



# Zoning Ordinance

City of De Smet

Draft



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# ARTICLE I GENERAL PROVISIONS

## CHAPTER 1.01 TITLE AND APPLICATION.

### Section 1.01.01 Title.

This ordinance shall be known and referred to as “The Zoning Ordinance of the City of De Smet, South Dakota.”

### Section 1.01.02 Jurisdiction.

The provisions of this ordinance shall apply to all territory within the boundaries of the City of De Smet, South Dakota, as established on the Official Zoning Map of the City of De Smet.

### Section 1.01.03 Purpose.

The Zoning Ordinance is enacted for the purpose set forth and provided for in South Dakota Compiled Laws and Amendments, Chapters 11-4 and 11-6, that is, among other things to promote health, safety, morals, or the general welfare of the community.

This ordinance has been prepared in accordance with the Comprehensive Plan for the City and is designed to coordinate physical development of the community with needs for public services and facilities. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

1. To assist in the implementation of the City of De Smet’s Comprehensive Land Use Plan which in its entirety represents the foundation upon which this Ordinance is based.
2. To foster a harmonious, convenient, workable relationship among land uses.
3. To promote the stability of existing land uses that conform with the Comprehensive Land Use Plan and to protect them from inharmonious influences and harmful intrusions.
4. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the community as a whole.
5. To prevent excessive population densities and overcrowding of the land with structures.

6. To foster the provision of adequate off-street parking and off-street truck loading facilities.
7. To facilitate the appropriate location of community facilities and institutions.
8. To protect and enhance real estate values.
9. To safeguard and enhance the appearance of the community, including natural amenities.
10. To place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the comprehensive land use plan.
11. To regulate and restrict the height, number of stories, and bulk of building and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; and the location and use of other purposes.
12. To regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of building, structures, and land.

## **CHAPTER 1.02 ORDINANCE PROVISIONS**

### **Section 1.02.01 Provisions of Ordinance Declared to Be Minimum Requirements.**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants; the most restrictive or that imposing the higher standards shall govern.

### **Section 1.02.02 Violations/Penalties for Violation.**

Violations of the ordinance shall be treated in the manner specified below.

1. Any person who starts work for which a permit (building, conditional use, variance, rezoning) is required by this zoning ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All administrative fees assessed there under shall be rounded to the nearest whole dollar.
  - A. Upon finding such violation, the Administrative Official shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail

with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the fee for the Building/Use Permit plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.

B. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the normal fee for the associated Building/Use Permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (B) below.

C. Any administrative fee or penalty imposed under the provisions of this zoning ordinance shall be in addition to any other fees or charges required under this zoning ordinance.

2. It is declared unlawful for any the owner or agent of a building or premises in or upon which a violation of any provision of these regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist to violate any of the terms and provisions of these regulations or other official control adopted by the City Council pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this zoning ordinance may be subject to a civil or criminal penalty. The penalty for violation of this zoning ordinance shall be five hundred dollars (\$500.00), or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the Finance Officer and shall be credited to the General Fund of the City.
3. In the event any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building or structure or land is used in violation of this Ordinance or other regulation the Administrative Official, or the City of De Smet, as a corporation or any interested person, in addition to other remedies, may institute injunction, mandamus or any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use of land, to restrain, correct or abate such violation, to prevent the occupancy of said building or land or to prevent any illegal act, conduct, business, or use in and to and of such premises.

4. Any taxpayer of the City may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

**Section 1.02.03 Separability Clause.**

Should any article, chapter, section, or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part other than the part so declared to be unconstitutional or invalid.

**Section 1.02.04 Repeal of Conflicting Ordinances.**

All ordinances or part of ordinances in conflict with this Ordinance or inconsistent with the provisions of this Ordinance, are hereby repealed.

**Section 1.02.05 Effective Date.**

This Ordinance shall take effect and be in force from and after its approval, publication, and effective date according to South Dakota Codified Law.

**CHAPTER 1.03. OFFICIAL ZONING MAP**

**Section 1.03.01 Official Zoning Map.**

The City is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

The Official Zoning Map shall be identified by the signature of the Mayor of the City attested by the Finance Officer under the following words: "This is to certify that this is the Official Zoning Map referred to in Chapter 1.03 of Ordinance Number XX of the City of De Smet, State of South Dakota," together with the date of the adoption of this Ordinance. The Official Zoning Map shall be on file at the office of the City Finance Officer.

If, in accordance with the provisions of this Ordinance and Chapter 11-4, as amended, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall not become effective until after said changes have been made or referenced on the Official Zoning Map by the Finance Officer or in his/her absence a person designated by the City Council. Any unauthorized change by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Chapter 1.02. Section 1.02.02.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the City Offices, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the City.

**Section 1.03.02. Rules Where Map Designation Uncertain.**

Where uncertainty exists with respect to the various zoning districts as shown on the Official Zoning Map, the following rules shall apply:

1. The district boundaries are either streets or alleys, highways, rights-of-way, railroad rights-of-way, waterways, lot lines, property lines, quarter section lines, half section lines, or full section lines, unless otherwise shown.
2. Where the designation on the Official Zoning Map indicates the various districts are approximately bounded by lot lines, the lot lines shall be the boundaries of such districts unless boundaries are otherwise indicated on the map.
3. In subdivided property, the zoning district boundary line on the Official Zoning Map may be determined by use of the scale contained on the map.

**Section 1.03.03 Annexation.**

Subsequent of the effective date of these regulations, any land annexed into the municipal boundaries of the City of De Smet shall be automatically placed into the "A" Agricultural zoning district, unless and until such time as the area is rezoned by amendment of these regulations by ordinance, as provided for in Chapter 3.04, Section 3.04.07 of these regulations.

**Section 1.03.04 Changes and/or Replacement of Official Zoning Map**

In the event that the Official Zoning Map becomes damaged, or destroyed the City Council may, by ordinance, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Mayor attested by the Municipal Finance Officer, and bearing the seal of the City under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Zoning Ordinance of the City of De Smet, State of South Dakota."

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved together with all available records pertaining to its adoption or amendment.

In the event that the Official Zoning Map becomes difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such corrections shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof.

Changes to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 3.04, Section 3.04.07 of these regulations

**ARTICLE II  
DISTRICT REGULATIONS**

**CHAPTER 2.01 APPLICATION OF DISTRICT REGULATIONS.**

**Section 2.01.01 Applicability of Regulations.**

The regulations set forth by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

**Section 2.01.02 Compliance; Generally.**

No building, or any part thereof shall hereafter be used or occupied, and no building or any part thereof shall be erected, constructed, reconstructed, converted, altered, enlarged, extended, raised, moved or used, and no premises shall be used for any purpose other than a purpose permitted in the District in which said building or premise is located, except as hereinafter provided.

**Section 2.01.03 Structures & Lots; Construction or Alteration; Limitations of.**

1. No building or other structure shall hereafter be erected or altered:
  - A. To exceed the height or bulk;
  - B. To accommodate or house a greater number of families;
  - C. To occupy a greater percentage of lot area;
  - D. To have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this ordinance.
2. No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or are below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

**CHAPTER 2.02 NON-CONFORMING USES**

**Section 2.02.01 Intent.**

Within the districts established by this Ordinance or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of



use. Which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival.

Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure, a non-conforming use of land or a non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance by the addition of other uses, or a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance.

#### **Section 2.02.02 Repairs and Maintenance**

On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing to an extent not exceeding ten (10) percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

#### **Section 2.02.03 Uses and Structures.**

A lawful use or structure existing at the time this ordinance is adopted or amended may continue even though such use does not conform to the district regulations subject to the following provisions:

1. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:
  - A. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.
  - B. Structural alteration of buildings or structures may otherwise be made if such changes do not further encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located. Exception: The Board of Adjustment may allow buildings with side yard setbacks less than required herein to have additions erected in line with the existing building and provided further that said additions will be erected no closer to the lot line than the existing building and the addition shall further conform to all ordinance requirements.
  - C. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.
2. Whenever, a nonconforming use or structure has been changed to a conforming use, it shall not be changed back to a nonconforming use.
3. If any nonconforming building is destroyed or damaged by any casualty, such building may be repaired or replaced and use continued providing said reconstruction shall not add to the non-conformity or add to the cubic contents of said building as the same existed at the time of such casualty; and provided further that such repair or reconstruction of such building shall begin within six (6) months after such casualty and completed within a reasonable time thereafter; however, if the damage caused by such casualty is such as to cause a loss in value exceeding fifty (50) percent of the value immediately prior to such casualty then it cannot be rebuilt for a non-conforming use. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.
4. When a nonconforming use or structure is discontinued for a period of one (1) year, it shall not be continued unless in conformance with the requirements of this ordinance and SDCL 11-6-39.
5. Any nonconforming use may be extended throughout any part of a structure, which was arranged or designed for such use previous to the adoption of this ordinance, but shall not be extended outside each structure.

6. No existing nonconforming use or structure shall be enlarged, moved, or structurally altered except to change to a permitted use. This is not to include normal repairs and maintenance, which do not enlarge, move or structurally alter a nonconforming use.
7. Type I and Type II Manufactured Homes located upon any lot or lots of record at the time of the adoption of this Ordinance may be replaced by Type I and/or Type II Manufactured Homes of like dimensions and said replacement shall not be deemed to have changed the use thereof from a nonconforming to a conforming use. If a replacement Type I and/or Type II Manufactured Home is of larger dimension than the replacement Type I and/or Type II Manufactured Home, then application must first be made to the Board of Adjustment for a Conditional Use Permit.
8. "Non-Conforming Land Use" shall be deemed to include non-conforming manufactured home courts existing at the time of the adoption of this Ordinance, and the substitution or replacement of Type I and Type II Manufactured Homes to said manufactured home court shall not be deemed to have changed the use thereof from a non-conforming to a conforming use.
9. Nothing contained in this section shall be so construed as to abridge or curtail the powers of the City Planning and Zoning Commission as set forth elsewhere in this Ordinance.

**Section 2.02.04. Uses Under Conditional Use Provisions Not Non-Conforming Uses.**

Any use which is permitted as a conditional use in a district under the terms of this Ordinance shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

**Section 2.02.05 Non-conforming Lots of Record.**

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership and not of continuous and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such a lot fails to meet the requirements of area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations of the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements in this ordinance.

## **CHAPTER 2.03 DISTRICT REGULATIONS**

### **Section 2.03.01 Generally.**

The district regulations included in this Chapter may be qualified or supplemented by additional regulations appearing elsewhere in this ordinance.

Any use or uses not expressly permitted in a particular district shall be prohibited, unless such uses are existing at the effective date of these regulations and qualify as nonconforming uses.

Deviation from zoning district lot, yard and related requirements, and deviation from city-wide zoning regulations, shall be prohibited, unless a Variance is granted as provided for in Chapter 3.04, Section 3.04.03 of these regulations.

The Board of Adjustment may establish additional requirements and standards for uses and structures permitted by Conditional Use Permit in accordance with Section 3.04.02

### **Section 2.03.02 Zoning Districts.**

The following zone and use districts are hereby established for the purposes of administration and enforcement of this ordinance.

- “A” Agricultural District
- “R-1” Single Family Residential District
- “R-2” General Residential District
- “R-3” Combined Residential District
- “C-1” Central Commercial District
- “C-2” Commercial-Industrial District
- “I” Industrial District

The following districts shall be designated as zoning overlay districts, imposing special regulations on the properties that fall within these overlay districts without abrogating the requirements imposed by the underlying land use district regulations:

- “O/I” Office and Institutional Use Overlay District
- “CB” Central Business Overlay District
- “FP” Flood Plain District

## **CHAPTER 2.04 “A” - AGRICULTURAL DISTRICT**

### **Section 2.04.01. Permitted Uses.**

The following uses and structures shall be permitted in the “A” Agricultural District.

1. Any form of agriculture activity and related farm buildings, but excluding feed lots;
2. Nurseries and greenhouses;
3. Fisheries services;
4. Game propagation areas;
5. Single-Family dwellings;
6. Veterinarians offices and animal hospitals;

### **Section 2.04.02 Permitted Accessory Uses:**

The following accessory uses and structures shall be permitted in the “A” Agricultural District:

1. Accessory uses and structures customarily incidental to permitted uses and structures when established within the space limits of this district.
2. Roadside stands for sales of agricultural products grown or produced on the premises;
3. Signs conforming to Chapter 4.04.

### **Section 2.04.03 Special Permitted Uses:**

The following uses and structures shall be permitted Special Permitted Use in the “A” Agricultural District.

1. Temporary occupancy of a recreational vehicle on a lot with an active building permit for new construction or reconstruction of a single-family dwelling.

### **Section 2.04.04 Conditional Uses:**

The following uses may be permitted as a Conditional Use in the “A” Agricultural District by the Board of Adjustment subject to such requirements as the Board deems necessary.

1. Airports;

2. Cemeteries;
3. Commercial or private recreation areas not normally accommodated in commercial areas such as golf courses, campgrounds, drive in theatres, riding stables, race tracks, swimming pools, etc.;
4. Private clubs;
5. Stables;
6. Sewage treatment plants, but not within one thousand three hundred twenty (1,320) feet of a residence;
7. Type I Manufactured Home provided written consent of all landowners within one hundred fifty (150) feet is submitted with application;
8. Extraction of sand, gravel, minerals and petroleum or natural gas;
9. Public buildings or facilities erected or established and operated by any governmental agency;
10. Radio and television towers and transmitters;
11. Home occupations;
12. Utility substations;

**Section 2.04.05. Prohibited Uses:**

All uses and structures not specifically listed as Permitted Uses, Special Permitted Uses, accessory uses, or Conditional Uses shall be prohibited in the "A" Agricultural District.

**Section 2.04.06. Area/Construction Regulations.**

Minimum lot area, maximum building height, maximum lot coverage and minimum yard requirements shall be regulated in accordance with the following tables:

Table 2.04.06.1

	Minimum Lot Area	Minimum Lot Width	Maximum Height
Single Family Residential	43,560 square feet	150'	35'
Towers or Steeples	To be determined by the Board of Adjustment		75'
Principal building excluding tower or steeple			45'
Other Conditional Uses	To be determined by the Board of Adjustment		

Table 2.04.06.2

	Minimum Front Yard		Minimum Rear Yard	Minimum Side Yard
	Primary	Secondary		
Permitted Uses	75'	37'	50'	30'
Conditional Uses	To be determined by the Board of Adjustment			



## **CHAPTER 2.05 “R-1” SINGLE FAMILY RESIDENTIAL DISTRICT**

### **Section 2.05.01 Permitted Uses:**

The following uses and structures shall be permitted in the “R-1” Single Family Residential District:

1. Single-family dwellings;
2. Modular homes;
3. Public park and recreation areas;
4. Reserved;
5. Churches and other religious institutions.

### **Section 2.05.02. Permitted Accessory Uses:**

The following accessory uses and structures shall be permitted in the “R-1” Single Family Residential District:

1. Accessory uses and structures customarily incidental to permitted uses, except stables;
2. Signs conforming to Chapter 4.04.

### **Section 2.05.03 Special Permitted Uses:**

The following uses and structures shall be permitted Special Permitted Use in the “R-1” Single Family Residential District.

1. Temporary occupancy of a recreational vehicle on a lot with an active building permit for new construction or reconstruction of a single-family dwelling.

### **Section 2.05.04 Conditional Uses**

The following uses may be permitted as a Conditional Use in the “R-1” Single Family Residential District by the Board of Adjustment, subject to such requirements as Board deems necessary. The City Board of Adjustment may grant the following uses provided the written consent of more than fifty percent (50%) of the property owners within one hundred fifty (150) feet of any property line of the premises is obtained.

1. Bed and breakfast establishments;
2. Home occupations. See Chapter 4.19;

3. Offices of recognized professions providing such profession is carried on in their respective residence, and there is no display nor advertising except one sign, not exceeding one (1) square-foot in area, non illuminated, and mounted flat against the wall of the principle building;
4. Schools;
5. Public buildings or facilities established and operated by any governmental agency;
6. Hospitals, nursing homes, and homes for the aged; .
7. Commercial Day Care Facilities not operated at a residence.

**Section 2.05.05. Prohibited Uses:**

All uses and structures not specifically listed as Permitted Uses, Special Permitted Uses, accessory uses, or Conditional Uses shall be prohibited in the “R-1” Single Family Residential District.”

**Section 2.05.06 Area/Construction Regulations:**

Table 2.05.06.1

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Religious Institutions, parks, and recreation areas	30,000 square feet	75'	35'*	30%
Single Family Residence	9,000 square feet	75'	35'	30%
Conditional Uses	To be determined by the Board of Adjustment			

*\*Maximum height for steeples and towers shall be seventy-five (75) feet*

Figure 2.05.06.1

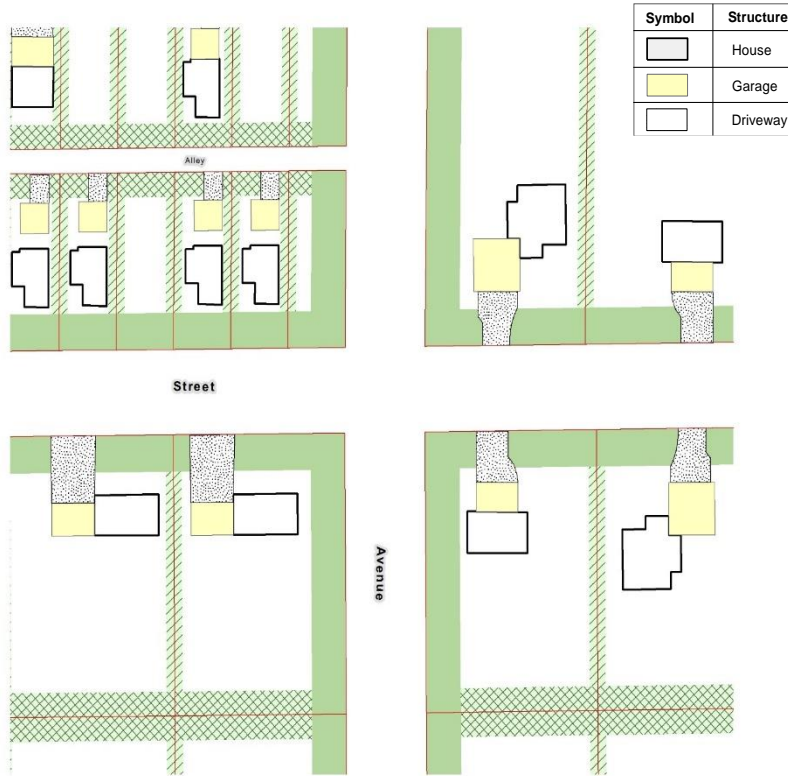





Table 2.05.06.2

	Minimum Front Yard		Minimum Rear Yard	Minimum Side Yard
	Primary	Secondary		
SYMBOL				
Permitted Uses	30'	15'	25'	9'
Hospitals, convalescent and nursing homes, supervised care facilities and congregate housing	50'	30'	30'	30'
Conditional Uses	To be determined by the Board of Adjustment			

## **CHAPTER 2.06 “R-2” GENERAL RESIDENTIAL DISTRICT**

### **Section 2.06.01 Permitted Uses**

The following uses and structures shall be permitted in the “R-2” General Residential District:

1. Single-family dwellings;
2. Two-family dwellings;
3. Modular homes;
4. Public park and recreation areas;
5. Churches and other religious institutions;

### **Section 2.06.02 Permitted Accessory Uses:**

1. Accessory uses and structures customarily incidental to permitted uses; except stables.
2. Signs conforming to Chapter 4.04.

### **Section 2.06.03 Special Permitted Uses:**

The following uses and structures shall be permitted Special Permitted Use in the “R-2” General Residential District.

1. Temporary occupancy of a recreational vehicle on a lot with an active building permit for new construction or reconstruction of a single-family dwelling.

### **Section 2.06.04 Conditional Uses**

The following uses may be permitted as a Conditional Use in the “R-2” General Residential District by the Board of Adjustment, subject to such requirements as the Board deems necessary. The Board of Adjustment may grant the following uses provided the written consent of more than fifty percent (50%) of the property owners within one hundred fifty (150) feet of any property line of the premises is obtained.

1. Bed and breakfast establishments;
2. Type I manufactured homes;
3. Multiple-family dwellings with three (3) or more units (i.e. apartment buildings, town houses, and group row houses);

4. Home occupations. See Chapter 4.19;
5. Offices of recognized professions provided such profession is carried on in their respective residence, and there is no display nor advertising except one sign, not exceeding one (1) square-foot in area, non illuminated, and mounted flat against the wall of the principle building;
6. Schools;
7. Public buildings or facilities established and operated by any governmental agency;
8. Hospitals, nursing homes, and homes for the aged;
9. Commercial day care facilities not operated at a residence;
10. Funeral homes;

**Section 2.06.05 Prohibited Uses:**

All uses and structures not specifically listed as Permitted Uses, Special Permitted Uses, accessory uses, or Conditional Uses shall be prohibited in the "R-2" General Residential District.

**Section 2.06.06 Area Regulations.**

Table 2.06.06.1

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential	6,000 square feet	50'	35'	35%
Two (2) Dwelling Units (A)	6,000 square feet/dwelling unit	100'	35'	40%
Three (3) - Eight (8) Dwelling Units (A)	12,000 plus 1,000 square feet for each dwelling unit over two (2)	100'	45'	40%
Assisted Living, Nursing and Rest Homes, etc.	2,000 square feet/dwelling unit	60'	35'	40%
Churches and other religious institutions established after January 1, 2022	30,000 square feet	75'	35'*	30%
Other Conditional Uses	To be determined by the Board of Adjustment			

\*Maximum height for steeples and towers shall be seventy-five (75) feet

- A. At the time of construction, lot area and width shall comply with these requirements. In order to obtain future building permits for replacement, additions, expansions, etc., each respective unit shall maintain the minimum lot area and lot width for single family residences after subdivision of individually owned units.

Figure 2.06.06.1

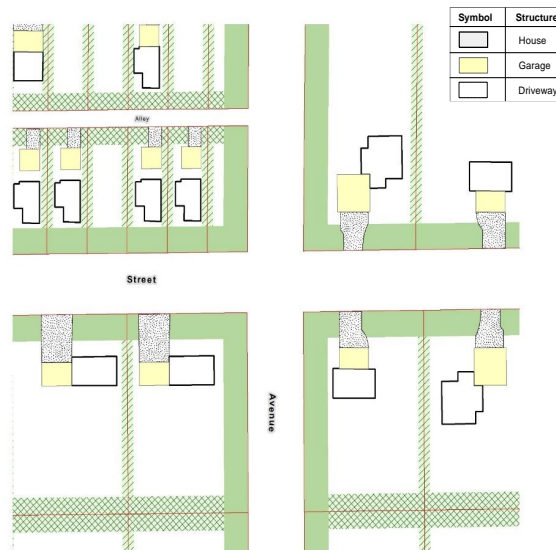




Table 2.06.06.2

	Minimum Front Yard		Minimum Rear Yard	Minimum Side Yard
	Primary	Secondary		
SYMBOL				
Permitted Uses and Two-Family Dwellings	25'	15'	20'	6'(A)
Hospitals, convalescent and nursing homes, supervised care facilities and congregate housing	50'	30'	30'	30'
Conditional Uses	To be determined by the Board of Adjustment			

- A. Upon subdivision into individual units, two family dwellings will be allowed one “shared” wall (required yard = zero (0) feet) provided all other yard requirements are met.

## **CHAPTER 2.07 “R-3” COMBINED RESIDENTIAL DISTRICT**

### **Section 2.07.01 Permitted Uses:**

The following uses and structures shall be permitted:

1. Single family dwellings;
2. Multiple family dwellings;
3. Type I Manufactured Home with or without permanent foundation;
4. Modular homes;
5. Public park and recreation areas;
6. Churches and other religious institutions.

### **Section 2.07.02. Permitted Accessory Uses:**

1. Accessory buildings and uses customarily incident thereto; excluding stables.
2. No part of any manufactured home park shall be used for nonresidential purposes, except such uses that are required for the direct servicing and well being of park residents and for the management and maintenance of the park.
3. Signs conforming to Chapter 4.04.

### **Section 2.07.03 Special Permitted Uses:**

The following uses and structures shall be permitted Special Permitted Use in the “R-3” Combined Residential District.

1. Shop-style dwellings. See Chapter 4.22.
2. Temporary occupancy of a recreational vehicle on a lot with an active building permit for new construction or reconstruction of a single-family dwelling.

### **Section 2.07.04 Conditional Uses:**

The following uses may be permitted as a Conditional use in the “R-3” Combined Residential District by the Board of Adjustment, subject to such requirements as the Board seems necessary to protect adjacent property, prevent objectionable or offensive conditions and promote the health, safety and general welfare. The Board of Adjustment may grant the following uses provided the written consent of more than fifty



percent (50%) of the property owners within one hundred fifty (150) feet of any property line of the premises is obtained.

1. Bed and breakfast establishments;
2. Manufactured home park developments;
3. Manufactured home subdivisions.
4. Recreational trailer parks. See Chapter 4.18;
5. Offices of recognized professions provided such profession is carried on in their respective residence, and there is no display nor advertising except one sign, not exceeding one (1) square-foot in area, non illuminated, and mounted flat against the wall of the principle building;
6. Schools;
7. Public buildings or facilities established and operated by any governmental agency;
8. Hospitals, nursing homes, and homes for the aged;
9. Commercial day care facilities not operated at a residence;
10. Private storage buildings used exclusively for storage and not for performance of any other services, provided siding consists of that customarily used for site-built single family dwellings.
11. Home occupations. See Chapter 4.19.

**Section 2.07.05 Prohibited Uses:**

All uses and structures not specifically listed as Permitted Uses, Special Permitted Uses, accessory uses, or Conditional Uses shall be prohibited in the "R-3" Residential District.

**Section 2.07.06 Area Regulations.**

Table 2.07.06.1

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential	6,000 square feet	50'	35'	35%
Two (2) Dwelling Units (A)	6,000 square feet/dwelling unit	100'	35'	40%
Three (3) - Eight (8) Dwelling Units (A)	12,000 plus 1,000 square feet for each dwelling unit over two (2)	100'	45'	40%
Assisted Living, Nursing and Rest Homes, etc.	2,000 square feet/dwelling unit	60'	35'	40%
Churches and other religious institutions established after January 1, 2022	30,000 square feet	75'	35'*	30%
Other Conditional Uses	To be determined by the Board of Adjustment			

\*Maximum height for steeples and towers shall be seventy-five (75) feet

- A. At the time of construction, lot area and width shall comply with these requirements. In order to obtain future building permits for replacement, additions, expansions, etc., each respective unit shall maintain the minimum lot area and lot width for single family residences after subdivision of individually owned units.

Figure 2.07.06.1

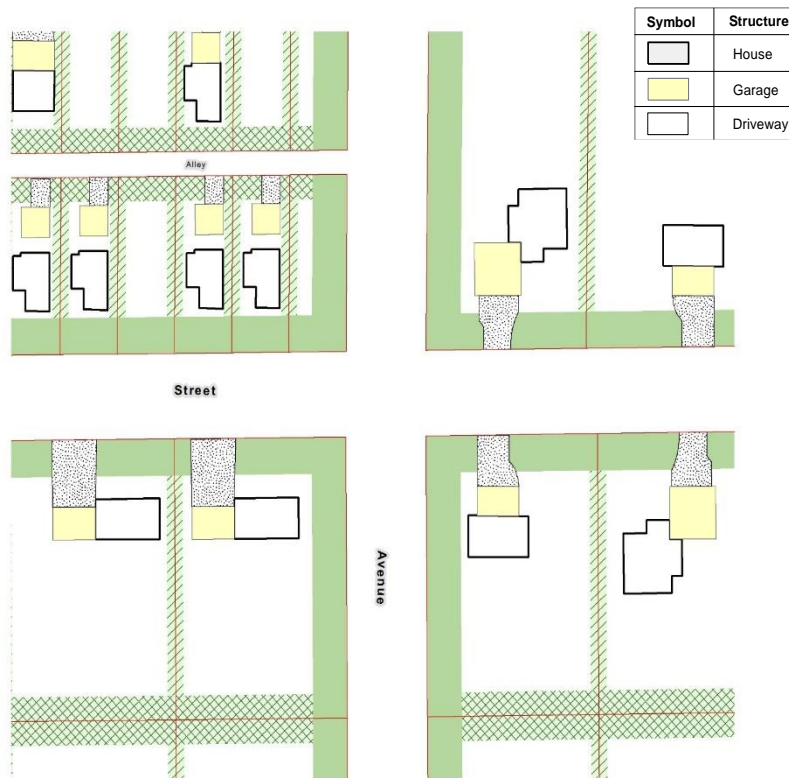


Table 2.07.06.2

	Minimum Front Yard		Minimum Rear Yard	Minimum Side Yard
	Primary	Secondary		
<b>SYMBOL</b>				
Permitted Uses and Two-Family Dwellings	25'	15'	20'	6'(A)
Hospitals, convalescent and nursing homes, supervised care facilities and congregate housing	50'	30'	30'	30'
Conditional Uses	To be determined by the Board of Adjustment			

- A. Upon subdivision into individual units, two family dwellings will be allowed one “shared” wall (required yard = zero (0) feet) provided all other yard requirements are met.

## **CHAPTER 2.08 “C-1” CENTRAL COMMERCIAL DISTRICT**

### **Section 2.08.01 Permitted Uses:**

The following uses and structures shall be permitted in the “C-1” Central Commercial District:

1. Retail and wholesale sales;
2. Finance, insurance and real estate services;
3. Business services excluding any warehousing and storage services;
4. Churches, welfare and charitable services; business associations, professional membership organizations, labor unions, and similar labor organizations, and civic, social and fraternal associations;
5. Eating establishments;
6. Communication and utility uses;
7. Public buildings and grounds;
8. Service establishments;
9. Professional, governmental and education services;
10. Communication and utility uses;
11. Printing and publishing establishments;
12. Offices;
13. Parking lot and/or parking garages;
14. Bed and breakfast;
15. Filling stations and convenience stores;
16. Cannabis Dispensary (Subject to 4.16)
17. Car washes;
18. Greenhouses.

**Section 2.08.02 Permitted Accessory Uses:**

The following accessory uses and structures shall be permitted in the “C-1” Central Commercial District.

1. Accessory buildings and uses customarily incidental to permitted uses.
2. Signs conforming to Chapter 4.04.

**Section 2.08.03 Special Permitted Uses:**

The following uses and structures shall be permitted Special Permitted Use in the “C-1” Central Commercial District.

1. Reserved.

**Section 2.08.04 Conditional Uses.**

1. Bar or tavern;
2. Licensed day care centers;
3. Apartments;
4. Implement and automobile sales, service, and repairs;
5. Contractor shops with or without office.

**Section 2.08.05 Prohibited Uses:**

1. All uses and structures not specifically listed as Permitted Uses, Special Permitted Uses, accessory uses, or Conditional Uses shall be prohibited in the “C-1” Central Commercial District.

**Section 2.08.06 Area/Construction Regulations.**

1. Minimum lot area, maximum building height, maximum lot coverage, and minimum yard requirements shall be regulated in accordance with the following tables:




Table 2.08.06.1

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Permitted Uses	3,500 square feet	25'	45'	90%
Conditional Uses	To be determined by the Board of Adjustment			

Figure 2.08.06.1



Table 2.08.06.2

	Minimum Front Yard	Minimum Rear Yard		Minimum Side Yard
		Adjacent to Industrial, Ag, Commercial Districts; or Alleys	Adjacent to and Shared with Residential Districts	
Symbol				
Permitted Uses	0'	0'	30'	0'
Conditional Uses	To be determined by the Board of Adjustment			

2. All commercial buildings/structures shall be constructed on-site.

## **CHAPTER 2.09 “C-2” COMMERCIAL INDUSTRIAL DISTRICT**

### **Section 2.09.01 Permitted Uses:**

The following uses and structures shall be permitted in the “C-2” Commercial Industrial District:

1. Horticulture and the raising of field crops;
2. Automobile sales, service stations and convenience stores;
3. Financial institutions, offices, clinics;
4. Utility substations;
5. Wholesale or retail sales of: lumber and other building materials, farm equipment, motor vehicles, marine crafts, manufactured homes, trailers, farm and garden supplies, fuel and ice; motor vehicles and automobile equipment; drug , chemicals, all allied products; dry goods and apparel; groceries, and related products; electrical goods, hardware, plumbing, heating and equipment and supplies; machinery, equipment and supplies; beer, wine, and distilled alcoholic beverages; paper and paper products; furniture and home furnishings; lumber and construction materials;
6. Sale of general farm products, and farm services, household goods, implement and farm equipment repair or maintenance;
7. Funeral home;
8. Contract construction services with shop and/or yard;
9. Commercial storage, mini-storage facilities
10. Truck or bus terminal;
11. Wholesale merchandising or storage warehouse;
12. Hotel/motel;
13. General service and repair of household appliances and other items in which all storage and repair occurs inside;
14. Personal services;



**Section 2.09.02 Permitted Accessory Uses:**

The following accessory uses and structures shall be permitted in the “C-2” Commercial Industrial District.

1. Accessory buildings and uses customarily incidental to permitted uses.
2. Signs conforming to Chapter 4.04.

**Section 2.09.03 Special Permitted Uses:**

The following uses and structures shall be permitted Special Permitted Use in the “C-2” Commercial Industrial District.

1. Reserved

**Section 2.09.04 Conditional Uses**

1. Food lockers, provided that any slaughtering, killing, eviscerating, skinning, or plucking be done indoors;
2. Bulk fuel or storage of petroleum products for wholesale.

**Section 2.09.05 Prohibited Uses:**

All uses and structures not specifically listed as Permitted Uses, Special Permitted Uses, accessory uses, or Conditional Uses shall be prohibited in the “C-2” District.

**Section 2.09.06 Area/Construction Regulations.**

1. Minimum lot area, maximum building height, maximum lot coverage and minimum yard requirements shall be regulated in accordance with the following tables:




Table 2.09.06.1

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Permitted Uses	20,000 square feet	100'	45'	75%
Conditional Uses	To be determined by the Board of Adjustment			

Figure 2.09.06.1



Table 2.09.06.2

	Minimum Front Yard	Minimum Rear Yard		Minimum Side Yard	
		Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to and Shared with Residential Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to and Shared with Residential Districts
Symbol					
Permitted Uses	25'	20'	40'	10'	40'
Conditional Uses	To be determined by the Board of Adjustment				

2. All commercial buildings/structures shall be constructed on-site.
3. Screening - Where any use in the “C-2” Commercial Industrial District is adjacent to any Residential Zone, that use (building, parking or storage) shall be appropriately screened from the Residential Use District by plantings or fencing, except where plantings and/or fencing may be in conflict with Chapter 4.01

## **CHAPTER 2.10 “I” – INDUSTRIAL DISTRICT**

### **Section 2.10.01 Permitted Uses:**

The following uses and structures shall be permitted in the “I” Industrial District:

1. Horticulture and the raising of field crops;
2. Commercial storage, mini-storage facilities;
3. Utility substations;
4. Motor freight terminals, garaging and equipment maintenance;
5. Contract construction services;
6. Storage plants, lumber yards, distributing stations and warehouses;
7. Motor freight terminals, garaging and equipment maintenance;
8. Light manufacturing and assembly work, machine shops doing assembling or shaping and light cutting and sampling, provided that there is not outside storage of materials or product;
9. Woodworking shops or plants, provided that there is not outside storage of materials or product;
10. Warehouses.

### **Section 2.10.02 Permitted Accessory Uses:**

The following accessory uses and structures shall be permitted in the “I” Industrial District:

1. Signs conforming to Chapter 4.04;
2. Buildings and structures customarily incidental to permitted uses.

### **Section 2.10.03 Special Permitted Uses:**

The following uses and structures shall be permitted Special Permitted Use in the “I” Industrial District.

1. Reserved

**Section 2.10.04 Conditional Uses:**

1. Junk or salvage yards, provided that the area is enclosed or screened from public view as required by the Board of Adjustment;
2. Slaughterhouse;
3. Explosive manufacture or storage;
4. Fertilizer manufacture;
5. Incineration or reduction of garbage, dead animals, fat, or refuse;
6. Livestock sales or auction barns and yards;
7. Manufacturing requiring outdoor storage of finished products or raw materials;
8. Adult Uses. See Chapter 4.21.

**Section 2.10.05 Prohibited Uses:**

All uses and structures not specifically listed as Permitted Uses, Special Permitted Uses, accessory uses, or Conditional Uses shall be prohibited in the “I” District.

**Section 2.10.06 Area/Construction Regulations:**

1. Minimum Lot Requirements: Minimum lot area, maximum building height, maximum lot coverage and minimum yard requirements shall be regulated in accordance with the following tables:




Table 2.10.06.1

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Permitted Uses	30,000 square feet	150'	45'	50%
Conditional Uses	To be determined by the Board of Adjustment			

Figure 2.10.06.1



Table 2.10.06.2

	Minimum Front Yard	Minimum Rear Yard		Minimum Side Yard	
		Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to and Shared with Residential Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to and Shared with Residential Districts
Symbol					
Permitted Uses	50'	25'	35'	10'	35'
Conditional Uses	To be determined by the Board of Adjustment				

2. Outdoor Storage and Screening. All outdoor storage within 500 feet of a residential District must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stock pile which fence shall be maintained in safe and good repair;

Storage yards for junk shall be set back a minimum of one hundred (100) feet from any adjoining street line and thirty-five (35) feet from any other property line, and shall be screened by a solid wall at least two (2) feet above the highest stock pile and maintained in a state of good repair. Further provided, that no storage yard for junk shall be allowed on any lot in an "I" Zone that is within five hundred (500) feet of a residential zone.

**Section 2.10.07 Performance Standards**

1. **Noise.** All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
2. **Air Pollution.** State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. **Odor.** The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. **Glare, Heat or Radiation.** Every use shall be so operated that there is no emission or heat, glare, glare or radiation visible or discernable beyond the property line.

5. **Vibration.** Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. **Sewage and Liquid Wastes.** No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radio-active nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. **Fire Hazard.** All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the City Council.
8. **Physical Appearance.** All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.



## **CHAPTER 2.11 “O/I” OFFICE AND INSTITUTIONAL USE OVERLAY DISTRICT**

### **Section 2.11.01. Purpose.**

In addition to those stated purposes statements of the underlying zoning districts, the purpose of the “O/I” Office and Institutional Use Overlay District is to:

1. Allow continuation, reasonable expansion, and provision of new types of community and privately owned healthcare, educational, and other related institutional uses intended to support the general health, safety, and welfare of the City of De Smet provided certain arrangements are made to minimize intrusion upon adjacent residential uses.
2. Prevent the dilution of commercially zoned areas with institutional and healthcare-oriented uses which may be accommodated in portions of the community which may not support other traditional commercial uses.

### **Section 2.11.02 Applicability.**

The provisions of this Chapter shall apply to any project on any “R-2” zoned lot or parcel in the “O/I” Office and Institutional Use Overlay District as described herein.

The “O/I” Office and Institutional Use Overlay District shall include certain lots owned by the school district or religious institutions; and certain lots adjacent to the water treatment plant; and those blocks adjacent to Prairie Avenue and Wilder Lane. Further, the “O/I” Office and Institutional Use Overlay District may be expanded to include other areas as recommended by the Comprehensive Land Use Plan of the City of De Smet or other ancillary studies by recommendation of the Planning Commission and action of the City Council.

Where the provisions of Chapter 2.11 conflict with other provisions of this Title, the provisions of Chapter 2.11 shall prevail.

Standards, uses, and regulations not addressed in Chapter 2.11 shall be regulated as defined elsewhere in this Title.

### **Section 2.11.03. Permitted Uses.**

The following uses and structures shall be permitted in the “O/I” Office and Institutional Use Overlay District:

1. Permitted Uses in the “O/I” Office and Institutional Use Overlay District include all Permitted Uses in the underlying district which each respective lot is located.
2. Any use listed as a “Conditional Use” in Section 2.11.06 and in operation on July 1, 2023.

3. Religious institutions, and other activities sponsored or organized by a school.
4. Schools, and other activities sponsored or organized by a school.
5. Uses operated by a governmental agency, and other activities sponsored or organized by a governmental agency unless such use is specifically listed as a conditional use in the “O/I” District.

**Section 2.11.04. Permitted Accessory Uses.**

The following accessory uses and structures shall be permitted in the “O/I” Office and Institutional Use Overlay District:

1. Accessory uses and structures customarily incidental to permitted uses, including vertical metal siding despite not complying with Chapter 4.03.

**Section 2.11.05. Special Permitted Uses.**

The following special permitted uses and structures shall be permitted in the “O/I” Office and Institutional Use Overlay District:

1. Permitted Uses in the “O/I” Office and Institutional Use Overlay District include all Special Permitted Uses in the underlying district which each respective lot is located.

**Section 2.11.06. Conditional Uses.**

The following uses may be permitted as a Conditional Use in the “O/I” Office and Institutional Use Overlay District by the Board of Adjustment, subject to such requirements as the Board deems necessary to protect and promote the health, safety and general welfare:

1. Conditional Uses in the “O/I” Office and Institutional Use Overlay District include all Conditional Uses in the underlying district which each respective lot is located.
2. Clinics and healthcare facility;
3. Fitness and rehabilitation center;
4. Event Center, banquet facility, theater.

**Section 2.11.07. Prohibited Uses.**

1. All other uses and structures not specifically listed as a permitted use, special permitted use (in the underlying district), accessory use, or conditional use shall be prohibited in the “O/I” Office and Institutional Use Overlay District.

**Section 2.11.08. Area/Construction Regulations.**

1. Minimum lot area, maximum building height, and maximum lot coverage in the “O/I” Office and Institutional Use Overlay District shall be regulated in accordance with the underlying zoning district.
2. Minimum yard requirements in the “O/I” Office and Institutional Use Overlay District shall be regulated in accordance with the underlying zoning district on property lines and right-of-way lines shared with other properties in the “O/I” District or any Commercial, Industrial, or Agriculturally Zoned properties.
3. Minimum yard requirements in the “O/I” Office and Institutional Use Overlay District shall meet minimum setback requirements in the C-2 Commercial/Industrial District on property lines and right-of-way lines shared with other properties zoned R-1 or R-2 but not within “O/I” District:

**Section 2.11.09 Additional Conditional Use Requirements in the O/I District.**

For the purpose of this section, provided all requirements are met, the following shall be considered contracting services, in addition to motor vehicle repair and auto body repair and therefore allowed in the “O/I” Office and Institutional Use Overlay District:

1. Parking and loading requirements for conditional uses shall comply with minimums established in Chapter 4.05.
2. Screening by means of solid walled fence or hedge shall be required for any change of use or accessory use if said use is operated on a lot which shares a rear or side property line with a lot used for Single Family or Multiple Family Structures.
  - A. The screening requirement may be waived by the administrative official provided written consent of the affected adjacent property owner is provided prior to issuance of a building permit or a change of use/accessory use.

## **CHAPTER 2.12 “CB” CENTRAL BUSINESS OVERLAY DISTRICT**

### **Section 2.12.01. Intent.**

The intent of the “CB” Central Business Overlay District is to preserve the original development pattern of the central business district and accommodate mixed-uses with neighborhood-serving retail, service, and other uses on the ground floor and residential units above the nonresidential space by utilizing pedestrian-oriented, storefront-style shopping streets thereby promoting the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.

### **Section 2.12.02 Applicability.**

The provisions of this Chapter shall apply to any project on a lot or parcel in the “CB” Central Business Overlay District as described herein.

The “CB” Central Business Overlay District may be expanded to include other areas as recommended by the Comprehensive Land Use Plan of the City of De Smet or other ancillary studies by recommendation of the Planning Commission and action of the City Council.

Where the provisions of Chapter 2.12 conflict with other provisions of this Title, the provisions of Chapter 2.12 shall prevail.

Standards, uses, and regulations not addressed in Chapter 2.12 shall be regulated as defined elsewhere in this Title.

### **Section 2.12.03. Permitted Uses.**

The following uses and structures shall be permitted in the “CB” Central Business Overlay District:

1. Permitted Uses in the “CB” Central Business Overlay District include all Permitted Uses in the underlying district which each respective lot is located.

### **Section 2.12.04. Permitted Accessory Uses.**

The following accessory uses and structures shall be permitted in the “CB” Central Business Overlay District:

1. Accessory uses and structures customarily incidental to permitted uses.

### **Section 2.12.05. Conditional Uses.**

The following uses may be permitted as a Conditional Use in the “CB” Central Business Overlay District by the Board of Adjustment, subject to such requirements as the Board deems necessary to protect and promote the health, safety and general welfare:

1. Conditional Uses in the “CB” Central Business Overlay District include all Conditional Uses in the underlying district for which each respective lot is located.

**Section 2.12.06. Prohibited Uses**

1. All other uses and structures not specifically permitted or not permitted by conditional use shall be prohibited in the “CB” Central Business Overlay District.

**Section 2.12.07. Area/Construction Regulations.**

1. Minimum yard requirements in the “CB” Central Business Overlay District shall be regulated in accordance with the following tables:

Table 2.12.07.1

	Minimum Front Yard		Minimum Rear Yard (Adjacent to Railroad)	Minimum Side Yard
	All Other Streets	Chase Street and SD HWY 25		
Commercial Uses	0'	20'	5'	0'
Mixed Commercial and Residential Uses	0'	20'	5'	0'
Residential Uses	0'	20'	5'	0'
Industrial Uses	0'	20'	5'	0'
Conditional Uses	To be determined by the Board of Adjustment			

2. Side and rear yard setbacks for a parcel in the “CB” Central Business District where the lot line is shared with any residentially zoned parcel shall adhere to the minimum setback requirements of the underlying district.

**Section 2.12.08 Performance Standards.**

1. Because of the range of land uses permitted within the in the “CB” Central Business Overlay District, other design standards may be considered for Conditional Uses, major amendments, or final development plans.
2. Any additional standards shall be designed to eliminate or offset potential negative impacts to the landscape of this district which may result from development.

## **CHAPTER 2.99 FLOODPLAIN DISTRICT.**

### **Section 2.99.01. Statutory Authorization, Findings of Fact, Purpose and Methods of Reducing Flood Losses.**

#### **1. Statutory Authorization**

The Legislature of the State of South Dakota has in SDCL Chapter 11-4 delegated the responsibility to local governmental units to adopt land use regulations designed to promote the public health, safety, and general welfare of its citizenry through flood plain and land use regulation. Therefore, the City Council of the City of De Smet, South Dakota, ordains as follows:

The City of De Smet elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program (NFIP) is a voluntary program administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security, and the City of De Smet's community officials have elected to join the program, participate and enforce these flood damage prevention regulations to areas not identified as Special Flood Hazard Areas (SFHAs) by FEMA on the community's effective Flood Insurance Rate Map (FIRM), if the community has documentation to support that there is an inherent risk of flooding in such areas.

#### **2. Findings of Fact**

A. The flood hazard areas of the City of De Smet 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 of the inhabitants of the City of De Smet.

B. These potential flood losses are caused by:

- i) The cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities;
- ii) The occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage; and
- iii) Uses deemed unsuitable for floodplain areas or that do not account for the increased flood risk.

3. Statement of Purpose. It is the purpose of this Ordinance to promote the public

health safety, and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

- A. To protect human life and health.
  - B. To minimize expenditure of public expenditures 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 caused by flooding.
  - 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 sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
  - G. To ensure that potential buyers are notified that property is in an area of special flood hazard.
4. Methods of Reducing Flood Losses. In order to accomplish its purpose, 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 times of flooding, or cause excessive increases 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 floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters.
  - D. Controlling filling, grading, dredging, and other development which may increase flood damage.
  - E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

**Section 2.99.02. Definitions.**

In addition to the Definitions in Article II of this ordinance, unless specifically defined

below, words or phrases used in Chapter 2.99 shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application. The definitions contained in Section 2.99.02 shall supersede the definitions in Article II of this ordinance only in the interpretation of Chapter 2.99 of this ordinance. In all other cases where these definitions conflict with the definitions in Article II, the definitions in Article II shall apply.

*100-Year Flood* means a flood having a recurrence interval that has a 1-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms “100-hundred-year flood” and “1-percent-annual-chance flood” are synonymous. The term does not imply that the flood will necessarily happen once every 100 hundred years. Mandatory flood insurance requirements may apply.

*100-Year Floodplain* means the area of land susceptible to being inundated due to the occurrence of a 1-percent-annual-chance flood.

*500-Year Flood* means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-annual-chance flood). The term does not imply that the flood will necessarily happen once every 500 years and mandatory flood insurance requirement generally does not apply.

*500-Year Floodplain* means the area of land susceptible to being inundated due to the occurrence of a 0.2-percent-annual-chance flood.

*Accessory Structure* is a structure that is on the same parcel of property as a principal structure. Its use is incidental to the use of the principal structure the ownership of the accessory structure is the same owner as of the principal structure. An accessory structure is a non-residential structure of low value that is used solely for the parking of vehicles and storage of tools, materials, or equipment. No human habitation is allowed within an accessory structure.

*Addition* is any improvement that expands the enclosed footprint or increases the square footage of an existing structure. This includes lateral additions added to the side, front, or rear of a structure; vertical additions added on top of a structure; and enclosures added underneath a structure.

*Alluvial Fan Flooding* means flooding occurring on the surface of an alluvial fan or similar landform that originates at the apex. It is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

*Apex* means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.



*Appurtenant Structure*—see *Accessory Structure*.

*Area of Future-Conditions Flood Hazard* means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood, based on future-conditions hydrology.

*Area of Shallow Flooding* means a designated AO, AH, AR/AO, or AR/AH zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of Special Flood-Related Erosion Hazard* is the land within a community that is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area, in preparation for publication of the FIRM, Zone E may be further refined.

*Area of Special Flood Hazard* is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

*Base Flood* means the flood having a 1-percent chance of being equaled or exceeded in any given year.

*Base Flood Elevation (BFE)* is the water surface elevation of the 1-percent-annual-chance flood event. It is the height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas. It is also the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1-percent chance of equaling or exceeding that level in any given year.

*Basement* means any area of the building having its floor subgrade (below ground level) on all sides. A walkout basement that does not require a step up to grade is not considered a basement.

*Best Available Data* is existing flood hazard information adopted by a community and reflected on an effective FIRM, FBFM, and/or within an FIS report; or draft or preliminary flood hazard information supplied by FEMA or from another source. Other sources may include, but are not limited to, state, other federal agencies, or local studies, the more restrictive of which would be reasonably used by the community.

*Breakaway Wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system. Any walls below the lowest floor in a building in a V or VE Zone should give way under wind and water loads without causing collapse, displacement, or other damage to the elevated portion of the building or the supporting pilings or columns. Breakaway walls apply only to V or VE Zones.

*Building*—see *Structure*.

*Channelization* means the artificial creation, enlargement, realignment, or alteration of a stream channel's slope, shape, or alignment. Streambank restoration may be deemed as channelization.

*Code of Federal Regulations (CFR)* is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

*Conditional Letter of Map Revision (CLOMR)* is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, and/or the SFHA. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

*Conditional Letter of Map Revision Based on Fill (CLOMR-F)* is FEMA's comment on a proposed structure or property. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be removed from the floodplain.

*Crawlspace* means an under-floor space that has its interior floor area (finished or not) no more than 4 feet from the bottom floor joist to the next higher floor elevation, designed with proper openings that equalize hydrostatic pressures of flood water, and is not used for habitation.

*Critical Facility* means a facility or building where even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, schools, storage of critical records, assisted living and similar facilities.

*Deed Restriction* refers to a clause in a deed that limits the future use of the property in some respect. Deed restrictions may impose a vast variety of limitations and conditions. For example, they may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or from being used at all.

*Detached Garage* is a building that is used solely for storage of materials or vehicle parking for up to four housing occupants. If a detached garage is designed or used for

habitation or conducting business, or has multiple stories, then the building is not considered a detached garage under the NFIP.

*Development* means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, demolition, excavation or drilling operations, or storage either temporary or permanent of equipment or materials.

*Elevated Building* is a non-basement building built, in the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (post and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, an “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

*Enclosure* refers to an enclosed walled-in area below the lowest floor of an elevated building. Enclosures below the BFE may only be used for building access, vehicle parking, and storage.

*Erosion* means the process of the gradual wearing away of land masses by wind, water, or other natural agents.

*Existing Construction* refers to structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. It may also be referred to as *Existing Structures*.

*Existing Manufactured Home Park or Subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

*Existing Structures*—see *Existing Construction*.

*Expansion to an Existing Manufactured Home Park or Subdivision* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*FEMA* means the Federal Emergency Management Agency.

*Fill* refers to the placement of materials, such as dirt, sand, or rock to elevate a structure, property, or portion of a property above the natural elevation of the site,

regardless of where the material was obtained from. The common practice of removing unsuitable material and replacing with engineered material is not considered fill if the elevations are returned to the existing conditions. Any fill placed or used prior to the area being mapped as a flood hazard area is not deemed as fill.

*Flood or Flooding* means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters.
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. Mudslides (i.e., mudflows) that are proximately caused by flooding as defined in this ordinance and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
3. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this ordinance.

*Flood Insurance Manual* is the document FEMA produces twice a year and is used to write flood insurance policies underwritten by the NFIP. The document contains definitions, policy rates, coverage and limitations, application, and insurance policy forms.

*Flood Insurance Rate Map (FIRM)* means an official map of a community, on which the Administrator has delineated both the SFHAs, and the risk premium zones applicable to the community.

*Flood Insurance Study (FIS) or Flood elevation study* means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

*Floodplain Development Permit* is a community issued permit or document that is used for any development that occurs within an SFHA identified by FEMA or the community. It is used to address the proposed development to ensure compliance with the

community's ordinance.

*Floodplain or Flood-Prone Area* means any land area susceptible to being inundated by water from any source whether or not identified by FEMA (see definition of *Flooding*).

*Floodplain Management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, mitigation plans, and floodplain management regulations.

*Floodplain Management Regulations* means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for flood damage prevention and reduction.

*Flood Opening* refers to an opening in the wall of an enclosed structure that allows floodwaters to automatically enter and exit the enclosure. Refer to FEMA Technical Bulletin 1.

*Flood Protection System* means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to an SFHA and to reduce the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized, flood modifying works are those constructed in conformance with sound engineering standards. FEMA only accredits levees, both private and public, that have been certified by a professional engineer or firm in which the certification shows that the levee have met and continue to meet the minimum regulatory standards cited in Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR 65.10).

*Floodproofing* means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Floodproofing can either be accomplished in the form of dry floodproofing in which the structure is watertight below the levels that need flood protection, or wet floodproofing in permanent or contingent measures applied to a structure that prevent or provide resistance to damage from flooding, while allowing floodwaters to enter the structure or area.

*Floodway*—see *Regulatory Floodway*.

*Floodway encroachment lines* mean the lines marking the limits of floodways on federal, state, and local flood plain maps.

*Freeboard* means a factor of safety usually expressed in feet above a flood level for

purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

*Functionally Dependent Use* means a development that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and repair facilities. It does not include long-term storage or related manufacturing facilities.

*Highest Adjacent Grade (HAG)* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. In AO Zones, the highest adjacent grade is utilized by comparing the lowest floor elevation to that of the highest adjacent grade and the depth of the AO Zone.

*Historic Structure* means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs that have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior, or
  - b. Directly by the Secretary of the Interior in states without approved programs.

*Letter of Map Amendment (LOMA)* means an official amendment, by letter, to an effective FIRM. A LOMA establishes a property’s location in relation to the SFHA. It is usually issued because a property or structure has been inadvertently mapped as being in the floodplain when the property or structure is actually on natural high ground above the BFE.

*Letter of Map Revision (LOMR)* means FEMA's modification or revision to an entire or portion of the effective FIRM, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, or the SFHA.

*Letter of Map Revision Based on Fill (LOMR-F)* means FEMA's amendment, by letter, to an effective FIRM where fill was brought in or used to elevate a property, portion of property or structure above the BFE.

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

*Levee System* means a flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest Adjacent Grade (LAG)* means the lowest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. For an existing structure, it means the lowest point where the structure and ground touch, including but not limited to attached garages, decks, stairs, and basement windows.

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

*Manufactured Home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle"; however, a manufactured home may be used for both residential and non-residential use.

*Manufactured Home Park or Subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

*Map* means the FHBM or the FIRM for a community issued by FEMA.

*Mean Sea Level* means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BFEs shown on a community's FIRM are referenced.

*Mixed Use Structures* are structures with both a business and a residential component,

but where the area used for business is less than 50 percent of the total floor area of the structure.

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

*New Manufactured Home Park or Subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

*No-Rise Certifications* are formal certifications signed and stamped by a professional engineer licensed to practice in the state, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that a proposed development will not result in any increase (0.00 feet) in flood levels within the community during the occurrence of a base flood event.

*Physical Map Revision (PMR)* is FEMA’s action whereby one or more map panels are physically revised and republished.

*Recreational Vehicle* means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily, not for use as a permanent dwelling but, as temporary living quarters for recreational, camping, travel, or seasonal use.

*Regulatory Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*Riverine* means relating to, formed by, or resembling a river (including tributaries), stream, brook, creek, etcetera, which can be intermittent or perennial.

*Section 1316* refers to the section of the National Flood Insurance Act of 1968, as



amended, which provides for the denial of flood insurance coverage for any property that the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Section 1316 is issued for a property, not a property owner, and remains with the property even after a change of ownership.

*Special Flood Hazard Area*—see *Area of Special Flood Hazard*.

*Start of Construction* (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure* means, for floodplain management purposes in Chapter 2.99, a walled and roofed building, culvert, bridge, dam, or a gas or liquid storage tank that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes and Chapter 2.99, means:

1. A building with two or more outside rigid walls and a fully secured roof, which is affixed to a permanent site;
2. A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
3. A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For insurance purposes, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

*Substantial Damage* means damage of any origin sustained by a structure whereby the

cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial Improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

The term does not, however, include:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
2. Any alteration of a “historic structure”, if the alteration will not preclude the structure's continued designation as a “historic structure.”

*Variance* means a grant of relief by a community from the terms of a flood plain management regulation. Reference: 2.99.05. VARIANCE PROCEDURES

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

*Water surface elevation* means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies, such as the 1-percent-annual-chance flood event, in the flood plains of coastal or riverine areas.

*Watercourse* means the channel and banks of an identifiable water in a creek, brook, stream, river, ditch, or other similar feature.

### **Section 2.99.03. General Provisions.**

#### 1. Lands to Which This Ordinance Applies.

This Ordinance shall apply to all areas of special flood hazard identified by FEMA within the jurisdiction of De Smet.

#### 2. Compliance.

No structure or land shall hereafter be constructed, located, extended, or altered

without full compliance with the terms of this Ordinance and other applicable regulations.

3. Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Kingsbury County," dated May 22, 2024 with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Ordinance.

4. 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 and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5. Interpretation - In the interpretation of this Ordinance, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under State statute.

6. 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. On rare occasions, greater floods can and will occur and flood heights may be increased by human-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 community or any official or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

7. Penalties for Noncompliance.

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the NFIP regulation, to qualify for the sale of federally subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of

Section 60. “These regulations must include effective enforcement provisions.” In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, “These regulations must be legally enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or codes.”

**Section 2.99.04. Administration.**

1. Designation of the Floodplain Administrator.

The Administrative Official of this Ordinance, see Section 3.02.01, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of the NFIP Regulations and 44 CFR pertaining to floodplain management.

2. Duties and Responsibilities of the Floodplain Administrator.

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

- A. Uphold the goals of the community and the NFIP to reduce risk when possible and increase the community’s resistance to future disasters.
- B. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation of the lowest floor (including basement or crawlspace) of all new or substantially improved structures and any floodproofing certificates, including the data supporting such certificates.
- C. Maintain and hold open for public inspection maps that identify and locate the boundaries of the SFHAs to which this ordinance applies, including, but not limited to, the FIRM.
- D. Review development proposals to determine whether a proposed building site, including sites designed for the placement of manufactured homes, will be reasonably safe from flooding.
- E. Review, approve, or deny all applications for development permits required by adoption of this ordinance.
- F. Ensure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 and the Endangered Species Act of 1973) from which prior approval is required.

- G. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
  - H. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
  - I. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
  - J. When BFE data has not been provided by FEMA, the Floodplain Administrator shall obtain, review, and reasonably utilize any BFE data and floodway data available from a federal, state, or other source including data provided by the applicant, in order to administer the provisions of this ordinance.
  - K. When a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30, AE, and AH on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1.00 foot at any point within the community.
  - L. Under the provisions of 44 CFR Chapter 1, Section 65.12 of the NFIP Regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM, which increases the water surface elevation of the base flood by more than 1.00 foot, provided that the community first meets the requirements of Section 65.12 for a conditional FIRM revision through FEMA's CLOMR process.
  - M. If the project is determined or reasonably believed to cause an adverse effect on the BFE(s), boundaries of the floodplain or any insurable structures, technical justification for the proposed development shall be submitted and the community may require a CLOMR or LOMR to be submitted prior to the permit approval or as a requirement of the permit.
3. Requirement to Submit New Technical Data.
- A. The property owner or developer shall notify FEMA by submittal of a LOMR within 6 months of project completion when an applicant had obtained a CLOMR from FEMA or when development altered a watercourse, modified floodplain

boundaries, or modified BFE.

B. The property owner or developer shall be responsible for preparing technical data to support the CLOMR or LOMR application and paying any processing or application fees to FEMA. The property owner or developer is responsible for submitting the CLOMR and LOMR to FEMA and shall provide all necessary data to FEMA if requested during the review process to ensure the CLOMR or LOMR is issued.

C. The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this ordinance and all applicable state federal, and local laws.

#### 4. Permit Procedures.

A. Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to:

i) Duplicated plans drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations.

ii) Duplicated plans drawn to scale showing the location, dimensions, and elevation of existing and proposed structures, including the placement of manufactured homes.

iii) Location of the foregoing in relation to SFHAs.

iv) Elevation (in relation to mean sea level), of the lowest floor (including basement and crawlspace) of all new and substantially improved structures, if applicable;

v) Elevation (in relation to mean sea level), to which any nonresidential structure (if applicable) shall be floodproofed.

vi) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure (if applicable) shall meet the floodproofing criteria of this ordinance and the NFIP Regulations.

vii) Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development, if applicable.

viii) At the community's discretion, the community may charge a fee for issuance of floodplain development permits.

- ix) Copies of all floodplain development permits, and the associated documents shall become property of the community and a permanent record.
- B. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
- i) The danger to life and property due to flooding or erosion damage.
  - ii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - iii) The danger that materials may be swept onto other lands to the injury of others.
  - iv) The compatibility of the proposed use with existing and anticipated development.
  - v) The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - vi) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems.
  - vii) 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.
  - viii) The necessity to the facility of a waterfront location, where applicable.
  - ix) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - x) The relationship of the proposed use to the comprehensive plan for that area.

**Section 2.99.05. Variance Procedures.**

1. The Board of Adjustment as established by the community shall hear and render judgment on requests for variances from the requirements of this Ordinance.
2. The Board of Adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.

3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. 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 Ordinance.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in 2.99.05.10 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
7. Upon consideration of the factors noted above and the intent of this Ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (3.11.01 (3)).
8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
  - A. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - B. Variances shall only be issued upon:
    - i) showing a good and sufficient cause;
    - ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
    - iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense,



create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.

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

11. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

- A. the criteria outlined in 2.99.05 are met, and
- B. the structure or other development is protected by methods that minimize flood; and
- C. damages during the base flood and create no additional threats to public safety.

**Section 2.99.06. General Standards for Flood Hazard Reduction.**

1. General Standards.

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

- A. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- B. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- C. All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
- D. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- G. On-site waste disposal systems shall be designed or located to avoid impairment to them or contamination from them during flooding.

## 2. Substantial Improvement.

Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, if the cumulative cost of the entire project equals or exceeds 50 percent of the market value of the structure only (not of the structure and land value combined) before the improvement or repair is started then the work shall be considered as substantial improvement. If the structure has sustained substantial damage, any repairs are considered substantial improvements regardless of the actual repair work performed. For Substantial Damage, refer to 2.99.06.3 SUBSTANTIAL DAMAGE. The term does not, however, include either:

- A. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- B. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

## 3. Substantial Damage

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure only before the damage occurred. This term also applies to structures which have incurred any damage that equals or exceeds 50 percent of the structure's market value regardless of the actual repair work performed. When a structure or building has been determined as substantially damaged, any work or repair on said structure or building will be considered as substantial improvement and will be required to meet the development requirements set forth within this ordinance for substantial improvement.

## 4. Substantial Improvement and Substantial Damage Determination

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, and any other improvement of or work on

such buildings and structures, the Floodplain Administrator, in coordination with the applicable community officials and staff, shall:

- A. Estimate the market value or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure only, not of land and building, before the start of construction of the proposed work. In the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- B. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.
- C. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in Section 2.99.06.2 SUBSTANTIAL IMPROVEMENT.
- D. Utilize FEMA's Substantial Improvement/Substantial Desk Reference when making any determination on Substantial Improvement and/or Substantial Damage.
- E. The substantial improvement regulations apply to all of the work that is proposed as the improvement, even if multiple permits are issued. Therefore, the determination of the cost of the improvement should consider all costs of all phases of the work before issuance of the first permit.
- F. Notify the applicant that if it is determined that the work constitutes substantial improvement or repair of substantial damage, that compliance with the floodplain management ordinance is required.

**Section 2.99.07. Specific Standards for Flood Hazard Reduction.**

In all SFHAs and areas of suspected flood risk areas, the following provisions are required:

1. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to the BFE, A registered professional engineer, architect, or land surveyor shall submit certified elevations to the Floodplain Administrator that the standards of this ordinance are satisfied.

2. Nonresidential Construction

New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to the base flood level, or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification that includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. If the use or occupancy of the building changes in the future to residential, then the dry floodproofing of the structure cannot be used when determining compliance of the structure to the residential construction of this ordinance, Section 2.99.07.1 RESIDENTIAL CONSTRUCTION. As such, the building will not be grandfathered into compliance and will be required to be brought into compliance with the residential construction requirements of this ordinance.

### 3. Enclosures

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

- A. A minimum of two openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- B. The bottom of all openings shall be no higher than 1 foot above grade.
- C. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- D. The development and construction of the structure must conform with the provision in FEMA/Federal Insurance Administration (FIA)-Technical Bulletins 1 and 2. Certification and documentation from a professional, licensed engineer or architect is required if the structure's lowest floor is built below the BFE.

### 4. Crawlspace

New construction and substantial improvements built on a crawlspace or sub-grade

(below grade) crawlspace may be permitted if the development is designed and meets or exceeds the standards found in FEMA's Technical Bulletins 1, 2, and 11, which include but are not limited to the following:

- A. The structure must be affixed to a permanent foundation, designed, and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than 5 feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
- B. The crawlspace is an enclosed area below the BFE and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than 1 foot above the lowest adjacent grade (LAG).
- C. The crawlspace enclosure must have proper openings that allow equalization of hydrostatic pressure by allowing automatic entry and exit of floodwaters. To achieve this, a minimum of 1 square inch of flood opening is required per 1 square foot of the enclosed area subject to flooding.
- D. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, piers, or other materials that extend below the BFE. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
- E. Any building utility systems within the crawlspace must be elevated above the BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
- F. The interior grade of a crawlspace below the BFE must not be more than 2 feet below the LAG.
- G. The height of the below-grade crawlspace, measured from the lowest interior grade of the crawlspace floor to the bottom of the floor joist of the next higher floor cannot exceed 4 feet at any point.
- H. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event.
- I. Buildings with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with

the interior elevation at or above the LAG.

## 5. Manufactured Homes

- A. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- B. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites outside of a manufactured home park or subdivision;) in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated as high as the BFE, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- C. In A-1-30, AH, AO and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at least as high as the BFE; or the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

## 6. Recreational Vehicles

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

- A. Be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use;
  - i) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- B. Or meet the permit requirements of 2.99.04.4, PERMIT PROCEDURES, and the elevation and anchoring requirements for "manufactured homes" of this section.

**Section 2.99.08. Standards for Subdivision Proposals.**

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
2. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
3. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
4. BFE data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or 5 acres, or whichever is lesser.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall minimize flood damage.
6. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

**Section 2.99.09. Floodways.**

Floodways located within SFHAs are extremely hazardous areas due to the velocity of flood waters that carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

1. Designate a regulatory floodway that will not increase the base flood level more than 1 foot.
2. Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase greater than 0.00 feet in flood levels within the community during the occurrence of the base flood discharge.
3. All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this ordinance.
4. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

## **ARTICLE III ADMINISTRATION**

### **CHAPTER 3.01 GENERAL**

#### **Section 3.01.01 Permits Required.**

No building or other structure shall be erected, moved added to or structurally altered without a permit issued by the Administrative Official. No permit shall be issued by the Administrative Official except in conformity with the provisions of this ordinance, unless a written order is received from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.

#### **Section 3.01.02 Applications.**

All applications for permits shall be accompanied by a site plan which may be required to be drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed structure or alteration. The application shall include such other information as lawfully may be required by the Administrative Official, including legal description, existing or proposed structures or alterations; existing or proposed uses of the structure and land; the number of families, housekeeping units, or rental units the structure is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance.

#### **Section 3.01.03 Fee Schedule.**

The City Council shall by resolution establish a schedule of fees, charges, and expense and a collection procedure for building/use permits, conditional use permits, variances, amendments, appeals, and other matters pertaining to this ordinance. The schedule of fees may be altered or amended only by the City Council.

The current fee schedule shall be available from the Administrative Official or Finance Officer. All fees shall be the property of the City and shall be paid over to the Finance Officer for credit to the General Fund of the City, which under no condition shall be refunded. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

#### **Section 3.01.04 Issuance of Permits.**

Permits issued on the basis of plans and applications approved by the Administrative Official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and other use, arrangement, or construction at variance with that authorized shall be deemed violation of this Ordinance, and punishable as provided by Section 1.02.02 of this Code.



**Section 3.01.05 Expiration of Building/Use Permit.**

If the work described in any building/use permit has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be canceled by the Administrative Official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new permit has been obtained.

**CHAPTER 3.02 ADMINSTRATIVE OFFICIAL**

**Section 3.02.01 Establishment and Purpose.**

The position of Administrative Official is hereby established for the City of De Smet. The Administrative Official may include City Council Members, employees of the city or another entity in another position. The City Council shall appoint up to three (3) individuals to serve concurrently as the Administrative Official. Further, he/she may be provided with the assistance of such other persons as the City Council may direct. The Administrative Official shall administer and enforce this Ordinance. It is the intent of this ordinance that questions of interpretation and enforcement shall be first presented to the Administrative Official and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official.

**Section 3.02.02 Duties.**

The powers and duties of the Administrative Official shall be as follows:

1. Issue all building/use permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issues, or any permit wherein defective work has been performed, and when such work has not been corrected within the time period prescribed by the administrative official.

6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Provide public information relative to all matters arising out of this Ordinance.
8. Forward to the Planning Commission all applications for amendments to this Ordinance.
9. Forward to the Board of Adjustment, applications for appeals, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.
10. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission. The Administrative Official shall receive applications for Building Permits, Permitted Special Use Permits, Conditional Uses, Variances, and Zoning Amendments.
  - A. For Building/Use Permits and Permitted Special Use Permits, the Administrative Official shall approve Building/Use Permits and Permitted Special Use Permits only in accordance with the provisions of the City's Zoning Regulations.
  - B. For Conditional Uses and Variances, the Administrative Official review the application, and shall provide a review of the application to the Board of Adjustment.
  - C. For Zoning Amendments, the Administrative Official shall review the application, and shall provide a review of the application to the Planning Commission.

### **3.02.03 Powers.**

If the Administrative official shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the persons responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.

He/she shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

## **CHAPTER 3.03 BOARD OF ADJUSTMENT**

### **3.03.01 Establishment.**

A Board of Adjustment is hereby established, which shall consist of the members of the City Council and Mayor, as provided for in the provisions of Chapter 11-4, South Dakota Codified Laws and Amendments.

**Section 3.03.02 Procedures for Meetings.**

The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions. A draft of the unapproved, unofficial minutes will be prepared and available for public inspection ten (10) days following each meeting. Upon adoption by the Board of Adjustment, all of which shall be a public record and be immediately filed in the office of the Board of Adjustment.

**Section 3.03.03 Powers and Duties of Board of Adjustment.**

The Board of Adjustment shall have the following powers and duties:

1. Administrative Review:

- A. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Administrative Official in the carrying out or enforcement of any provision of this Ordinance, and for the interpretation of the Official Zoning Map.

2. Conditional Use Permits:

To hear and decide only such Conditional Use Permits as the Board of Adjustment is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether Conditional Use Permits should be granted; and to grant Conditional Use Permits with such conditions and safeguards as are appropriate under this Ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this Ordinance.

3. Variances:

To hear requests for variances from this ordinance in instances where strict enforcement would cause unnecessary hardship; and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

**Section 3.03.04 Hearings; Appeals; Notice:**

Appeals to the Board of Adjustment concerning interpretation or administration of this Ordinance may be taken by any person meeting the definition of an “aggrieved person” within this Ordinance or by any officer of the governing body of the city affected by any decision of the Administrative Official. Such appeals shall be taken by filing with the Administrative Official and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrative Official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

**Section 3.03.05 Stay of Proceedings**

An appeal stays all proceedings in furtherance of the action appealed from unless the Administrative Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause an imminent peril to life and property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Administrative Official from whom the appeal is taken and on due cause shown.

**CHAPTER 3.04 PROCEDURES FOR APPLICATIONS**

**Section 3.04.01 Building/Use Permits.**

No new development, change of use, moving in/moving out of structures, demolition, or other action which may be regulated by the provisions of this ordinance including use, height, number of occupants, lot area, off street parking or yard requirements, shall occur without a Building/Use Permit issued by the Administrative Official. Building/Use Permits issued on the basis of plans and applications approved by the Administrative Official authorize only the use, arrangement, or construction set forth in such approved plans and specifications. Any use, arrangement, or construction at variance without authorization shall be deemed a violation of this regulation and shall be punishable as provided by this regulation. The failure to obtain the necessary Building/Use Permit shall be punishable under this regulation.

1. The landowner, or applicant on behalf of the landowner, requesting the Building/Use Permits shall complete an application for a Building/Use Permit, accompanied with the appropriate fee, available from the Administrative Official. Completed applications shall be returned to the Administrative Official for review. To be considered complete, the application form shall be accompanied by the following additional items:

- A. Applications for Building/Use Permits shall be accompanied by a site plan which may be required to be drawn to scale with the following information indicated in order to determine compliance with this Ordinance:
- i) The exact size, shape, and dimensions of the lot to be built upon, the exact size and location on the lot of all existing buildings and structures, and the exact size and location on the lot of the structure or building proposed to be repaired, altered, erected, or moved, and the size, arrangement, number of parking stalls, movement of vehicles and ingress and egress drives for all off-street parking and loading facilities.
  - ii) The location of the said lot with respect to existing rights-of-way and adjacent lots.
  - iii) A letter of certification stating that the lot to be built upon has been accurately surveyed may be required.
  - iv) Any other information which the Administrative Official may deem necessary for consideration in enforcing the provisions of this Ordinance.
2. The applicant shall stake out the building site for inspection by the administrative official prior to the issuance of the building/use permit.
  3. One copy of the application shall be returned to the applicant, after the Administrative Official has marked such copy as either approved or disapproved, and attested to the same by signing said copy of the plans. The Administrative Official, for City records, shall retain one copy of the application, similarly marked.
  4. The Administrative Official shall then, if the application is approved, issue a signed Building/Use Permit. If the Administrative Official determines the proposed action would not be in compliance with the provisions of these regulations, a Building/Use Permit may not be issued, and the applicant may then appeal the action of the Administrative Official to the Board of Adjustment.
  5. Building/Use Permits are intended to be posted in a conspicuous place upon the premises and visible from a public right-of-way at all times from the beginning until completion of such construction, alteration, or repair.

#### **Section 3.04.02 Conditional Uses**

Conditional Uses are allowed for certain uses in some districts, as identified in Article II District Regulations. Uses not listed in Article II District Regulations as eligible for a Conditional Use Permit shall not, in any circumstances, be granted a Conditional Use Permit.

The following procedure for requesting a Conditional Use Permit shall be followed:

1. The Board of Adjustment shall adhere to the following procedure in considering a Conditional Use Permit. A Conditional Use Permit is intended by this Ordinance to be granted by the Board of Adjustment provided:
  - A. A written application for a Conditional Use Permit is submitted, indicating the section of this Ordinance under which the Conditional Use Permit is sought and stating the grounds on which it is requested.
  - B. Property owners adjacent to the proposed site shall be notified of the Conditional Use Permit request by mail, at the cost of the applicant.
  - C. Notice of hearing shall be published once, not less than ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
  - D. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
  - E. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the Conditional Use Permit, and that the granting of the Conditional Use Permit will not adversely affect the public interest.
  - F. The granting of any Conditional Use Permit, by the Board of Adjustment shall be based upon written findings certifying compliance with the specific rules governing individual Conditional Use Permits and that satisfactory provision and arrangements have been made concerning the following, where applicable:
    - i) Access:
      - a. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed Conditional Use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for Conditional Use requested prior to issuance of a Conditional Use Permit.
      - b. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.

- ii) Parking and internal traffic:
  - a. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
  - b. The number of parking spaces is appropriate for the proposed use of the property.
- iii) Utilities and refuse:
  - a. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.
  - b. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.
- iv) Screening, buffering, and open space:
  - a. The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
- v) Lighting:
  - a. Lights associated with the use will not create a nuisance nor distract traffic.
  - b. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.
- vi) General compatibility with adjacent properties and other property in the district.
  - a. Any use listed as a Conditional Use is generally compatible in the district it is listed in.
  - b. General compatibility is used when prescribing conditions for approval of a permit.
- g. In granting any Conditional Use Permit, the Board of Adjustment may prescribe conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards may result in revocation of the permit. Violation of such conditions, when made a part of the terms under which the Conditional Use Permit is granted, shall further be deemed a violation of this regulation and punishable under the terms of the City of De Smet Zoning Ordinance.

- h. The concurring vote of a majority of the present and voting members of the Board of Adjustment is required to pass any application for a Conditional Use permit.
- i. If no work has commenced, unless otherwise specified by the Board of Adjustment, a Conditional Use Permit shall expire two (2) years from the date upon which the Conditional Use Permit becomes effective or two (2) years following completion of any final appeal of the decision of the Board of Adjustment to issue the permit.

**Section 3.04.03 Variances.**

Variances to the Zoning Regulations, may be granted by the Board of Adjustment, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

- 1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
- 2. Property owners adjacent to the proposed site shall be notified of the variance request by mail, at the expense of the applicant.
- 3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
- 4. A public hearing shall be held. Any party may appear in person, or by agent or attorney;
- 5. The Board of Adjustment shall make a finding that is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this ordinance shall only be granted if all of the following are demonstrated by the applicant:



- A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
  - B. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
  - C. That the special conditions and circumstance do not result from the actions of the applicant;
  - D. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
  - E. That granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
  - F. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- 6. Approval or denial of any variance shall be by a two-thirds (2/3) majority (five (5) votes) of all members of the Board of Adjustment.
  - 7. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Chapter 1.02, Section 1.02.02 of this Ordinance.
  - 8. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.
  - 9. If no work has commenced, unless otherwise specified by the Board of Adjustment, a variance shall expire two (2) years from the date upon which the variance becomes effective or two (2) years following completion of any final appeal of the decision of the Board of Adjustment to issue the variance.

**Section 3.04.04. Procedures for Approval of Special Permitted Use Permit**

1. The special permitted use procedure is an administrative review process, where the Administrative Official shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a special permitted use permit. Requests for special permitted uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. A special permitted use permit shall not be granted unless and until:
  - A. A written application for a special permitted use is submitted, indicating the section of this Ordinance under which the special permitted use is sought and stating the grounds on which it is requested.
  - B. The Administrative Official shall review the application for conformance with this Ordinance.
  - C. If the Administrative Official determines that the application is in conformance with the prescribed performance standards, the Administrative Official shall make written findings certifying compliance with the specific standards governing the specific special permitted use permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the special permitted use permit.
  - D. The Administrative Official shall then issue the special permitted use permit subject to the applicant agreeing to any conditions prescribed by this Ordinance or the Administrative Official for the special permitted use permit.
  - E. The Administrative Official shall then issue any other associated building/use permits.
  - F. If the application does not meet all of the performance standards for the special permitted use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Administrative Official shall determine that the application is not in conformance with Section 6.01.05 and appropriate special permitted use standards. The applicant may, as appropriate:
    - i) Apply for a variance from lot area, size of structure(s) or size of yards and open spaces
    - ii) Apply for Conditional Use Permit, if eligible.
    - iii) Appeal the decision of the Administrative Official in accordance with Section 3.03.04 and 3.04.05.

- G. A special permitted use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Administrative Official and prior to the special permitted use expiration date, a one (1) year time extension for the special permitted use may be granted by the Administrative Official.
- H. If a decision by the Administrative Official to issue a special permitted use permit is appealed to circuit court the special permitted use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

**Section 3.04.05 Board has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official:**

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Administrative Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official.
  - A. All appeals filed in accordance with Section 3.04.05 relating to a particular action, decision, or property shall be consolidated and heard at the same hearing.
  - B. Ministerial acts or other preliminary acts to bring an application or matter before the Board may not be appealed to the Board of Adjustment.
2. In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Administrative Official from whom the appeal is taken.
3. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

**Section 3.04.06 Appeals:**

Any person or persons, jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the City Finance Officer.

**Section 3.04.07 Zoning Amendments.**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the City Planning Commission, as provided herein, the City Council may change zoning district boundaries, use groups, or the regulations established by this Ordinance. A proposed change of zoning district boundaries or regulations may be initiated in the following manners:
  - A. The City Council may direct the Planning Commission, to consider a change of zoning district boundaries or regulations;
  - B. The Planning Commission may initiate a change of zoning district boundaries or regulations;
  - C. One (1) or more of the owners of property within the area proposed to be rezoned may present a request to change the zoning district boundaries;
  - D. Initiated petitions specifying and requesting amendments to the regulations of this Ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Administrative Official.
2. Unless otherwise provided for in these regulations, any change in these regulations, shall require City Council approval of an Ordinance describing said changes. The City Council may not consider said Ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said Ordinance amendment.
3. The following procedure for requesting a Zoning Amendment shall be followed:
  - A. The landowner or other person(s) requesting the Amendment shall complete an application for Amendment, available from the Administrative Official or Finance Officer. Completed applications shall be returned to the Administrative Official for review. To be considered by the Planning and City Council, the application form shall be completed and shall be accompanied by the following items:
    - i) Any required attachments and fees, including costs; and
    - ii) Any additional information, as requested by the Administrative Official, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
    - iii) The Administrative Official shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.

- iv) The Administrative Official shall set the date, time, and place for a joint public hearing to be held by the Planning Commission and City Council. The Administrative Official shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to the public hearing. If the proposed amendment will change the boundaries of a zoning district, the Administrative Official shall notify all owners of property within 250 feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least ten (10) days before the public hearing.
- v) The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.
- vi) The Planning Commission shall either recommend or not recommend approval of the amendment to the City Council.
- vii) The City Council shall either approve or not approve the ordinance describing the proposed changes to these Zoning Regulations, in accordance with standard procedures for reading, approval, publication, and effective date.
- viii) When the City Council approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by two-thirds (2/3) of the City Council.
  - a. Protest Standard: The protest shall be signed by at least 40% of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within 250 feet of the area affected by the amendment.

**Section 3.04.08. Reapplication.**

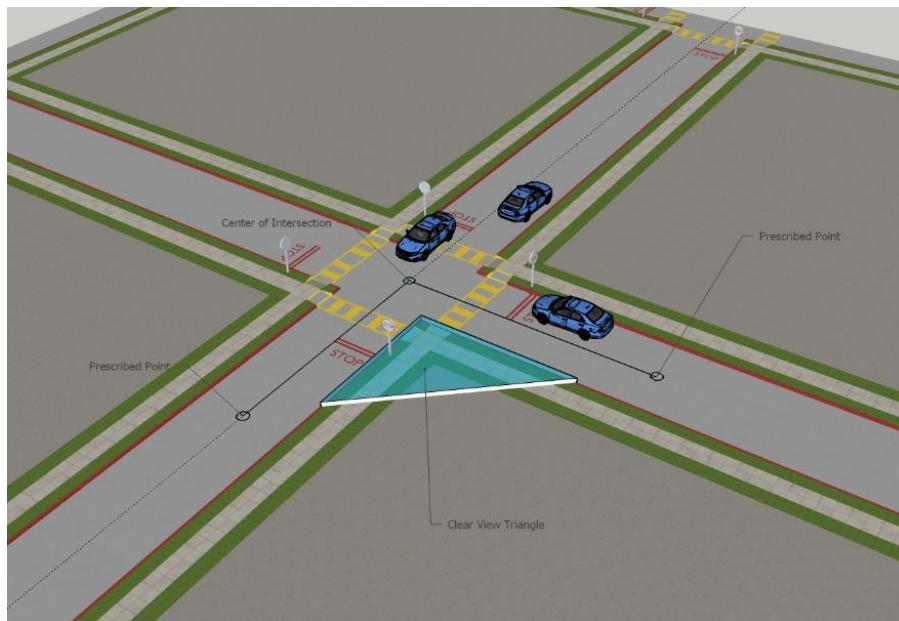
No application requesting a variance, Conditional Use, or Zoning Ordinance amendment or district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment (Variances, Conditional Uses) or City Council (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or City Council before the expiration of six (6) months from the date of the final action of the Planning Commission, Board of Adjustment, or City Council.

**ARTICLE IV  
SUPPLEMENTAL REGULATIONS**

**CHAPTER 4.01 VISIBILITY AT INTERSECTIONS.**

On a corner lot in any zoning district, no planting or obstruction to impede the vision between a height of three (3) feet and ten (10) feet above the centerline grades of the intersecting streets shall be placed or maintained within the triangular area formed by the intersection of street right-of-way lines and a straight line connecting points on said road right-of-way line, each of which is fifty (50) feet from the point of intersection (Clear View Triangle). See Figure 4.01.01.

Figure 4.01.01



**CHAPTER 4.02 FENCES**

**Section 4.02.01 Construction and Materials**

1. No person shall hereafter construct, erect, or maintain or cause to be constructed, erected, or maintained, in the City of De Smet corporate limits any fences of any character or material, without obtaining a building permit.
2. Fences, walls, and hedges which are more than thirty (30) percent solid shall abide by Chapter 4.01.

3. Approved fencing materials include stone, brick, wood, vinyl, and chain link. The City further requires fencing materials to be “new” – used for first time installation. Individuals wishing to utilize “used” – not first time installation fencing materials shall require Board of Adjustment approval. No electric or barbed wire fence shall be used in the construction of any fences within the City of De Smet, except that barbed wire may be used in connection with a security fence when the barbed wire is at least six feet from the ground.
4. That side of the fence considered being the face (facing as applied to fence post) should face abutting property.
5. No person shall hereafter construct, erect, or maintain or cause to be constructed, erected, or maintained, in the City of De Smet corporate limits any fences of any character or material closer than one (1) foot to the sidewalk line or property line. Exception: A fence/wall/hedge may be placed on the property line provided application includes both owners of the shared property line

**Section 4.02.02 Location/Setback Requirements**

Table 4.02.02.2

		Maximum Height	Required Setback
<b>Primary front yard</b>	<i>Greater than 30% Solid</i>	3 feet	1 foot from sidewalk line (ROW)
	<i>Greater than 30% Solid</i>	7 feet	Minimum Primary Front Yard Setback in applicable Zoning District
	<i>Less than 30% Solid</i>	4 feet	1 foot from sidewalk line (ROW)
	<i>Less than 30% Solid</i>	7 feet	Minimum Primary Front Yard Setback in applicable Zoning District
<b>Secondary front yard (A)</b>	<i>Greater than 30% Solid</i>	3 feet	1 foot from sidewalk line (ROW)
	<i>Greater than 30% Solid</i>	7 feet	Minimum Secondary setback in applicable Zoning District (if listed)
	<i>Less than 30% Solid</i>	4 feet	1 foot from sidewalk line (ROW)
	<i>Less than 30% Solid</i>	7 feet	Minimum Secondary setback in applicable Zoning District (if listed)
<b>Rear yard setback no Alley (B)</b>		7 feet	1' (C)
<b>Rear yard setback with Alley (B)</b>			5' from alley line and street line
<b>Side yard setback (B)</b>			1'

(A) On corner or reversed frontage lots a secondary front yard is the yard adjacent to the street but not used for direct vehicular access to a street.

(B) Any form of fence meeting the materials requirements of Section 4.02.01.3. above.

## **CHAPTER 4.03 ACCESSORY BUILDINGS**

1. Only specifically authorized accessory uses are allowed; accessory uses must be subordinate to principal use.
2. No accessory use shall be permitted in any district unless such use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
3. No accessory structure or use may be located in a required front or side yard.
4. No accessory building may be used for residential dwelling purposes at any time.
5. Residential districts.

Accessory uses shall be permitted for the principal permitted uses and Conditional Uses for the residential districts only in accordance with the provisions of Table 4.03.5



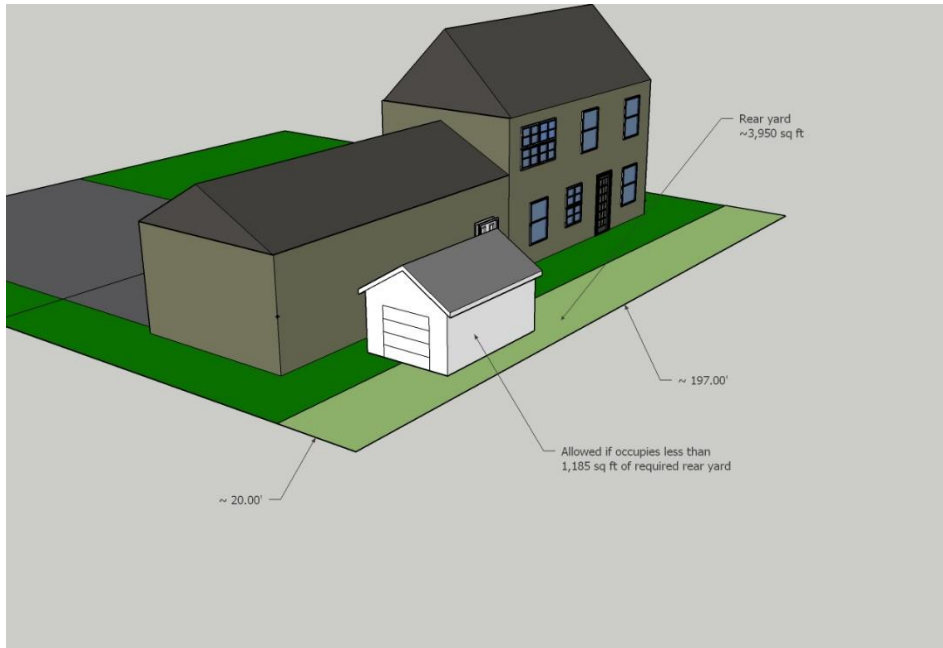
Table 4.03.5

Permitted uses:

<b>Principal Use</b>	<b>Permitted Accessory Uses</b>
<p>Single-family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and day care centers.</p>	<ol style="list-style-type: none"> <li>1. Private garages.               <ol style="list-style-type: none"> <li>i. Attached garages shall be limited to a total area less than or equal to the gross floor area of the house and conform to the design of the house. Unless otherwise authorized by the Board of Adjustment corrugated galvanized steel and other steel panel siding are prohibited.</li> <li>ii. Unattached garages shall be limited to a maximum sidewall height of fourteen (14) feet and a total area less than or equal to the gross floor area of the house and a minimum of 4/12 roof pitch or to conform to the design of the house.</li> <li>iii. Unattached garages shall have siding material of a type customarily used on site-constructed residence. Comparable to dwelling and be color coordinated to dwelling. Corrugated galvanized steel and other steel panel siding are prohibited.</li> </ol> </li> <li>2. Buildings or structures for customary residential storage- purposes, including weather protective canopies (carports), not over twelve (12) feet in height and not exceeding two hundred (200) square feet in gross floor area.</li> <li>3. Readily moveable sports, recreation, or outdoor cooking equipment.</li> <li>4. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools (with an approved security fence), barbeque pits, and similar improvements provided a site plan for such facility is approved.</li> <li>5. Home occupations but only as defined herein.</li> <li>6. Non-commercial greenhouses provided that greenhouses over 100 square feet in floor area must have an approved site plan.</li> <li>7. Off-street parking and storage of vehicles, but only as provided in Chapter 4.05 of this Ordinance.</li> </ol>
<p>Religious Institutions</p>	<ol style="list-style-type: none"> <li>1. All uses and structures determined by the administrative official to be customarily incidental and reasonably necessary to promote the primary purposes of the principal use.</li> </ol>
<p>All Conditional Uses</p>	<ol style="list-style-type: none"> <li>1. All uses and structures determined by the administrative official to be customarily incidental and reasonably necessary to promote the primary purposes of the principal use.</li> </ol>
<p>Prohibited and non-conforming uses</p>	<ol style="list-style-type: none"> <li>1. No accessory uses/structures permitted.</li> </ol>

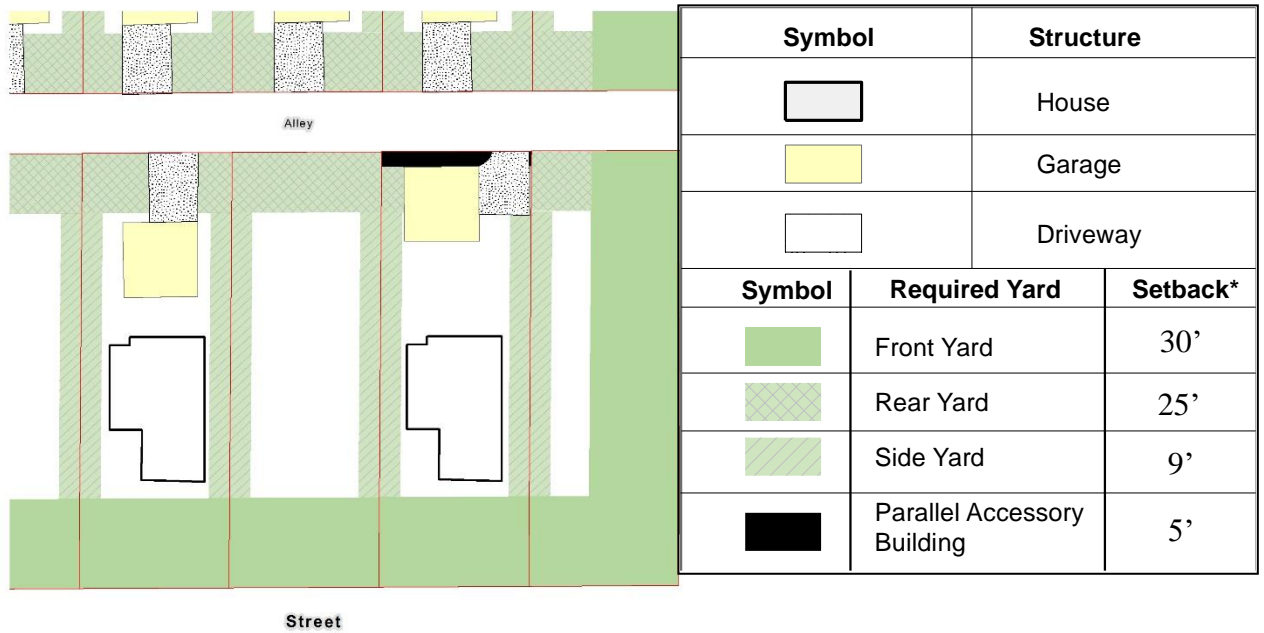
6. Accessory buildings which are attached to or located within ten (10) feet of the main building shall be considered part of the principal structure and shall comply with the same yard requirements as the main building.
7. Accessory buildings not part of the main building may be located in the required rear yard, but such accessory buildings may not occupy more than thirty (30) percent of the required rear yard. See Figure 4.03.7.B.

Figure 4.03.7.B



8. Accessory buildings for townhouses which are attached to or located within ten (10) feet of the main building shall be considered part of the main building and shall comply with the same yard requirements as the main building.
9. Accessory buildings for townhouses not part of the main building may be located in the required rear yard, but such accessory buildings may not occupy more than sixty (60) percent of the required rear yard.
- 10.A garage which is entered directly from an alley shall not be located closer than twenty (20) feet to the alley line. A garage which is entered parallel to the alley way may be located five (5) feet from the alley line. See Figure 4.03.10.A

Figure 4.03.10.A



\*Setbacks represent R-1 District Setbacks.

8. No separate accessory building shall be erected within five (5) feet of any other building.
9. Commercial/Industrial Districts.
  - A. In any commercial or industrial district, any accessory use customarily incident to the Permitted Use or Conditional Use shall be permitted unless otherwise specifically prohibited in the applicable district.
  - B. No accessory structure shall be located between the primary structure and the street, except signs, gas/pumps islands unless otherwise determined necessary for the normal operation of the primary use in the opinion of the Board of Adjustment.

**CHAPTER 4.04 SIGNS AND OUTDOOR ADVERTISING.**

**Section 4.04.01 Prohibited Signs:**

1. Creates a hazard due to collapse, fire, collision, decay, or abandonment; or
2. Creates traffic hazards, by either:

- A. Confusing or distracting motorists; or
- B. Impairing the driver's ability to see pedestrians, obstacles or other vehicles, or
- C. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
- D. Creates a nuisance to persons using a public right-of-way; or
- E. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement.
- F. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel.

**Section 4.04.02 General Requirements**

Signs shall be permitted in zoning districts per Article II, subject to the following provisions:

1. Wall signs may be located anywhere on the wall of a building.
2. Signs shall not project over public property.
3. Signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Chapter 4.01.
4. Each sign – size, lighting, and location - in the City shall at least meet the standards established by the South Dakota Department of Transportation.
5. Other than notices for municipal events, utility fixtures or holiday decorations.
6. The Administrative official shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies with codes relating to outdoor advertising.

**Section 4.04.03 Signs in the Residential Zoning Districts.**

1. Permanent freestanding signs and wall signs are prohibited for Permitted Uses in Residential Zoning Districts.
2. Temporary signs for Permitted and Conditional Uses in Residential Zoning Districts shall comply with the requirements of Table 4.04.03.3.

3. Freestanding and wall signs erected accessory to any Conditional Use in the any residential Zoning Districts shall be constructed in accordance with the building permit issued for the sign and, unless specified elsewhere in this Ordinance, conform to Table 4.04.03.3.
  - A. The sign structure or sign shall have a maximum height of ten (10) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
  - B. Notwithstanding the provisions of Section 4.04.02.5, Each sign shall be constructed in accordance with minimum setback requirements of the applicable district except that a sign may be constructed in any location in the front yard provided it shall not be closer than one (1) foot from any street right-of-way and shall comply with all other requirements of this Chapter.

Table 4.04.03.3

Sign Type	Area		Number	
	Adjacent to Municipal Right-of-Way	Adjacent to State or Federal Right-of-Way	Adjacent to Municipal Right-of-Way	Adjacent to State or Federal Right-of-Way
Freestanding	50 Square Feet		1	
Wall				
Temporary	32 Square Feet		1	

**Section 4.04.04 Signs in Business and Industrial Zoning Districts.**

Freestanding and wall signs erected in the Commercial and Industrial Districts shall be constructed in accordance with the building permit issued for the sign and, unless specified elsewhere in this Ordinance, conform to Table 4.04.04

1. The sign structure or sign shall have a maximum height of thirty-two (32) feet or six (6) feet above the height of the peak of the tallest building on site, whichever is greater. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
2. Notwithstanding the provisions of Section 4.04.02.5, each sign shall not be closer than one (1) foot from any street right-of-way and shall not overhang above any right-of-way.

Table 4.04.04

Sign Type	Setback from Residentially Zoned Property	Area	Number	
		Adjacent to all Streets	Adjacent to Municipal Right-of-way	Adjacent to County, State, or Federal Highway Right-of-Way
Freestanding	100 Feet	<ul style="list-style-type: none"> <li>• 2 sq. ft. per lineal foot of frontage not to exceed 120 square feet per sign on a single frontage lot;</li> <li>• 2 sq. ft. per lineal foot of frontage not to exceed 75 square feet per sign on a multiple frontage lot (See (A) below)</li> </ul>	1 per 100 lineal feet of frontage (B)	1 per 100 lineal feet of frontage (B)
Wall	Applicable Setback for Primary Structures	7% of wall area facing right-of-way (C)	n/a	
Temporary	Applicable Side or Rear Setback for Primary Structures	32 square feet	1	

(A) In the case of lots with multiple frontages, maximum sign area for each sign is based upon the lineal feet of the narrowest frontage on the lot.

(B) For lots with less than one hundred (100) feet of frontage on any given street, one (1) sign is allowed per frontage.

(C) Not to include printing, lettering or drawing in doors or windows.

**Section 4.04.05 Portable Signs.**

Temporary use of portable or moveable signs shall be allowed in Business and Industrial Districts in excess of and in addition to the sign limitations of this Section. The following provisions shall apply:

1. Portable signs shall be permitted only four times per twelve-month period for a maximum of 14 consecutive days per period;
2. The maximum permitted size of a portable sign is six (6) feet in height and ten (10) feet in length.
3. A portable sign shall not be located closer than twenty (20) feet to any intersection and shall not be located closer than three (3) feet from any sidewalk;

4. Only one portable sign shall be allowed per 150 feet of lot frontage;

**Section 4.04.06 Electronic Message Signs.**

1. Electronic message sign displays shall be limited to displays, which are gradual movements, including, but not limited to, dissolve, fade, scrolling, or traveling. However, sudden movement is prohibited, including, but not limited to, blinking and flashing.
2. Any permitted signs may be, or may include as an individual component of the total sign area, electronic message signs.
3. Electronic messages or graphic displays may be changed at periodic intervals by gradual entry and exit display modes provided that messages and animation shall be displayed at periodic intervals by various modes, such as fade, dissolve, scrolling, or traveling.

**Section 4.04.07 Signs on otherwise vacant lots (as Conditional Use).**

In those districts identified in Article II the Board of Adjustment may, by Conditional Use Permit, allow freestanding signs on a lot with no other principle permitted use provided the following conditions are met:

1. The requirements of Chapter 4.01 and Section 4.04.01 are met;
2. Not more than one (1) sign per one hundred fifty (150) feet of frontage.
3. No sign shall exceed one hundred twenty (120) square feet in area.
4. No sign shall be constructed less than one hundred (100) feet from a residentially zoned property;
5. The Board of Adjustment shall consider the following factors when determining whether a sign on an otherwise vacant lot would adversely affect the public interest:
  - A. Width of the right-of-way
  - B. Speed limit of adjacent right-of-way
  - C. Distance the sign is placed from the right-of-way.

## **CHAPTER 4.05 PARKING**

### **Section 4.05.01 Use of Major Recreation Equipment.**

No off-street parking of motor vehicles, recreational vehicles, watercraft or trailers should be permitted in the required front yard of any residence except as follows:

1. Upon a driveway providing direct access to the garage or rear yard;
2. Upon any other driveway provided that it is no wider than twenty-two (22) feet;
3. Upon the yard area between the driveway and the nearest side lot line.

No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

### **Section 4.05.02 Parking and Storage of Certain Vehicles:**

Automotive vehicles or trailers of any kind or type which are inoperable or without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings.

### **Section 4.05.03 Off-Street Parking Requirements:**

Except in the C-1 Commercial District, off-street motor vehicle parking and loading spaces shall hereafter be provided on the same lot as, and in the number stated, for each use set forth in the Schedule of Minimum Off-street Parking and Loading Requirements in Table 4.05.03 below. In the event the minimum number of spaces specified cannot be reasonably provided on the same lot as the principal use for which the spaces are required, the Board of Adjustment may permit such spaces to be provided on other off-street property within four hundred (400) feet of the entrance to such principal use.



Table 4.05.03

USE OR STRUCTURE	MINIMUM OFF-STREET PARKING REQUIREMENTS	MINIMUM OFF-STREET LOADING REQUIREMENTS
Bed & Breakfast	One (1) space for each guest room	None
Bowling Alleys	Four (4) spaces per alley	One (1) space per establishment
Car Wash	Three (3) spaces per wash stall	None
Churches	One (1) space for each four (4) seats in the main seating area	None
Eating & Drinking Places	One (1) space for each three- (3) customer seating spaces	One space per establishment
Gas Stations	Three (3) per bay plus one (1) per employee on duty	One space per establishment
Hospitals	One (1) space for each three (3) beds	Three spaces per establishment
Hotels/Motels	One (1) space for each guest room plus one (1) per employee at largest shift	One space per establishment
Industrial Uses	One (1) space for each two (2) employees on the maximum working shift	Two spaces per establishment
Libraries	One (1) space for each five hundred- (500) square feet of floor area	One space per establishment
Medical or dental clinics	One (1) space for each examining or operating room plus one (1) space for each doctor and employee	None
Manufactured home parks	Two (2) spaces for each manufactured home	None
Mortuaries & funeral homes	Five (5) spaces for each reposing room	Two spaces per establishment
Multiple family dwellings, Nursing, Convalescent & Rest Homes	Two (2) spaces for each dwelling unit or one (1) space per bedroom, whichever is greater.	None
Museums	1 per employee on duty plus 5 per 1000 sq. ft.	One (1) space per establishment
Office	1 per 250 sq. ft. gross floor area	None
Private Clubs, Lodges, Social or Fraternal Organizations	One (1) space for each one hundred (100) square feet or one (1) space for each three (3) seats at bars or dining tables, whichever is greater	None
Schools	One (1) space for each twenty-five students	One (1) space per school
Service Establishments	One (1) space for each three hundred (300) square feet of floor area	One (1) space per establishment
Retail sales establishments	One (1) space for each three hundred (300) square feet of floor area	One (1) space per establishment
Single family dwellings	Two (2) spaces for each dwelling unit exclusive of required yards	None
Theatres, auditoriums, & places of public assembly	One (1) space for each four (4) seats of design capacity	One (1) space per establishment
Warehouse, wholesale & distribution	One (1) space for each two (2) employees on the maximum working shift	Two (2) spaces per establishment

## **CHAPTER 4.06 STRUCTURES TO HAVE ACCESS**

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to private streets approved by the Board of Adjustment, and all structures shall be so located on lots as to provide safe and convenient access for services, fire protection and required off-street parking.

## **CHAPTER 4.07 YARDS**

For the purposes of this ordinance the term “yard” shall refer to any required yard or setback area specified in the applicable zoning district.

No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

### **Section 4.07.01 Yards, Reduction in Size.**

No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards and lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

### **Section 4.07.02 Additional Yard Requirements.**

The following yard requirements must be observed in addition to the yard requirements of the various districts:

1. Except in the, “A”, and “C-1” Districts, a corner lot must have a front yard on both streets.
  - A. On through lots and reversed frontage lots, a front yard must be provided on both streets.
  - B. All buildings on lots in an “C-1”, “C-2”, “I”, or “A” District adjacent to the R1 and R2 Districts lot shall observe the minimum yard requirement of the applicable zoning district or the affected R1 or R2 District, whichever is greater, for the shared property line. This requirement does not apply to lots across a rights-of-way or alleys.
2. Required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

**Section 4.07.03 Exceptions to Yard Requirements**

The following exceptions may be made to the yard requirements:

1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.
2. In commercial and industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.

**CHAPTER 4.08 ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT.**

In any district, unless authorized by the Board of Adjustment in granting a permit for a listed Conditional Use, only one (1) structure housing a permitted or permissible principle use may be erected on single lot, provided that yard and other requirements are met.

**CHAPTER 4.09 EXCEPTIONS TO HEIGHT REGULATIONS.**

The height limitations contained in Article II do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

**CHAPTER 4.10 PRIVATE WASTEWATER TREATMENT SYSTEMS (SEPTIC TANKS)**

All existing septic tanks shall be considered Non-conforming Uses. All structures used for human habitation, commercial and industrial use must be connected to a sewage disposal system approved by the City Council. If the city sanitary sewer system is available within 400 feet, all such structures must be connected at the landowner's cost.

**CHAPTER 4.11 MANUFACTURED HOME PROVISIONS.**

**Section 4.11.01 Modular Homes.**

1. Modular homes shall meet the following regulations.
  - A. Modular homes shall meet or exceed International Building Codes.
  - B. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.

- C. Modular homes shall have more than 1,000 square feet in ranch style and 850 square feet split and be placed on a permanent foundation. The foundation shall be to a depth below the frost line.
- D. Modular homes shall not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch.
- E. Modular homes shall have a minimum of a 3/12 roof pitch.
- F. Have siding material of a type customarily used on site-constructed residences.
- G. Have roofing material of a type customarily used on site-constructed residences.

**Section 4.11.02 Type I and Type II Manufactured Homes.**

1. For the purpose of this Ordinance, manufactured homes will be regulated by type. Two types of homes are defined under these regulations.
  - A. Type I manufactured home shall be a dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with the [Federal Manufactured Housing Construction and Safety Standards Code](#) in addition to the following requirements:
    - i) Have more than 1,100 square feet of occupied space in a double section or larger multi section unit.
    - ii) The running gear and hitch have been removed.
    - iii) Has been anchored to a foundation and permanent footing.
    - iv) The foundation shall be (a) an approved wood basement constructed of 2 x 6 frame work and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block.
    - v) The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with the top of the footing to be sixteen (16) inches below grade.
    - vi) Have a gabled roof with a pitch of at least 3/12 feet.
    - vii) Have siding material of a type customarily used on site-constructed residences.
    - viii) Have roofing material of a type customarily used on site-constructed residences.

ix) The age of the manufactured house may not exceed ten (10) years from the date of manufacture.

B. Type II manufactured home shall be a dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with the [Federal Manufactured Housing Construction and Safety Standards Code](#) in addition to the following requirements:

i) Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit.

ii) Utilize a permanent perimeter enclosure in accordance with approved installation standards, as specified in 4.11.02.B.2.

iii) Be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the [Federal Manufactured Housing Construction and Safety Standards Code](#).

iv) Have siding material of a type customarily used on site-constructed residences.

v) Have roofing material of a type customarily used on site-constructed residences.

vi) Have a gabled roof with a pitch of at least 3/12 feet.

vii) The age of the manufactured house may not exceed ten (10) from the date of manufacture.

viii) Be placed onto a support system. In accordance with approved installation standards, as specified in Section 4.11.02.B.3.b.

## 2. Installation standards

A. Permanent Perimeter Enclosure as required for Type I and II Manufactured Homes. Those manufactured homes designated in this Ordinance (Type I), as requiring a permanent perimeter enclosure must have footings and crawl space or basement walls. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

## B. Foundation Siding/Skirting

All manufactured homes without a perimeter (Type II) enclosure shall have an approved foundation siding/skirting enclosing the entire perimeter of the home.

## C. Support System

- i) All HUD-Code manufactured homes of the Type I classification shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.
- i) Type II manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations as prescribed by the TR-75, issued June 1972, by the U.S. Department of Defense or by the ANTI/NFPA 501A Standards.

## 3. Nonconforming Homes.

A manufactured home placed and maintained on a tract of land and deemed to be a legal nonconforming use prior to the adoption of this Ordinance shall continue to be a legal nonconforming use. If the nonconforming use is discontinued for a period of one year, the land thereafter must be used in conformity with all provisions of this Ordinance.

## 4. Replacement of Nonconforming Homes.

Type I and Type II Manufactured Homes located upon any lot or lots of record at the time of the adoption of this Ordinance may be replaced by Type I and/or Type II Manufactured Homes of like dimensions and said replacement shall not be deemed to have changed the use thereof from a non-conforming to a conforming use.

## 5. Structural Alteration.

Due to its integral design, the Administrative Official after it is placed on the site must approve any structural alteration or modification of a manufactured home.

## 6. Variance from Maximum Age Requirement

Type I and Type II manufactured homes may receive a variance from the maximum age requirement (Sections 4.12.01.1.a.10 and 4.12.01.1.b.8). The Board of Adjustment may grant a variance if the manufactured home meets the following requirements:

- i) The applicant shall provide a photograph of the manufactured home's exterior and interior.
- ii) That it shall have been shown to the satisfaction of the Administrative Official that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of the City of De Smet.
- iii) That the applicant shall obtain the written consent of sixty-six (66) percent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and the consent of fifty (50) percent of the property owners within 150 feet (excluding streets and alleys) of said proposed location has been received.

**Section 4.11.03 Manufactured Home Park Minimum Standards.**

Manufactured home parks shall meet the following minimum standards:

1. Streets.

Each manufactured home shall abut or face a public private roadway or street, such roadway or street having an all-weather surface of at least thirty (30) feet in width where parking is permitted on both sides, and twenty-six (26) feet in width where parking is restricted to one side only. Where private streets are proposed, they shall have a minimum right-of-way of forty (40) feet.

2. Open Space or Buffer Zone.

A landscape buffer area of ten (10) feet in width shall be provided and maintained around the perimeter of the park, except where walks and drives penetrate the buffer.

3. Lot Area.

Each lot provided for the occupancy of a single manufactured home unit shall not be less than fifty feet in width and have an area of not less than five thousand five hundred (5,500) square feet, and the same shall be defined by markers at each corner.

4. Density.

No park shall be permitted an average net density of manufactured home lots of more than eight (8) units per acre and each park shall provide an area of not less than three (3) acres.

5. Spacing and Yard Requirements.

All manufactured housing units will be positioned on the manufactured home space in compliance and accordance with the zoning requirements at the time of establishment of the manufactured home Park. Manufactured home parks established after the effective date of this ordinance, will comply with the following:

**A. Front Yard.**

All manufactured homes shall be located at least twenty (20) feet from any road or street. The distance will be measured from the wall of the structure to the street or roadway at the closest point.

**B. Side and Rear Yards.**

All manufactured homes shall have minimum side yards of seven (7) feet and a minimum rear yard of ten (10) feet.

**C. Exceptions to minimum yard requirements.**

A garage, canopy, or carport may project into a required side or rear yard provided it is located no closer than ten (10) feet to another manufactured home garage, canopy, carport, or addition thereto, and provided further that the maximum depth be twenty-four (24) feet.

A deck may project into a required side or rear yard provided it is located no closer than four feet to any other structure.

An enclosed vestibule containing not more than forty (40) square feet in area may project into a required yard for a distance not to exceed four (4) feet, but in no event closer than ten (10) feet to another manufactured home, garage, canopy, carport, or addition thereto.

Detached accessory buildings with a projected room area of not more than one hundred and twenty (120) square feet may project into a required side or rear yard provided it is located no closer than four (4) feet to another structure or right-of-way.

**D. Maximum Lot Coverage:**

No manufactured home shall occupy more than twenty-five (25%) of the area of the lot on which it is situated.



6. Parking

Two (2) off-street automobile parking spaces shall be provided for each manufactured home. Such off-street parking spaces shall be set aside in a location convenient to the occupants of the trailer or camping units and shall have ingress and egress by means of a public way. Where parking areas are provided adjacent to a public street, ingress and egress thereto shall be made accessible only through driveways or openings not exceeding twenty-five (25) feet in width in the curb line of said street.

7. Refuse Collection

In the event that there is not individual refuse collection, one refuse collection station shall be provided, with a minimum of one (1) two-yard screened on four sides, for each twelve (12) families or fractions thereof, conveniently located to serve tenants not more than one hundred fifty (150) feet from any trailer unit served, and to be conveniently located for collection.

8. Recreation Area

The developer of the manufactured home park shall dedicate no less than 8 (eight) percent of the gross site area to recreational facilities appropriate to the needs of the occupants. The Board of Adjustment shall approve the designated recreation area.

9. Storm Shelter

Management shall provide or make arrangements for a suitable storm shelter for residents of the park.

10. On-Site management

Each manufactured home park shall provide on-site management by the owner or his representative at all times to supervise the management, repairs, maintenance and janitorial work connected therewith and to see that all provisions of this Chapter are complied with.

11. Water Supply and Distribution System and Sewage Disposal:

Each manufactured home shall be connected to the City sanitary sewer and water system.

12. Tie Down Requirements

All manufactured homes, regardless of location, unless such manufactured homes are securely anchored to a permanent foundation approved by the Administrative Official, shall be anchored to the ground, in accordance with the manufacturer's specifications or as prescribed by the [Federal Manufactured Housing Construction and Safety Standards Code](#).

13. Maximum Age Limitation:

No manufactured home placed within a manufactured home park within the City limits of De Smet may exceed fifteen years from the date of manufacture.

14. Expansion.

Existing manufactured home parks may be extended to a total area of less than three (3) acres provided the area of expansion complies with all other regulations herein set forth.

15. Building/Moved-in Building Permit Required

Whenever a manufactured home is moved into a manufactured home park, a permit from the Administrative Official shall be required.

16. Skirting

All manufactured homes, regardless of location, unless such manufactured homes are securely anchored to a permanent foundation, approved by the administrative Official, shall be skirted within thirty (30) days of placement.

17. Lighting

Site lighting shall be provided and used to supplement street lighting and shall be effectively related to toilet and laundry facilities, plantings, walks, steps, or ramps. Illumination should be of conservative intensity but sufficiently distributed to eliminate dark areas, especially at steps. Lights may be attached to toilet and laundry facilities.

**Section 4.11.04 Application Procedure:**

Each application for a Manufactured Home Park shall be accompanied by a development plan incorporating the regulations established herein. The plan shall be drawn to scale and indicate the following:

The following requirements pertain to Manufactured Home Park:

1. Location and topography of the proposed manufactured home park, including adjacent property owners and proximity to Federal and State highways, and County, Township, and City roads/streets;
2. Property lines and square footage of the proposed park;
3. Location and dimensions of all easements and right-of ways;
4. Proposed general lay-out, including parking and recreation areas;
5. General street and pedestrian walkway plan;
6. General utility, water, and sewer plan.

Upon approval of the application, the plan becomes part of the permanent record and it shall serve as the basis for the final site plan submission.

#### **Section 4.11.05 Manufactured Housing Subdivisions.**

Nothing in this Ordinance shall be construed to prohibit subdividing an approved manufactured home park development into individual owner occupied lots. However, any such development shall be required to meet the subdivision regulations of the City of De Smet.

#### **CHAPTER 4.12 PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS**

No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exempted from this requirement are manufactured homes in an approved manufactured home park, provided said manufactured homes are anchored with tie downs to prevent the manufactured home from dangerous motion during high wind or other weather related events.

#### **CHAPTER 4.13 UTILITY EASEMENTS.**

Unless such structure is constructed by the utility provider for which the easement is reserved, no structure or addition thereto shall be erected over or across any existing public utility or upon any platted easement.

Building and use permits are not required for utility structures constructed within utility easements by the utility provider for which the easement is reserved.

## CHAPTER 4.14 MOVED BUILDINGS

1. It shall be unlawful to move any house or other building onto any lot or to any new location within the City unless and until a permit to do so has been obtained from the Administrative Official. No permit shall be issued until the following requirements are met.
  - A. The fee for said permit as prescribed in Section 3.01.03, shall have been paid.
  - B. That it shall have been shown to the satisfaction of the Administrative Official that the said house or other building complies with the gas, plumbing, electrical, and construction requirements of the city of De Smet.
  - C. That the work is to be completed within twelve (12) months after the permit has been issued by the Administrative Official.
  - D. The applicant shall also file with the Finance Officer a bond in the amount of not less than one thousand (1000) dollars conditioned so that the applicant will indemnify the City and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the city, the Administrative Official shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.
  - E. Any building, which is not newly constructed to be used for first occupancy, shall also meet the following minimum requirements to obtain a permit.
    - i) The written consent of sixty-six (66) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and the consent of fifty (50) percent of the property owners within 150 feet (excluding streets and alleys) of said proposed location has been received.
2. It shall be unlawful to move any house or other building off of any lot within the City unless and until a permit to do so has been obtained from the Administrative Official. No permit shall be issued until the following requirements are met.
  - A. The fee for said permit as prescribed in Section 3.01.03, shall have been paid.
  - B. That the work is to be completed within twelve (12) months after the permit has been issued by the Administrative Official.

- C. The applicant shall also file with the City Finance Officer a map of roadways upon which the building will be carried within city limits. Further, the applicant may be required to provide documentation of condition of said roadways, including right of way, utilities, private property, etc., both prior to, and following the moving of the structure.
- D. If damage occurs, the applicant shall be held financially responsible for the repair of roadways, including right of way, utilities, private property, etc. to their respective condition prior to the damage. All work shall be performed to the standards of the City of De Smet.
- E. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the City, the Administrative Official shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.
- F. When no replacement structure is to be moved in or constructed, the applicant shall agree to restore the lot to a buildable condition. This may include but is not limited to concrete basement removal, collapsing of the basement walls, earthwork, landscaping and/or reseeded

#### **CHAPTER 4.15 SCREENING**

Where any C-1, C-2, and I use is adjacent to any Residential Zone, that use (building, parking or storage) shall be appropriately screened from the Residential Use District by planting, except where planting may be in conflict with Chapter 4.01.

#### **CHAPTER 4.16 CANNABIS DISPENSARIES**

##### **1. Maximum Number of Cannabis Dispensaries.**

- A. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

B. The City shall allow up to 1 cannabis dispensary provided the time, place, and manner of said dispensaries comply with this ordinance.

## 2. Required Separation Distances

A. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;

B. A cannabis dispensary shall be located not less than two hundred fifty (250) feet from a public park and recreation area existing before the date of the cannabis dispensary application;

C. A cannabis dispensary shall be located not less than two hundred fifty (250) feet from a public library, church and day care facilities.

D. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:

i) The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.

E. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed

## 3. Other Locational Requirements

A. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.

B. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

4. Controlled Access - No cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.

## 5. Hours of operation:

A. Cannabis dispensaries are allowed to be open daily between the hours of 7:00 a.m. and 12:00 midnight.

6. Documentation of State Licensure.
  - A. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.
7. The zoning official is authorized to issue permits (building/use) for cannabis dispensaries subject to following:
  - A. Submission of a site plan containing the following:
    - i) Any information required for applicable building permit,
    - ii) Ingress and egress plan
    - iii) Parking plan
    - iv) Lighting plan (including security lighting)
    - v) Screening/security fencing plan,
    - vi) Refuse plan;
    - vii) Hours of Operation;
    - viii) Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
  - B. Documentation of ability to meet setback/separation requirements.
  - C. Documentation of State Licensure.
8. All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

#### **CHAPTER 4.17 REFUSE**

In all zoning districts, refuse (rubbish, garbage, trash, waste or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lots shall be responsible for keeping their property free of trash.

## CHAPTER 4.18 RECREATIONAL TRAILER PARKS

Recreational trailer parks may be allowed in any zoning district where listed in accordance with the requirements of that district in addition to the following:

1. Limitation on length of time recreational trailers may remain within city.

No recreational trailer shall remain in the city for any accumulated period exceeding one hundred eighty (180) days in any twelve (12) month period. The wheels of a recreational trailer shall not be removed, except temporarily. No recreational trailer which is occupied by more persons than the number for which it is designed and arranged or which is so overcrowded that in the opinion of the zoning officers it constitutes a danger to health or morals shall remain in the city for more than twenty-four (24) hours.

2. Sewer connections required.

No individual recreational trailer occupied as living quarters by one (1) or more persons shall remain upon any lot, tract or parcel of land in the city until sanitary and sewage regulations applicable to permanent residents in the city are fully complied with in the event the recreation trailer is to remain on the lot for more than five consecutive days.

3. License required.

No person shall establish or operate any recreational trailer park within the city unless a License therefore is first obtained from the council.

4. Approval of license prerequisite to construction permits.

Permits shall be obtained for all city building and technical code requirements in connection with recreational trailer parks. The zoning officer shall not issue a permit for construction work in connection with a recreational trailer park until the council has approved the issuance of a license.

5. License application; action by the council.

Each applicant for a license required by this article shall submit to the zoning officer a survey plat showing the location and arrangement of the recreation trailer park, and shall give full information relative to the facilities that are to be supplied, showing the location and character of the construction of the buildings and equipment, the arrangement and surfacing of driveways and the arrangements made for sanitation, lighting, and fire protection. The zoning officer shall submit the application and plat to the council, together with his recommendations. After receiving the zoning officer's recommendations, if it appears to the council that the location of the recreational trailer park is in conformity to the city zoning regulations and that the fire



protection and sanitary arrangements are adequate, and that the establishment of a park will not be detrimental to the neighborhood or to the city as a whole, the council may approve the issuance of a license.

6. License fees; issuance, term of license.

- A. The fee for a license required by this article shall be based on the number of units in the recreational trailer park as follows: Six dollars (\$6.00) for each unit per year, with a minimum fee of fifty dollars (\$50.00) per year.
- B. The fees for renewals of licenses issued pursuant to this article shall be calculated in the same manner as for an original license.
- C. The license required by this article shall be issued in the name of the owner or operator of the park, and a separate license is required for each recreational trailer park.
- D. The license required by this article shall be issued for one (1) year and shall be renewed annually on or before the first day of February.

7. Revocation of license.

If a licensee under this article or the manager of a recreational trailer park violates any requirement of this chapter, or fails to maintain the recreational trailer park in an orderly, safe and sanitary manner, the council shall have the right to revoke the license granted under this article.

8. Design and cleanliness of premises.

- A. Each recreational trailer park shall be so arranged that there are adequate and properly surfaced driveways affording convenient access to and egress from each trailer unit.
- B. All recreation trailer parks shall be kept free from refuse and weeds, and shall be kept in a clean and orderly manner.
- C. Inspection of recreational trailer parks and buildings shall be made at regular intervals by the zoning officer and by the fire department.
- D. Each recreational trailer park shall be provided with sufficient means for lighting.

E. An area of not less than one thousand seven hundred fifty (1750) square feet shall be required for each unit. The boundaries of each trailer unit shall be plainly marked in some permanent manner. The distance from any recreational trailer or propelling vehicle of a trailer unit shall be not less than ten (10) feet to any of the following:

- i) To any building on the recreational trailer park site.
- ii) To any boundary of the recreational trailer park except that the distance to any adjacent private property line shall not be less than twenty (20) feet.
- iii) To any recreational trailer or propelling vehicle of another trailer unit.

#### 9. Buildings.

Each recreational trailer park shall have an office and a sign designating it as such. Lavatories and toilets provided for the occupants of recreational trailers shall be located in a building properly arranged, and of permanent construction. All rooms in which lavatories and toilets are located shall be provided with a floor and a base not less than six (6) inches in height and made of impervious material such as concrete, tile or other similar material. Sufficient approved hand fire extinguishers shall be provided within recreational trailer park buildings. All rooms used by the public for toilet purposes shall be lighted at night. All recreational trailer park buildings shall comply with the city building and zoning codes.

#### 10. Water, sewage, and sanitary facilities.

- A. Water from city mains shall be provided for the trailer park so that water is either furnished directly to each recreational trailer or is accessible to the occupants of each recreational trailer by faucets with drains located not less than one hundred (100) feet away from any recreational trailer.
- B. Arrangements shall be made so that the recreational trailers having sinks shall be connected to a frost proof sewer system or the waste from the sink shall be conducted to a covered, portable receptacle; but if no such connection to a sewer system or such receptacle is provided, the sink shall not be used while in recreation trailer park. Recreational trailers having showers or lavatories shall similarly conform to the regulations covering the use of sinks.

- C. There shall be provided in permanent buildings separate entrances for each sex with not less than one (1) additional toilet and urinal for males and one, (1) toilet for females for each ten (10) additional units, or fraction thereof. In such buildings, there shall be one (1) lavatory, with a separate entrance for each sex, on the basis of not less than one (1) lavatory for each three (3) toilets, and at least one (1) shower shall be provided for each sex, for each six (6) trailer units or fraction thereof. Occupants of recreational units shall not be required to go more than three hundred fifty (350) feet to toilet facilities.

#### 11. Registration book.

Each recreational trailer park shall have a permanently bound registration book with numbered pages, and the names and addresses of all the members of any recreational trailer party shall be entered in the book by a member of the party, together with the information relative to the make and year of manufacture, and license number of the recreational trailer and the propelling vehicle. The registration book shall show the date of arrival and the departure of every recreational vehicle and the recreational trailer unit occupied. The registration book shall be available for inspection by duly authorized representatives of the council, upon request. The registration book shall be kept on file.

### **CHAPTER 4.19 HOME OCCUPATION**

A home occupation is a business conducted in a dwelling unit, provided that the occupation is clearly secondary to the main use of the premises as a dwelling and does not change the character thereof or have any exterior evidence of such secondary use. For the purposes of minimizing conflicts with neighboring residentially used property, the City of De Smet has established minimum performance standards for Home Occupations.

#### **Section 4.19.01 Performance Standards.**

1. No person other than members of the family residing on the premises shall be engaged in such occupation;
2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinated to its use for residential purposes by its occupants, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation. Exception: in-home day cares providing care for less than 12 children in a 24-hour period may utilize more than twenty-five percent (25%) of the floor area of the dwelling unit;

3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding two (2) square-foot in area, non-illuminated, and mounted flat against the wall of the principle building; and
4. No equipment or process shall be used in such home occupation, which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood and any need for parking generated by the conduct of such home occupation shall be met off the street.
6. Notwithstanding the preceding standards, any operation that provides care for more than 12 children in a 24-hour period shall not be considered a home occupation.

#### **CHAPTER 4.20 BED AND BREAKFAST (B & B'S)**

A Bed and Breakfast (B & B's) is a private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding residential properties and should comply with the following conditions:

1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor. Preference will be given to structures with historic or other unique qualities.
2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.
3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than one (1) square foot in area.
4. Such uses shall be an incidental use with an owner occupied principle dwelling structure provided that not more than four bedrooms in such dwelling structure shall be used for such purpose.
5. Off-street parking requirements shall be one space per guestroom and shall be in addition to parking requirements for the principle use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property.

6. The length of stay shall not exceed fourteen (14) days during any one hundred twenty-- (120) day consecutive period.
7. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.
8. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.

## **CHAPTER 4.21 ADULT USES**

In the development and execution of these regulations, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

### **Section 4.21.01 Setbacks.**

1. None of the following uses may be established, operated or maintained within five hundred (500) feet of a residence, a cemetery, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park.
  - A. Adult bookstore.
  - B. Adult motion picture theater.
  - C. Adult photo studio.
  - D. Adult Entertainment Facility.
  - E. Any use which has as a part of its operation an adult use component including, but not limited to, a restaurant or eating place, a bar, lounge or tavern.
  - F. Any use intended to provide adult amusement or entertainment.

2. Not more than two of the following uses may be established, operated or maintained within three hundred fifty (350) feet of each other:
  - A. Adult bookstore.
  - B. Adult motion picture theater.
  - C. Adult photo studio.
  - D. Adult entertainment facility.
  - E. Any use which has as a part of its operation an adult use component including, but not limited to, a restaurant or eating place, a bar, lounge or tavern.
  - F. Any use intended to provide adult amusement or entertainment.
  - G. A bar.
  - H. A liquor store.
3. The 350-foot restriction provided for in 4.21.01.2 above may be waived and a conditional use permit issued upon proper application if the Board of Adjustment finds:
  - A. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed.
  - B. That the proposed use will not enlarge or encourage the development of a 'skid row' area.
  - C. That all applicable regulations will be observed.

**Section 4.21.02 Conditions & Regulations Governing Operation; Violation; Penalty.**

1. Adult uses shall be operated in accordance with the following regulations:
  - A. No person under twenty-one (21) years of age shall be allowed on the licensed premises.
  - B. At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.

- C. No adult use shall be located on premises for which a license to sell alcoholic liquor has been issued, and no alcoholic liquor shall be permitted on such premises.
  - D. No adult use shall be permitted unless the premise on which such business is located complies with the requirements of the zoning ordinance.
  - E. No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.
  - F. No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.
2. In addition to the requirements established in Section 4.21.02.1, the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on premises by use of motion picture devices or other such operations means:
- A. All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure.
  - B. There shall be no aperture whatsoever in any wall or partition between viewing areas.
  - C. Each viewing area shall be lighted at a minimum level of ten (10) foot candles in all parts thereof.
3. In addition to the requirements established in Section (1) of this section, the following regulations shall govern and control the operation of an adult entertainment facility:
- A. All performers shall be at least twenty-one (21) years of age.
  - B. All performances, exhibitions or displays shall take place on a platform raised at least two feet from the level of the floor, and located at least ten (10) feet from any patron.
  - C. No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.

D. No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.

4. Any person in violation of this Chapter shall be subject to violations and penalties in accordance with Section 1.02.02 of this Ordinance.

#### **CHAPTER 4.22 SHOP-STYLE DWELLING STANDARDS.**

Shop-style dwellings may only be permitted provided the following conditions are met:

1. The construction of shop-style dwellings shall meet the requirements of Chapter 4.12 Permanent Foundations Required for Dwellings.
2. Shop-style dwellings shall have a gross floor area of not less than fifty-five (55) percent of the structure dedicated to dwelling purposes. Exception: Shop-style dwellings in the Ag District shall not be required to exceed three thousand square feet regardless of the gross floor area of the structure.
3. Shop-style dwellings shall contain a minimum eighteen (18) inch soffit/overhang unless on a gable end, in which case a minimum twelve (12) inch soffit/overhang shall be provided.
4. Shop-style dwellings do not include structures with vertical siding, nor corrugated steel siding.
5. Shop-style dwellings shall include more than one roof-line.
6. Figures 4.22.5.a and 4.22.5.b (below) includes examples of dwellings which may meet the definition of “Shop-style dwellings” and the conditions of Chapter 4.22:

Figure 4.22.5.a



Figure 4.22.5.b



7. Figure 4.22.6.a and 4.22.6.b (below) includes examples of dwellings that either do not meet the definition of “Shop-style dwellings” or they do not meet all of the requirements of Chapter 4.22:



Figure 4.22.6.a



Figure 4.22.6.b



**ARTICLE V**  
**DEFINITIONS**

**CHAPTER 5.01 GENERAL TERMS**

For the purpose of this Ordinance, certain terms and words are hereby defined. Words used:

In the present tense shall include the future;  
The singular number shall include the plural;

and the plural number includes the singular.

The word “building” shall include the word “structure,” and the word “shall” is mandatory, not discretionary, the word “may” is permissive;

The word “person” includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word “lot” includes the words plat or parcel and the words “used” or “occupied” include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English Dictionary.

**Accessory Use or Structure:** As applied to use or structure means customarily subordinate or incidental to, and on the premises of such use or structure.

**Adjacent Property:** Any lot, parcel, or property bordering by means of adjoining, abutting, or intersecting a specified lot boundary, and those lots immediately across a public right-of-way from a specified lot. See Figures Below:



**Adult Bookstores:** An establishment having, as a substantial portion of its stock in trade, books, magazines, films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished by their emphasis on matter depicting, describing or relating to specified Sexual Activities or Specified Anatomical Areas as such terms are defined in this section, or an establishment with a segment or section devoted to the sale or display of such material. Adult bookstores may alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

**Adult Entertainment Facility:** Means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas, as defined in this section.

**Adult Motion Picture Theater:** An enclosed building, regardless of its seating capacity which is used to present for public view on the premises, films, movies, previews, trailers or advertisements which are distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section.

**Adult Photo Studio:** An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing “specified anatomical areas”, as herein defined.

**Adult Use:** The term “adult use” shall include adult entertainment facility, adult bookstores, adult motion picture theaters, and adult photo studios as defined in this section.

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

1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;

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

**Airport:** A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

**Agriculture:** The cultivation of the soil, and all activities incident thereto, except that said term shall not include the raising and feeding of hogs, sheep, goats, cattle, poultry or fur bearing animals.

**Alley:** a public or private right-of-way which affords secondary means of access to abutting property.

**Animal unit:** One animal unit is equivalent to 1.0 beef cow, steer or fat beef animal, 0.5 horse; 0.7 mature dairy cow; 1.7 finishing swine; 6.7 sheep/goats; 55 turkeys; 5 ducks/geese; 33 hens, cockerels, capons, or broilers.

**Apartment:** a room or suite of rooms designed for, intended for, or used as a residence for one family or individual and equipped with cooking facilities.

**Apartment Building:** An apartment building is a detached dwelling designed for, or occupied by, three or more family units.

**Attached Garage:** A garage which is attached by a common wall side by side, extending from the basement floor to the roof, or a detached garage which is within ten (10) feet of the dwelling.

**Automobile Service Station:** (See "Service Station, Automobile.")

**Bar/lounge/tavern:** An establishment that is licensed to sell alcoholic beverages by the drink.

**Basement:** A basement is any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

**Bed and Breakfast (B & B's):** A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public.

**Block:** a tract of land bounded by streets or a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines, unsubdivided acreage or boundary line of the corporate limits of the city.

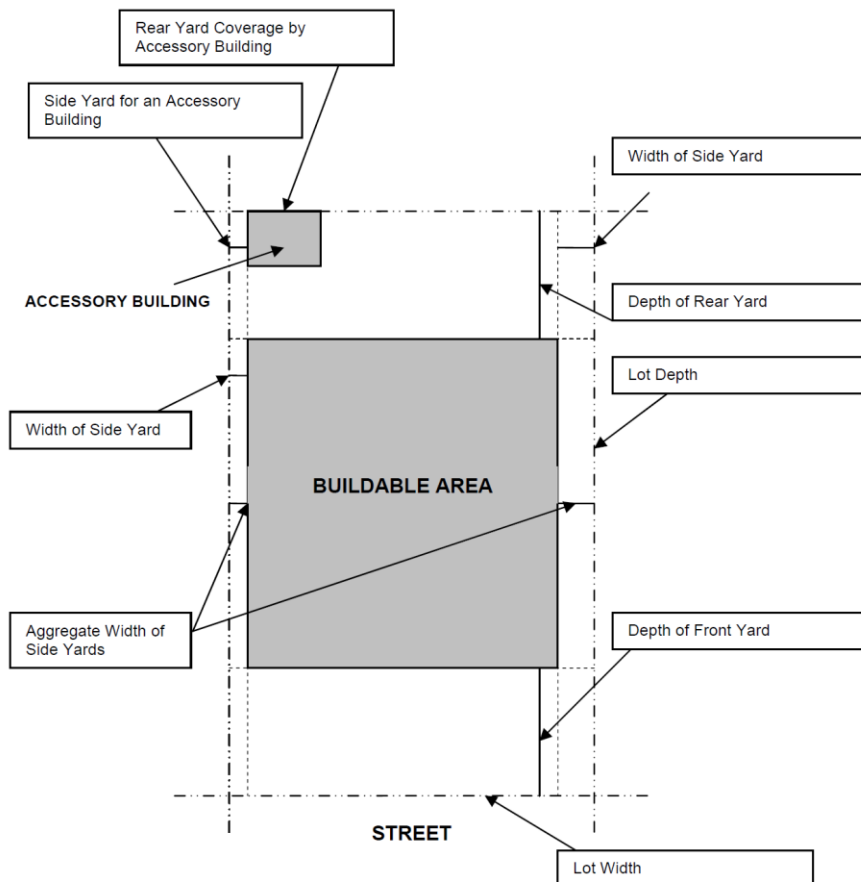
**Boarding House:** A building other than a motel, hotel or restaurant, where lodging and meals are provided for three (3) or more persons, but not exceeding ten (10) persons, and not open to public or transients.

**Buffer:** The use of land, topography, space, fences, or landscape planting to partially screen a use or activity from another property and thus reduce undesirable views or influences.

**Building:** A structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings.

**Buildable Area:** That portion of the lot that can be occupied by the principal use, thus excluding the front, rear and side yards. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (See illustration below).

Buildable Area Illustration



**Building Height:** The vertical distance from the mean curb level along the front lot line or from the mean ground level for all that portion of the structure having frontage on a public right-of-way, whichever is higher, to the top of the cornice of a flat roof, to the top line of a mansard roof, to a point on the roof directly above the highest wall of a shed roof, to the uppermost point on a round or other arch-type roof, or to the mean distance of the highest gable on a pitched or hip roof.

**Butcher Shop:** A retail store supplying meat and poultry products where meat processing is limited to making cuts of meat from pre-processed carcasses.

**Campground:** Shall mean a plot of ground for public use upon which two or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters. Campgrounds for tent trailers and recreational vehicles shall be sited with consideration for access to the property. The campground shall be designed to minimize the impact from adjacent major thoroughfares.

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

**Cannabis Cultivation Facility:** this term is defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

**Cannabis Dispensary:** this term is defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

**Cannabis Establishment:** a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

**Cannabis Product Manufacturing Facility:** this term is defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

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

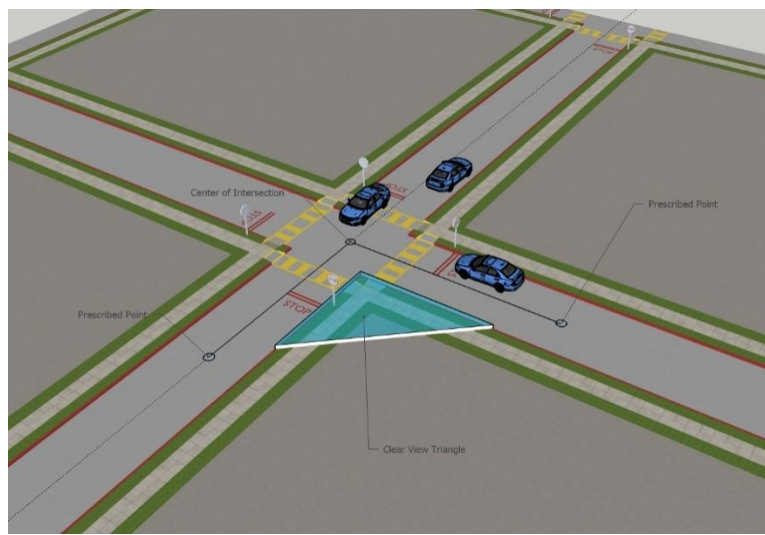
**Cannabis Testing Facility:** this term is defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

**Car Wash:** A facility used to clean the exterior, and sometimes the interior, of automobiles.

**Caretaker's Residence/Watchman's Quarters:** A Dwelling unit which is occupied by one who is employed by a business located on the same premises or within the same structure as said dwelling unit.

**Church:** A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. The definition of "church" includes all religious institutions.

**Clear View Triangle:** A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below).



**Clinic:** An establishment where patients are not lodged overnight, but are admitted for examination and treatment by physicians, psychologists, optometrists, chiropractors or dentists and other health care professionals practicing medicine together and including facilities for training and rehabilitation.

**Commercial Storage, Mini-Storage Facilities:** Individual locker storage facilities (frequently with some accessory outdoor vehicle/boat storage) primarily for the benefit of residential or small business users in which are kept household items, business records, vehicles, recreational equipment, etc.

**Commercial Vehicle:** Any motor vehicle, trailer, or semi-trailer designed or used to carry freight, passengers for a fee, or merchandise in the furtherance of any commercial enterprise and having a gross weight of more than 10,000 pounds.

**Commission:** The Planning Commission of the City of De Smet, South Dakota. “See also Planning Commission.”

**Comprehensive Plan (Comprehensive Land Use Plan):** The adopted long-range plan intended to guide the growth and development of the City of De Smet including a compilation of policy statements, objectives, standards and maps for guiding the physical, social and economic development, both public and private, of the municipality and its environs, as defined in current State law.

**Conditional Use:** A use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district. Conditional uses are subject to evaluation and approval by the Board of Adjustment.

**Condominium:** The ownership of single units in a multi-unit residential structure with common elements. (With the property subject to the condominium regime established pursuant to SDCL 43-15A.)

Commercial uses may occupy properties platted pursuant to SDCL 43-15A, however where referenced herein, the term “condominium” only authorizes the structure to be used for residential purposes. This Ordinance does not differentiate between the manner of ownership of non-residential uses.

**Construction:** Any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

**Construction, actual:** Construction materials are being permanently placed and the construction work is proceeding without undue delay.

**Contractor Shops and Storage Yards:** Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of off-site construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.



**Convenience Store:** Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit. Convenience stores may or may not sell fuel.

**Court:** An open unoccupied space bounded on two or more sides by the exterior walls of a building or buildings on the same lot.

**Curb Level:** The curb level is the level of the established curb in front of the building measured at the center of such front. Where no curb level has been established, the City Engineer shall establish such curb level or its equivalent for the purpose of this Ordinance.

**Day Care:** Any operation, which provides childcare services whether accessory to the caregiver's home or operated in a separate commercial structure.

**Day Care Center:** A commercial structure used for the purposes of providing childcare services. To be considered a Day Care Center under these regulations, must be licensed by the State of South Dakota.

**Dwelling:** Any building or part thereof which is designed or used exclusively for residential purposes by one or more human beings either permanently or transiently.

**Dwelling, Farm:** Any dwelling located on a farming operation, which is used or intended for use as a residence by the farm's owner, relative of the owner, or a person employed on the premises.

**Dwelling, Multiple Family:** A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided. Multiple-family dwellings may include structures where each dwelling unit is individually owned such as duplexes and townhomes.

**Dwelling, Single Family:** A detached residential dwelling building, other than a manufactured home but to include modular homes, designed for and occupied by one family only.

**Dwelling, Two Family:** A residential building containing two household units, designed for occupancy by not more than two (2) families.

**Dwelling Unit:** One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may in the same structure, and containing independent cooking and sleeping facilities.

**Electronic Message Sign:** A sign whose message may be changed at intervals by electronic process or remote control and whose only movement is the periodic changing of information having a constant light level.

**Engineer:** Means any engineer licensed by the State of South Dakota.

**Exception:** An exemption to a specified regulation within this Ordinance which, unless otherwise specified, may be authorized by the administrative official.

**Extended Home Occupation:** A home occupation conducted outside of the residence and/or in an accessory building.

**Family:** One or more individuals living, sleeping, cooking or eating on the premises as a single dwelling unit; but it shall not include a group of more than three (3) individuals not related by blood or marriage.

**Farm:** A bonafide business for the production of agricultural products and the incidental use of horses, dogs, or other animals and other similar operations; but specifically excluding greenhouses, horticultural nurseries, and kennels and other similar commercial operations.

**Feedlot:** A feedlot is a lot, yard, corral, building or other area where animals in excess of ten (10) animal units per acre or in excess of ten (10) animal units per parcel of land have been, are, or will be stabled or confined for a total of 45 days or more during any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility.

**Filling (service) Station:** (Also referred to “service station, automobile”) Buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, but where the following activities are not carried out as a normal part of doing business:

1. Major mechanical work, involving removal of the head or crankcase;
2. Auto body work, including straightening of auto body parts.
3. Painting or welding of any automobile parts;
4. Storage of automobiles not in operating condition, and
5. Any other automobile work which involves noise, glare, fumes, smoke, or other characteristics not normally found at places which sell gasoline at retail.

**Flammable Liquids:** Any liquid which gives off flammable vapors, as determined by the flash point from an open-cup tester as used for test of burning oils, at or below a temperature of eighty (80) degrees Fahrenheit, is flammable.

**Flashing Sign:** Any illuminated sign that has artificial light or color which is not maintained at a constant intensity or color when such sign is in use. A sign providing public service information, such as time, weather, date, temperature or similar information, shall not be considered a flashing sign.

**Funeral Home:** A building used for the preparation of the deceased for burial and display of the deceased and rituals connected therewith before burial or cremation. A funeral home, as defined for purposes of this Ordinance, includes a funeral chapel but does not include crematoriums.

**Game Lodge:** A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

**Garage, Private:** An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, and boats, but not commercial vehicles.

**Garage, Public:** A building or portion thereof, other than a private or storage garage, designed or used for equipping, servicing, repairing, hiring, selling, storing, or parking motor-driven vehicles. The term repairing shall not include an automobile body repair shop nor the rebuilding, dismantling, or storage of wrecked or junked vehicles.

**Garage, Storage:** Any building or premises, used for housing only motor-driven vehicles, other than trucks and commercial vehicles.

**Governmental Agency:** An organized entity which, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other governmental unit.

**Grade:** The finished grade of premises improved by a building or structure is the average natural elevation or slope of the surface of the ground within fifty (50) feet of the building or structure.

**Greenhouse:** A building whose roof and sides are made largely of glass regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.

**Gross floor area:** The total area of all floors of a building, including intermediately floored tiers, mezzanine, basements, etc., as measured from exterior surfaces of the outside walls of the building.

**Group Home:** A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

**Health Club:** A facility where members or nonmembers use equipment or space for the purpose of physical exercise.

**Height of Structure:** The vertical distance from the established average sidewalk grade of street grade, or finished grade at the building line, whichever is the highest, to the highest point of the building.

**High Voltage Transmission Line:** A conductor of electric energy and associated facilities.

**Home Occupation:** See Chapter 4.18.

**Household Unit:** One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

**Hotel or Motel:** A building designed for occupancy as the more or less temporary abiding place of individuals who are lodged with or without meals, in which there are four (4) or more guest rooms, and which is open to the public and transients.

**Indoor recreation facility:** An indoor facility, with or without seating for spectators, and providing accommodations for a variety of individual, organized, or franchised sports, including but not limited to basketball, ice hockey, wrestling, soccer, tennis, volleyball, racquetball, or handball. Such facility may also provide other regular organized or franchised events, health and fitness club facilities, swimming pool, snack bar, restaurant, retail sales of related sports, health or fitness items, and other support.

**Junk Yard:** The use of more than fifty (50) square feet of any land, building, or structure, whether for private or commercial purposes, or both, where waste discarded or salvaged materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, machinery, etc., or parts thereof with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

**kennel:** Any place where more than three (3) dog(s) or cat(s) over four (4) months of age are owned, boarded, raised, bred and offered for sale.

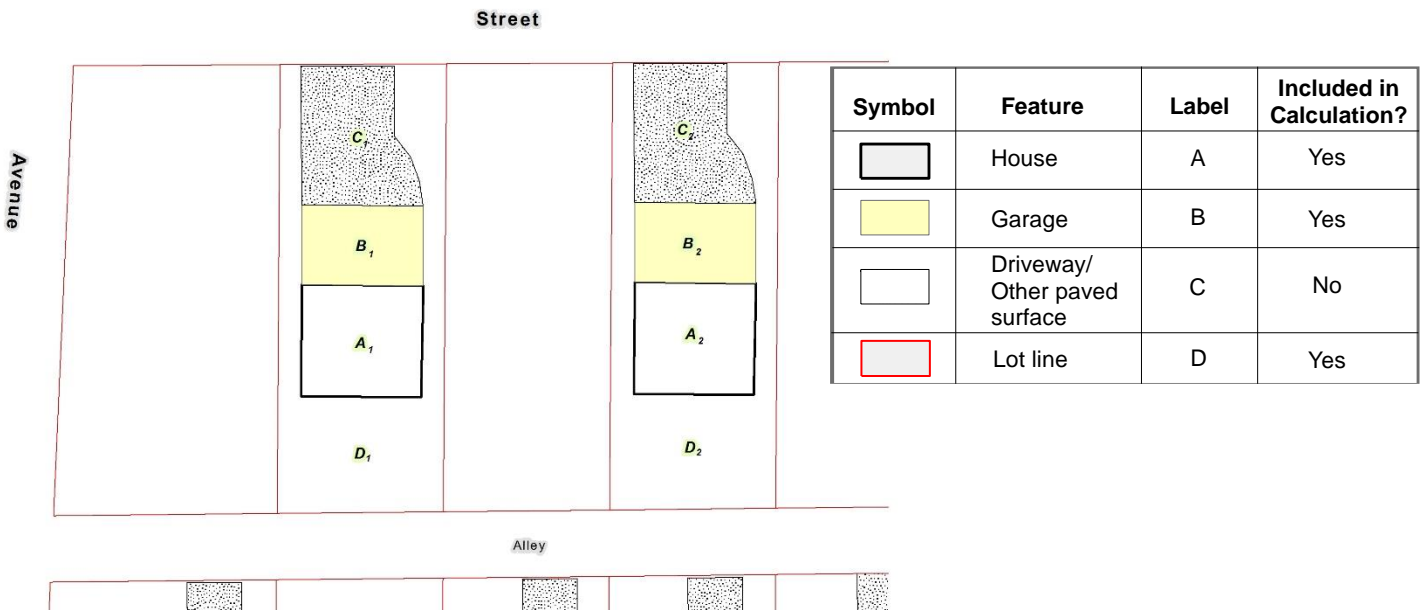
**Light Manufacturing:** Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

**Loading Space, Off street:** Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as of-street parking space in computation of required off-street parking space.

**Lot:** A parcel or tract of land having specific boundaries and which has been recorded in the Register of Deeds office. Unless otherwise specified by this ordinance or allowed by the Board of Adjustment, a lot shall include only one (1) principal building together with its accessory buildings; open spaces and parking spaces required by these regulations and shall have its principal frontage upon a road or other approved access.

**Lot Coverage:** For the purposes of this Ordinance, the percentage determined by dividing the area of a lot covered by the total (in square feet of: (A) the footprint of the primary structure; and (B) the footprint(s) of all accessory structures by the total lot area (D). (See formula and figure below):

Formula:  $\frac{(A + B)}{D} = \text{Lot Coverage}$



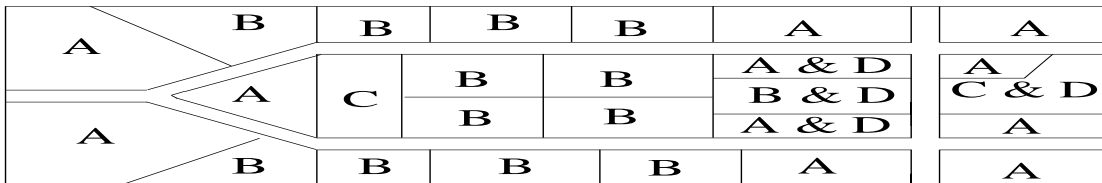
**Lot Frontage:** The front of a lot shall be construed to be the portion nearest the street. For the purposes of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage. Minimum frontage for lots located on cul-de-sacs shall be determined as the average of the widest and narrowest width of the lot.

Lot Measurements:

1. **Depth:** The average mean horizontal distance between the front and rear lot lines.
2. **Width:** The width of a lot at the front yard line.
3. **Area:** The lot area is the area of a horizontal plane in square feet or acres within the lot line.

**Lot of Record:** A lot which is part of a subdivision recorded in the office of the Kingsbury County Register of Deeds, prior to the adoption of Ordinance VII-08.

**Lot Types:** See figure below:



**Corner lot:** defined as a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees. (Lot A)

**Interior Lot:** Defined as a lot other than a corner lot with only one frontage on a street. (Lot B)

**Through Lot:** defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots. (Lot C)

**Double Frontage Lot:** defined as a lot on which the frontage is at right angles or approximately right angles (interior angle less than 135 degrees) to the general pattern in the area. A reversed frontage lot may also be a corner lot (Lot A & D in the diagram), an interior lot (Lot B & D in the diagram) or through lot (Lot C & D in the diagram).

**Manufactured Home:** See Chapter 4.11

**Manufactured Home Park:** See Chapter 4.11

### **Manufactured Housing Definitions**

1. **Anchoring System** – An approved system of straps, cables, turnbuckles, chains, ties, or other approved materials used to secure a manufactured or mobile home.
2. **ANSI/NFPA 501A Standards for Installation of (Manufactured) Mobile Homes** – Model national standards (including all authorized successor documents) for installation of manufactured and mobile homes, as adopted and copyrighted by the National Fire Protection Association and Manufactured Housing Institute.
3. **Expando Unit** – An expandable manufactured housing unit.
4. **Foundation Siding/Skirting** – A type of wainscoting constructed of fire and weather resistant material, such as aluminum, asbestos board, treated pressed wood or other approved materials, enclosing the entire undercarriage of the manufactured.
5. **Permanent Perimeter Enclosure** – A permanent structural system completely enclosing the space between the floor joists of the home and the ground.
6. **Permanent Foundation** – Any structural system for transporting loads from a structure to the earth at a depth below the established frost line without exceeding the same bearing capacity of the supporting soil.
7. **Section** – A unit of a manufactured home at least ten (10) body feet in width and thirty (30) feet in length.

8. **Support System** – A pad or combination of footings, piers, caps, plates, and shims, which, when properly installed, support the manufactured or mobile home.

**Measurement:** Unless otherwise specified, all distances shall be measured horizontally and shall be expressed to the nearest integral foot. If a fractional distance is one-half (1/2) foot or less, the preceding or lesser integral foot measurement shall control.

**Mining:** The excavation of earth materials for the purpose of sale.

**Modular Home:** See Chapter 4.11

**Moved-In Building:** A building that previously existed on a lot of different location relocated for use as a residence, out-building, commercial, industrial or any building used in relation to these uses shall be recognized as a moved-in building.

**Motel/Hotel:** See Hotel/Motel.

**Non-conforming Use:** Any building or structure, or land lawfully occupied by a use at the time of passage of this Ordinance or amendment which does not conform after the passage of this Ordinance or amendment with the use regulation of the district in which it is situated.

**Non-standard Use:** The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this Ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this Ordinance.

**Outdoor Advertising Business:** Provisions of outdoor displays or display space on a lease or rental basis only.

**Outdoor Display:** An outdoor arrangement of objects, items, products, or other materials, typically not in a fixed position and capable of rearrangement, designed and used for the purpose of advertising or identifying a business, product, or service. This definition excludes new and used sale, lease, or rental of automobiles, trucks, motorcycles, recreational vehicles, boats, or watercraft.



**Outside Storage:** Outside storage is the keeping of commodities, goods, raw materials, equipment, vehicles, heavy vehicles, or merchandise not within an enclosed building, including incidental maintenance and repair of the material which is being stored. This definition excludes new and used sale, lease, or rental of automobiles, trucks, motorcycles, recreational vehicles, boats, or watercraft. Parking of company owned automobiles that are currently registered, licensed, and operable will be excluded. Materials and equipment that are transferred from an enclosed building for an outdoor sales display are not considered outside storage.

**Parcel:** A single tract of land, located within a single block, which at the time of filing for a Building/Use Permit, is designated by the owner or developer as a tract to be used, developed, or built upon as a unit, under single or unified ownership or control, and assigned to the particular use, building or structure, for which the Building/Use Permit are issued and including such area of land as may be required by the provisions of this Ordinance for such use, building or structure.

**Parking Space, Off-street:** An off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with related access to a public street or alley, and maneuvering room. A space for parking of automobiles which has a minimum width of nine (9) feet and a minimum length of nineteen (19) feet.

**Permit:** A permit required by these regulations unless stated otherwise.

**Permitted Use:** Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

**Person:** In addition to an individual, includes the following terms: “firm”, “association”, “organization”, “partnership”, “trust” “company”, or “corporation”, joint venture, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

**Personal Services:** Establishments providing nonmedically related services, including beauty and barber shops; clothing rental; dry cleaning pick-up stores; laundromats (self-service laundries); psychic readers; shoe repair shops; tanning salons; tattoo parlors; body piercing studios; etc. These uses may also include accessory retail sales of products related to the services provided.

**Planning Commission:** The appointed members of the Planning Commission serving in an advisory capacity on planning and zoning matters. The “Planning and Zoning Commission” required in South Dakota Compiled Laws 11-6-2 shall be referred to throughout this document as the “Planning Commission.”

**Plat:** The map, drawing or chart on which the subdivider’s plan of subdivision is legally recorded.

**Principal Use:** The primary use to which the premises are devoted.

**Professional Services:** Work done for others, predominately on the premises of the office, by someone trained and engaged in such work for a career; e.g., doctors, lawyers, accountants.

**Recreational Vehicle:** A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include manufactured homes.

**Religious Institution:** Any building used for non-profit purposes by an established religious organization holding either tax exempt status under Section 501(c)(3) of the Internal Revenue Code or under the state property tax law, where such building is primarily intended to be used as a place of worship. The term includes, but is not necessarily limited to, church, temple, synagogue, and mosque.

**Roof line:** Either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette; and where a building has several roof eaves, this roof or parapet shall be the one belonging to that portion of the building on whose wall a sign is located. (See roof-line figure below)

Roof Line Figure



**Sanitary Landfills:** Method of waste disposal involving the dumping and daily covering of waste material all in compliance with State regulations.

**Sale or Auction Yard/barn:** A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or farm for one day during sale or auction.

**Screening:** Earthforms, walls, fences, plant material or other structures or devices intended to partially obscure, conceal or protect from off-site view.

**Service Station, Automobile:** Any building or premise, including filling stations, which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor

vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted.

**Setback:** The setback of a building is the minimum horizontal distance between the front line or street line and the nearest edge of any building or any projection thereof. Also referred to as “yard” or “required yard.”

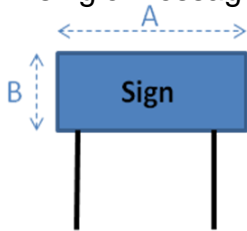
**Sheet Siding:** Any siding material customarily installed as a sheet and composed of galvanized, painted or bonded metal, and customarily installed in a vertical manner but also capable of being installed horizontally.

**Shopping Center:** Retail buildings of greater than 100,000 square feet and designed for more than one tenant.

**Sign:** means a name, identification, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public and which directs attention to a product, place, activity, purpose, institution or business.

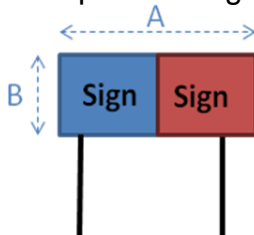
**Sign Area:** The total area or areas of all signs within the outer edges of the sign or advertising message. Sign area may be calculated in the following manners.

- a. A single message on a single sign face.



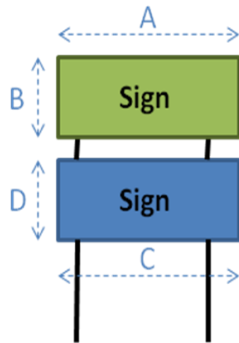
$$\text{Area} = A \times B$$

- b. Multiple messages on a single sign face.



$$\text{Area} = A \times B$$

c. Multiple messages on stacked signs.



$$\text{Area} = (A \times B) + (C \times D)$$

**Sign (Flashing):** means any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use.

**Sign (Ground):** A sign which is anchored to the ground and has no air space between grade and the bottom of the frame or sign facing.

**Sign (Illuminated):** means any sign which has characters, letters, figures, designs or outlines illuminated by electric or luminous tubes as a part of the design.

**Sign (Nameplate):** means any sign which states the name or address or both of the business or occupant of the lot where the sign is placed.

**Sign (Parking):** A sign which provides specific instruction to the public, including but not limited to. "Center," "Exit," "No Parking," "Drive Through." No parking sign shall be permitted to include any commercial message.

**Sign (Pole):** A freestanding sign wholly supported by one or more poles.

**Sign (Portable):** Any sign not permanently attached to the ground or other permanent structure designed to be transported from structure to structure or site to site at periodic intervals. Portable signs include signs attached to or painted on vehicles, unless said vehicle is used in the normal day-to-day operations of the business. Portable signs are temporary signs.

**Sign (Projecting):** Any sign that is affixed at an angle or perpendicular to a wall of any building in such a manner as to be read either perpendicular or at an angle to the wall on which it is mounted.

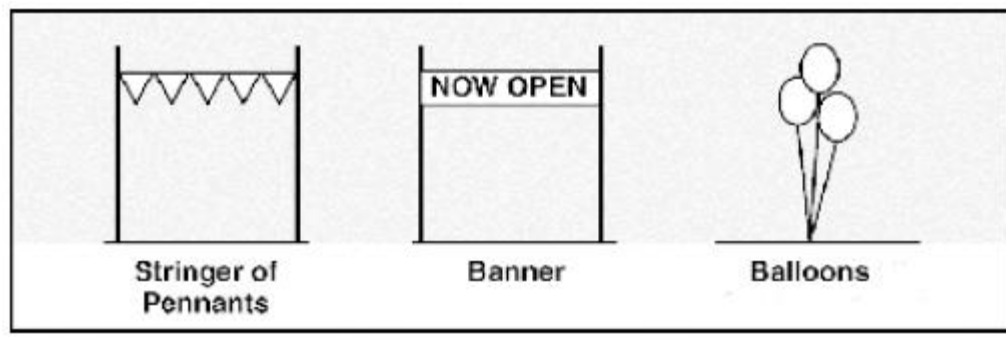
**Sign (Real Estate):** A sign placed upon property for the purpose of advertising the sale, lease, or availability for rent of property.

**Sign (Roof):** A sign erected upon and above a roof structure and wholly supported by the roof structure or a structure placed upon the roof. Roof signs shall constitute any message placed upon sloped building fascia intended to appear as or actually be roof elements of the building.

**Sign (Rotating):** means a sign which revolves or rotates on its axis by mechanical means.

**Sign Structure:** Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

**Sign (Temporary):** Any sign used for varying periods of time which is not permanently attached to the ground or other permanent structure. See below examples of Temporary Signs (not all inclusive)



**Sign (Wall):** A sign placed flat against a structure, fence or wall. Signs painted onto a wall, fence, or structure are wall signs.

**Slaughterhouse:** A facility for the slaughtering and processing of animals and refining of their byproducts for wholesale purposes.

**Sleeping Quarters:** A room or an area contained within a dwelling unit utilized for the purpose of sleep.

**Special Permitted Use:** Any land use listed as a special permitted use within a zoning district that meets the specified criteria for certification.

**Specified Anatomical Areas** means:

1. Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and
2. Genitals of humans or animals in a discernible turgid state, even if completely opaquely covered.

**Specified Sexual Activities** means:

1. Human or animal genitals in the state of sexual stimulation or arousal.
2. Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation.
3. Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast.
4. Excretory functions as part of or in connection with any activities set forth in an Adult Bookstore or "Adult Entertainment Facility".

**Stable:** A building for the shelter and feeding of domestic animals, especially horses and cattle.

**Stable, Commercial:** A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

**Stand, roadside:** A structure for the display and sale of products with no space for customers within the structure itself.

**Story:** That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or unused under-floor space is more than six (6) feet above grade for more than 50 percent of the total perimeter or is more than twelve (12) feet above grade at any point, such basement or unused under-floor space shall be considered as a story.

**Story, first:** The lowest story in a building which qualifies as a story, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than four (4) feet below grade for more than 50 percent of the total perimeter, or more than eight (8) feet below grade at any point.

**Street Line:** A right-of-way line of a street.

**Street:** A public right-of-way which affords the principal means of access to abutting property. Also may be referred to as road or highway. The term street shall include and apply to any public way except alleys. Streets may be further classified in accordance with the following terms referenced in the Comprehensive Land Use Plan for the City of De Smet:

1. **Arterial Street:** A street designated as such upon the Major Street Plan of the Comprehensive Land Use Plan of the City of De Smet.
2. **Collector Street:** A street designated as such upon the Major Street Plan of the Comprehensive Land Use Plan of the City of De Smet.
3. **Local Street:** Any street which is not an arterial street or collector street.

**Structure:** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include, but are not limited to, buildings, manufactured homes, walls, fences, swimming pools, and signs.

**Structure, Temporary:** Anything constructed or erected, or placed, the use of which requires temporary location on the ground or attached to something having a temporary location on the ground.

**Subdivision:** The division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building developments (whether immediate or future). This term includes resubdivision and, when appropriate to the context, is related to the process of subdividing or to the land subdivided.

**Substantially Completed:** This term refers to the amount of work required to be completed in association with a Building/Use Permit issued by the City. In order to be substantially complete, seventy-five (75) percent of the project for which a Building/Use Permit has been issued is required to be finished.

**Townhouses:** See "Condominium."

**Trailer:** Means any of the following:

1. **Travel Trailer:** A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses. The trailer shall be permanently identified "travel trailer" by the manufacturer of the trailer and, when factory equipped for the road, it shall have a body width not exceeding eight (8) feet, and a body length not exceeding thirty (30) feet.
2. **Pick-up Coach:** A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
3. **Motor-Home:** A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
4. **Camper Trailer:** A canvas, folding structure, mounted on wheels and designed for travel, recreation and vacation use.

**Tree:** A tree which is required by the Ordinance and meets or exceeds the definitions of deciduous shade trees and evergreen or coniferous trees.

**Tree, deciduous shade:** A woody plant that normally grows with one main trunk and has a canopy that screens and filters the sun in the summer months.

**Tree, evergreen or coniferous:** A tree species with foliage that persists and remains green year round.

**Twin Homes:** A two-family dwelling which has a common wall and is platted into two (2) separate lots.

**Use:** The purpose for which land or premises or a building thereof is designated, arranged or intended, or for which it is or may be occupied or maintained.

**Usable Open Space:** Land area and facilities specifically designated and developed for recreational or social activities of individuals or groups excluding required setback areas, in addition to those areas and facilities designated and developed for the private use of residents of individual dwelling units.

**Utility:** All lines and facilities related to the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, power, information, telecommunication and telephone cable, and includes facilities for the generation of electricity.

**Variance:** A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

**Veterinary Clinic:** A commercial activity catering to the medical needs of animals and having no outside runs or areas of outdoor animal confinement.

**Waste:** Any garbage, refuse, manure, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include 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,



1986, or source, special nuclear or by-product materials as defined by the Atomic Energy act of 1954, as amended.

**Watchman's Quarters:** See Caretaker's Residence/Watchman's Quarters.

**Wetlands:** Any area where ground water is at or near the surface at least six (6) months of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

**Wholesale Merchandising/Trade:** Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

**Yard:** An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line. Also referred to as: required yard or setback.

**Yard, front:** A yard extending between the side lot lines across the front of a lot adjoining a public right-of-way.

Depth of required front yards shall be measured at right angles to a straight line adjoining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear front yard lines shall be parallel.

1. **Primary Front Yard:** Any front yard adjacent to the street which is used as principal access (driveway) for the lot. Unless otherwise differentiated, for the purposes of measuring required setbacks the phrases "Front Yard," or "Required Front Yard" refer to the primary front yard.
2. **Secondary Front Yard:** On a lot with more than one frontage, any front yard adjacent to a street which is not used as principal access for the lot. Unless otherwise specified, for the purposes of measuring required setbacks, the minimum setback for all secondary front yards shall equal one-half the required setback for a primary front yard.

**Yard, rear:** A yard across the whole width of the lot, extending from the rear line of the building to the rear line of the lot. In the case of through lots and corner lots, where will be no rear yards, but only front and side yards.

**Yard, required:** That portion of a side, front, or rear yard nearest the designated lot line and having the width or depth required in the district in which located.

**Yard, side:** A yard between the building and the adjacent sideline of the lot, which separates it from another lot, extending from the front lot line to the rear yard. In the case of through lots and corner lots, side yards remaining after the full and half-depth front yards have been established shall be considered side yards.

**Zero Lot Line:** The location of a building on a lot in such a manner that the side of a building rests on a lot line.

**Zoning district:** A section of the city for which the regulations governing the use of land, the construction and use of buildings and the occupancy of premises are hereby made.