unattended or stored on any public property in the same or substantially same place within the City for a longer period than 24 hours.
- F. "Inoperable vehicle" – Any vehicle which is not in operating condition due to damage, removal or inoperability of one or more tires and wheels, the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto unexpired license plates, or which constitutes an immediate health, safety, fire or traffic hazard.
- G. "Nuisance" – Unlawfully doing an act, or omitting to perform a duty, which act or omission: (1) annoys, injures, or endangers the comfort, repose, health, or safety of others; (2) in any way renders other persons insecure in life, or in the

use of property; (3) renders the ground, the water, the air, or food a hazard or any injury to human health; and in addition (4) the specific acts, conditions and things listed in Section 3.0102 are hereby declared to constitute public nuisances, but such acts, conditions and things shall not be deemed to be exclusive. (SDCL 21-10-1)

- H. "Private property" – Any real property within the City that is privately owned and which is not public property.
- I. "Public property" – 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 also means any other publicly owned property or facility.
- J. "Removal agency" – Any public body, private or nonprofit organization authorized, hired or appointed by the City to remove and salvage vehicles.
- K. "Unsightly trash or junk" – Property which is deteriorated, wrecked or derelict property in unusable condition, having no value other than nominal scrap or junk value, if any, and which is left outside of a permanent, enclosed structure and which shall include, without limitation, motors, lawn mowers, campers, refrigerators and other household appliances, furniture, household goods and furnishings, scrap metals or lumber or other similar articles in such condition.
- L. "Vehicle" – Any conveyance, whether or not self-propelled, and which is designed to travel along the ground or in or on the water and shall include, but not be limited to, automobiles, buses, motorbikes motorcycles, motor scooters, trucks, tractors, pull trailers, go-karts, golf cars, boats, jet skis, campers and trailers.

3.0102 Acts, Omissions and Conditions Prohibited. No person, whether an owner, occupant, tenant or other person in charge of any real property within the corporate limits of the City shall create, commit, maintain, or permit to be created, committed, or maintained, any public nuisance, to include, without limitation, the following specific acts, conditions and things, each and all of which are hereby declared to constitute a nuisance: (SDCL 9-32-1)

- A. Depositing, accumulating, or permitting to be accumulated 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 health, safety, and welfare. (SDCL 9-32-10, SDCL 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. The growth of weeds or plants declared to be primary or secondary noxious weeds by the state weed and pest control commission, all weeds declared to be locally noxious by the City Council, and all other weeds and grasses growing upon any real property in the City to a height greater than 8 inches, or which have gone or are about to go to seed, or the dense growth of brush or grasses which may constitute a health, safety or fire hazard, shall be deemed noxious, dangerous and unhealthful vegetation and are hereby declared to be a nuisance. Fallen tree limbs, diseased or dead trees, and dead tree limbs shall also be declared dangerous and a nuisance; provided, however, that vegetation that is not a primary or secondary noxious weed and is being grown as hay for livestock consumption, as a native prairie display garden, or as a wildflower display garden, or other nature areas, so long as the same are approved to be used as such by the City Council, shall not constitute a nuisance. (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, or open basement 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. Disposing of garbage, waste, or refuse by open burning, or causing, allowing, or permitting the conducting of a salvage operation by open burning in the City. The following 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.
 - 2. Fires purposely set by the city maintenance personnel for the purposes as authorized by the Fire Chief of the City Volunteer Fire Department.
 - 3. Fires purposely set by the City Volunteer Fire Department personnel and authorized by the Fire Chief for the purpose of training and conducted in accordance with live fire-training standards.
 - 4. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, and for outdoor preparation of foods.

- 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, health, 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 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.

- J. Maintaining or permitting to be maintained on any private or public property any abandoned property or unsightly trash or junk, abandoned vehicle, or inoperable vehicle or parts thereof. It shall be unlawful to keep or place any of such vehicles or vehicle parts:
 1. Upon public streets or property except on an emergency basis.
 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 14 days unless it is within a fully enclosed building or structure. A carport, tarpaulin, tent or other similar temporary structure shall not be deemed to satisfy the requirements of this section.

In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept or located on any real property.

- K. The requirements of paragraph J shall not apply to the following:
 1. One inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. If this inoperable vehicle is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway longer than 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.

4. One vehicle specifically designed and used for operation on drag strips or raceways that remains on private property.
5. Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City or authorized by the City.

3.0103 Diseased Vegetation. Any owner, occupant, or person in charge of any property under the jurisdiction of the City shall remove at his 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 the 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 owner, occupant, or person within twenty-one (21) days from the date of service of said resolution and order on said owner, occupant, or person.

Any diseased vegetation stored in the City shall be debarked or covered with four (4) to six (6) mil clear plastic from April 1st to October 1st, such plastic to be sealed by placing all edges in a three to four-inch trench covered with soil. In addition, any diseased vegetation which is removed and not stored in accordance with the provisions of this Section shall be properly disposed of by burning or burying in a designated disposal site. (SDCL 9-32-12)

3.0104 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 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.
- 3.0105 Removal of Abandoned or Inoperable Vehicles – Public Property. Whenever the City or any law enforcement officer for the City finds an abandoned or inoperable vehicle on public property within the City, a written notice shall be placed on the vehicle that it will be removed to a garage or place of safety unless the owner removes the vehicle from public property within 24 hours of the giving of the notice. After the expiration of the 24-hour period, the vehicle may be removed by a removal agency to a garage or place of safety. Nothing in this section precludes the City or any law enforcement officer for the City from immediately removing a vehicle that constitutes an imminent health, safety or fire hazard.
- 3.0106 Disposition of Unclaimed Vehicles. The removal agency shall have the rights and obligations conferred upon it by SDCL Chp. 32-36 in regard to titling or disposition of such unclaimed, abandoned or inoperable vehicle, except that, if not otherwise provided by state law, it shall have a possessory lien upon any vehicle removed under provisions for this article for the costs or reasonable charges in taking custody of and storing such vehicles.
- 3.0107 Duty of Private Property Owners. No person owning, in charge of or in control of any real property within the City, whether as owner, tenant, occupant, lessee or otherwise, shall allow any abandoned or inoperable vehicle of any kind to remain on such property longer than 14 days.
- 3.0108 Notice Procedure. A written notice shall be placed on the abandoned or inoperable vehicle by the City or by any law enforcement officer for the City requesting the removal of such motor vehicle in the time specified in this Ordinance. Written notice shall also be placed on the front door of any dwelling located on the private property requesting the removal of such motor vehicle in the time specified in this article. In the event the owner and the occupant or tenant of the real property are not the same person, written notice shall be given to the owner by certified mail requesting the removal of such motor vehicle in the time specified in this Ordinance. In the event the private property is not occupied, written notice shall be given to the owner by certified mail requesting the removal of such motor vehicle in the time specified in this Ordinance.
- 3.0109 Responsibility for Removal. Upon notice having been given, the owner of the abandoned or inoperable vehicle and the owner or occupant of the private property on which the vehicle is located, either or all of them, shall be responsible for its removal.
- 3.0110 Content of Notice. The notice in section 3.0108 shall request removal of the abandoned or inoperable vehicle within 14 days after the date of the posting or

mailing of such notice, and the notice shall advise that failure to comply with the notice to remove shall be a violation of this Ordinance, that the City may take steps to abate the same, and that in addition to abatement directly or by civil action, the City may pursue criminal fines and penalties against the owner, occupant, tenant or other person in charge of the real property as provided in this Ordinance.

- 3.0111 Public and Private Nuisance Defined. A public nuisance is one that affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal. Every other nuisance is private. (SDCL 21-10-3)
- 3.0112 Remedies Against Nuisances. The remedies against any nuisance shall be: (1) A civil action; (2) Abatement; and (3) In cases of public nuisance only, the additional remedy of indictment or information as prescribed by the Ordinance or by the South Dakota Codified Laws, and the rules relating thereto. (SDCL 21-10-5)
- 3.0113 Abatement. A public nuisance may be abated without civil action by the City Council or by any officer authorized thereto by law. Any private person may likewise abate a public nuisance which is especially injurious to him or her, or any private nuisance injurious to him or her in a manner by removing, or, if necessary, destroying that which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his or her land, reasonable notice shall be given to him before entering to abate it. The City may defray the cost of abating a public nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred. When the nuisance abated is an unsafe or dilapidated building, junk, trash, debris or similar nuisance arising from the condition of the property, the City may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment. (SDCL 21-10-6)
- 3.0114 Public Nuisance Penalty and Remedy. Any person who creates, commits, maintains or fails to abate a public nuisance as required under the provisions of this Ordinance shall be subject to a maximum penalty of thirty (30) days in jail or a two hundred dollar (\$200.00) fine, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition, the City may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through 21-10-9.

CHAPTER 3.02 – COLLECTION OF GARBAGE & RECYCLABLES

- 3.0201 Definitions. For the purposes of this ordinance, the following terms shall have the meanings indicated, unless the context clearly indicates otherwise:
- A. 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.

- B. Commercial garbage Hauler License – A license issued by the City of Valley Springs under the terms of this ordinance.
- C. License Holder or Licensee – Any commercial garbage hauler which holds a Commercial garbage Hauler License.
- D. Rate Structure – The structure of charges made by a Commercial Garbage Hauler to its customers. This term is not intended to include the level of the rates charged; rather, it is intended to include the overall structure of the rates charged. This term is intended to refer to the relationship between rates charged by a particular hauler (1) to different customers (2) for different volumes of waste and (3) for different types of waste.
- E. Solid Waste (SDCL 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 semisolid 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 SDCL 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 sources, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.
- F. Volume Based – The property of providing financial incentives to encourage source reduction, re-use and recycling. Specifically, this term refers to garbage collection rate structures which provide for user fees which increase as the volume of waste collected increases.

3.0202 License Required. No commercial garbage hauler shall use the streets for the collection, removal or disposal of any garbage and recyclable materials without first having obtained a license to perform such service from the City Council. The application shall be filed with the Finance Officer along with proof of insurance, proof of County license, proposed rate structure and payment of license fee. The City Council may limit the number of licenses to be issued to one, or another specifically limited number. The license fee shall be one hundred (\$100) dollars per year for each licensee. The license shall run from January 15th through the 14th day of January of the following year.

3.0203 Application for License. The form of application for a Commercial Garbage Hauler License and renewal thereof, as required by the provisions of this ordinance, shall be available from the Municipal Finance Officer. Upon completion of the application, the applicant shall return it to the Municipal Finance Officer for review. For an application to be considered complete, the applicant must also submit:

- A. Proof of certification by the Sioux Falls Health Department that the applicant will be allowed to deposit solid waste collected from the City of Valley Springs in the Sioux Falls Sanitary Landfill;
 - B. Certificate of insurance coverage, as described in the 3.0200 Performance Standards;
 - C. Proposed rate structure, as described in 3.0200 Performance Standards;
 - D. Payment of an application fee in accordance with the fee schedule as determined by resolution of the City Council;
 - E. A written description of the recycling program offered by the hauler to its customers.
- 3.0204 Approval of Application by City Council Required Prior to Licensure. Before any Commercial Garbage Hauler License shall be issued, renewed or transferred under the provisions of this ordinance, the City Council must approve the application for license. The City Council may require the applicant to furnish additional information related to the provisions of this ordinance, prior to approval of an application. Upon approval of the application, the Municipal Finance Officer shall issue a Commercial Garbage Hauler License to the applicant. Once issued, licenses shall be conditional upon the license holder complying with the Performance Standards in 3.0200 of this ordinance.
- 3.0205 Collection of Garbage and Recyclable Materials. Every licensed commercial hauler shall collect the garbage at least once each week. Garbage collectors shall be under no obligation to remove any garbage unless the payments of the removal of such garbage as provided by contract with the customer shall have been made. Recyclables shall be collected at least once a month by a licensed garbage hauler.
- 3.0206 Rates. All licensed garbage haulers shall file, as a part of their application for a business license, a general statement of their use rate structures and billing systems.
- 3.0207 Renewal of License. A holder of a currently valid Commercial Garbage Hauler License may apply for renewal of such license in the same manner of application as described in Section 3.0203 of this ordinance.
- 3.0208 Transfer of License. A holder of a currently valid Commercial Garbage Hauler License may apply for renewal of such license, in conjunction with a party wishing to receive such a license, may apply for transfer of such license in the same manner of application described in Section 3.0203 of this ordinance. In such cases, the payment of the applicable fee shall be the responsibility of the party to receive the transferred license. For an application for a transfer to be considered complete, the signatures of an authorized representative from each party must be present on the application form.

3.0209 Performance Standards. For any Commercial Garbage Hauler License to be effective, the holder of such license shall comply with the following performance standards:

- A. Random Load Inspections. No holder of a Commercial Garbage Hauler License shall violate any rule or policy established by the City of Sioux Falls for the Sioux Falls Sanitary Landfill. All vehicles transporting solid waste to the Sioux Falls Sanitary Landfill and licensed under this ordinance shall be subject to random load inspections performed by the Sioux Falls Health Department. License holders should be aware that the Sioux Falls Health Department will forward reports of landfill violations to the City of Valley Springs.
- B. Minimum Design Requirements for Equipment. All solid waste collection or transportation equipment operated by license holders are required to meet the following standards:
 - 1. Vehicles shall be water tight.
 - 2. Vehicles shall be covered, with no openings which would allow the contents to escape.
 - 3. Vehicle boxes shall be of all metal construction and shall have metal doors which shall be in a closed position whenever the vehicle is in motion.
 - 4. Containers must be attached or bolted to the frame when in transport.
 - 5. All vehicles and containers must be manufactured or designed for hauling solid wastes.
 - 6. Vehicles and containers shall be thoroughly washed as directed by the City Council of Valley Springs or the Sioux Falls Health Department, as may be necessary to keep vehicles and containers in proper sanitary condition.
 - 7. Vehicles shall be loaded so that solid waste does not spill out, fall out, blow out or otherwise leave the vehicle or container while it is collecting or transporting solid waste.
- C. Frequency of Collection. Each holder of a Commercial Garbage Hauler License shall collect solid waste from its customers at least once per week. In cases where a customer of a license holder produces a type or quantity of waste which requires more frequent collection to protect public health, sanitation or safety, the City Council may direct the license holder to collect solid waste from that particular customer on a more frequent basis.
- D. Recycling Programs Required. Each holder of a Commercial Garbage Hauler License shall provide a program for collection of recyclable materials. Each such program shall include collection of recyclable materials from customers a minimum of one (1) time per month. Each hauler shall provide to the City, as part of the hauler's annual application for a Commercial Garbage Hauler's License, a written description of the hauler's recycling program. Charges to be included in with base rate.

- E. Insurance Required. A certificate of insurance which lists the City of Valley Springs as names insured must be provided along with the application for a Commercial garbage Hauler License.
1. Such insurance shall protect the applicant and the City against loss from the following:
 - a. Liability imposed by law for damages on account of bodily injury or death resulting therefrom, suffered or alleged to have been suffered by any person or persons whatever resulting directly or indirectly from:
 - (1) Any act, activity, errors or omissions of the licensee;
 - (2) Any act, activity, errors or omissions of any person acting for the licensee;
 - (3) Any act, activity, errors or omissions of any person under the control or direction of the licensee
 - b. Liability imposed by law for damages to property resulting directly or indirectly from:
 - (1) Any act, activity, errors or omissions of the licensee
 - (2) Any act, activity, errors or omissions of any person acting for the licensee
 - (3) Any act, activity, errors or omissions of any person under the control or direction of the licensee
 2. The certificate of insurance must show that the applicant has secured liability insurance with the following coverage:
 - a. For public liability and property damage and for bodily injury/death, resulting from any one accident or any other cause, in the minimum amount of two hundred fifty thousand (\$250,000) dollars for any one (1) occurrence and an annual aggregate limit of five hundred thousand (\$500,000) dollars for two (2) or more occurrences;
 - b. For damage liability for property damage resulting from any one (1) accident or other cause, in the minimum amount of two hundred fifty thousand (\$250,000) dollars; or
 - c. Combined coverage for bodily injury/death or property damage, in the minimum amount of one million (\$1,000,000) dollars.
- F. Duty of License Holder. License holders shall comply with all of the ordinances of Valley Springs.
- G. Rate Structure. Beginning with applications for licenses for the year 1995, each applicant for a Commercial Garbage Hauler License shall provide, as an attachment to the application, a schedule of the rates which the applicant is

proposing to charge its customers. The rate structure shall demonstrate that the applicant's proposed rates are volume based, as defined in 3.0201 if this ordinance. If applicable, charges shall be categorized as to residential, commercial and any other special charges. If the application is approved, the rate structure identified in the application shall remain in effect during the term of the license. A license holder may change the rate structure during the term of the license only upon approval by the City Council. The City Council may approve a requested change only after written request from the license holder, and only if the request appears to maintain the principles of volume based rates.

- 3.0210 Vehicle to Vehicle Transfer. The loading, unloading and transfer of garbage from one licensed garbage collection vehicle to another such vehicle shall occur only upon lands or within structures which have been zoned by the City for Industrial use or as directed by the City.
- 3.0211 Obligation to Remove. Garbage collectors shall be under no obligation to remove any garbage unless the payments for the removal of such garbage, as provided by contract with the customer, shall have been made.
- 3.0212 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 week, 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.

- 3.0213 Revocation. Any license issued under the provisions of this chapter may be revoked by the City Council for the violation by the licensee of any applicable provision of state law or city ordinance, rule or regulation.

- 3.0214 City Not Liable. The City shall not be liable for any expense incurred through the failure of a licensee 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.
- 3.0215 Violation of Ordinance. Any violation of any provision of this Ordinance shall be a petty offense punishable pursuant to Valley Springs Municipal Ordinance 12.0101.
- 3.0216 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.
- 3.0217 Separability. All prior ordinances or parts of prior ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3.03 – DANGEROUS BUILDING

- 3.0301 Definitions. For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered:
1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
 2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
 3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
 4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
 5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.
7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose of which it is being used.
10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.
12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.
14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer or housing inspector to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal or housing inspector to be a fire hazard.
17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

3.0302 Authority.

1. Administration. The Building Inspector shall be appointed by, and serve at the pleasure of, the City Council, which also may appoint in a similar manner deputy building inspectors, and such persons so appointed are hereby authorized to enforce the provisions of this chapter.
2. Right of Entry. Whenever necessary to make an inspection or whenever the Building Inspector has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises dangerous as defined in 3.0401, the Building Inspector may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Building Inspector by this chapter; provided that (1) if such building or premises be occupied, he shall first present proper credentials and demand entry; and (2) if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused or owner is not located, the Building Inspector shall have recourse to every remedy provided by law to secure entry.
3. Declaration as Public Nuisance. All buildings or portions thereof which are determined after inspection by the Building Inspector to be dangerous as defined in this Chapter are hereby declared to be public nuisances and shall be abated by repair, demolition, or removal.

3.0303 Notice and order. The building official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

1. The street address and a legal description sufficient for identification of the premises upon which the building is located.
2. A statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under this chapter.
3. A statement of the action required to be taken as determined by the building official.
 - a. If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed 30 days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances and in accordance with current building code.
 - b. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated within a time certain from the date of the order as determined by the building official to be reasonable.
 - c. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed 30 days from the date of the order); that all required permits be secured therefore within 30 days from the date of the order; and that the demolition be completed within such time as the building official shall determine is reasonable.
4. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official (i) will order the building vacated and post it to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the costs thereof against the property or its owner.
5. Statements advising (i) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to the board of appeals, provided the appeal is made in writing as provided in this ordinance and filed with the building official within 30 days from the date of service of such notice and order; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.
6. Such notice may be served personally by the Police Department or authorized representative of the City by prepaid first class mail, certified mail, or registered mail, upon the owner of the property where the nuisance exists, and such notice

is deemed given at the time it is personally served, or mailed, and said period to reply or abate begins to run at such time of giving notice.

7. Proof of Service. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service is made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the Building Inspector. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail.
8. Posting of Notice to Vacate. Every notice to vacate shall, in addition to being served as provided in this section, be posted at or upon each exit of the building, and shall be in substantially the following form:

"DO NOT ENTER
UNSAFE TO OCCUPY"
It is a misdemeanor to occupy this
building, or to remove or deface this notice.
Building Inspector
City of Valley Springs

3.0304 Appeal.

1. Board of Appeals. In order to provide for final interpretation of the provisions of this chapter and to hear appeals provided for hereunder, there is hereby established a Board of Appeals which shall be the City Council of Valley Springs. The Building Inspector shall be an (ex-officio) member of and shall act as Secretary to said Board. The Board may adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the appellant with a copy to the Building Inspector. Copies of all rules or regulations adopted by the Board shall be delivered to the Building Inspector who shall make them freely accessible to the public.
2. Form of Appeal. Any persons entitled to service under Section 3.0403 may appeal from any notice and order or any action of the Building Inspector under this chapter by filing at the office of the Municipal Finance Officer within 30 days from the date of the service of such order, a written appeal containing:
 - A. A heading in the words: "Before the Board of Appeals in the City of Valley Springs".
 - B. A caption reading: "Appeal of _____, giving the names and addresses of all appellants participating in the appeal.

- C. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
 - D. A brief statement of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
 - E. A brief statement of the relief sought, and reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside.
 - F. The signatures of all parties named as appellants, and their official mailing addresses.
 - G. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
3. Processing of Appeal. Upon receipt of any appeal filed pursuant to this section, the Building Inspector shall present it at the next regular or special meeting of the Board of Appeals.
 4. Scheduling and Noticing Appeal for Hearing. As soon as practicable after receiving the written appeal, the Board of Appeals shall fix a date, time, and place for the hearing of the appeal by the Board. Such date shall be not less than 10 days and not more than 60 days from the date the appeal was filed with the municipal Finance officer. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the Secretary of the Board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.
 5. Effect of Failure to Appeal. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order, or any portion thereof.
 6. Scope of Hearings on Appeal. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.
 7. Staying of Order Under Appeal. Except for vacation orders enforcement of any notice and order of the Building Inspector issued under this chapter shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.
 8. Form of Notice of Hearing. The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the Board or name of hearing examiner) at _____ on the _____ day of _____, 20____, at the

hour of _m., upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you.”

9. Inspection of the Premises. The Board or the hearing examiner appointed by the Board may inspect any building or premises involved on the appeal during the course of the hearing provided that (1) notice of such inspection shall be given to the parties before the inspection is made, (2) the parties are given an opportunity to be present during the inspection, and (3) the Board shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the Board.
10. Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested. The effective date of the decision shall be as stated therein.

3.0305 Enforcement.

1. Recordation of Notice and order. If compliance is not made with the order within the time specified therein, and no appeal has been properly and timely filed, the Building Inspector shall file in the office of the County Auditor a certificate describing the property and certifying (1) that the building is a dangerous building and (2) that the owner has been so notified.

Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the Building Inspector shall file a new certificate with the County Auditor certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

2. Notice to Vacate. Whenever the required repair or demolition is not commenced within the time period specified in notice and order issued under this chapter, the Building Inspector shall post at each entrance of said building a notice to vacate.
3. Abatement of Nuisance. The Building Inspector may, in addition to any other remedy herein provided, order the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished, or demolished and the materials, rubble and debris therefrom removed and the lot cleaned.
4. Extension of Time to Perform Work. Upon receipt of an application from the person required to conform to the order and an agreement by such person that

he will comply with the order if allowed additional time, the Building Inspector may, in his discretion, grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation, or demolition, if the Housing Inspector determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Building Inspector's authority to extend time is limited to the physical repair, rehabilitation, or demolition of the premises and will not in any way affect or extend the time to appeal his notice and order.

3.0306 Violations.

1. No person shall obstruct, impede or interfere with, any officer, employee, contractor or authorized representative of the city, or with any person who owns or holds any estate or interest in any building which has been ordered to be repaired, vacated or demolished under the provisions of this chapter.
2. No person shall enter or occupy any building which has been posted with a notice to vacate. No person shall remove or deface any such notice so posted until the required repairs, demolition, or removal ordered by the Housing Inspector have been completed.
3. Any person violating any provision of this chapter or failing to obey any order of the Building Inspector or Board of Appeals made pursuant to this chapter, after such order has become final, shall be subject to a fine not to exceed \$200.00, if convicted, and each day such violation or failure to obey shall occur may be considered a separate violation of this chapter. The Building Inspector is authorized to initiate prosecutions for the violation of this chapter or for the failure to obey such orders.

3.0307 Recovery of Cost of Repairs or Demolition.

1. Assessment. The City may recover the total cost of the repair or demolition of dangerous buildings or structures through any means available under the laws of the State of South Dakota, including, but not limited to, any special assessment procedure provided by such laws, as from time to time amended.
2. Surplus. Any surplus realized from the sale of such building, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

TITLE 4 – LICENSES

[TRADE REGULATION AND LICENSES SDCL 9-34]

Chapter 4.01 – General Provisions

Chapter 4.02 – Public Dancing and Public Dance Halls

Chapter 4.03 – Transient Merchants, Peddlers

CHAPTER 4.01 – GENERAL PROVISIONS

4.0101 License, Unlawful Without. 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 a license, 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 trade, business or occupation within the City which is not specified by this ordinance to obtain a license, as deemed necessary. (SDCL 9-34-1)

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 applicant, 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 ordinance, 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 licenses granted under the provisions of this Chapter shall be renewable annually and 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 rate, and there shall be no rebate made on the termination of said calling, vocation, 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 any such calling, vocation, 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 revocation, 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 license, and the place where such property is to be carried on.

CHAPTER 4.02 – PUBLIC DANCING AND PUBLIC DANCE HALLS

- 4.0201 License Fees. If the City Council approves any application for a license to operate a public dance hall or conduct a public dance, as provided herein, the applicant shall pay to the Finance Officer the sum of fifty dollars (\$50.00). A one-night dance license shall be ten dollars (\$10.00). The applicant shall be responsible and liable for any damage or littering resulting from such activity and as such shall assume all liabilities. (SDCL 9-34-15)
- 4.0202 Minors Prohibited. No person or persons under the age of eighteen (18) years shall be permitted to enter or remain in any public dance hall unless accompanied by his or her father, mother, or legally appointed guardian.
- 4.0203 Supervision. Public dances conducted in any public hall licensed hereunder may be required by the City Council to retain one or more supervisors, who shall be authorized to remove any person who is intoxicated or is conducting himself or herself in an improper or disorderly manner. No public dance or public dance hall shall be conducted past the hour of 1:00 a.m.
- 4.0204 Defined. A public dance hall, as used in this Chapter, shall mean any place or space open to public patronage in which dancing, wherein the public may participate, is carried on and to which admission may be had by the public, by payment either directly or indirectly of an admission fee price for dancing, for the personal gain or profit of the person, firm, or corporation, conducting, maintaining, or operating such public dance hall.

Nothing in this Chapter shall be construed to apply to dances conducted, maintained, or operated as a community enterprise and without personal profit to any person, firm or corporation, where the admission fee charged does not exceed the cost of operating, maintaining, or conducting such public dance.

CHAPTER 4.03 – TRANSIENT MERCHANTS, PEDDLERS

- 4.0301 Definitions. For the purpose of this Chapter, the following terms are hereby defined:
- A. "Peddler" – 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, products or services, other than agricultural products produced or processed in this state; and shall also mean and include any person transacting a temporary business within the city.

B. "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.

4.0302 Application for License. Any peddler wanting to do business in the City shall complete and file an application with the Finance Officer containing the following:

1. Whether the applicant, upon a sale or order, receives payment or a deposit in advance of final delivery;
2. The period of time the applicant wishes to engage in business within the city;
3. The local, and permanent address of the applicant;
4. The kind of goods, products, or services the applicant wishes to sell;
5. The last five (5) cities or towns the applicant has worked in;
6. Proof that the applicant has received the license required by the State of South Dakota pursuant to SDCL 37-13, as amended;
7. An application fee of twenty-five (\$25) dollars.

4.0303 Granted License. The application shall be submitted to the Council for review. If the Council grants the license, it shall be issued to the peddler and valid for a period of one year. If the Council does not grant the peddler a license, the Finance Officer shall refund the application fee to the applicant. The application may be renewed by filing a renewal application and twenty-five (\$25) dollar fee with the Finance Officer before the expired year.

4.0304 Exceptions. The provisions of this ordinance shall not apply to the following:

1. Solicitations, sales or distributions made by charitable, educational, or religious organizations which have registered with the city finance office on forms provided by that office.
2. Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.
3. Members of professions licensed by the state which have continuing education requirements.
4. Persons selling or delivering personal property to regular customers on established routes.

4.0305 Unlawful conduct. The following conduct shall be deemed unlawful:

1. For any peddler to remain upon premises after having been told by the owner or possessor of the premises to leave.
2. For any peddler to make false or fraudulent statements concerning the quality or nature of his goods, products, or services.
3. To enter upon any premises posted with a sign stating "No Peddlers Allowed" or "No Soliciting".
4. To engage in business of peddling between the hours of 8 p.m. and 9 a.m., or anytime on Sunday, except by specific appointment or invitation.
5. For any peddler to engage in business within the City without first obtaining a license to do so.
6. For any peddler to fail to display his license upon the request of any person.

4.0306 Licenses not Transferable. No license issued under this Chapter is transferable to any other person.

4.0307 Revocation. Any license issued under the provisions of this article may be revoked for the violation by the licensee of any provision of this ordinance or state law. Upon such revocation, such license shall immediately be surrendered to a city police officer or the Finance Officer.

TITLE 5 – OFFENSES

Chapter 5.01 – Alcoholic Beverages

Chapter 5.02 – Offenses Against Public Welfare

Chapter 5.03 – Animals

Chapter 5.04 – Fireworks, Firearms and Explosives

Chapter 5.05 – Minors

Chapter 5.06 – Street Dances

Chapter 5.07 – Public Nudity and Regulating Strip Dancing

CHAPTER 5.01 – ALCOHOLIC BEVERAGES

- 5.0101 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 statute, without having a license therefore as required by South Dakota Law, or as amended. All provisions in this Chapter concerning dealers shall apply to anyone operating under a management contract with the City under a Municipal Liquor License. (SDCL 35-2)
- 5.0102 Application and License Fee. When applicable, application for licenses under the jurisdiction of the City shall be submitted as prescribed by South Dakota law. The annual fee for licenses shall be as established in South Dakota law. (SDCL 35-2-1.2)
- 5.0103 License Restrictions. Applications for licenses for the sale of off sale or on sale liquor shall have the necessary fees attached upon being submitted to the City Council as required by South Dakota law, and the granting and retention of licenses will be as provided by South Dakota law and local regulations, with no licenses to be granted to any applicants determined by the City Council not to be residents of the City, except that the provisions of this Section shall not be applicable to any licensees who have heretofore been approved and doing business at this time. The provisions of this Section shall be applicable, however, at any time in the future when the business of present licensees change ownership. Licenses shall be considered for residents of the City only upon such changes in ownership referred to hereinbefore. (SDCL 35-2-1.1)
- 5.0104 Location of Business. The City Council shall not issue any license to any person where the location of such business would not be considered desirable. (SDCL 35-3-1)
- 5.0105 Hours of Business. It shall be unlawful to sell or offer for sale, retail, or to give away, in or upon any on-sale licensed premises, any alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m., except it shall be unlawful on Sunday after the hour of 2:00 a.m., on Memorial Day after 1:00 a.m. and on Christmas Day at any time. Every on sale dealer shall flash the lights of his or her place of business each day at 1:45 a.m. as a warning that within fifteen (15) minutes such place of business will close. At 2:00 a.m. every on sale dealer shall clear the premises of customers and patrons and shall not sell, serve, or allow to be consumed on the premises any alcoholic beverages. (SDCL 35-4-81)

- 5.0106 Exception to Hours of Business. Notwithstanding 5.0105 above, the City Council may prescribed in the license of any on-sale licensee, that said licensee has the right to sell, serve or allow to be consumed alcoholic beverages between 1:00 p.m. and 12:00 midnight on Sunday, providing licensee has facilities for the serving of prepared meals from a fixed restaurant with a simultaneous seating capacity of at least thirty-five (35) and the sale, service or consumption is in conjunction with the operation of said restaurant.
- 5.0107 Hours of Sale. No off sale licensee shall sell or allow to be sold alcoholic beverages between the hours of 12:00 midnight and opening of business for the following day (not earlier than 7:00 a.m.), nor any holidays designated under South Dakota Codified Law or designated by resolution of the City Council. (SDCL 35-4-81.1)
- 5.0108 Sanitation Facilities. Every on sale dealer shall maintain upon his licensed premises, toilets properly connected with the City sewer system with separate facilities for men and women. In each such facility there shall be maintained running water and towels for use by the users of such facilities (or approved sanitary drying facilities). Every licensee shall have such facilities equipped and maintained so as to pass state and/or local health requirements at all times. (SDCL 34-18-22)
- 5.0109 Revocation of License. Whenever any person shall as clerk, servant, agent, or employee of any other person or establishment violate 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 of this Chapter, shall provide cause for revocation of any licenses granted under the provisions of South Dakota law. (SDCL 35-2-10)
- 5.0110 Open Containers. It shall be unlawful to drink any beer or alcoholic beverage or to possess any glass, 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 35-1-5.3)
- 5.0111 Beer Allowed. The possession and consumption of beer shall be allowed at the City Park unless otherwise provided by the City Council or in these ordinances. (SDCL 35-1-5.3)
- 5.0112 Purchase, Possession or Consumption of Alcoholic Beverages by a Minor. It shall be unlawful for any person under the age of twenty-one (21) to purchase, attempt to purchase, possess or consume alcoholic beverages from a licensee, unless it is done in the immediate presence of a parent or guardian or spouse twenty-one (21) years of age or older or by prescription or direction of a duly licensed practitioner or nurse of the healing arts for medicinal purposes.
- 5.0113 Persons Under twenty-One (21) Barred from On-sale Premises: Exceptions to Ordinance.

- A. No on-sale licensee may permit any person less than twenty-one (21) years old to loiter on the licensed premises or to sell, serve, dispense or consume alcoholic beverages on such premises. However, an on-sale licensee pursuant to subdivision (4), (6), (11), (14) or (17) of SDCL 35-4-2 (as amended) may permit eighteen (18) year olds to sell and serve or dispense alcoholic beverages if not less than fifty percent of the gross business transacted by that establishment is from the sale of food and the licensee or an employee that is at least twenty-one (21) years of age is on the premises when the alcoholic beverage is sold or dispersed. For the purpose of this section, the term, "to sell and serve alcoholic beverages". Means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages.
- B. No off-sale licensee licensed under subdivision (18) of SDCL 35-4-2 may permit any person less than twenty-one (21) years old to sell, serve or dispense alcoholic beverages on the licensed premises unless such sales of alcoholic beverages constitutes less than fifty percent of the gross business transacted by that establishment.
- C. An on-sale licensee issued a license pursuant to subdivision (17) of SDCL 35-4-2 whose sale of alcoholic beverages constitutes more than fifty percent of the gross business transacted by that establishment may erect a physical barrier to allow for multiple uses of the premises by persons of all ages provided persons under the age of twenty-one (21) are not permitted access to the area reserved for the sale of malt beverages. For the purpose of this section, a physical barrier includes, but not limited to, a wall, fence, rope, railing or other physical feature erected for the sole purpose of restricting the free flow of foot traffic and access to certain area of a premises.
- D. No off-sale licensee licensed under subdivision (3) or (5) of SDCL 35-4-2 (as amended) may permit any person less than twenty-one (21) years old to sell, serve or dispense alcoholic beverages on the licensed premises.

CHAPTER 5.02 – OFFENSES AGAINST PUBLIC WELFARE

- 5.0201 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 nuisance, he willfully does any of the following acts in a public place: (SDCL 9-29-3, 22-13-1)
- 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 fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another, except in exhibitions duly authorized and licensed under 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 the City Police or other lawful authority known to be such;
- 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 the City Police or any other authorized official of the City when known to be such an official;
- H. Incites, attempts to incite, or is involved in attempting to incite a riot;
- I. Addresses abusive language or threats to any member of the City Police Department, 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 are not 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 causes to be made any loud, boisterous, and unreasonable noise or disturbance to the annoyance of any other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed, or the traveling public annoyed;
- L. Fails to obey a lawful order to disburse by a police officer, when known to be such an officer, where one or more persons are committing acts of disorderly conduct in the immediate vicinity, and the public health and safety is eminently threatened;
- M. Throws a stone, snowball or any other missile upon or at any vehicle, building, tree or other public or private property or upon or at any person in any public or private way or place or enclosed or unenclosed ground.

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 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 of, 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 mean, but is not limited to, urging or instigating other persons to riot, 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 to lawful assembly, picketing, public speaking, or lawful means of expressing public opinion not in contravention with other laws.

- 5.0202 False Report of a Crime. No person in the City shall make to, or file with, the Police Department of the City any false, misleading, or unfounded statement or report concerning the commission or alleged commission of any crime occurring within the City. (SDCL 22-11-9)
- 5.0203 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 movable or personal property belonging to the City or to any person in the City. (SDCL 22-34-1)
- 5.0204 Tampering in General. No person in the City shall tamper with, injure, deface, destroy or remove any sign, notice, marker, fire alarm box, fire plug or hydrant, typographical survey marker or monument, or any other personal property erected or placed by the City. (SDCL 22-34-1)
- 5.0205 Tampering with Service Connections. It shall be unlawful for any person to connect, disconnect, or otherwise tamper with any service connection of any franchised cable television company without the express prior approval from a designated agent of said Cable Television company.
- 5.0206 Indecency. As used in this Section, the following definitions shall apply: (SDCL 22-24-27)
 - 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 statute or other figure, or any recording, 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.

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

- A. Knowingly disseminate, distribute or make available to the public any obscene materials; or
- B. Knowingly engage or participate in any obscene performance made available to the public; or
- 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; or
- D. Provide service to patrons in such a manner as to expose to public view:
 - 1. His or her genitals, pubic hair, buttocks, perineum, anal region, or pubic hair region;
 - 2. Any device, costume or covering the appearance of which simulates the genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - 3. Any portion of the female breast at or below the areola thereof; or
- E. Knowingly promote the commission of any of the above listed unlawful acts.

F. Appear in any public state in a state of dress intended to deceive others as to his or her sex, or make any indecent exposure of his or her person.

5.0207 Certain Uses Prohibited. No person shall put up, erect, hang, post, or suffer to remain so placed, any sign, poster, notice or other advertising matter, upon any telephone, traffic sign, or electric light pole in the City. (SDCL 9-29-1)

5.0208 Resisting and Officer. It shall be unlawful for any person to resist, hinder or interfere with any police officer, any member of the Law Enforcement or any person duly empowered with police authority, while in the discharge or apparent discharge of his duties.

5.0209 Impersonating a Law Enforcement Officer. No person not duly authorized by law shall exercise the duties of a law enforcement officer, wear a law enforcement uniform and/or badge, represent himself to be a law enforcement officer or attempt to exercise the duties of a law enforcement officer.

5.0210 Displaying License Unlawful. No person shall display in public, any City license or permit which has been suspended or revoked, or which has not been lawfully procured.

CHAPTER 5.03 – ANIMALS

5.0301 General.

A. Definitions.

1. "At Large"

a. An animal when off the premises of the owner and not under the control of the owner, possessor, keeper, agent, servant, or member of his immediate family by a leash.

b. An animal when on the premises of the owner, possessor, keeper, agent, or servant and not attended by a competent person unless the animal is chained, restrained, enclosed, or confined in a manner preventing it from leaving the premises or from reaching the sidewalk.

2. "Leash"- A cord, thong, or chain, not to exceed six feet in length, by which an animal is controlled by the person accompanying it.

3. "Owner"- any person harboring or keeping an animal or who is head of the household or owner or manager of the premises where such animal remains.

B. Running at Large. It shall be unlawful for any person to allow any dog, cat or other animal held as a domestic pet to run at large at any time.

C. Impoundment. A law enforcement officer or animal control officer shall impound any animal found running at large within the City. Once the owner of said animal

is ascertained, said owner shall be notified of the impoundment within 24 hours. Owner shall be liable and responsible for all impound fees or charges.

- D. Liability. Animal control officers and police officers shall not be responsible for any injury or disease of any animal resulting from the enforcement of this chapter.
- E. Failure to claim. Any impounded animal not claimed by the owner within three days after receiving notice shall become the property of the City and shall be placed for adoption in a suitable home or humanely euthanized.
- F. Conditions for release. The owner of any dog or cat found running at large without a license tag affixed to its collar shall be subject to a fine of \$50. The dog or cat will not be released from impound until the \$50 fine has been paid and a license has been issued under the provisions of 5.0310.
- H. Violation. Any owner who allowed his/her animal to run at large is in violation of this chapter and subject to prosecution of a Class II misdemeanor. Any violation of this chapter shall be documented by the animal control officer or police officer involved in said incident by issuing a warning ticket or filing a complaint stating the alleged violation.

5.0302 Compulsory Immunization of Animals for Rabies. Every dog, cat, or other animal held as a domestic pet in the City, six (6) months of age or older, shall be immunized against rabies by a licensed veterinarian or other qualified person designated by the City Council. 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. (SDCL 9-32-1)

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 by the Pound Master 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.

5.0303 Responsibility of Owner to Place Animal for Observation. When any person owning or harboring a dog, 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 the Animal Control 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 claimed 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.

Any person who shall suspect that any animal in the City is infected with rabies, shall report said animal to the Animal Control Officer, the City, or other health authority, describing the animal and giving the name and address of the owner if known.

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 the City or Animal Control Officer. Any rabid animal may be destroyed by the Animal Control Officer upon authorization in writing by the City Council.

Whenever the Animal Control Officer or Sheriff's Department shall have determined that there is a danger of the existence or spread of rabies in the City, such facts shall be made known to the City Council in writing. 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 publication 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 observation as hereinbefore provided for fourteen (14) 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. (SDCL 9-29-12)

5.0304 Vicious Dogs.

A. Findings and Policy. The City Council of the City of Valley Springs, South Dakota finds that vicious dogs are so dangerous that they constitute a threat to children and others in the city. Vicious dogs occasionally escape from the yard or building in which they are kept, by slipping under a fence, jumping over a fence, slipping out through a door or gate temporarily opened or unlatched, breaking the leash or chain, or pulling up the anchor for the chain or leash. Children too young to read may wander too close to a dog, even in the presence of "beware of the dog" signs. It is the policy of the City that children and others should not have to assume risk of a vicious dog having an opportunity to attack or to kill.

The City Council finds that the benefits to a dog owner in owning a dangerous dog are outweighed by dangers to children and to the general public.

- B. Definitions. As used in this ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

City – The City of Valley Springs

Vicious Dog – Any dog that has bitten or attacked any person, and any dog that has attempted to bite or to attack any person. A dog shall be deemed to be attempting to attack if it is restrained by a leash, fence or other means, and it is clear from the dog's excited actions that only the presence of the leash, fence or other means of restraint is preventing the dog from making an immediate attack.

- C. Keeping of Vicious Dogs Prohibited. No person shall keep any vicious dog anywhere in the city.
- D. Duty of Landlords and Agents. No landlord or landlord's agent shall knowingly permit any tenant to move in a vicious dog into any building or premises owned or controlled by such landlord or agent. No landlord or landlord's agent shall knowingly permit any person to keep any vicious dog in any building or premises owned or controlled by such landlord or agent. Any landlord or agent learning of any vicious dog in any building or premises owned or controlled by such landlord or agent. Any landlord or agent learning of any vicious dog in any building or premises owned or controlled by such landlord or agent shall notify the person having such dog to remove the dog from the city immediately.
- E. Exclusions. It is not the intent of this ordinance to prohibit the police department from using any trained dog that may attack on command, provided that each such dog must be in the presence of its handler or confined in accordance with police department policy at all times.
- F. Impoundment and Rabies. This ordinance shall not prohibit the temporary impoundment of any dog. This ordinance shall not prohibit the holding of any vicious dog suspected of rabies or any vicious dog that has bitten a person, provided that such vicious dog may be held in a secure place operated or supervised by a licensed veterinarian.
- G. Nuisance, Injunction. Any violation of this ordinance is hereby declared to be a nuisance. In addition to any other relief provided by this ordinance, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this ordinance. Such application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

- 5.0305 Disturbance of Peace by Animals. The owner of an animal shall not allow such animal to disturb the peace and quiet of the neighborhood through barking or any other manner possible.
- A. The owner or custodian of an animal shall not allow the animal to create a disturbance by making loud noises any time of the night or day.
 - B. Any person having custody or control of any female animal in heat shall be required to keep the same confined in a building, secure enclosure, veterinary hospital, or boarding kennel so that it cannot attract or come into contact with another animal on public or private property except for controlled breeding purposes. Upon complaint such owner will be notified by the Police Department 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. (SDCL 9-29-13)

5.0306 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 40-1)

5.0307 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 the Police Department immediately. The keeping of animals and fowls on any lot in the City shall not be on a commercial basis or on a scale objectionable to the adjacent property owners, without a permit from the City Council.

The provisions of this section shall not be applicable to those existing at the time of the effective date of this ordinance, particularly insofar as permit requirements are concerned. (SDCL 9-29-13, 40-1)

5.0308 Responsibility of Owner. Any person who creates or maintains any condition, or operate any equipment, or keeps any animal, fowl, pet or insect in such a way that such condition, operation or keeping causes or is likely to cause the transmission of diseases from animals or insects to man shall be in violation of this ordinance.

No owner, keeper, caretaker or attendant of any animal shall allow an animal to defecate on public or private property other than his own. If such animal shall defecate upon public or private property, the owner, keeper, caretaker or attendant must immediately and thoroughly clean the fecal matter from such property.

5.0309 Livestock in City. No person shall keep or maintain any building or enclosure where livestock is kept, unless the same be at all times kept in a clean and sanitary condition. No person shall place, keep or maintain any live swine within the City, unless such animals are kept as household pets, and are not used for any commercial purpose.

For the purpose of this section, the term "Livestock" shall mean any animals except common household pets such as dogs, cats, mice, rats, hamsters, gerbils, guinea pigs, pot-bellied pigs, rabbits, ferrets, fish, and birds. (SDCL 9-29-13)

- 5.0310 Dog and Cat License Required. All dogs and cats kept, harbored, or maintained by their owners in the City shall be licensed and registered if over six (6) months of age. Dog and cat licenses shall be issued by the Finance Officer upon payment of an annual license fee of four dollars (\$4.00) for each neutered male or spayed female, and eight dollars (\$8.00) for each unneutered male or unspayed female.

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 or her name and address, and the name, breed, color and sex of each dog and cat to be licensed. The provisions of this Section shall not be intended to apply to dogs and cats whose owners are nonresidents temporarily within the City, nor to dogs and cats brought into the City for the purpose of participating in any dog show, 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 and cat 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 and cat 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 and cat tag is lost or destroyed, a duplicate 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 of a one dollar (\$1.00) fee for such duplicate. Dog and cat tags shall not be transferable from one dog to another and no refunds shall be made on any dog and cat license fee because of death of the dog and cat or the owner's leaving the City before expiration of the license period. (SDCL 9-29-12)

- 5.0311 Number of Pets Limited. It is unlawful for any person to have or to keep more than four domestic pets over the age of six months, except birds and fish, on any lot or premises in the City, unless such person residing on or in the lot or premises has a valid kennel license issued by the City. Humane societies, veterinarian offices, and retail pet stores are exempt from the provisions of this section.

CHAPTER 5.04 – FIREWORKS, FIREARMS AND EXPLOSIVES

- 5.0401 Discharging Firearms Prohibited. No person shall discharge or shoot off any gun, pistol, or any other firearm within the City, unless permitted by the City Council in firing ranges. (SDCL 22-14-7, 9-29-3)
- 5.0402 Fireworks Prohibited. The use, throwing, lighting, firing, display, or sale of fireworks within the City shall be prohibited. The term fireworks as referred to in this Section shall include firecrackers, torpedoes, Roman candles, toy cannons, detonating canes, blank cartridges, sky rockets or other pyrotechnic displays, but shall not include or apply to ammunition for firearms nor to dynamite and devices for exploding the same used in any industry or for the same. (SDCL 34-37, 9-33-1)
- 5.0403 Exceptions Provided. The provisions of this Chapter shall not apply to police officers of the City or 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. The discharge of only permissible fireworks, as defined by SDCL 34-37-5, shall be permitted on July 4th of each year from the hours of 10:00 a.m. until 11:00 p.m. and provided further that the use or discharge of all fireworks may be banned by resolution of the City Council or Order of the Fire Department because of dry climatic conditions or other emergencies.

CHAPTER 5.05 – MINORS

[MINORS SDCL Title 26]

- 5.0501 Curfew Hours and Exceptions. It shall be unlawful for any person under the age of sixteen (16) to be on the streets, alleys, or public grounds of the City between the hours of 9:30 p.m. and 5:00 a.m. on the following day, unless accompanied by parents or legal guardian, or unless such person shall be upon some necessary errand by written permission of a parent, guardian, or employer and said person so permitted to be outdoors shall have with him or her such written permission and shall upon request of any police officer of the City exhibit the same to said police officer. An exception to the curfew will be made in the case of activities officially sponsored by schools, churches, or the City, when the curfew will extend one-half (½) hour beyond the time said activities end. (SDCL 9-29-13)
- 5.0502 Responsibility of Officers. It shall be the duty of any police 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 the police or other authorized personnel to answer to the charge of having violated this Chapter.
- 5.0503 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 sixteen (16) 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 lots or other

unsupervised public places within the City between the hours of 9:30 p.m. and 5:00 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.

CHAPTER 5.06 – STREET DANCES

- 5.0601 Non-Profit Organizations. Street dances held within the City of Valley Springs or within one (1) mile from the outer boundary of the City shall be conducted by Non-Profit Organizations only. Each sponsoring organization must obtain a permit and license at least thirty (30) days prior to each event. The sponsoring organization must submit proof of liability insurance to the City before such an event can take place and adhere to all implemented street dance policies as set forth by the City Council.
- 5.0602 Restriction of Age Attending. It shall be unlawful for any person conducting a street dance in the City of Valley Springs to permit or allow any person under the age of sixteen (16) years unaccompanied by his or her parent, step parent or legally appointed guardian to enter or remain within the boundary designated for holding the street dance.

CHAPTER 5.07 – PUBLIC NUDDITY AND REGULATING STRIP DANCING

- 5.0701 Prohibited Generally. It is a violation of this ordinance for any person to knowingly or intentionally, in a public place:
- (1) Engage in sexual intercourse;
 - (2) Engage in deviate sexual conduct;
 - (3) Appear in a state of nudity; or
 - (4) Fondle the genitals of himself, herself or another person.
- 5.0702 Definitions.
- (1) Nudity or State of Nudity – 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.
 - (2) Public Place – 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, night clubs, country clubs, cabarets and meeting facilities utilized by an 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. Public place shall not include movie theaters, enclosed single sex public rest rooms, enclosed single sex 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 necessarily 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: (1) a proprietary school licensed by the State of South Dakota; a college, junior college or university supported entirely or partly by taxation; or (2) 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.

- 5.0703 Operations. 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 public place or to permit unlawful touching as prohibited by Section 5.0704 thereof.
- 5.0704 Physical Contact. 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.
- 5.0705 Refuse Admittance. It shall be a violation of this Ordinance for any person or entity to refuse admittance without fee to any on duty police officer at any time when patrons or customers remain in said premises.
- 5.0706 Underage Admittance. No person under twenty-one (21) years of age shall be permitted access to any public place defined herein which shall permit nude dancing, which otherwise complies with the provisions hereof.
- 5.0707 Conduct. The contents of this ordinance shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.
- 5.0708 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.
- 5.0709 Violations. 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 said nuisance.

TITLE 6 – STREETS, SIDEWALKS AND PUBLIC PLACES

[STREET AND ALLEY IMPROVEMENTS SDCL 9-45]

[SIDEWALK IMPROVEMENTS SDCL 9-46]

Chapter 6.01 – Street Names and Addresses

Chapter 6.02 – Streets, Sidewalks, Curb and Gutter

Chapter 6.03 – Snow and Ice Removal

Chapter 6.04 – Moving Buildings

Chapter 6.05 – Municipal Trees

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 office of the Finance Officer. All east-west thoroughfares shall be designated as avenues and all north-south thoroughfares shall be designated as streets. Other streets shall be named in accordance with guidelines included in the City subdivision regulations. 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. (SDCL 9-45-2)
- 6.0102 Numbering Plan. A numbering plan for residences and businesses shall be maintained by the City Council. Buildings on the east or north side of any street or avenue shall be given even numbers, and the buildings on the west or south side thereof shall be given odd numbers. A listing of the assigned numbers and a map showing the location of addresses shall be maintained and filed in the Finance Office. The Finance Officer shall be responsible for assigning new numbers and updating the listing of such numbers and the location map. (SDCL 9-45-2)
- 6.0103 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 Valley Springs shall number with 3" minimum numbers. The numbers shall be so located on the structure such that it is clearly visible from the street.
- 6.0104 Numbering of Lots. One number shall be apportioned to every building or lot along all the thoroughfares of the City whether the same be occupied by buildings or not. In case more than one building is erected in a single lot feet the same may be numbered by placing thereon the regular number which appeared on the building formerly situated in said 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 ($\frac{1}{2}$). (SDCL 9-45-2)

CHAPTER 6.02 – STREETS, SIDEWALKS, CURB AND GUTTER

- 6.0201 Streets. A thirty-six (36) foot roadway shall be maintained between curbs whenever practical, with streets platted at sixty-six (66) feet in width having a distance of fifteen (15) feet from property line (inside of sidewalk) to curb, with slope of one-

fourth inch per foot toward street, and streets platted at sixty (60) feet shall have twelve (12) feet from property line (inside of sidewalk) to curb, with slope also of one-fourth inch per foot toward street. The crown of the street or avenue should be the same height as the curb. Any deviations shall be authorized by the Street Superintendent or the City Council. Only street department personnel or other authorized so to do shall be permitted to work on any of the streets, avenues, or alleys in the City. (SDCL 9-45-1)

- 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 City Council. Application for such approval shall state where such excavation is to be made, the extent thereof and the purpose of such excavation.
- 6.0203 Excavation Permits. 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 and approval of the City Council.
- 6.0204 Excavation Repairs. Approval for any excavation covered by this Chapter shall be issued only upon the express condition that the applicant shall refill such excavation in accordance with the requirements of the City Council, and shall restore the pavement or surfacing as the case may be, to its former condition. The City Council shall adopt and amend as necessary such requirements, which shall set forth the manner in which various types of excavations shall be backfilled or refilled and the manner in which any street surfacing shall be replaced.
- 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 backfilling, 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.
- 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 (3) inches in thickness, of approved materials. Sidewalks shall be no less than three and one-half (3½) inches in thickness, of Portland Cement Construction, and not less than four (4) feet nor more than five (5) feet wide in residential areas, with slope toward street of one-fourth (1/4) 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. (SDCL 9-46-1, 9-45-14)

When existing sidewalk is removed for any reason it shall be replaced, according to the provisions of this section by the property owner.

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 (4) 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. (SDCL 9-45-1)

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 (1) year from the time of such construction is completed. (SDCL 9-45-5) Curb and gutter shall be of Portland Cement Construction, not less than 3,000 PSIV with curb six (6) inches in width and extending six (6) inches above the gutter. Gutter shall be of six and one-half (6½) 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. (SDCL 9-45-5)

6.0210 Permits. When constructed separately from an overall 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 9-46-1.1,1.2)

- 6.0212 Assessment of Cost of Repair or Replacement. The City Council, after such repairs or replacements are made, shall return and file with the City Finance Officer a complete statement of the cost thereof, and the City Finance Officer shall cause the same to be published in the official paper of the City for two (2) successive issues together with a notice of the time and place when the City Council shall meet to consider the same.
- 6.0213 Enforcement of Assessments. The City Council shall consider and act upon such assessments. If the City Council approves the same, these assessments shall become a lien upon the property so benefited and assessed. Payment of such assessment shall be enforced according to state statute.

CHAPTER 6.03 – SNOW AND ICE 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 ice and to cause any accumulated snow and ice to be removed from any such abutting sidewalk within twenty-four (24) hours after the termination of any snowfall, or snow or ice accumulation. (SDCL 9-30-5)
- 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 and ice upon such property in such manner that any snow and ice when removed shall not be deposited upon any sidewalk, within or upon any public street or alley, or in a manner that will obstruct or interfere with the passage or vision of vehicle or pedestrian traffic.

It shall be the duty of the property owner, tenant, or person in possession of any property abutting on any sidewalk to dispose of accumulated snow and ice upon such sidewalk in such a manner that any snow and ice when removed shall not be deposited within or upon any public street or alley, after such public street or alley has been cleared of snow and ice by the grading of such snow or ice away from the curb or the picking up and carrying away of such snow or sanding or salting of ice by the City. (SDCL 9-30-5)

- 6.0303 Removal Costs Assessed. In the event any owner, tenant, or person in possession of any property shall fail to comply with any provisions of this chapter, any police 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 building into, along or across any public street, alley, or grounds in the City without having obtained a moving permit. (SDCL 9-34-1, 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 Zoning Administrator and/or Planning Commission for approval, and any other conditions to be complied with by the applicant, shall be stated.

- 6.0403 Surety Bond. No permit shall be granted until the applicant shall file with the Finance Officer a bond 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, cross walk, 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 permit granted by the City shall authorize the holder thereof to break, injure, or move any telephone or electric light or power wire or pole, or to cut, trim or otherwise interfere with any trees or to damage or in any manner interfere with any property without the written permission of the owner or owners thereof.

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 parts of 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. (SDCL 9-38-2)
- 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 shrubs or trees, to prune such shrubs or 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 intersection, 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 clearance shall be from fourteen (14) to sixteen (16) feet, unless otherwise determined by the City Council.

- 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 them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree located on public grounds along the street or enclosing public grounds. (SDCL 9-38-2)
- 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)

TITLE 7 – TRAFFIC REGULATIONS

[TRAFFIC REGULATION SDCL 9-31]

Chapter 7.01 – General Provisions

Chapter 7.02 – Operation of Vehicles

Chapter 7.03 – Speed Restrictions

Chapter 7.04 – Parking, Stopping

Chapter 7.05 – Trucks

Chapter 7.06 – Vehicle Equipment

Chapter 7.07 – Snowmobiles

Chapter 7.08 – Miscellaneous Provisions

CHAPTER 7.01 – GENERAL PROVISIONS

7.0101 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 departments or public service corporations as are designated or authorized by the City Council.
- B. "Crosswalk" – That portion of a roadway ordinarily included within the prolongation of curb and property lines at intersections, or any other portion of a roadway clearly indicated for pedestrian crossing by lines or other markings on the surface.
- C. "Intersection" – The area embraced within the prolongation of a lateral curb line, or if none, then the lateral boundary lines of two (2) or more streets or highways which join one (1) another at an angle whether or not one (1) such street or highway crosses the other.
- D. "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.
- E. "Motor Vehicle" – Every vehicle, as herein defined, which is self-propelled.
- F. "Operator" – Any person who is in actual physical control of a vehicle.
- G. "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 or signals.

H. "Vehicle" – Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

7.0102 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)

7.0103 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 safeguard pedestrians, Fire Department Personnel may direct traffic, as conditions may require. (SDCL 9-29-19)

7.0104 Obedience to Enforcement. No person shall refuse or fail to comply with any lawful order, 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)

7.0105 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.

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.

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 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 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.

CHAPTER 7.02 – OPERATION OF VEHICLES

- 7.0201 Driver's License Required. It shall be unlawful for any person to drive or operate upon any of the streets or highways within the City any motor vehicle without first having secured and having in his possession a valid license to do so. (SDCL 32-12-22)
- 7.0202 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.
- 7.0203 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 32-26-1)
- 7.0204 Vehicles Shall Not Be Driven on Sidewalk. The operator of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway. (SDCL 32-26-21.1)
- 7.0205 Operation of Vehicles on Approach of Authorized Emergency Vehicle. Upon the approach of any authorized emergency vehicle or vehicles giving audible signal by bell, siren or exhaust whistle, 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 police officer.
- It shall be unlawful for the driver of any vehicle, other than one on official business, to follow (closer than 500 feet) any fire apparatus, or to park any vehicle within the block where such fire apparatus has stopped to answer a fire alarm. It shall be further unlawful for the driver of any vehicle to drive over any unprotected hose of the Fire Department without the consent of authorized personnel. (SDCL 32-31-7)
- 7.0206 Backing Around Corners or into Intersection Prohibited. It shall be unlawful for the operator of any vehicle to back such vehicle around a corner at an intersection or into an intersection of public streets. (SDCL 32-30-20)
- 7.0207 Reckless Driving. No person shall drive any vehicle upon a street, avenue, or alley carelessly and heedlessly in disregard of the rights or safety of others, or without due caution, and at a speed or in a manner so as to endanger or be likely to endanger any person or property. (SDCL 32-24-1)
- 7.0208 Careless Driving. No person shall drive any vehicle carelessly and without due caution, 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. (SDCL 32-24-8)

- 7.0209 Exhibition Driving. No person shall drive 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. (SDCL 32-24-9)
- 7.0210 Right-of-Way at Intersection. The right-of-way rule as between vehicles at intersections is hereby declared as follows: (SDCL 32-26-13)
- 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.
 - 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.
- 7.0211 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 so as to proceed in the opposite direction. (SDCL 32-26-25)
- 7.0212 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, but said 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 32-26-18)
- 7.0213 Turning Around in Midblock Prohibited. The operator of a vehicle shall not turn such vehicle so as to park in the opposite direction or so as to proceed in the opposite direction except at an intersection. (SDCL 32-26-25)
- 7.0214 Required Condition of Vehicles. Any vehicle having a loud or offensive muffler shall be considered illegal. Any vehicle not equipped with adequate brakes shall be prohibited from operating in the City. Any motor vehicle operated within the City shall be equipped with operable lights and a horn as required by state law. License plates shall be clearly displayed on each end of vehicle, and shall be kept clean and legible. (SDCL 32-15)
- 7.0215 Action Required at Stop Sign. Except when directed to proceed by a police 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 intersecting 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)

7.0216 Action Required at Yield Sign. The operator of a vehicle approaching a sign authorized by the City Council 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)

7.0217 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 area, 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)

7.0218 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 police 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 roadway, 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)

CHAPTER 7.03 – SPEED RESTRICTIONS

7.0301 General Restrictions. It shall be unlawful for any person to drive a vehicle on a street or highway at a speed greater than is reasonable and prudent under the conditions then existing or at a speed in excess of those fixed by this Chapter. (SDCL 32-25-16)

7.0302 Speed Zones – Establishment.

- 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 limits 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.
- B. The beginning of such limited speed zones shall be indicated by signs showing the speed limits.

- 7.0303 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:
- A. Twenty (20) miles per hour within any business district.
 - B. Fifteen (15) miles per hour on any alley.
 - C. Twenty (20) miles per hour within any residential district.
 - D. The appropriate legal maximums established by state law on all other unmarked streets and highways within the City shall be effective.
- 7.0304 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.

CHAPTER 7.04 – PARKING, STOPPING

- 7.0401 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 a traffic obstruction. Whenever any police officer finds a vehicle which constitutes a traffic obstruction, such officer shall be authorized to remove such vehicle by towing, if necessary, at the owner's expense, with no liability to the City. (SDCL 32-30-1,2,3)
- 7.0402 Prohibited Parking After Snowfall. In the event of two (2) or more inches of snow thus creating the necessity for the blading and/or removal thereof from City streets, it shall be unlawful for any person to park a motor vehicle or allow a motor vehicle to remain parked on any public street within the City following the initial two (2) inch accumulation of snow.
- 7.0403 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 car or 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 in violation with the provisions of this Chapter. Cars 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 car upon payment of a penalty fee as determined by the City Council plus towing charges, within twenty-four (24) hours after the time such car was removed, plus five dollars (\$5.00) for each additional twenty-four (24) hours of fraction thereof. (SDCL 32-30-13,14)
- 7.0404 Abandoned Vehicles. The abandonment of a motor vehicles 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)

- 7.0405 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 7.0403 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.
- 7.0406 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 to avoid conflict with other traffic or in compliance with the directions of a law enforcement officer or traffic control device: (SDCL 32-30-6,6.1,6.2)
- A. In an 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 a fire station and on the side of the street opposite the entrance to any such station within one hundred (100) feet of such entrance.
 - F. On any sidewalk.
 - G. At any place where the vehicle would block the use of a sidewalk.
 - H. In any portion of a street so designated as a fire lane.
 - I. In any portion of a street so designated as a traffic lane.
 - L. At any place where official signs prohibit parking.
 - M. Within twenty (20) feet of a mailbox.
- 7.0407 General Parking Provisions. No vehicle shall be parked with the left side of such vehicle next to the curb, except on one-way streets, or opposite to the flow of traffic. No vehicle shall be parked in the Business District on Broadway Avenue except if such vehicle parked diagonal to the curb with the front wheel touching the curb and the right rear wheel approximately six (6) feet from such curb at approximately forty-five (45) degree angle. It shall be unlawful to park any vehicle upon any street for the purpose of displaying it for sale, or to park any vehicle upon any business street from which vehicle merchandise is peddled, unless authorized by the City Council. It shall be unlawful to park any motor vehicle on any private property without the consent of the owner of the property, or on any public property without the consent of the appropriate governmental agency. (SDCL 32-30-6,6.1,6.2)
- 7.0408 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)
- 7.0409 Handicapped Parking Areas. Parking in those areas so designated as handicapped parking areas by signs and pavement striping shall be restricted to those vehicles identified, by window sticker and/or license plate, as being operated by handicapped drivers. Any person without such identification on his or her vehicle who parks in a

handicapped parking area shall be guilty of a misdemeanor. (SDCL 32-30-11.1, 11.2, 11.3, 11.4, 11.6)

- 7.0410 Double Parking. It shall be unlawful for a vehicle to be double parked. For the purposes of this ordinance, the term "double parked" shall mean that situation where one vehicle is parked so as to occupy two designated parking places. (SDCL 32-30-6.1)

CHAPTER 7.05 – TRUCKS

- 7.0501 Definitions. The following word "truck" shall mean and include truck, trailer and semi-trailer, tractor and farm wagon.
- 7.0502 Truck Routes. The City Council may designate streets and highways within the City as truck routes. Said truck routes shall be posted accordingly.
- 7.0503 Operation of Trucks. A truck may not operate on any city street or highway other than a designated truck route unless otherwise permitted by this article.
- 7.0504 Detours. Trucks may operate on any officially established detour of a truck route or street unless such detours are posted prohibiting such operation by trucks.
- 7.0505 Load Limits.
- A. Trucks may operate on any street or highway as long as the gross vehicle weight does not exceed five (5) tons.
 - B. Trucks whose gross weight is more than five (5) tons may operate only on designated truck routes.
- 7.0506 Police Authority. Any law enforcement officer has the authority to require any person driving or in control of any truck to proceed to any public or private scale for the purpose of weighing and determining whether such truck is in violation of this article or any other Code provision. Such authorities may issue a citation to any motor vehicle that exceeds the limits imposed by this article. Such authorities may detain such vehicles until the weight of such vehicles meets the limits imposed by this article.
- 7.0507 Exceptions to use of truck routes. There shall be the following exceptions to the use of truck routes:
- A. A truck arriving at the end of any designated truck route may be driven over the most direct course to the nearest truck route which extends in the same general direction. A truck may drive on other streets when it is necessary to get to a designation for the purpose of loading or unloading commodities, or for the purpose of towing a disabled or damaged motor vehicle to or from public or private property, and then only by such deviation from the nearest truck route as is reasonably necessary.
 - B. The City Council or the City Maintenance Official shall have the authority, for good cause and upon request, to issue temporary permits for trucks to operate

over routes not established as truck routes by the City Council or to otherwise deviate from the provisions of this article. Such action by the City Maintenance Official shall be subject to review, modification or cancellation by the City Council.

- C. The provisions of the ordinance shall not apply to school buses, the operation of emergency vehicles of law enforcement, fire department or health department, nor to any public utility vehicles engaged in the performance of emergency duties, nor to any vehicle owned by or performing work for the United States, State of South Dakota, City of Valley Springs or political subdivision.
- D. "Trucks" as referred to in this section (except semi-trailers) may deviate from the truck route for the purpose of taking said truck to the owners personal residence or parking facility, but said truck must be parked on the owners real property and not on City streets or City property. In this instance said vehicle may only make one (1) trip to and from owners personal residence or parking facility per day.

7.0508 Street Repair or Construction. Any contractor or material men, while engaged in the repair, maintenance or construction of city streets, utilities or any other authorized City activity is permitted as long as these vehicles only use the city streets within the immediate work area and use the shortest route from the truck route to the work area.

CHAPTER 7.06 – VEHICLE EQUIPMENT

7.0601 Warning Tickets. Any authorized law enforcement officer(s) 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 by the time specified on the warning ticket.

7.0602 Lights Required. A motor vehicle in motion during the period from half an hour after sunset to half an hour before sunrise 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 (1) lighted lamp in front and one (1) in the rear.

7.0603 Headlights Dimmed. No person shall use headlights upon any vehicle on any street unless the same are dimmed in such a way as to prevent the light being dazzling or blinding to persons using the streets.

7.0604 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.

- 7.0605 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.
- 7.0606 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.
- 7.0607 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.
- 7.0608 Mufflers. No person shall drive a motor vehicle on any street within the City unless such vehicle is equipped with a 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 cutout on any motor vehicle within the City.
- 7.0609 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 some warning sign or signal plainly discernible to other drivers and clearly indicating the projecting parts of such load.
- 7.0610 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 the state law governing such vehicle.
- 7.0611 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 windshield side wings, sides or rear windows of such motor vehicle other than a certificate or other paper required to be so displaced by law or other temporary driving instruction placed thereon by the manufacture.
- 7.0612 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.

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 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 his or her possession a valid driver's license.
- 7.0703 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.
- 7.0704 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.
- 7.0705 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 of occupant of such property.
- 7.0706 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.
- 7.0707 Crossing Streets at Right Angles. Persons operating snowmobiles are permitted to cross streets at right angles but only may do so after stopping and fielding the right-of-way to all approaching traffic and crossing as closely as possible to an intersection or approach.
- 7.0708 Speed. No person shall operate a snowmobile at a speed greater than is reasonable or proper, under all existing circumstances.

- 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.
- 7.0710 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.
- 7.0711 Emergency Use.
- 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 the emergency conditions shall be subject to all existing traffic ordinances of the City and traffic laws of the State.
- 7.0712 Equipment Required. All snowmobiles operated in the City shall have the following equipment:
- 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.
- 7.0713 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.
- 7.0714 Sidewalk Operation Prohibited. No person shall operate a snowmobile upon any public sidewalk in the City.
- 7.0715 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.
- 7.0716 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 tow bar.
- 7.0717 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.

CHAPTER 7.08 - MISCELLANEOUS PROVISIONS

- 7.0801 Clinging to Moving Vehicles. No person traveling upon any bicycle, motorcycle, coaster, sled, roller skates, or any toy vehicles shall cling to or attach himself or such vehicle to any other moving vehicle upon any street.
- 7.0802 Riding on Outside of Vehicles. No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers. This provision shall not apply to persons riding within truck bodies in space intended for merchandise.
- 7.0803 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.
- 7.0804 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)
- 7.0805 When Driver Unable to Report. An accident report shall not be required from any person who is physically incapable of making such report during the period of such 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 accident shall cause to be given the notice not given by the operator. (SDCL 32-34-8,9)
- 7.0806 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 name, address and the license number of the vehicle he is driving, and shall upon request and if available, exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with, and shall 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)
- 7.0807 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 7.0806. (SDCL 32-34-7)

- 7.0808 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 7.0706. 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)
- 7.0809 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. (SDCL 32-34-4)
- 7.0810 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 7.0708 or statute. (SDCL 32-34-4)
- 7.0811 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 shall notify a law enforcement officer of such accident.
- 7.0812 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.
- 7.0813 Notice to Appear. A person charged with a 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.

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.

- 7.0814 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 procedures 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.

- 7.0815 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.

- 7.0816 Repair of Vehicle with Reportable Damage Prohibited Unless Required Notice Affixed. The person in charge of any garage or repair shop shall not commence repair on any motor vehicle which shows evidence of having been involved in a reportable accident or struck by any bullet unless the vehicle bears the notice provided for in SDCL 32-34-23.

- 7.0817 Off-road Vehicles; Operation on Highway Prohibited. No person may operate on a public street or highway any off-road vehicle except for crossing from one (1) side of the road to the other. A person may operate an off-road vehicle in a highway ditch if the vehicle is operated as close as possible to the outer edge of the highway right-of-way. However, no person may operate an off-road vehicle except a snowmobile in a highway ditch that is designated as part of the state snowmobile trails system pursuant to SDCL 41-19.

TITLE 8 – WATER AND SEWER

[WATER SUPPLY SYSTEMS SDCL 9-47]

[SEWER SUPPLY SYSTEMS SDCL 9-48]

Chapter 8.01 – General Provisions

Chapter 8.02 – Water Provisions

Chapter 8.03 – Sewer Provisions

Chapter 8.04 – Sewer and Water Rates

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 Finance Office. 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 his application and as they may be revised from time to time in addition to conditions and agreements as the Council shall deem advisable.

- 8.0102 Same-Not Available to Debtors. The City may decline or fail to cease to furnish utility service to any person who may be in debt to the City for any reason, 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: (SDCL 9-47-1)
 - A. Failure to meet the applicable provisions of law.
 - B. Violation of the rules and regulations pertaining to utility service.
 - 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 of the termination of municipal utility service. At any time before the date of termination, a customer may dispute the correctness of all or a 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 Customer Disputes. The procedure for customer disputes shall be as follows:

- A. Before the date of termination, the customer shall notify the Finance Officer orally or in writing that the customer disputes all or a part of the amount shown on the municipal utility bill or the determination that a violation of this Section has occurred giving rights to a termination stating as completely as possible the basis for the dispute.
- B. Within five (5) days after the receipt of the customer's notice, the Finance Officer shall arrange an informal meeting with the customer. Based upon the municipal records, the customer's allegations and all other relevant materials available to the official the Finance Officer shall attempt to resolve the dispute, in a manner satisfactory to both the City and the customer.
- C. Within five (5) days after the meeting, the Finance Officer shall mail to the customer a copy of his or her decision resolving the dispute and within five (5) days of receipt of the notice, the customer may request, in writing, a formal hearing before the City Council. The formal hearing shall be held at the next regularly scheduled Council meeting.
- D. At the hearing, the City Council and the customer shall be entitled to present all evidence that is relevant and material to the dispute, be represented by counsel, and examine and cross-examine witnesses.
- E. Based upon the record established at the hearing, the City Council shall, within five (5) days of the completion of the hearing, issue its written decision formally resolving the dispute, which decision shall be final and binding upon the City and the customer.

Utilization of this dispute procedure shall not relieve a customer's obligation to timely and completely pay all other undisputed municipal utility charges and the undisputed portions of any amounts subject to the present dispute. Failure to so pay shall subject the customer to termination.

8.0105 Termination After Customer Disputes. Until the date of the Finance Officer's or the Council's decision, whichever is later, the municipal utility shall not terminate the utility service of the customer and shall not issue a notice of termination solely for nonpayment of the disputed amounts. When it is determined that the customer must pay some or all of the disputed amounts, the utility shall promptly mail to or personally serve upon the customer a notice of termination containing the following:

- 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 municipal utility receives complete payment of the amount shown, if any, prior to the date of termination, municipal utility service shall be terminated.

8.0106 Termination Procedures. Except as provided in Section 8.0105 with respect to disputes, all terminations of municipal utility services for violations of Section 8.0103 shall follow these procedures:

- A. If by the payment date shown on the municipal utility bill, complete payment has not been received by the municipal utility, or another violation of Section 8.0103 has occurred, the municipal utility shall mail to, or personally serve upon, the customer a notice of termination at least three (3) days after the payment containing (i) the amount to be paid or a statement of violation of Section 8.0103; (ii) the date of the notice of termination; (iii) the date of termination which shall be at least fifteen (15) days from the notice of termination; (iv) notice that unless the municipal utility receives complete payment of the amount shown, if any, service shall be terminated, or notice that service shall be terminated for another violation of Section 8.0103.
- B. (i) If prior to the date of termination when the termination is for nonpayment; (A) the municipal utility has not received complete payment of the amount shown on the notice of termination; or (B) the customer has not notified the municipal utility that disputes the correctness of all or part of the amount shown on the notice of termination, or (ii) if, prior to the date of termination for other violation of Section 8.0103, the customer has not notified the municipal utility that disputes the violation, then the municipal utility shall terminate municipal utility service provided to the customer on the date of termination.

8.0107 Provisions for Termination of Service. The municipal utility shall terminate 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.

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.

The City Finance Officer may agree to the partial payment of at least 1/3 of the balance of the municipal utility bill and the customer's entering into a written agreement to pay the balance within sixty (60) days. Failure to make payments as agreed shall also be grounds for termination under the provisions of this Chapter.

8.0108 Service Taps – Extensions. Tapping of any water or sewer main for the purpose of making connection shall be done only 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 and sewer facilities for hookups shall be provided, unless otherwise specified by the 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. This shall hereinafter be referred to as the extension line. The City Council may require said extension line to the farthest end of the petitioning property owners' lot line.

Any additional property owners desiring hookups from the extension lines thus paid for by the petitioning property owners shall reimburse the petitioning property owner for their pro rata share of the actual costs as provided herein. The pro rata share of the actual costs shall be determined by multiplying the actual costs by a fraction, the numerator of which is the total front footage of the additional property owner desiring a hookup from the extension line and the denominator of which is the total front footage provided by the extension line which was paid for by the petitioning property owner. Said charge to be paid by the additional property owners desiring hookups shall be payable only for the benefit of the petitioning property owner, and shall not run with the land. The actual costs referred to herein shall be documented by the petitioning property owner by paid receipts filed in the office of the City Finance Officer.

- 8.0109 Hookup Fees. An initial hookup fee at a minimum as specified by the City Council reflecting costs incurred, but in no event less than two hundred and fifty dollars (\$250.00) for water and three hundred and fifty dollars (\$350.00) for sewer, shall be paid to the City by all applicants for water and sewer service.

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 paid 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 authorized personnel of the City.

- 8.0110 Extension of Lines. The City may serve water or sewer customers outside the municipal corporate limits solely at the discretion of the 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 and other fees as set forth and regulated by the City.

- 8.0111 Private Lines. Private water or sewer mains shall not be installed in the City unless authorized by the City Council. For the purposes of this section, the phrase "private water and sewer mains" shall be construed to include any rural water pipelines, pipes or waterlines.

- 8.0112 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.

- 8.0113 Excavation Permits. For the purposes of water and sewer connections and/or extensions, no person shall make or cause to be made any excavation in or under any street, parking area, sidewalk, alley, or public ground, or remove any earth, soil, paving, gravel, or material therefrom without having first obtained a permit therefor as hereinafter provided.

Applications for such permit shall be made to the City Council, and accompanied by a deposit in such sum as deemed necessary by said committee to insure the replacement and refilling of any such excavation or to cover any damages which may be caused to any street or for replacement of bituminous surfacing.

Any unused portion of said permit shall be refunded to the applicant upon recommendation and approval of the City Council.

- 8.0114 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. No backfill shall be placed until the work has been inspected, and backfilling on City streets, avenues, or alleys shall be according to approved specifications. Authorized personnel of the City shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the department when the work is ready for final inspection and before underground portions are covered.

- 8.0115 Guarding Excavations. Any person receiving a permit 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.

- 8.0116 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 sewerage system, failure of water supply, interruption of service or any cause outside the direct control of the City.

- 8.0117 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.
- 8.0118 Damage, Trespass of Equipment. It shall be unlawful for any person, not having authority to do so, to open any water hydrant or tamper with any water and 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.
- 8.0119 Razing Permit. No person shall raze or remove any building or structure which is connected to a water or sewer main or disconnect any building or structure from such main without first having obtained a permit therefore from the City Council.
- 8.0120 Unlawful Use. No person, other than employees of the City, shall be authorized to 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.
- 8.0121 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 expense, 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.

CHAPTER 8.02 – WATER PROVISIONS
 [WATER SUPPLY SYSTEMS SDCL 9-47)]

- 8.0201 Duties of Utilities Superintendent. It is the duty of the Superintendent to:
- A. Carry out the provisions of all City ordinances and resolutions concerning the municipal water system;
 - B. Supervise the operation and maintenance of the water system;
 - C. Account to the City Council for any expenditures made in the discharge of his office;
 - D. Perform any other duties as may be assigned by the City Council or Mayor.
- 8.0202 General Regulations of Water System. The rules, regulations and water rates hereinafter named shall be considered a part of the contract with every person, company or corporation who is supplied with water through the water system of the City and every such person, company or corporation by taking water shall be considered to express his or their assent to be bound thereby. Whenever any of them, or such others as the City Council may hereinafter adopt are violated, the water shall be cut off from the building or place of such violation, although two (2) or more parties may receive water through the same pipe, and shall not be turned

on again except by order of the City Council or superintendent and upon the payment of expenses and other terms as the City Council shall demand.

- 8.0203 Water Meters. All water services being supplied from the distribution systems of the City shall be provided with a meter of a kind, size and type meeting the approval of the City Council. All meters must be procured from the City or approved by the City and installed under the supervision of parties designated by the City Council. The costs of the meter and installation are to be borne by the owner of the property upon which meter is to be installed.
- 8.0204 Sealing of Water Meters. Upon the installation of meters, the meters shall be sealed both at the register box and couplings with a form of seal designated by the City Council. The seals shall not be broken except upon authority of the City Council or upon authority of its duly authorized agent. The residents of the property upon which meter is installed will be held responsible for the intactness of the seals and a fine will be imposed upon the resident of any property where the seal or seals may be found to be broken.
- 8.0205 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.
- 8.0206 Testing Meters. The consumer and/or owner of property may have the meter tested by depositing with the City Finance Office the sum, as set by Resolution of the City Council and kept on file with the City Finance Officer, to cover the cost of testing. Whenever any meter, upon being tested, shall be found to register one hundred two percent (102%) or more, the fee paid by said consumer for such inspection shall be repaid to said consumer, and an adjustment shall be made for the period of the inaccuracy known. If the period of inaccuracy is not known, the adjustment shall be paid for the period since the meter was last tested but not to exceed six (6) months. Should the meter be found to register less than one hundred two percent (102%), the sum deposited will not be returned.
- 8.0207 Estimate of Water Changes. If a meter fails to register for any cause, the amount charged 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.
- 8.0208 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. 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.

Where 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.

8.0209 Meter Reading. All water meters are to be read once each calendar quarter and then recorded. The City will make periodic checks on the reading of the meters. Broken or malfunctioning meters are to be reported at once; if due to the user's negligence, it will be replaced at the user's expense.

8.0210 Payment of Water Rates. The owner of any property where water service is supplied by the City of Valley Springs will be held responsible for the payment of all water bills by the 20th day of each calendar quarter. Any bill for water and/or wastewater services which is not paid prior to the 21st day of the quarter in which it is due, shall be deemed to be delinquent and the water becomes subject to being shut off. A late fee of ten (\$10.00) dollars shall be added if payment is received after the 20th of the month following billing.

After a bill becomes delinquent, a notice of disconnection will be sent to the user. If the past due amount is not paid, a City employee will personally serve notice that the water shall be shut off to the delinquent property within ten (10) days of service of such notice. If after such personal notice, the delinquent property owner has not either paid the bill, together with the actual costs of personal service or appealed the water and/or wastewater charge to the City Council, the Superintendent shall then shut off water service.

An appeal of the water and/or wastewater charge may be had in the manner specified under Section 8.0104.

8.0211 Reconnection After Disconnection. In the event that any water service is disconnected for nonpayment of a bill, a disconnection fee of twenty-five dollars (\$25) shall be charged to the property owner. Every property owner shall have the right to have the same reconnected only upon the payment of the amount due plus an additional reconnection fee of twenty-five dollars (\$25).

8.0212 Voluntary Discontinuance of Service. Persons wishing to discontinue the use of any water service shall give written notice thereof at the City Hall. Failure to do so shall render them liable for the payment of all bills until such notice has been given.

Persons wishing to temporarily discontinue the use of any water service shall give written notice thereof at the City Hall.

A disconnection fee of ten (\$10) dollars shall be charged to the property owner. At the time the property owner wishes to continue service, a ten (\$10) dollar fee shall be paid.

8.0213 Interruption of Service. The users of any water service furnished by the City are hereby notified that the supply of such utility may be temporarily shut off at any

time. Notice shall be given, if feasible, of the contemplated shutoff, but accidents may render this impossible; hence the City hereby warns those dependent upon the utility service for any purpose of this hazard. Immediately upon finding the supply shutoff it becomes the duty of the occupant of the premises to take prompt precautions to prevent damages.

- 8.0214 Restricting Use. The City hereby 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.

Water shall be used only for beneficial purposes and shall never be wasted. The right is reserved to suspend the use of sprinklers and hoses for watering lawns, yards, and gardens whenever, in the opinion of the City Council, a public emergency exists.

- 8.0215 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 cut 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 said City by any user whose water charge has been paid, or who has complied with the rules of said City, because of such turn-off, it being expressly stipulated that the necessity for such turn-off shall be deemed to be the joint act of all served through such service.

- 8.0216 Use Assumed. All premises connected to any utility 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 utility service of the City.

- 8.0217 Dual Check Backflow Preventor. A dual check backflow preventor approved by the City Council shall be installed on the outlet side of the water meter on all new homes or buildings or anytime plumbing is changed within five feet (5') of the outlet side of said meter.

It shall be the owner's responsibility to maintain the dual check backflow preventor.

- 8.0218 Definition. "Water User" shall be defined as all residential and non-residential users including all households, apartment dwellers, housing units, industrial and commercial establishments. This term is not to include residents of a nursing home.

- 8.0219 Water Deposit. Every person desiring a supply of water from the city must make application therefore to the Finance Officer upon blanks to be furnished by said Finance Officer. Not more than one house, trailer, or apartment shall be supplied from one tap except by special permission by the City Commission. Prior to the commencement of water service, the user shall pay a seventy (\$70.00) dollar water service deposit, which shall be refunded at the termination of water service, less any

delinquent unpaid water charges. This rule shall be subject to change upon motion of the city council.

CHAPTER 8.03 – SEWER PROVISIONS

[SEWER SUPPLY SYSTEMS SDCL 9-48]

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 (1.5 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 wastewater and storm or surface water.
- E. "Easement" – An acquired legal right for the specific use of land owned by others.
- F. "Floatable 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 oil 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 ground water.
- J. "pH" – The logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of 10^{-7} .
- K. "Properly Shredded Garbage" – 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 ½ inch (1.27 centimeters) in any dimension.

- L. "Public Sewer" – A common sewer controlled by a governmental agency or public utility.
- M. "Sanitary Sewer" – 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" – The spent water of a community. The preferred term is "wastewater."
- O. "Sewer" – A pipe or conduit that carries wastewater or drainage water.
- P. "Slug" – 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 called "Storm Sewer") – A drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.
- R. "Superintendent" – The superintendent of all wastewater facilities of the City or his authorized deputy, agent or representative.
- S. "Suspended Solids" – Total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is memorable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.
- T. "Unpolluted Water" – 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. "User" – All residential and non-residential users including all households, apartment dwellers, housing units, industrial and commercial establishments. This term is not to include residents of a nursing home.
- V. "Wastewater" – 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 groundwater, surface water and storm water that may be present.

- W. "Wastewater Facilities" – The structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.
- X. "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."
- Y. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

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 its jurisdiction, any human or animal excrement, garbage, or other objectionable waste.
- B. 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.
- C. The owner 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, 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 60 days after date of official notice to do so, provided that said public sewer is within 400 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 8.0302 I, 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 sewage disposal system the owner shall first obtain a written permit issued by the City Council. The permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the City. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the City and the Department of Water and Natural Resources, State of South Dakota. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City. No connection from any private sewage disposal system shall be made with any public sanitary sewer under jurisdiction of the City.

- C. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in 8.0302 I, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
- D. 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 Finance Officer.
- B. There may 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 or his agent shall make application on a form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Sewer Superintendent. A permit and inspection fee for a residential or commercial building sewer permit and for an industrial building sewer permit shall be paid to the City at the time the application is filed.
- C. All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. The owner of the property is responsible for all plumbing and fixtures from the point of the connection to the sewer main to the structure or his premises. An initial hookup fee shall be paid to the City by all applicants for new service from the connection of their private service to a public sewer main. The City shall not be responsible for any expense in connection therewith. All hookup fees are set by the City Council and are collectable at the time of the issuance of a building permit.
- 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 aforementioned.
- E. Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the Sewer Superintendent, to meet all requirements of this ordinance.

- F. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings 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.
- G. No person(s) shall make connection of roof down spouts, 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 unless such connection is approved by the Sewer Superintendent for purposes of disposal of polluted surface drainage.
- H. 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 gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Sewer Superintendent before installation.
- I. The applicant for the building sewer permit shall notify the Sewer 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 Sewer Superintendent or his representative.
- J. All excavations for building sewer installation shall be adequately guarded with barricades and lights to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of work shall be restored in a manner satisfactory to the City.

8.0305 Use of the Public Sewers.

- A. Storm water other than that exempted herein 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 Sewer Superintendent and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the Sewer Superintendent, to a storm sewer, combined sewer, or natural outlet. No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.

It shall be unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of said City, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Title.

- B. No person shall discharge or cause to be discharged any of the following water or wastes into 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 injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
 3. Any waters or wastes having a pH lower than (5.5), or having any 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 fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
 5. The use of the sewer system of the City, for the disposal of crude oil, refined oil or any and all other petroleum products, shall be prohibited.

Grease, oil, and sand interceptors shall be provided when, in the opinion of the City Council, they are necessary for the proper handling of wastes. Where installed, such interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

Any user discovered to have discharged any toxic pollutants into public sewer facilities, in addition to other penalties as provided by ordinance and law, shall be responsible for all costs associated with treating or otherwise disposing of such pollutants.

- C. The disposal by any and all persons of garbage, cans, washers, filters and other foreign debris into the sanitary sewer system of the City shall also be prohibited.
- 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 health, public property, or constitute a nuisance. The Sewer Superintendent may set limitations lower than those established in the regulations below if in his opinion more severe limitations are necessary to meet the above objectives.

In determining 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 process employed, capacity of 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 wastewaters 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 150° Fahrenheit (65° Celsius).
2. Wastewater containing more than twenty-five (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 8.0301 (K)). 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 such that as received in the composite wastewater at the wastewater treatment works, it 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 Sewer Superintendent.
7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Sewer 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. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

- 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 8.0305 D, and which in the judgment of the Sewer 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 Sewer 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 8.0305 (J) of this article.

When considering the above alternative the Sewer 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. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained in satisfactory and effective operation by the owner at his expense.
- G. When required by the Sewer Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances to facilitate observation, sampling, and measurement of the wastes. Such structure shall be accessible 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.

- H. The Sewer Superintendent may require a user of sewer services to provide information needed to determine compliance with this ordinance. This information may include:
1. Wastewater discharge peak rate and volume over a specified time period.
 2. Chemical analyses of wastewaters.
 3. Raw materials, processes, and products affecting wastewater volume and quality.
 4. Quantity and disposition of specific materials important to sewer use control.
 5. A plot plan showing sewer and pretreatment facility locations on the user's property.
 6. Details of wastewater pretreatment facilities.

7. Details of systems to prevent and control spills of materials into the municipal sewer.

- I. 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 Sewer Superintendent.
- J. 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 willfully or negligently damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities.

8.0307 Powers and Authority of Inspectors.

- A. The Sewer 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 Sewer 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 may withhold information considered confidential. 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 necessary work on private properties referred to in 8.0307 (A) above, the Sewer 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 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 8.0305 (G).
- D. The Sewer 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. Entry and all subsequent work shall be in accordance with the terms of the easement pertaining to the private property involved.

- 8.0308 Proper Design and Construction of New Sewers and Connections. The size, slope, alignment, materials of construction of all sanitary sewers and sewer connections, and methods to be used in excavating, placing of pipe, jointing, testing, and backfilling the trench shall all conform to the requirements of the Uniform Building Code or other applicable rules and regulations of the City 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.

All sanitary sewer shall be cast iron soil pipe, ASTM specification (A74-42) or equal, vitrified clay sewer pipe, ASTM specification (C13-441) or equal; PVC: or other suitable material approved by the City Council. Additional requirements may be provided when any part of a building sewer is located near a water service pipe, or where the sewer is exposed to damage by tree roots or unstable ground.

The size and slope of sanitary sewer shall be subject to the approval of the City Council, but in no event shall the diameter be less than four inches. The slope of such pipe shall be not less than one eighth inch per foot.

Whenever possible, the sewer shall be brought to the building at an elevation below the basement floor. No sewer shall be laid parallel to or within three (3) feet of any bearing wall, which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The sewer shall be laid at uniform grade and in straight alignment in so far as possible. Changes in direction shall be made only with properly curved pipe and fittings. The connection of the sanitary sewer into the public sewer shall be made at the "y" branch, if such branch is available at a suitable location. Where the public sewer is greater than twelve inches in diameter, and no properly located "y" branch is available, a neat hole may be cut into the public sewer to receive the sewer connection, with entry in the downstream direction at an angle of about forty-five (45) degrees. A forty-five (45) degree ell may be used to make such connection, with the spigot end cut so as not to extend past the inner surface of the public sewer. Smooth, neat joint shall be made, and the connection made secure and watertight. The connection into the public sewer shall be made under the supervision of the Water and Sewer Superintendent.

- 8.0309 Disconnection. When a disconnection from the sanitary sewer is made, the sewer service shall be closed to the satisfaction of the Water and Sewer Superintendent. Closure shall be at the curb line on residential property and at the property line on commercial property.

8.0310 Penalties.

- A. Any person found to be violating any provision of this ordinance except 8.0306 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 shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$200.00 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.
- C. Any person violating any provision(s) of this ordinance shall be liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.

8.0311 Validity.

- A. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- B. 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 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 Total Annual Operation and Maintenance Cost. The City, or its engineer, may determine the total annual costs of operation and maintenance of the wastewater system necessary to maintain the capacity and performance, during the useful life of the treatment system, for which it was 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 tests, and a reasonable contingency fund.

8.0403 Determining Each User's Wastewater Contribution Percentage. The City, or its engineer, may determine for each user or user class the average daily volume of discharge 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 or its

engineer also 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 or its engineer may 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 may 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 250 ppm BOD and 275 ppm TSS. The surcharge rate structure for such above-normal strength waste dischargers shall be set by resolution of the City Council.
- 8.0405 Determining Each User's Wastewater Service Charge. Each non-residential user's wastewater treatment cost contribution as determined in Sections 4 and 5 may 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 City Council may classify industrial, commercial, and other non-residential establishments as a residential user, provided the wastes from these establishments are equivalent to the wastes from the average residential user with respect to volume, TSS, and BOD.
- 8.0406 Payment of the User's Wastewater Service Charge and Penalties. The City may 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 wastewater utility billing. The owner of any property where wastewater service is supplied by the City of Valley Springs will be held responsible for the payment of all wastewater bills by the 20th day of each calendar quarter. Any bill for water and/or wastewater services which is not paid prior to the 21st day of the quarter in which it is due, shall be deemed to be delinquent and the water becomes subject to being shut off. A late fee of ten (\$10.00) dollars shall be added if payment is received after the 20th of the month following billing.

After a bill becomes delinquent, a notice of disconnection will be sent to the user. If the past due amount is not paid, a City employee will personally serve notice that the water shall be shut off to the delinquent property within ten (10) days of service of such notice. If after such personal notice, the delinquent property owner has not

either paid the bill, together with the actual costs of personal service or appealed the water and/or wastewater charge to the City Council, the Superintendent shall then shut off water service.

An appeal of the water and/or wastewater charge may be had in the manner specified under Section 8.0104.

- 8.0407 Review of User's Wastewater Service Charge. The City may review the total annual cost of operation and maintenance as well as each user's Wastewater Contribution Percentage every two years and revise the system as necessary to assure equity of the service charge system and to assure sufficient revenue 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 attributed to that class for the next year and adjust the rate accordingly.

If a significant user 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 City Council, 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 finding as soon as possible.

- 8.0408 Notification. Each user may 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.

- 8.0409 Rate Schedule, Deposits and Classification of Users.

- A. Establishment of Rates. The utility rates shall be established by Resolution of the City Council and kept on file in the office of the City Finance Officer. Rates may be modified at any time during the year and shall be effective on the first day of the billing cycle following the effective date of the resolution. The utility meter rates shall be structured to provide sufficient funds to cover the following costs:
1. Cost of current operation and maintenance.
 2. Amounts necessary for working capital.
 3. Amounts necessary to make payments of principal and interest on all obligations.
 4. Amounts necessary for a reasonable reserve for depreciation, and which shall be used solely to pay for capital improvements necessary to off-set current depreciation.
 5. Amounts necessary to fund a reserve account.
 6. Amounts necessary to fund a surplus account.
- B. Deposits. All revenue collected from the utility shall be deposited into such utility account pursuant to and in conformance with the Municipal Accounting Standards published by the Department of Legislative Audit.

C. Classification of Users. Classifications of users for billing purposes, deposits, rates and any other purpose shall be established by Resolution of the City Council.

8.0410 Delinquent Water Bills. The Municipal Finance Officer shall be authorized to certify to the Office of the Minnehaha County Treasurer all unpaid and delinquent water and/or sewer fees due to the City for purposes of collection by the County Treasurer in the following year pursuant to SDCL 34A-6-29.

All water and/or sewer services shall be deemed to be rendered to both the named customer and to the owner of record of the real estate which is occupied by the named customer.

8.0411 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.

TITLE 9 – PLANNING AND ZONING
MUNICIPAL PLANNING AND ZONING SDCL 11-4
[COMPREHENSIVE CITY PLANNING SDCL 11-6]

- Chapter 9.01 – General*
Chapter 9.02 – Planning Commission
Chapter 9.03 – Zoning and Subdivision Regulations
Chapter 9.04 – Uniform Building Code
Chapter 9.05 – Plumbing and Electrical Work
Chapter 9.06 – Flood Damage Prevention

CHAPTER 9.01 – GENERAL

- 9.0101 Ordinances Saved from Repeal. Nothing in this chapter shall be construed to repeal or otherwise affect in any manner:
- A. Any zoning ordinance of the City or amendment thereto.
 - B. Any subdivision ordinance of the City or amendment thereto.
 - C. Any ordinance dedicating, accepting or vacating any plat or subdivision in the City or any part thereof.

CHAPTER 9.02 – PLANNING COMMISSION

- 9.0201 Created. There is hereby created a municipal planning commission, which shall be referred to as the Planning Commission.
- 9.0202 Composition. The Planning Commission shall consist of seven members appointed by the Mayor and approved by the City Council. The appointment of each member of the Planning Commission shall be for terms of two (2) years and appointed in such a manner that there will be an overlapping of tenures. Administrative officials of the City may be appointed as ex-officio members of the Planning Commission.
- Upon appointment, the Planning Commission shall elect a President, Vice-President and Secretary from among its members for a term of one year with eligibility for re-election. The Planning Commission shall hold meetings as called by the President or Zoning Administrator. 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.
- 9.0203 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.

9.0204 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 a 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.

9.0205 Zoning Regulations 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.

9.0206 Subdivision Plats and Regulations. All plans, plats, or re-plats of subdivisions or re-subdivisions of land within the jurisdiction of this ordinance shall first be submitted to the Planning Commission for its recommendation 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 thereto 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 9.03 – ZONING AND SUBDIVISION REGULATIONS (See Appendix I and II)

CHAPTER 9.04 – UNIFORM BUILDING CODE

9.0401 Adoption. The most recent edition of the Uniform Building Code, published by the International Conference of Building Officials, shall be the official building code of the City and is hereby adopted by reference. A copy of the Uniform Building Code shall be on file with the Finance Officer.

9.0402 Conflicts. In the event of any conflict between the provisions of this code, State law or City ordinance, rule or regulation, the provisions of State law or City ordinance, rule or regulation shall prevail and be controlling.

- 9.0403 Building Official. The Zoning Administrator 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, and to make all necessary inspections as required.
- 9.0404 Application for Permits. Application for all building permits required by the Zoning Regulations, Subdivision Regulations and building codes shall be submitted to the Zoning Administrator or Building Official, as designated by the City Council.
- 9.0405 Permit Fees. No building permit shall be issued unless the appropriate nonrefundable fee, established by resolution of the City Council, is paid to the Finance Office.

CHAPTER 9.05 – PLUMBING AND ELECTRICAL WORK

- 9.0501 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 9.06 FLOOD DAMAGE PREVENTION

- 9.0601 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. "Appeal" shall mean a request for a review of the Mayor's interpretation of any provision of this ordinance or a request for a variance.
 - B. "Area of Shallow Flooding" shall mean a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident.
 - C. "Area of Special Flood Hazard" shall mean the land in the flood plain within a community subject to a one (1%) percent or greater chance of flooding in any given year.
 - D. "Base Flood" shall mean the flood having a one (1%) percent chance of being equaled or exceeded in any given year.

- E. "Development" shall mean 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.
- F. "Flood or Flooding" shall mean 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.
- G. "Flood Insurance Rate Map (FIRM)" shall mean the official map on which the Federal Emergency management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
- H. "Flood Insurance Study" shall mean the official report provided in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Insurance Rate Maps and the water surface elevation of the base flood.
- I. "Lowest Floor" shall mean any floor usable for living purposes, which include working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor".
- J. "Manufactured Home" shall mean a structure that is transportable in one (1) or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.
- K. "Manufactured Home Park or Subdivision" shall mean a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads and the construction of streets) is completed on or after the effective date of this ordinance.
- L. "New Construction" shall mean structures for which the "start of construction" commenced on or after the effective date of this ordinance.
- M. "Start of Construction" shall include substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred

eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on the foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or shed not occupied as dwelling units or not part of the main structure.

- N. "Structure" shall mean a walled and roofed building, a manufactured home or a gas or liquid storage tank, that is principally above ground.
- O. "Substantial Improvement" shall mean any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (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 the alteration affects the external dimensions of the structure.

The term does not, however, include either:

- 1. Any project for improvements 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 or a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- P. "Variance" shall mean a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

9.0602 Findings of Fact.

- A. The flood hazard areas of the City of Valley Springs 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 expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

- B. 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.

9.0603 State 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 in specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. 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;
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To insure that potential buyers are notified that property is in an area of special flood hazard; and,
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

9.0604 Methods of Reducing Flood Losses. In order to accomplish its purposes, this ordinance includes methods and provisions for:

- A. 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;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural flood plains, stream channels and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging and other development which may increase flood damage; and,
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

9.0605 Lands to Which This Ordinance Applies. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Valley Springs.

9.0606 Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Emergency Management Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Valley Springs, South Dakota:", dated January 1980, with accompanying Flood

Insurance Rate Maps is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the Municipal Finance Office, Municipal Building, 308 Broadway Avenue, Valley Springs, South Dakota.

- 9.0607 Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one hundred (\$100) dollars or imprisoned for not more than thirty (30) days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- 9.0608 Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this ordinance or another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- 9.0609 Interpretation. In the interpretation and application of this ordinance, all provisions shall be:
- A. Considered as minimum requirements.
 - B. Liberally construed in favor of the governing body
 - C. Deemed neither to limit or repeal any other powers granted under State statutes.
- 9.0610 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 will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City, any officer or employee thereof or the Federal Emergency Management Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.
- 9.0611 Establishing of Development Permit. A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in 6.0606. Application for a Development Permit shall be made on forms furnished by the Municipal Officer and 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:

- A. Elevation in relation to mean seal level, of the lowest floor (including basement) of all structures.
 - B. Elevation in relation to mean sea level to which any structure has been floodproofed.
 - C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in 9.0604.
 - D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- 9.0612 Designation of the Mayor. The Mayor is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.
- 9.0613 Duties and Responsibilities of the Mayor. Duties of the Mayor shall include, but not be limited to:
- 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 for compliance with the provisions of SDCL 10-5-1.5, Encroachments.
- 9.0614 Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with 6.0606, Basis For Establishing the Areas of Special Flood Hazard, the Mayor shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer 9.0320(F(1)) Specific Standards, Residential Construction, and 9.0620(F(2)), Specific Standards, Nonresidential Construction.
- 9.0615 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 substantially improved flood proofed structures:
 - 1. Verify and record the actual elevation (in relation to mean sea level).
 - 2. Maintain the flood proofing certifications required in 6.0613.
 - 3. Maintain for public inspection all records pertaining to the provisions of this ordinance.

9.0616 Alteration of Watercourses.

- A. Notify adjacent communities and the State Planning Bureau prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Administration.
- B. Require that maintenance is provided within the altered or relocated portion of said watercourse so that flood carrying capacity is not diminished.

9.0617 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). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in 6.0616.

9.0618 Variance Procedure, Appeal Board.

- A. The Board of Adjustment as established by the City shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- B. The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Mayor in the enforcement or administration of this ordinance.
- C. Those aggrieved by the decision of the Board of Adjustment, or any taxpayer, may appeal such decision to the court of record as provided in SDCL 11-4.
- D. In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and;
 - 1. The danger that materials may be swept onto other lands to the injury of others;
 - 2. The danger of life and property due to flooding or erosion damage;
 - 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - 4. The importance of the services provided by the proposed facility to the community;
 - 5. The necessity to the facility of a waterfront location, where applicable;
 - 6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

7. The compatibility of the proposed use with existing and anticipated development;
 8. The relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
 9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- E. Upon consideration of factors of Section 4.4-1(4) and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- F. The Mayor shall maintain the records of all appeal actions including technical information and report any variances to the Federal Administration upon request.

9.0619 Conditions for Variances, Procedure.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 1-11 in 6.0618(D) have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Variances shall only be issued upon:
 1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in 6.0618 (D), or conflict with existing local laws or ordinances.
- F. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

9.0620 Flood Hazard Reduction. In all areas of special flood hazards the following standards are required:

A. Anchoring

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. 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. Special requirements shall be that:
 - a. Over-the-top ties be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side at intermediate locations, with manufactured homes less than fifty (50) feet long requiring four (4) additional ties per side;
 - b. Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points, with manufactured homes less than fifty (50) feet long requiring four (4) additional ties per side;
 - c. All components of the anchoring systems be capable of carrying a force of 4,800 pounds;
 - d. Any additions to the manufactured home be similarly anchored; and,
 - e. 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.

B. Construction Materials and Methods

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using the methods and practices that minimize flood damage.

C. Utilities

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contains at least fifty (50) lots or five (5) acres (whichever is less).

E. Encroachments

In all areas of special flood hazard in which base flood elevation data has been provided, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.

F. Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in 9.0606, Basis for Establishing the Areas of Special Flood

Hazard or in 9.0614, 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 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 level 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 standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in 9.0615.
3. Manufactured Homes:
 - a. Manufactured homes shall be anchored in accordance with 9.0620 A (2).
 - b. For new manufactured home parks and manufactured home subdivisions; for expansions to existing manufactured home parks and manufactured home subdivisions; for existing manufactured home parks and manufactured home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds fifty (50%) percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for manufactured homes not placed in a manufactured home park or manufactured home subdivision require that:
 - (1) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level:
 - (2) Adequate surface drainage and access for a hauler are provided; and,
 - (3) In the instance of elevation on pilings, that:
 - (a) Lots are large enough to permit steps.
 - (b) Piling foundations are placed in stable soil no more than ten (10) feet apart.

(c) Reinforcement is provided for pilings more than six (6) feet above the ground level.

- c. All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base floor elevation and is securely anchored to an adequately anchored foundation system.

G. Openings in Enclosures Below the Lowest Floor

For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

1. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
2. The bottom of all openings shall be no higher than one (1) foot above grade.
3. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

TITLE 10 – UTILITY FRANCHISES
[MUNICIPAL UTILITIES IN GENERAL SDCL 9-39]
[UTILITY REVENUE BONDS SDCL 9-40]
[MUNICIPAL TELEPHONE SYSTEMS 9-41]
[MUNICIPAL POWER AGENCIES 9-41A]

Chapter 10.01 – Natural Gas
Chapter 10.02 – Cable Television

CHAPTER 10.01 – NATURAL GAS

- 10.0101 Franchise Granted. There is hereby granted to MidAmerican Energy Company, a South Dakota Corporation, hereinafter called "Company", and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of Valley Springs, South Dakota, hereinafter called the "City", a gas distribution system, to furnish natural gas along, under and upon the streets, alleys and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. For the term of this franchise the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. This franchise shall be effective for a twenty (20) year period from and after the effective date of the ordinance. (Ordinance #265: Effective Date 7-11-00)
- 10.0102 Rights and Privileges. The rights and privileges hereby granted are subject to the restrictions and limitations of the Code of South Dakota.
- 10.0103 Excavations. The Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits and other facilities provided that the same shall be so placed as not to interfere with the construction of any water pipes, drain or sewer or the flow of water therefrom, which have been or may hereafter be located by authority of the City. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, the Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.
- 10.0104 Installations. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall select said alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's

cost of relocation, the City will select the route that requires the other franchisees or users to relocate. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

- 10.0105 City Not Liable. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses on account of injury or damage to any person or property, caused or occasioned, or allegedly caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities authorized by this franchise, provided, however, that the Company shall not be obliged to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.
- 10.0106 Extensions. The Company shall extend its mains and pipes and operate, and maintain the system in accordance with the applicable regulations of the South Dakota Public Utilities Commission or its successors.
- 10.0107 Service. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable South Dakota laws and regulations.
- 10.0108 Police Regulations. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

CHAPTER 10.02 – CABLE TELEVISION

- 10.0201 Definitions. For the purpose of this Franchise, 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 plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
1. "Basic Cable Service" has the same meaning as in the Cable Act.
 2. "Cable Act" means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et. seq., as amended.
 3. "Cable Service" has the same meaning as in the Cable Act.
 4. "Cable System" has the same meaning as in the Cable Act.
 5. "Channel" has the same meaning as in the Cable Act.
 6. "City" means the City of Valley Springs, South Dakota.

7. "City Council" means the Mayor and Council members of Valley Springs, South Dakota.
8. "County" means Minnehaha County, South Dakota.
9. "Demarcation" means a point that is 12 inches on the subscriber's side of the protector, or the equivalent thereof in cases where a protector is not employed.
10. "Drop" means the cable that connects the subscriber ground block or other point of demarcation to the nearest feeder cable of the system.
11. "FCC" means Federal Communications Commission, its designee, or any successor thereto.
12. "Franchise" means the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, permit, license resolution, contract, certificate, or otherwise, which authorizes construction and operation of a Cable System for the purpose of offering cable service or other service to subscribers.
13. "Franchise Fee" means any tax, fee, or assessment of any kind imposed by the City on the Grantee or Grantee's subscriber, or both, solely because of their status as a cable operator, cable subscriber, or cable user. The Franchise Fee payable by Grantee to the City shall be the sole amount payable for all of its rights under this Franchise, including but not limited to, the use of the streets in the operation of the Cable System and for City supervision thereof.
14. "Grantee" means the person agreeing to be bound by the terms of this Franchise ordinance, its contractors/subcontractors, agents, assigns or its successor in accordance with the provisions of this Franchise.
15. "Gross Revenues" shall include monthly Basic Cable Service charges but shall not include monies received as installation charges and charges and fees for reconnection, inspections, and all State and Federal taxes relating thereto. The term "gross revenues" shall not include the amount of any franchise fees or copyright fees passed on to subscribers or any taxes, fees, or assessment of any kind imposed by the State of South Dakota, the City, or any other governmental unit, or third party on subscribers on or for services furnished over the cable system and collected by the Grantee on behalf of such entity.
16. "Person" means any person, firm, partnership, association, corporation or organization of any kind, and any other legally recognized entity.
17. "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent

fixtures or improvements located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing or transmitting the Grantee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

18. "School District" means the Brandon Valley School District.
19. "Service Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.
20. "Subscriber" means any member of the general public who receives Cable Service distributed by a Cable System and does not further distribute it.
21. "Video Programming" has the same meaning as in the Cable Act.

10.0202 Qualifications of Grantee and Grant of Non-Exclusive Authority.

1. The City hereby grants 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 all Public ways and all future 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 Valley Springs a Cable 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, provided that all operable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with in, a manner acceptable to the city. The right so granted includes the right to use and occupy said Public Ways and public places and all matter of easements for the purposes herein set forth.
2. The City specifically reserves the right to grant, at any time, additional franchises for a system in accordance with City, state and federal law.

10.0203 Duration and Acceptance of Franchise. The Franchise shall commence on the effective date of the signed acceptance of this Franchise by the Grantee and shall expire fifteen years thereafter unless renewed, revoked, or terminated sooner as herein provided. (Ordinance #283: Effective Date 8-09-05)

10.0204 Compliance with Applicable Laws, Regulations, Ordinances and Codes.

1. Except in those areas which have been preempted by the Cable act, or any other applicable federal or state law, the Grantee shall be subject to the police powers of the City to adapt and enforce ordinances necessary to the health, safety, and welfare of the public.
2. All facilities and equipment of the Grantee shall be constructed and maintained to the premise demarcation point in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards. All facilities and equipment of the Grantee from the demarcation point to customer premise equipment shall be constructed and maintained in accordance with the provisions of the National Electrical Code of the National Board of Fire Underwriters, and other national, state or City electrical or construction codes which may be in effect.

10.0205 Territorial Area Involved. This Franchise relates to the present territorial limits of the City and to any area added to it during the term of this Franchise.

10.0206 Liability and Indemnification.

1. Grantee shall maintain the following types of insurance with a company, authorized to do business in the State of South Dakota with a rating by Best of not less than "A".
 - a. Worker's compensation upon its employees with statutory limits of the worker's compensation laws of the State of South Dakota and Coverage B employer's liability covering operations of the individual/group/business and its consultants/subcontractors. This shall include "Other States Insurance" so as to include all states not named on the "declarations" page of the insurance policy, but excepting monopolistic state funds states. The available limits for Coverage B, employer's liability shall be not less than \$1,000,000 each accident, \$1,000,000 disease policy limits.
 - b. Commercial general liability (CGL) insurance providing coverage not less than that of the standard commercial general liability insurance policy ("occurrence form") for operations of the individual/group/business or its consultants/subcontractors. If the "occurrence form" is not available, "claims made" coverage shall be maintained for three years after final completion and acceptance of the project by the City. The policy shall include contractual personal injury, bodily injury, and property damage liability coverages with total available limits not less than \$1,000,000 per occurrence, not less than \$2,000,000 general aggregate, \$2,000,000 aggregate products and completed operations. The CGL insurance policy shall name the City and its duly authorized representatives as an additional insured. The City shall be provided with a copy of the certificate and policy endorsement prior to the effective date of this ordinance. This insurance coverage shall be

increased/decreased annually to reflect changes in the Consumer Price Index.

- c. Automobile liability insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers. Such insurance shall provide coverage at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence.
2. Grantee shall indemnify, defend, and hold harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under the Worker's Compensation law which may be caused by the erection, maintenance, use or removal of any of Grantee's attachments, poles, or other undertakings, within the City, or by any action of Grantee, its agents or employees.
3. 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. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities.
4. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Said policy or policies of insurance, or a certificate of insurance thereof, shall be provided to the City prior to the effective date of this ordinance, and then deposited with and kept on file by the City. The City shall be notified at least 30 days prior to expiration or cancellation of any such insurance.
5. All subcontractors of Grantee working in the City's right-of-way shall be bonded.
6. In addition, Grantee shall indemnify, defend, and hold harmless the City for all damages and penalties at all times during the term of this Franchise, as a result of the legal process followed and conducted by the City for granting this Franchise, or Grantee's conduct or performance under this Franchise. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, anti-trust, errors and omissions, theft, fire, and all other damages arising out of Grantee's exercise of this Franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise; such indemnification shall include, but not be limited to, reasonable attorneys' fees and costs.
7. If, in the opinion of the City, the interests of the City cannot reasonably be represented in good faith by the Grantee, the Grantee shall pay all expenses incurred by the City in defending itself, including all reasonable out-of-pocket expenses, including attorneys' fees and costs.

10.0207 System Design. Grantee shall construct a cable system as follows:

1. The system shall be of the type generally referred to as "single trunk, single feeder" wherein the trunk cable shall carry signals in the minimum frequency range of between 5 to 750 MHZ. The system shall provide the capability of distribution of multiple television channels.
2. Any system improvements shall be designed, constructed, and operated to meet the technical standards promulgated by the FCC.
3. The system shall be capable of interconnecting with other cable systems within and adjacent to the City.

10.0208 Operation and Maintenance of System.

1. 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.
2. The Grantee shall maintain a force of sufficient employees to provide safe, adequate and prompt service for its facilities.
3. Service shall be provided in compliance with all consumer protection and customer service regulations governed by the Cable Act, as amended from time to time.

10.0209 Continuity of Service Mandatory.

1. All subscribers shall have the right to continue to receive service, insofar as their financial and other obligations to Grantee are honored. If Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew this Franchise, Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service. If Grantee fails to provide such service, the City may do so.
2. If the Franchisee is changed, or if a new operator acquires the system, Grantee shall cooperate with the City, new Franchisee, or operator in maintaining service to all subscribers. During such period Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.
3. If the Grantee fails, for reasons not beyond its control, to operate the system for ten consecutive days without prior approval of the City, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for Grantee, the City shall receive the revenue from the system's operation, and the Grantee shall

reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City during its period of operation that is the result of Grantee's failure to perform.

4. Nothing in this Franchise shall be construed to be a waiver by Grantee of its constitutional or statutory rights under federal or state law.

10.0210 Subscriber Privacy. The Grantee shall comply with all federal subscriber privacy laws, including information relating to signals from any cable communications channel to a subscriber terminal for purposes of monitoring individual viewing patterns, data or information gathered by monitoring transmission of a signal from a subscriber terminal, and electronic sweeps of the system. The Grantee will comply with Section 631 of the Cable Act.

10.0211 Emergency Use of Facilities. In the case of any emergency or disaster, including weather emergencies, the Grantee shall, upon request of the governing body of the City or an appropriate law enforcement or civil defense authority, make available its facilities to the City, local law enforcement official, or civil defense authorities during any emergency or disaster.

10.0212 Safety Requirements. The Grantee shall at all times employ ordinary care and shall install and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

10.0213 Conditions.

1. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be installed in accordance with the provisions of the National Electrical Safety Code (NESC) prepared by the Bureau of Standards and so located as to cause minimum interference with the proper use of Public Ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any Public Ways and places, and poles, towers, and any other structures, lines, or equipment shall be removed by Grantee whenever in the opinion of the City Engineer, they restrict or obstruct the operation or location of any facility.
2. 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.
3. In the maintenance and operation of their transmission and distribution system in the Public Way, and in the course of any new construction or addition to their facilities, Grantee 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 Grantee 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.

4. No excavations of any type shall be done or caused to be done unless permission in writing is first obtained from the City Engineer. The City may require all or any part of the installation to be underground where all other public utilities are required to be located underground.
5. All work in any way necessitated by the business of Grantee which may involve the opening, breaking up or tearing up of a portion of a Public way or other part of any City-owned or City-controlled property shall at the option of the City be done by the City at the expense of Grantee. In such instances, Grantee shall save the City harmless against all loss or damage to any person or property in accordance with the provisions of Section 10.0206 of this Franchise if the City does not exercise its option, in case of disturbance of any Public Way, the Grantee shall, at its own cost and expense and a manner approved by the City Engineer, replace and restore such Public Way in as good a condition as before the work involving such disturbance was done.
6. If at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any Public Way, the Grantee, upon at least 30 days notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
7. All installations of equipment shall be of permanent nature, durable, and installed in accordance with good engineering practices, and of sufficient height to comply 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 owner, 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.
8. 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 it, and the Grantee may require such payment in advance. The Grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.
9. The Grantee may trim trees upon the overhanging 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.

10. In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground, the Grantee shall place its wires, cables or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so. Underground line shall be placed at depths consistent with the provisions of the National Electrical Safety Code prepared by the National Bureau of Standards. The Grantee shall be responsible for all costs associated with damage to any line which has been installed at a depth less or more than that required. If the ground is frozen, saturated or otherwise unable to facilitate an underground installation and underground installation is required, the installation shall be performed on a temporary basis in compliance with state and federal rules. As soon as conditions change to permit proper underground installation of the cable, the Grantee shall install the cable no later than 30 days after such conditions have changed to allow the installation.
11. The Grantee shall not allow its cable or other operations to interfere with television and radio reception of persons not served by the Grantee.
12. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same Public way or public place, or remove from the Public Way or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street-construction, change or establishment 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 may abandon any property of Grantee in place as hereinafter provided.
13. If the use of any part of the system is discontinued for any reason for a continuous period of twelve months, or if the system or property has been installed in any Public Way or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall promptly remove from the Public Way, 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 Public Way or other area from which such property has been removed to a condition the City.
14. 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.

10.0214 Removal of Facilities.

1. Upon termination of service to any subscriber, the Grantee shall promptly remove all its aerial drops and equipment from the premises of such subscriber upon request. Underground drops shall remain buried.
2. Upon revocation or expiration of this Franchise, the City may request the removal of the Grantee's aerial equipment and facilities. Such removal shall be at the expense of the Grantee. Any disturbance to City property during such removal process shall be restored to its original condition as far as is practicable. The City reserves the right to inspect and approve the condition of its property after such removal. Underground facilities shall remain buried.

10.0215 Transfer or Sale of Franchise.

1. This Franchise and the rights granted under this Franchise may not be sold, assigned, or transferred by the Grantee either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any rights, interest, or property therein, pass to or vest in any person without the consent of the City.
2. The provisions of this section shall apply to the sale or transfer of all or a majority of Grantee's assets or shares of stock, merger (including any parent and its subsidiary corporation), consolidation, creation of a subsidiary corporation of the parent company, or sale or transfer of stock in Grantee so as to create a new controlling interest. The term "controlling interest" as used herein is not limited to majority stock owners but includes actual working control in whatever manner exercised, including the creation or transfer of decision-making authority to a new or different Board of Directors. The transfer of 5 percent of the shares of stock shall be a presumptive transfer of controlling interest and require compliance with the provisions of this section.
3. The Grantee shall provide written notice to the City of any proposed sale, assignment, or transfer. Within 120 days of receipt of such notice, and following a public hearing, within ten days after the public hearing, the City shall approve or deny the sale, assignment, or transfer.
4. The City reserves the right of first refusal of any offer to purchase the system in favor of the City purchasing the system under substantially the same terms and conditions as the offer.
5. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City either lawfully acquires ownership of the Cable System or by its actions lawfully affects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be on the terms set forth in 47 U.S.C. § 547.

6. If the Franchise is revoked, the Grantee may request and the City shall give Grantee in its sole discretion, a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. During such period, the Grantee may continue to operate pursuant to the terms of its prior Franchise. However, in no event shall such authorization exceed a period greater than 120 days from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law. The Grantee's continued operation of its Cable System during the 120 day period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

10.0216 Payment to the City.

1. During the term of this Franchise and so long as Grantee or its successors or assigns operate the Cable System, commencing from the effective date of this ordinance, Grantee shall pay to the City the sum of three percent (3%) of gross revenue. The Franchise Fee shall be payable annually within thirty (30) days following the expiration of the preceding year. A brief report shall accompany the payment showing the basis for the computation of the amount paid in a manner described below.

DATE:

TO: CITY OF VALLEY SPRINGS

FROM: _____

RE: Franchise FEE Mo/Yr

Franchise fees payable for the current month were calculated using prior month revenue numbers as follows:

<u>REVENUE TYPE</u>	<u>SUBSCRIBERS</u>	<u>REVENUE</u>	<u>BASE RATE</u>	<u>FRANCHISE FEE</u>
BASIC			3%	
PREMIUM			3%	
OTHER			3%	
TOTAL				

Payment is attached. If you have questions or concerns, please contact Accounts Payable at (605) XXX-XXXX.

Thank you,

2. 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, 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.
3. The City may, at its request, audit or inspect the books and records of Grantee related to gross revenue, as defined herein, up to seven years prior to the date of the request. In the event any such audit or inspection by the City determines that the Grantee's obligations to the City were under-reported by more than five percent, the cost of such audit or inspection shall be paid by Grantee.
4. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City.
5. If a payment is not made by the due date, interest on the amount due shall accrue from such date at an annual rate of 12 percent.

10.0217 Erection, Removal and Common Use of Poles.

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Engineer with regard to locations, height, 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 Council determines that the public convenience would be enhanced thereby.
2. 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 any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from the City any and all holders of public licenses and franchises within the corporate limits of the City of Valley Springs, including Xcel Energy or Southeastern Electric, as the case may be, to use such towers, poles, lines, cables and other equipment and facilities, with the exception of city street light poles, subject to all existing and future ordinances and regulations of the City. It is the stated intention of the City 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 a number of new or additional poles constructed by Grantee within the City may be minimized.

3. Grantee hereby grants 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 actions, causes of action, 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 their poles, Grantee is required to change or replace poles or install new poles, the City shall compensate Grantee for such additional expense.
4. Where a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreements therefore with the Grantee cannot be reached, the Council may require the Grantee to permit such use for such consideration and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operation.
5. To the extent the State of South Dakota does not regulate the rates, terms, and conditions of pole attachments pursuant to federal law, the City shall follow the FCC's rate-setting formula and pole attachment regulations and decisions to resolve any dispute concerning the use of Grantee's poles or underground conduit by a public utility. Notwithstanding the foregoing, nothing in this ordinance shall be construed to be a waiver by Grantee of its constitutional or statutory rights under federal or state law.

10.0218 Rates.

1. Grantee shall at all times maintain on file with the City Finance Director a schedule setting forth all rates and changes to be made to Subscribers for Basic Cable Service, including installation charges.
2. Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by federal or state law.
3. Grantee's rates for Basic Cable Service shall be subject to regulation by the FCC and/or the City as provided for in the Cable Act and implementing regulations.

10.0219 Performance Evaluation.

1. Within 60 days of the second, fourth, sixth, and eighth anniversaries of the effective date of this franchise, the governing body of the City, as part of a regularly scheduled meeting, and upon notice to the public, may hold a hearing to evaluate the performance of the Grantee. Topics may include, but are not limited to, applications of new technology, system performance, services provided, complaints, privacy issues, and franchise modification.

2. Grantee shall fully cooperate with the City regarding this evaluation. Grantee will at its expense provide such information, data, and documents as the City may reasonably request in connection with the evaluation.
3. If the City reasonably determines that evidence exists of inadequate cable system performance, it may require Grantee to perform tests and analyses as necessary, directed toward the identified or suspected inadequacies. The costs of such tests and analyses shall be borne by the Grantee if said tests and analyses determine that the inadequate cable system performance alleged by the City, in fact, exists. The Grantee shall fully cooperate with the City in the performance of any tests. Results of the tests may include, but are not limited to the following:
 - a. Identification and qualifications of the person performing the tests.
 - b. The nature of the identified or suspected inadequacy which precipitated the test.
 - c. What system components were tested.
 - d. The equipment used and procedures employed in testing.
 - e. The results, and our analyses and interpretation of the results of the tests.
 - f. The method, if any, by which any identified system inadequacy has been, or will be rectified.
 - g. Recommendations, if any, for additional action.
 - h. Any other information pertinent to the tests and analyses which may, be required or is useful.

10.0220 Complaint Procedures.

1. The Grantee shall maintain a customer service facility which Subscribers may telephone during regular business hours to report complaints. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to this service facility. Should Grantee fail to satisfy a complaint, it may then be directed to the City Finance Officer for investigation. In response to a complaint, Grantee shall be afforded a reasonable opportunity to present written statements of its position. The City Finance Officer shall attempt to resolve the complaints but, if this cannot be achieved, he shall submit a recommendation to the City Council, recommending that: (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.

2. As notice of the complaint procedure described in subsection 1, the following information will be distributed in printed form to all new Subscribers at the time of installation:

Pursuant to Section 76.607 FCC Rules, all subscribers are hereby notified that Service Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's Customer Service facility. If the Service Complaint is not resolved in a reasonable length of time it shall then be directed to the office of the City Finance Officer at the City, and shall be processed in accordance with Section 10.0220.

3. Notwithstanding the foregoing, Grantee shall comply with all applicable rules of the FCC with regard to complaint procedures and customer service standards including any required modifications of the complaint procedures or notice to subscribers, as may from time to time be needed to conform such notice and procedures to the FCC rules.

10.0221 City Police Powers. Grantee's rights under this Franchise are subject to the police powers of the City to, adopt and enforce ordinances necessary for the health, safety, and welfare of the public subject to federal and state law.

10.0222 Separability.

1. If any section, subsection, sentence, clause, phrase or portion of this Franchise 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.
2. Should any provision of this Franchise be inconsistent or at variance with any rule, regulation or policy, 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.

10.0223 Notice Requirements. All notices, reports, or demands required by this Franchise shall be given in writing. All notices to the City shall be to the City Finance Officer. All notices to the Grantee shall be to its general manager.

10.0224 Costs to City.

1. Grantee shall reimburse the City for all incidental expenses incurred by it in connection with the publications required for adoption of this Franchise and the rights granted to Grantee hereunder. Such payment shall be made by Grantee to City within thirty days after City shall furnish Grantee with a written statement of such expense.

2. 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.

- 10.0225 Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this Franchise are hereby repealed.
- 10.0226 Cost Defined. It is understood that only the Franchise Fee shall constitute the Franchise Fee. Any payments made or costs incurred in the provision of other services required by this Franchise shall not be considered part of the Franchise Fee.
- 10.0227 Reopeners. It being recognized that the cable television industry is undergoing significant changes in the law, communications technology, services, and competition; because these changes over the term of Grantee's franchise are not entirely predictable at the present time, Grantee and the City agree to negotiate in good faith modifications to Grantee's franchise to the extent necessary to allow the City and the Grantee to benefit from such changes.
- 10.0228 Required Services.

1. The Grantee shall provide the following services to public institutions:
 - a. The Grantee shall provide Basic Cable Service to all public elementary, secondary, post high, and support locations within the City one junction terminal at each building for educational purposes upon request by the City or the school system and at no extra cost to it or the City or the school system, except for cost of installation. This shall mean only one (1) energized cable to such buildings. The cost of any internal wiring shall be borne by the institution.
 - b. Grantee shall also provide the City, for Basic Cable Service to the City owned buildings in the City which are listed below, without charge, one junction terminal to each building at a location therein to be selected by the City.

The following Brandon Valley School District Buildings: (add name and address of building(s)).

Valley Springs Elementary, 301 Valley Drive, Valley Springs, SD 57068

The following City of Valley Springs Buildings: (add name and address of building(s)).

City Hall, 401 Broadway Ave, Valley Springs, SD 57068

City Maintenance Building, 308 Broadway Ave, Valley Springs, SD 57068

- c. The buildings to which service shall be provided may from time to time be amended by the City.
2. Grantee shall provide the following additional services to the City of Valley Springs, Minnehaha County, the Brandon Valley School District, and the subscribers of Grantee's cable television system:
 - a. Emergency Alert Services consistent with and to the extent required by FCC regulations.
 - b. Grantee shall at all times maintain a system with the technical capability of providing not less than 58 channels of information and entertainment.

10.0229 Equal Protection. If the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's Public Ways for the purpose of constructing or operating a Cable System or providing cable service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

10.0230 Enforcement and Termination of Franchise.

1. This Franchise may be terminated by the City upon violation of its terms by the Grantee.
2. If the City becomes aware of violations of the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged violation.
3. The Grantee shall have thirty days from receipt of the notice (a) to respond to the City contesting the allegation, or (b) to cure it, or (c) if, by the nature of the violation, such violation cannot be cured within the thirty day period, initiate reasonable steps to remedy it and notify the City of the steps being taken and the projected date that they will be completed.
4. If the Grantee fails to respond to the notice, or if the alleged violation is not remedied within sixty days after the Grantee is notified of the alleged violation, or such other period as is agreed to between the Grantee and the City, the City shall schedule a public hearing to investigate the violation. Such public hearing shall be held at the next regularly scheduled meeting of the governing body of the City which is scheduled at a time which is no less than five business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard, to present and

cross-examine witnesses. At such time, the City may terminate the Franchise.

5. Enforcement of the terms of this Franchise shall be under the laws of South Dakota and the United States.
6. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

10.0231 Equal Access.

1. Provision of access. A cable operator, as that term is defined in Section 602(6) of the Communications Act of 1934, may not enter into any agreement with a property owner or other person controlling access to any facility having multiple occupants in four or more distinct dwelling or office units that does not provide all cable operators or video programming providers equal access to that facility.
2. Resident's rights. The intent of this section is to give occupants of such multiple dwelling or business unit facility the freedom to choose among competing cable operators or video programming providers and nothing in this section shall be interpreted to require occupants to hook up or subscribe to any services offered by any cable operator or alternative provider of cable or video service.

10.0232 Penalty. Violation of this ordinance shall be punished under the general penalty provisions of the Revised ordinances of the City.

TITLE 11 – TAXATION
[UNIFORM MUNICIPAL NON-AD VALOREM TAX LAW SDCL 10-52]
[USE TAX SDCL 10-46]

Chapter 11.01 – Municipal Sales and Service Tax and Use Tax
Chapter 11.02 – Special Property Tax Classifications

CHAPTER 11.01 – MUNICIPAL SALES AND SERVICE TAX AND USE TAX

- 11.0101 Purpose. The purpose of this chapter is to provide additional needed revenue for the City by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52-1 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.
- 11.0102 Effective Date and Enactment of Tax. From and after the 1st 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 two percent (2%) on the gross receipts of all persons engaged in business within the jurisdiction of the City, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.
- 11.0103 Use Tax. In addition, there is hereby imposed an excise tax on the privilege of the use, storage and consumption within the jurisdiction of the City of tangible personal or services purchased from and after the 1st day 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 rule 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 chapter 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 thereto, and that this shall be considered a similar tax exempt for the same rate thereof to that tax.
- 11.0106 Penalty. Any person failing or refusing to make reports or payments prescribed by this chapter and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be in violation of this ordinance. 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.

- 11.0107 Separability. If any provision of this Chapter is declared unconstitutional or the application thereof to any person or circumstances held invalid the constitutionality of the remainder of the Chapter and applicability thereof to other persons or circumstances shall not be affected thereby.

CHAPTER 11.02 – SPECIAL PROPERTY TAX CLASSIFICATIONS

- 11.0201 New Construction. It is deemed in the best interest of the City of Valley Springs to grant a special tax classification to all new industrial and commercial structures, or additions to existing structures, which new structures or additions have a true and full value of Thirty Thousand (\$30,000) Dollars or more, added to real property.
- 11.0202 Classification of Property. All real property qualifying under SDCL 10-6-35.1 and SDCL 10-6-35.24 shall be valued for taxation purposes as follows:
- A. For the first tax year following construction, zero (0%) percent of the assessed valuation shall be used for tax purposes on such property;
 - B. For the second tax year following construction, not more than twenty-five (25%) percent of the usual assessed valuation shall be used for tax purposes on such property;
 - C. For the third year following construction, not more than fifty (50%) percent of the usual assessed valuation shall be used for tax purposes on such property; and
 - D. For the fourth and fifth years following construction, not more than seventy-five (75%) percent of the usual assessed valuation shall be used for tax purposes on such property.
- 11.0203 Restrictions. Pursuant to SDCL 10-6-35.3, no real property shall qualify for the foregoing new construction tax incentive under these ordinances if the structure fails to comply with all air and water pollution laws and standards which are enacted and may be enacted from time to time by the State of South Dakota.

TITLE 12 – GENERAL PROVISIONS
[ORDINANCES AND RESOLUTIONS SDCL 9-19]

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 or 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 two hundred dollars (\$200.00) or by imprisonment for a period not exceeding thirty (30) days or both such fine and imprisonment.
- 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 reenacted 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, 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 thereby.

APPENDIX I

[ZONING REGULATIONS SDCL 11-4]

APPENDIX II

[SUBDIVISION REGULATIONS SDCL 11-6]