

## CHAPTER 155: ZONING

### GENERAL PROVISIONS

#### § 155.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the present tense shall include the future; the singular number shall include the plural, and the plural shall include the singular.

**ACCESSORY USE OR STRUCTURE.** A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal 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:



**ADMINISTRATIVE OFFICIAL.** The individual(s) appointed by the City Council and designated to administer and enforce the zoning ordinance.

**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 Chapter who:

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

**AGRICULTURAL ACTIVITY.** The raising of grain crops and/or animals.

**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 either: one feeder/slaughter cattle, one-half horse; seven-tenths mature dairy cow; two and one-half finishing swine; ten nursery swine; ten sheep/goats; 55 turkeys; five ducks/geese; 30 hens, cockerels, capons, broilers.

**ANTENNA.** Any communications equipment that transmits or receives electromagnetic radio frequency signals used in the provisions of wireless services. This definition does not include broadcast radio or television antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

**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 HOUSE BUILDING.** A detached dwelling designed for or occupied by ~~four~~ **three** (3) or more family units.

**APPLICANT.** Any person who submits an application as, or on behalf, of a property owner.

**AUTOMOBILE SERVICE STATION.** ~~Buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail. This definition does not include storage, body repair, or auto salvage operations.~~ Any building or premise 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, 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.

**AUTOMOBILE REPAIR SHOP.** Any building or premise which provides services relating to the rebuilding of engines, spray paint operations, or body or fender repair.

**BAR OR LOUNGE.** An establishment that is licensed to sell alcoholic beverages by the drink.

**BASEMENT.** ~~Has more than one half of its height below grade. A BASEMENT is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes.~~ 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).** 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. (see 155.330)~~

- ~~1) B&Bs shall be limited to residential structures with an overall minimum of one 1,800 square foot 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 state's Department of Health, maintain a guest list, and provide 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 square foot in area.~~
- ~~4) Such uses shall be an incidental use with an owner occupied principal 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 principal 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 14 days during any 120 day consecutive period.
- 7) Meals shall be limited to breakfast which is prepared in a common facility such as 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.

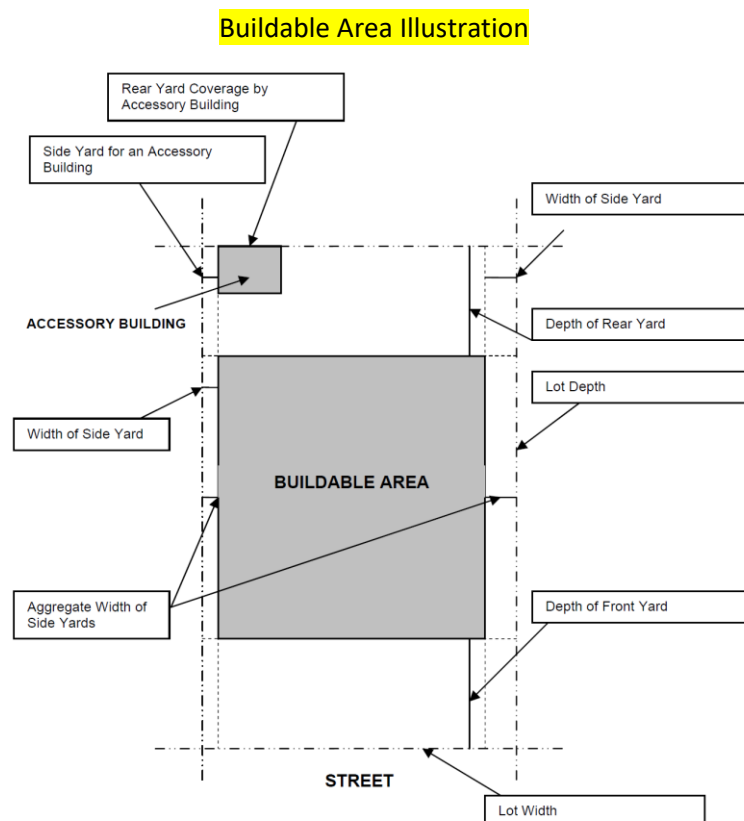
**BLOCK.** A tract of land bounded by streets or a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines, unsubdivided acreage or boundary line of the corporate limits of the City.

**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 the 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.** Includes the words STRUCTURE and PREMISES and is 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 and is designed for the support, shelter, and protection of persons, animals, or property.

**BUILDING BUILDABLE AREA.** The portion of a lot remaining after required yards have been provided. 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).



**BUILDING LINE.** Is a line on the lot running parallel to the required horizontal distance from the nearest property line.

**BUILDING, PRINCIPAL.** A non-accessory building in which is conducted the principal use of the lot on which it is located.

**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.

**CARETAKER'S RESIDENCE or WATCHPERSON'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. (see § 155.245)

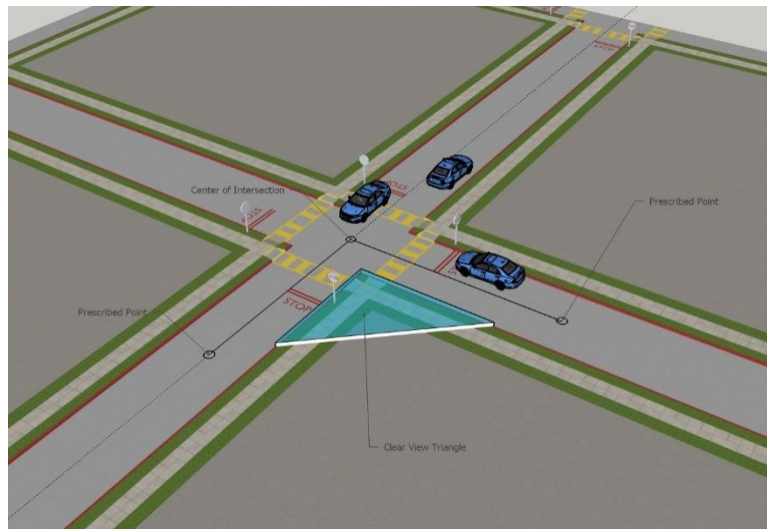
**CHURCH.** A building wherein persons regularly assemble for religious worship, and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. The definition of “church”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

**CITY.** The City of Flandreau, South Dakota.

**CITY COUNCIL.** The governing body of the City of Flandreau.

**CITY PLANNING AND ZONING COMMISSION.** The members appointed by the city to serve 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.”

**CLEAR VIEW TRIANGLE.** A triangular-shaped portion of land established at street intersections and ingress and 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 figure 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.

**COLLOCATION.** The mounting or installation of an antenna or a small cell facility on a pre-existing utility pole or SCF support structure and/or modifying a utility pole or SCF support structure for the purpose of mounting or installing an antenna or SCF on that utility pole or SCF support structure in order to transmit and/or receive radio frequency signals for communications purposes.

**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.

**COMPREHENSIVE PLAN (COMPREHENSIVE LAND USE PLAN).** ~~The adopted long-range plan intended to guide the growth and development of the City of Flandreau.~~ The adopted long-range plan intended to guide the growth and development of the City of Flandreau 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 conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district but, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses as specific provisions for such uses are made in this chapter. Conditional are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.

**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 Chapter 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 Chapter.

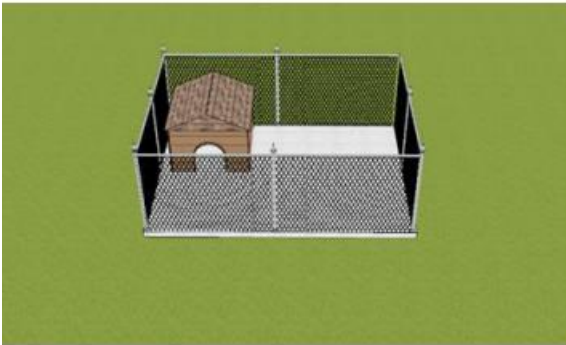
**DAY CARE.** Any operation which provides childcare services whether accessory to the caregiver's home or operated in a separate commercial structure.

**DAY CARE CENTER, LICENSED.** Any operation, which provides childcare services. 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, 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.

**DENSITY.** The number of families, individuals, dwelling units, or housing structures per unit of land.

**DOG ENCLOSURE.** An attached or detached outdoor structure intended for the exercising, containment, and/or sheltering of a dog or dogs. Not to include a fence constructed on the perimeter of the property. See example figures below.



**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, 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.



**DWELLING, SINGLE-FAMILY.** A detached residential dwelling building, other than a manufactured home, including modular homes designed for and occupied by one (1) 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 it is physically separated from any other rooms or dwelling units which may be in the same structure and contains independent cooking and sleeping facilities.

**EAVE.** The lower edge of a sloping roof or that part of a roof which projects beyond the wall.

**EAVE HEIGHT.** The vertical dimension from finished grade to the eave.

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

**ESSENTIAL PUBLIC UTILITIES AND SERVICES.** Overhead or underground electrical, natural gas, water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, satellite dishes, and accessories in connection therewith.

**EXCEPTION.** An exemption to a specified regulation within this Chapter 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. (See 155.321)

**FAMILY.** One (1) or more individuals living, sleeping, cooking, or eating on the premises as a single housekeeping unit, but it shall not include a group, or more than ~~three~~ four (4) individuals not related by blood or marriage.

**FARM UNIT.** An area of ten acres or more on which a bonafide business with the purpose or producing agriculture products and the incidental uses of horses, dogs, or other animals and other similar operations, specifically excluding greenhouses, horticultural nurseries, kennels and other similar commercial operations. For purposes of this chapter, all land in like ownership being operated as a single economic unit shall be considered to be part of a single farm UNIT.

**FEEDLOT.** A lot, yard, corral, building, or other area where animals in excess of ten (10) animal units per acre or in excess of animal units per parcel of land have been, are, or will be stabled or confined for a total of forty-five (45) days or more during any twelve (12) month period and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility.

**FCC.** The Federal Communications Commission.

**FENCE.** A structure used as a boundary, screen, separation, means of privacy, protection, or confinement and is constructed of wood, plastic, metal, wire mesh, masonry, or other similar material and is used as a barrier of some sort.

**FLAG.** Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols used as a symbol of a government, political subdivision, or other entity.

**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.

**FOOTPRINT, BUILDING.** The portion of a building measures from the outside of exterior walls that covers the ground, but excluding the edge of roofs that overhang exterior walls that are intended to prevent rain, snow, and other debris from spilling directly down the side of the building (e.g., roof eave).

**FUNERAL HOME/MORTUARY.** 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 may include 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.

**GENERAL COMPATIBILITY WITH ADJACENT PROPERTIES.** All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Flandreau, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

**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 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.

**HEIGHT OF BUILDING.** 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.

**HOME OCCUPATION.** (See 155.320). An occupation conducted in a dwelling unit with the following stipulations.

- ~~(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 no more than 25% of the floor area of the dwelling unit shall be used in the conduct of the HOME OCCUPATION.~~
- ~~(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 four square feet in area, non illuminated, and mounted flat against the wall of the principal building.~~
- ~~(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.~~

**HOTEL or MOTEL.** A building designed for occupancy as a temporary abiding place of individuals who are lodged with or without meals and in which there are four or more guest rooms open to the public and transients.

**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.

**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.

**INTERMODAL SHIPPING/STORAGE CONTAINER.** A six-sided metal unit constructed as a general cargo container used for the transport and storage of goods and materials. Intermodal shipping/storage containers do not include railroad cars, bus bodies, semi-trailers, and similar items designed to be permanently attached to a chassis. See image below.



**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, and the like or parts thereof with or without the dismantling, processing, salvage, sale, or other use or disposition of the same. Where such materials are a byproduct of a use, permitted by the City, such activity shall be considered outdoor storage.

**KENNEL, COMMERCIAL.** Any premises or portion thereon where more than three (3) dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration or are offered for sale, or are kept for the purpose of sale. Veterinary clinics, animal hospitals, and animal shelters are specifically excluded.

**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.

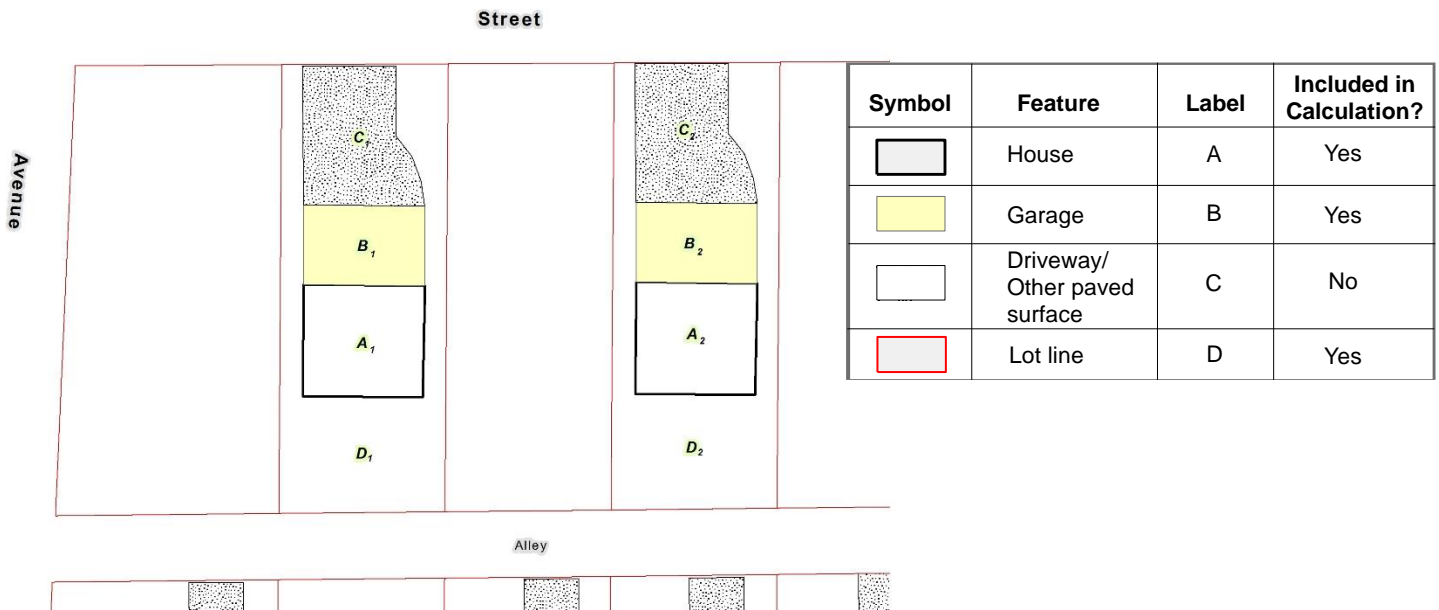
**LOADING SPACE, OFF-STREET.** Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street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

**LOT.** Any plot or parcel of land of sufficient size to meet minimum zoning requirements for use, coverage, and area and to provide such yards and other open spaces as are herein required. LOT also includes the words PLAT and PARCEL. A plat, parcel or tract of land having specific boundaries, and which has been recorded in the Register of Deeds office. Unless otherwise specified by this Chapter 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 public right-of-way other approved access.

**LOT AREA.** The land in square feet within the lot lines.

**LOT COVERAGE:** For the purposes of this Chapter, 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):

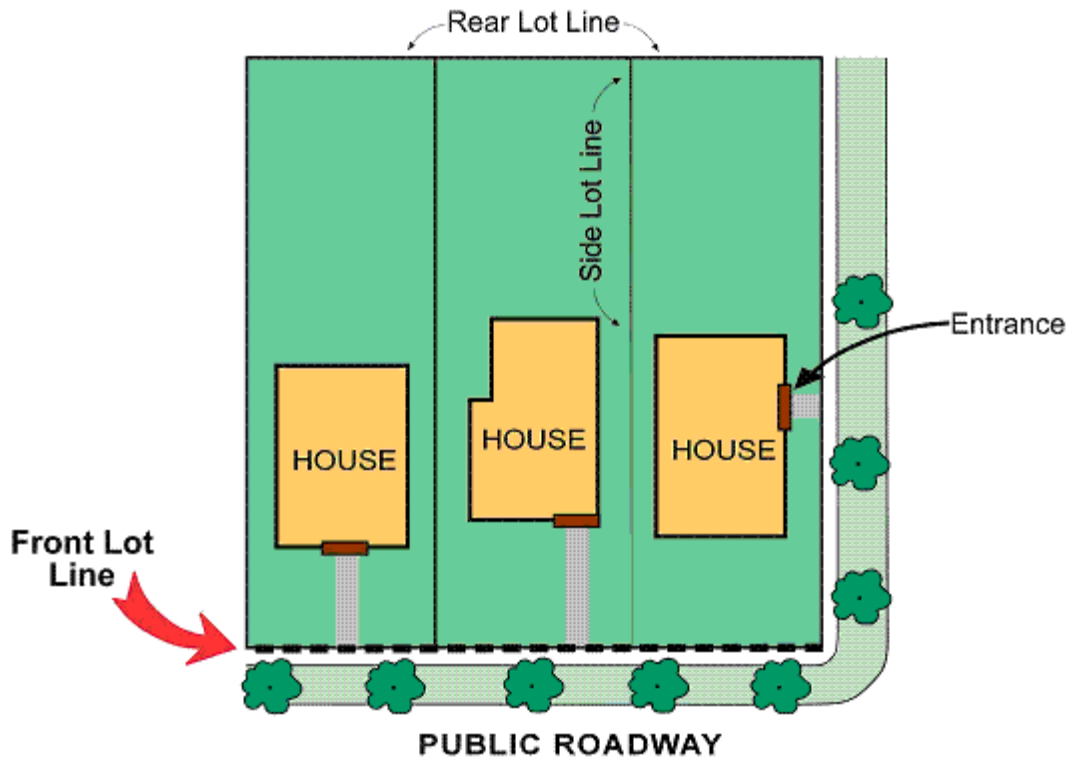
$$\text{Formula: } \frac{(A + \Sigma B)}{D} = \text{Lot Coverage}$$



**LOT DEPTH.** The mean distance from the street line of the lot to its rear line measured in the general direction of the side line of the lot.

**LOT FRONTAGE.** 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 LINE.** means the property line bounding a lot. There are three types of lot lines: Front, Side and Rear. See illustration below.



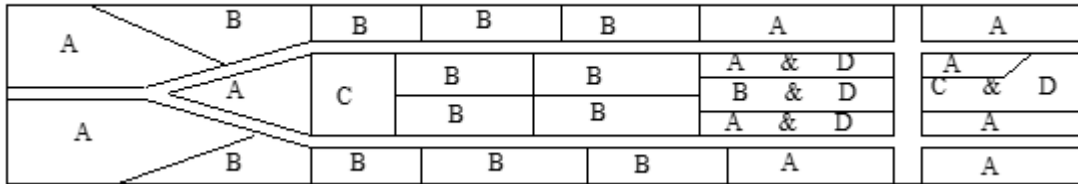
**LOT MEASUREMENTS.**

1. Depth: The average mean horizontal distance between the front and rear lot lines.
2. Width: The distance between side lot lines measured at a point of 50 feet from the street line thereof.
3. Area: The lot area is the area of a horizontal plane in square feet or acres within the lot line.

**LOT WIDTH.** The distance between side lot lines measured at a point of 50 feet from the street line thereof.

**LOT OF RECORD.** A lot which is part of a subdivision recorded in the office of the Moody County Register of Deeds prior to the adoption of this chapter Ordinance \_\_\_\_ Adopted on \_\_\_\_ 2024.

**LOT TYPES.** See figure below.



1. CORNER LOT. 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. (See lot A and lot A & D.)
2. INTERIOR LOT. A lot other than a corner lot with only one frontage on a street. (See lot B.)
3. REVERSED FRONTAGE LOT. A lot on which the frontage is at right angles or approximately right angles, meaning interior angle less than 135 degrees, to the general pattern in the area. A reversed frontage lot may also be a corner lot (see lot A & D), an interior lot (see lot B & D) or through lot (see lot C & D).
4. THROUGH LOT. 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. (See lot C and lot C & D.)

MANUFACTURED HOME. See § 155.239.

### **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. See also 155.239.
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 installed, support the manufactured or mobile home.

**MANUFACTURED HOME PARK.** See § 155.089.

**MAY.** The act referred to is permissive.

**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 § 155.238.

**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.

**NETWORK INTERFACE DEVICE.** The telecommunications demarcation and test point separating the wireless facility and the wireline backhaul facility.

**NON-CONFORMING USE.** Any building, structure, or land lawfully occupied by a use at the time of passage of this chapter or amendment which does not conform after the passage of this chapter 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 Chapter 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 Chapter.

**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 Chapter for such use, building or structure.

**PARKING SPACE, OFF-STREET.** Consists 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. ~~For purposes of rough computation, an OFF STREET PARKING SPACE may be estimated at 300 square feet.~~ A space for parking of automobiles which has a minimum width of nine (9) feet and a minimum length of nineteen (19) feet.

**PERMANENT FOUNDATION.** An approved wood basement constructed of two by six framework and treated with water resistant materials, or a foundation shall be constructed with eight inches of poured concrete or concrete block. The foundation shall be to a depth below the frost line.

**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, PERSON includes firm, association, trust, organization, partnership, company, or corporation, **limited liability company**, 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.

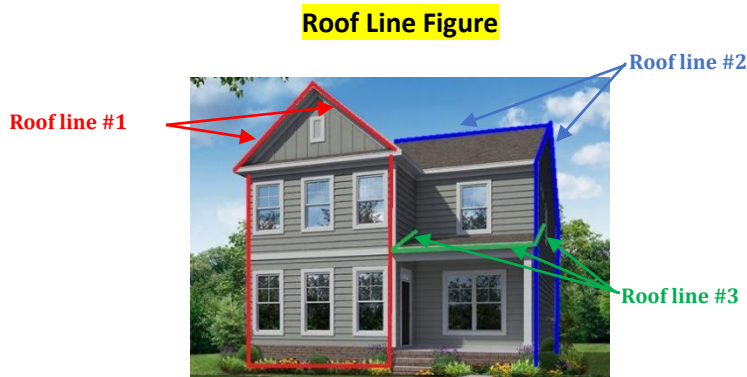
**PROFESSIONAL SERVICES.** Work done for others, predominately on the premises of the office, by someone trained and engaged in such work for a career; e.g., doctors, lawyers, accountants.

**PUBLIC RIGHT-OF-WAY or RIGHT-OF-WAY or ROW.** The surface and space above and below any street, sidewalk, avenue, boulevard, alley, lane, easement, right-of-way, highway, or thoroughfare open for public use in which the city has an interest in law or equity whether held in fee or other estate or interest or as a trustee for the public.

**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)



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

**SCALE 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.

**SETBACK.** The minimum horizontal distance between the front line or street line and the nearest edge of any building or any projection thereof except cornices and unenclosed porches and entrance vestibules and window bays projecting not more than three and one-half feet from the building and not more than fifty (50) square feet in area and which do not extend above the first story of the building. Also referred to as "yard" or "required yard."

**SHALL.** The act referred to is mandatory.

**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.

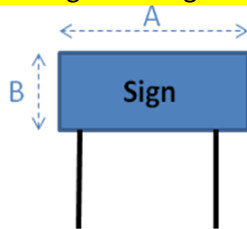
**SHOPPING CENTER.** Retail buildings of greater than 100,000 square feet and designed for more than one tenant.

**SHOULD.** The condition is a recommendation. If violations of this regulation occur, the county-city will evaluate whether the party implemented the recommendations contained in this regulation that may have helped the party to avoid the violation.

**SIGN.** Any object, device, or structure or part thereof situated outdoors or visible from outdoors which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. 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. This definition does not include national or state flags or their emblem or insignia, interior window displays, athletic scoreboards, or the official announcements or signs of government.

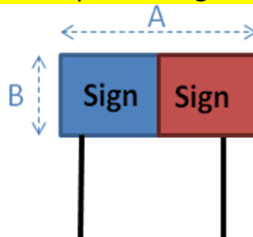
**SIGN AREA.** The entire area within a single continuous perimeter enclosing the extreme limits of the actual sign copy surface excluding any structural or supporting elements such as uprights, aprons, poles, beams, or standards. The total area or areas of all signs within the outer edges of the sign or advertising message. Sign area may be calculated in the following manners.

a. A single message on a single sign face.



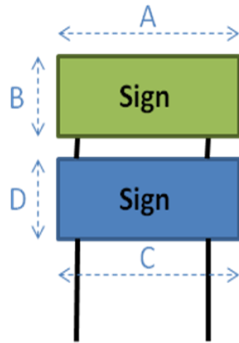
$$\text{Area} = A \times B$$

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, AREA IDENTIFICATION OR NAMEPLATE.** A freestanding ground sign or pylon which identifies the names of neighborhoods, a residential subdivision, a multiple residential complex, or a commercial or industrial complex consisting of three or more businesses.

**SIGN, CHANGEABLE COPY/READER BOARD.** An outdoor sign or any portion thereof which is permanently affixed or mounted to a support structure or building which has removable characters, letters, or illustrations that may be manually changed or rearranged without altering the underlying sign surface.

**SIGN, ELECTRONIC MESSAGE CENTER.** A sign utilizing electronic technology such as light emitting diodes (LEDs), incandescent bulbs, or magnetized flipping devices to display messages, advertising, or animation. 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.

**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, FREESTANDING.** A sign attached to or a part of a self-supporting structure. Any supporting structure shall be set firmly below the ground surface and shall not be attached to any building or any other structure, pylon, or ground sign.

**SIGN, GOVERNMENT.** Any sign which directs traffic, displays street names, or which serves any public purpose duly authorized by governing body having jurisdiction thereof.

**SIGN, GROUND.** A sign supported or upon standards, poles, beams, or other supports directly affixed to the 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, IDENTIFICATION OR NAMEPLATE.** A sign which bears the name or address or both of the business or the occupant of the building on which it is located.

**SIGN, ILLUMINATED.** A sign which has artificial light source directed upon it or which has an interior light source.

**SIGN, INFORMATIONAL.** A sign erected on private property providing general information about the use or uses on such property that the sign relates to, such as name and address, for the following uses: church, school, hospital, club, library, civic, or other similar types.

**SIGN, INSTITUTIONAL.** A sign which identifies such uses as hospitals, clinics, churches, schools, government buildings, libraries, museums, apartment complexes, and retirement homes.

**SIGN, MARQUEE AND/OR CANOPY.** Any message or identification which is affixed to a projection or extension of a building or structure and erected in such a manner as to provide a shelter or cover over the approach of any structure of a store, building, or place of public assembly being at least ten (10) feet above any public sidewalk and being at least two (2) feet behind the face of the curb.

**SIGN, MOTION.** A sign which revolves, rotates, or moves in any way by mechanical means.

**SIGN, OFF-PREMISES.** A sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

**SIGN, ON-PREMISES.** A sign which directs attention to a business or profession conducted or to a commodity or service sold, offered, or manufactured or to an entertainment offered on the premises where the sign is located.

**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, PERMANENT.** A sign permanently attached to framing or a sign with a support member at or below the frost line or attached to a building or other structure by direct attachment to a rigid wall, frame, or structure.

**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.** A sign affixed to an exterior wall or roof of a building, and which extends more than eighteen (18) inches from the face of the building wall, and which is perpendicular to the building wall being at least ten (10) feet above sidewalk and being at least two (2) feet behind face of curb.

**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 the roof or parapet wall of a building or structure. 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.** 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. The following are examples of TEMPORARY SIGNS (not all inclusive):

(1) **BANNER SIGN.** A sign constructed of cloth, canvas, fabric, paper, cardboard, or any other lightweight material. National, state, or municipal flags or the official flag of any institution or business shall not be considered BANNERS.

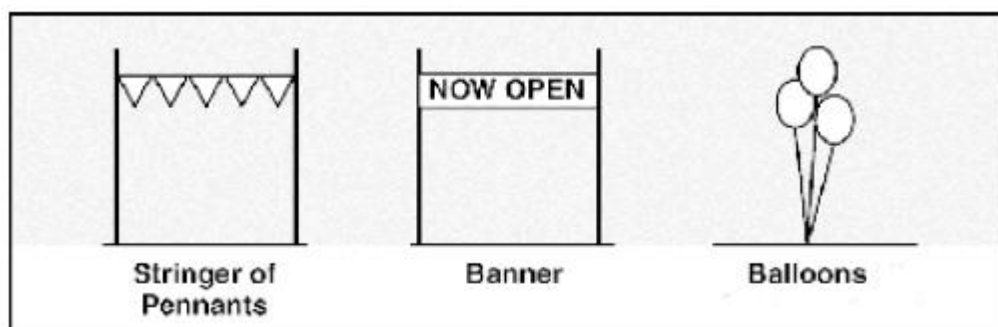
(2) **CONSTRUCTION SIGN.** A temporary sign identifying a building or construction site, architects, engineers, contractors, or suppliers.

(3) **INFLATABLE SIGN.** A sign capable of expanding due to the injection of air, gas, water, or vapor.

(4) **POLITICAL SIGN.** A temporary sign, such as poster card or lawn sign, advertising a candidate or issue to be voted upon a definite election day.

(5) **PORTABLE SIGN.** 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.

(6) **REAL ESTATE SIGN.** A temporary sign advertising the sale or lease of property or buildings.



**SIGN, WALL.** A sign attached to or erected against the wall of a building or structure with the exposed face of the sign in a plane approximately parallel to the face of said wall and extending not more than 18 inches from the building wall face.

**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.

**SMALL CELL FACILITY or SCF.** A wireless facility that either meets all of the following qualifications or is within a stealth design that is consistent with the design guidelines.

- (1) Each antenna is located inside an enclosure of not more than three cubic feet in volume, or in the case of an antenna that has been exposed to the elements, the antenna and all of its exposed elements could fit within an enclosure of no more than three (3) cubic feet.
- (2) Each provider's equipment enclosures shall be no larger than 28 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meters, concealment measures, network interface devices, underground enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, cables, conduits, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.
- (3) The facility is mounted on a utility pole or SCF support structure fifty (50) feet or less in height, including antennas, on a utility pole or SCF support structure no more than ten percent (10%) taller than other adjacent structures of substantially similar design or on an existing utility pole or SCF support structure on which it is to be located to a height of more than the greater of either fifty (50) feet or the height of such utility pole or SCF support structure plus ten percent (10%).

**SMALL CELL FACILITY PERMIT.** A permit authorizing the installation, construction, and maintenance of a small cell facility.

**SMALL CELL FACILITY SUPPORT STRUCTURE or SCF SUPPORT STRUCTURE.** A structure such as a monopole or tower either guyed or self-supporting, billboard, building, or other existing structure designed to support, or capable of supporting, SCFs. Such term does not include a utility pole.

**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.

**STEALTH DESIGN.** Any SCF that is integrated as an architectural feature of a utility pole or changes a support structure design so that the purpose of the utility pole or SCF support structure for providing wireless services is not readily apparent. This includes the ability of SCFs to blend into the neighborhood environment at a given location and camouflage or conceal the SCF subject to applicable law.

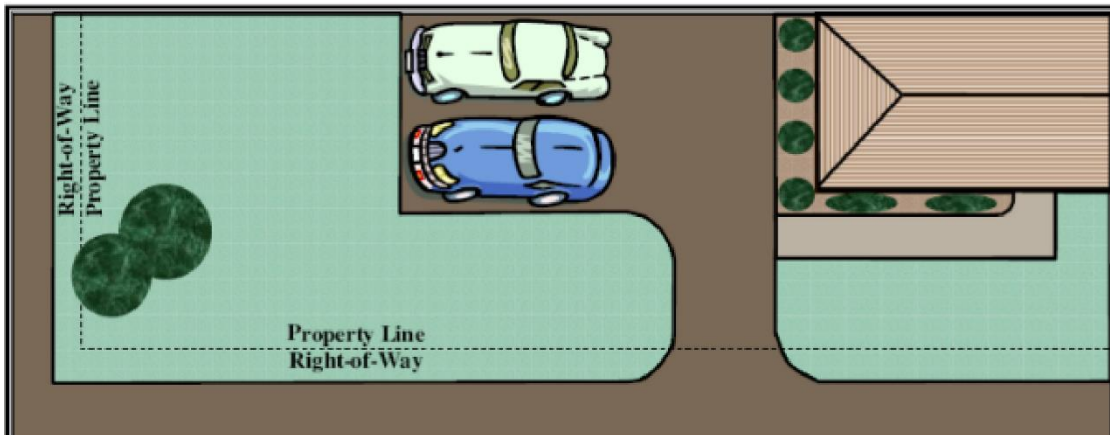
**STORY.** That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished 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.** A right-of-way dedicated to public use which affords a primary means of access. 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 Flandreau:

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

**STREET LINE.** A right-of-way line of a street. See figure below.



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

**STRUCTURE, TEMPORARY.** Anything constructed, erected, or placed which requires temporary location on the ground or attachment to something having a temporary location on the ground for use.

**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-eight (38) 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. Motorhome: 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 CONIFEROU.** 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.  
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.

**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.

**USED or OCCUPIED.** Includes intended, designed, or arranged to be used or occupied.

**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.

**UTILITY POLE.** A pole or similar structure that is or may be used, in whole or in part, to facilitate telecommunications, electric, distribution, lighting, traffic control, signage, or to carry lines, cables, or other similar function or for location or collocation of small cell facilities. Such term does not include a SCF support structure.

**VARIANCE.** 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 chapter, 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 non-conforming 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.

**WETLANDS.** Any area where ground water is at or near the surface at least six 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.

**WIRELINE BACKHAUL FACILITY.** An above ground or underground wireline facility used to transport communications data from a wireless facility network interface device to a network.

**WIRELESS FACILITY.** Equipment at a fixed location that enables wireless services between user equipment and a communications network including equipment associated with wireless communications, radio transceivers, antennas, coaxial or fiber optic cable located on a utility pole or SCF support structure or immediately adjacent to the utility pole or SCF support structure or directly associated with equipment located on the utility pole or SCF support structure, regular and backup power supplies and rectifiers, and comparable equipment regardless of technological configuration. The term includes SCFs but does not include the structure or improvements on, under, or within which the equipment is collocated, or wireline backhaul facilities.

**WIRELESS INFRASTRUCTURE PROVIDER.** A person that builds or installs wireless facilities or utility poles or SCF support structures but not a wireless provider.

**WIRELESS PROVIDER.** A wireless infrastructure provider or a wireless service provider.

**WIRELESS SERVICES.** Any services using licensed or unlicensed spectrum including the use of WiFi, whether at a fixed location or mobile, provided to the public.

**WIRELESS SERVICES PROVIDER.** A person who provides wireless services.

**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 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, there will be no REAR YARDS but only front and side yards.

**YARD, SIDE.** A yard between the building and the adjacent sideline of the lot which separates it from another lot and extends 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.

§ 155.002 TITLE AND JURISDICTION.

- (A) Title. This chapter shall be known and referred to as “The Zoning Ordinance of the City of Flandreau, South Dakota”.
- (B) Jurisdiction. The provisions of this chapter shall apply to all territory within the boundaries of the city as established on the Official Zoning Map of the city.

§ 155.003 PURPOSE AND INTENT.

- (A) Purpose. The ~~purpose of this chapter~~ 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 to promote the general welfare of the population through sound policies of land development and land management and to preserve natural beauty and ecological balance. To this end, this chapter will prevent overcrowding of the land with population and structures and provide for adequate sanitation, transportation, and other community facilities. This chapter 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.
- (B) Intent. The intent of this chapter is 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 ~~general~~ **comprehensive** land use plan.
- (C) To foster a harmonious, convenient, workable relationship among land uses.
- (D) 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.
- (E) 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.
- (F) To prevent excessive population densities and overcrowding of the land with structures.
- (G) To facilitate the appropriate location of community facilities and institutions.
- (H) To protect and enhance real estate values.
- (I) To safeguard and enhance the appearance of the community, including natural amenities.
- (J) 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.
- (K) To regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of building, structures, and land.



§ 155.004 DECLARED MINIMUM REQUIREMENTS.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. Wherever the requirements of this chapter 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.

§ 155.005 SEPARABILITY CLAUSE AND CONFLICTING ORDINANCES.

(A) Separability clause. Should the courts declare any section or provision of this chapter unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole or any part other than the part so declared to be unconstitutional or invalid.

(B) Repeal of conflicting ordinances. All ordinances or part of ordinances in conflict with this chapter or inconsistent with the provisions of this chapter are repealed entirely. Specifically, Ordinance 476 and all amendments thereto is repealed.

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

§ 155.006 OFFICIAL ZONING MAP.

(A) 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 chapter.

(1) The Official Zoning Map shall be identified by the signature of the Mayor attested by the City 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 \_\_\_\_ of the City of Flandreau, State of South Dakota," summarized and adopted in § 155.007, together with the date of the adoption of this chapter. The Official Zoning Map shall be on file at the office of the City Finance Officer.

(2) If, in accordance with the provisions of this chapter 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 on the Official Zoning Map by the City Finance Officer or, in his or her absence, a person designated by the City Council. Any unauthorized change by any person or persons shall be considered a violation of this chapter and punishable as provided under § 155.999.

(3) 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.

- (B) 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.
- (C) Annexation. Subsequent of the effective date of these regulations, any land annexed into the municipal boundaries of the city shall be automatically placed into the A, Agricultural District, unless and until such time as the area is rezoned by amendment of these regulations by ordinance, as provided for in § 155.183 of these regulations.
- (D) Changes and/or replacement of Official Zoning Map. In the event that the Official Zoning Map becomes damaged, destroyed, lost, ~~or difficult to interpret because of the nature or number of changes and additions,~~ 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 City Finance Officer and bear 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 Flandreau, State of South Dakota." Unless the prior Official Zoning Map has been lost or 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 § 155.183 of these regulations.

§ 155.007 NOTICE OF ADOPTION; SUMMARY OF REGULATIONS. (Reserved)

~~(A) Notice is hereby given that Ordinance \_\_\_\_\_ (being this section), an ordinance amending Ordinance 476, an ordinance establishing zoning regulations for the city and providing for the administration, enforcement, and amendment thereof, in accordance with the provisions of the 1967 SDCL Chapters 11-4 and 11-6, and amendments thereof, was duly adopted by the City Council on the May 15, 2006, and became effective on the June 20, 2006.~~

- ~~(B) (1) The following is a summary of the zoning regulations and related amendments made thereto:~~
- ~~(a) Article 1: "General Provisions";~~
  - ~~(b) Article 2: "District Regulations";~~
  - ~~(c) Article 3: "Administration";~~
  - ~~(d) Article 4: "Supplemental Regulations"; and~~
  - ~~(e) Article 5: "Definitions".~~
- ~~(2) The zoning ordinance includes the Official Zoning Map, which designates the respective zoning districts for the city.~~
- ~~(C) Notice is further given that the Ordinance 516 and the Official Zoning Map will be made available for public inspection at the city offices during regular business hours.~~
- ~~(Ord. 476, passed 6-19-2000; Ord. 516, passed 5-31-2006)~~

## DISTRICT REGULATIONS

### § 155.020 GENERAL.

- (A) The district regulations included in this subchapter may be qualified or supplemented by additional regulations appearing elsewhere in this chapter.
- (B) 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 non-conforming uses. Deviation from zoning district lot, yard, and related requirements and city-wide zoning regulations, shall be prohibited unless a variance is granted as provided for in § 155.182 of these regulations.
- (C) The Board of Adjustment may establish additional requirements and standards for uses and structures permitted by a conditional use permit as conditions to said conditional use **permit in accordance with § 155.180** .

### § 155.021 APPLICABILITY OF REGULATIONS.

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

### § 155.022 GENERAL COMPLIANCE.

No building or any part thereof shall hereafter be used or occupied; 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 premises is located except as hereinafter provided.

### § 155.023 CONSTRUCTION OR ALTERATION OF STRUCTURES AND LOTS.

- (A) No building or other structure shall hereafter be erected or altered:
- (1) To exceed the height or bulk;
  - (2) To accommodate or house a greater number of families;
  - (3) To occupy a greater percentage of lot area;

- (4) To have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; and/or
- (5) In any other manner contrary to the provisions of this chapter.

(B) ~~(1)~~ No yard or lot existing at the time of passage of this chapter shall be reduced in dimension at or below the minimum requirements set forth herein. ~~(2)~~ Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established by this chapter.

§ 155.024 INTENT OF NON-CONFORMING USES.

- (A) Within the districts established in this chapter 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 chapter was passed or amended but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendment. It is the intent of this chapter to permit these non-conformities to continue until they are removed but not to encourage their survival. It is further the intent of this chapter that non-conformities, **with the exception of nonstandard uses**, shall not be enlarged upon, expanded, or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
- (B) Non-conforming uses are declared to be incompatible with permitted uses in the districts involved. **With the exception of nonstandard uses**, 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 chapter by the addition of other uses or a nature which would be prohibited generally in the district involved.
- (C) To avoid undue hardship, nothing in this chapter 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 **chapter Ordinance**, **and, upon which, CONSTRUCTION is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner.** Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction provided that work shall be carried on diligently.

§ 155.025 REPAIRS AND MAINTENANCE OF NON-CONFORMING STRUCTURES.

On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 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 percent (10%)** 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.

§ 155.026 NON-CONFORMING USES AND STRUCTURES.

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

(A) ~~If no structural alterations are made, a non-conforming use or structure may be changed to another non-conforming use or structure of the same or more restricted zoning district.~~

~~(B)~~(A) Whenever a non-conforming use or structure has been changed to a conforming use, it shall not be changed back to a non-conforming use.

~~(C)~~(B) If any non-conforming building is ~~(partially up to 50%)~~ destroyed or damaged by any casualty, such building may be repaired or replaced and use continued provided 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 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 50% of the replacement value immediately prior to such casualty, 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's Insurance Code, being SDCL Title 58.

~~(D)~~(C) When a non-conforming use or structure is discontinued for a period of one year, it shall not be continued unless in conformance with the requirements of this section and SDCL § ~~9-6-39~~ 11-6-39.

~~(E)~~(D) Any non-conforming use may be extended throughout any part of a structure which was arranged or designed for such use previous to the adoption of this chapter but shall not be extended outside each structure.

~~(F)~~(E) No existing non-conforming 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 non-conforming use.

~~(G)~~(F) Type I and type II manufactured homes located upon any lot or lots of record at the time of the adoption of this chapter 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. If a replacement type I and/or type II manufactured home is of larger dimension than the existing type I and/or type II manufactured home, the application must first be made to the ~~City Planning and Zoning Commission~~ Board of Adjustment for a ~~special Conditional Use~~ Permit.

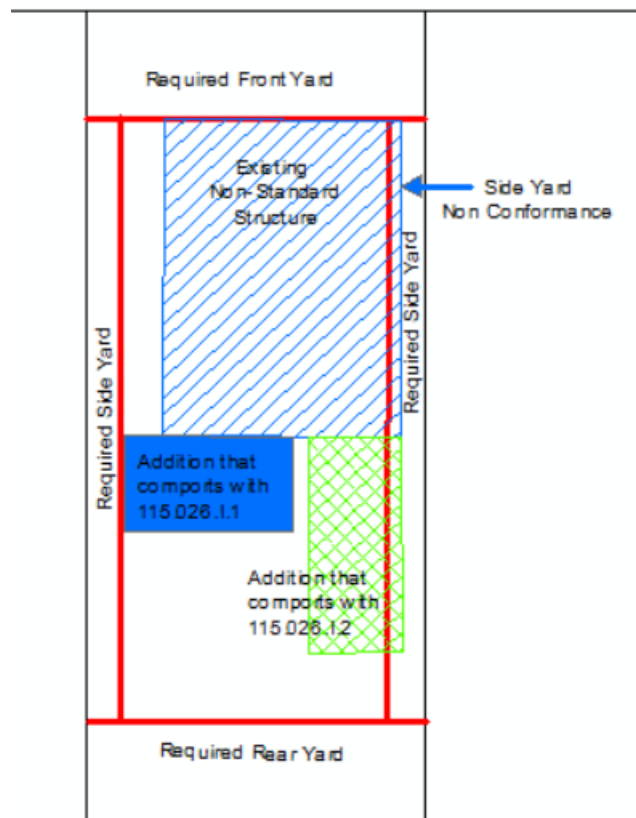
~~(H)~~(G) NON-CONFORMING LAND USE shall include non-conforming manufactured home courts existing at the time of the adoption of this chapter, and the substitution or replacement of type I and type II manufactured homes to said manufactured home court shall not be deemed to have changed the use thereof from a non-conforming to a conforming use.

(H) Nothing contained in this section shall be so construed as to abridge or curtail the powers of the City Planning and Zoning Commission, City Council and/or Board of Adjustment as set forth elsewhere in this chapter.

(I) Nonstandard uses existing immediately prior to the effective date of this chapter 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:

- 1) The Administrative Official may allow the structural alteration, addition (enlargement or extension) of a non-standard structure provided such alteration(s) or addition(s) will be erected no closer to the lot line than the existing building's current non-conforming setback and the addition shall further conform to all other ordinance requirements. (See Figure 155.026 below)
- 2) The Board of Adjustment structural alteration, addition (enlargement or extension) of a non-standard structure provided such alteration(s) or addition(s) conforms to all other ordinance requirements. (See Figure 155.026 below)

**Figure 155.026**  
**Example of Addition to a Non-Standard Structure**



§ 155.027 NON-CONFORMING LOTS OF RECORDS.

- (A) ~~(1)~~ 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 chapter notwithstanding limitations imposed by other provisions of this chapter. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. ~~(2)~~ This provision shall apply even though such lot fails to meet the requirements of area and/or width that are generally applicable in the district provided that yard dimensions and requirements other than these applying to area and/or width 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.
- (B) If two ~~(2)~~ 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 chapter and all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered an undivided parcel for the purposes of this subchapter, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established nor shall any division of any parcel be made which creates a lot with width or area below the requirements in this subchapter.

§ 155.028 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 subchapter, other than a change through Board of Adjustment action from a non-conforming use to another use not generally permitted in the district shall not be deemed a non-conforming use in such district but shall, without further action, be considered a conforming use.

§ 155.029 ZONING DISTRICTS.

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

- (A) A, Agricultural District. The ~~intent purpose~~ of the A, Agricultural District is to preserve open space and land currently used for agricultural purposes. This land is considered not yet ready for further development ~~until the installation of drainage works, streets, utilities, and community facilities and until objective projections of appropriate land uses are possible~~ and may further be subject to periodic flooding.
- (B) C1, Central Commercial District. The purpose of the C1, Central Commercial District is to provide commercial areas ~~oriented to the pedestrian shopper~~ for business establishments serving the needs of trade area residents. Permitted uses are intended to create a strong central business district, free from conflicting land uses, which is the focal point of trade area retail sales, personnel, business and professional services, governmental and cultural activities.

- (C) FP, Flood Plain District. The ~~intent~~ purpose of the FP, Flood Plain District is to protect from encroachment in watershed areas subject to flooding, backwater spreading, and flood water or overflow of streams or rivers. The FP, Flood Plain District is an overlay district, imposing special regulations on the properties that fall within this overlay district without abrogating the requirements imposed by the underlying land use district regulations.
- (D) HC, Highway Commercial District. The purpose of the HC, Highway Commercial District is to accommodate those industrial uses able to meet performance standards and those commercial uses which need larger lot area or are not compatible with the Central Commercial District.
- (E) I, Industrial District. The purpose of the I, Industrial District is to provide space for a wide range of industrial uses and structures and for certain commercial uses. Regulations are intended to provide guidelines for locating activities which may be injurious or offensive to occupants of adjacent areas, or which emit odors, fumes or gases, dust, smoke, noise, or vibrations which are evident beyond the property of such uses.
- (F) R1, Single-Family Residential District. The purpose of the R1, Single-Family Residential District is to provide locations for low-density residential dwellings. Restrictions and requirements are intended to preserve and protect the residential character by preventing incompatible land uses.
- (G) R2, General Residential District. The purpose of the R2, General Residential District is to provide a stable environment for the development of two-family and multiple-family dwelling units free from incompatible land uses.
- (H) R3, Combined Residential District. The purpose of the R3, Combined Residential District is to permit a broad variety of housing types with an emphasis of the development of a single-family residential manufactured home park located in an appropriate environment. ~~It is the purpose of the R3 District to encourage site development in accordance with good planning principles, to prevent detrimental effects to the use or development of adjacent properties or the general neighborhood, and to promote the health, safety, and welfare of the present and future inhabitants of the city.~~



A, AGRICULTURAL DISTRICT

§ 155.040 PERMITTED USES.

The following uses and structures shall be permitted in the A, Agricultural District:

- (A) Any form of agriculture activity and related farm buildings excluding feed lots;
- (B) Site-built single-family dwellings;
- (C) Modular homes; and
- (D) Public parks and recreation areas.

(E) Essential public utilities and services

§ 155.041 PERMITTED ACCESSORY USES.

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

- (A) Accessory uses and structures customarily incidental to permitted uses, special permitted uses, conditional uses and structures when established within the space limits of this district (see § 155.232); and
- (B) Roadside stands for sales of agricultural products grown or produced on the premises;
- (C) Signs conforming to 155.260;
- (D) Home occupations subject to 155.320.

§ 155.042 CONDITIONAL USES.

- (A) 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 to protect adjacent property, prevent objectionable or offensive conditions, and promote the health, safety, and general welfare:
  - (1) Airports;
  - (2) Cemeteries;
  - (3) Commercial or private recreation areas not normally accommodated in commercial areas such as golf courses, campgrounds, drive-in theaters, riding stables, racetracks, swimming pools, and the like;
  - (4) Private clubs;
  - (5) Stables;

- (6) Type I and type II manufactured homes subject to 155.089;
- (7) Extraction of sand, gravel, minerals, and petroleum or natural gas; Commercial Stables and/or commercial kennels with outside runs;
- (8) Public buildings or facilities erected or established and operated by any governmental agency;
- (9) Radio and television towers and transmitters Telecommunication facilities;
- (10) Extended home occupations subject to 155.321;
- (11) Utility substations;
- (12) Veterinarian offices and animal hospitals;
- (13) Nurseries and greenhouses.
- (14) Sanitary Sewage treatment plants, but not within one thousand three hundred twenty (1,320) feet of a residence; Horticultural Services;
- (15) Intermodal shipping/storage containers.

~~(B) The Board of Adjustment may grant these uses provided the written consent of more than 50% of the number of owners of property within 250 feet of any property line of the premises is obtained.~~

§ 155.043 SPECIAL PERMITTED USES:

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

(A) Shop-style dwellings subject to 155.350.

§ 155.0434 PROHIBITED USES.

All uses and structures not specifically permitted or not permitted listed as a Permitted Uses, Special Permitted Use, Accessory Use, or by Conditional Use shall be prohibited in the A, Agricultural District.

§ 155.0445 LOT, YARD, AND HEIGHT SPECIFICATIONS.

~~(A) Minimum lot requirements. The minimum lot area for permitted uses shall be one acre or 43,560 square feet. The minimum lot width for permitted uses shall be 150 feet. Uses permitted by conditional use shall have a minimum lot area and width as determined by the Board of Adjustment.~~

~~(B) Minimum yard requirements. Permitted uses shall have a minimum front yard of 75 feet, minimum side yards of 30 feet, and a minimum rear yard of 50 feet. Uses permitted by conditional use shall have minimum yard requirements as determined by the Board of Adjustment. (See § 155.234.)~~

(C) Height regulations. Single family dwellings should be no more than two and one half stories, excluding basements, or 35 feet. Other allowable uses include 75 feet for towers or steeples and not more than 45 feet for the principal building.

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

**Table 155.045.1**

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential/Type I & II Manufactured Home /Modular Home	43,560 square feet	150'	35'	10%
Towers or Steeples	To be determined by the Board of Adjustment		75'	NA
Other Principal buildings excluding tower or steeple			45'	10%
Other Permitted Uses/ Conditional Uses	To be determined by the Board of Adjustment			

**Table 155.045.2**

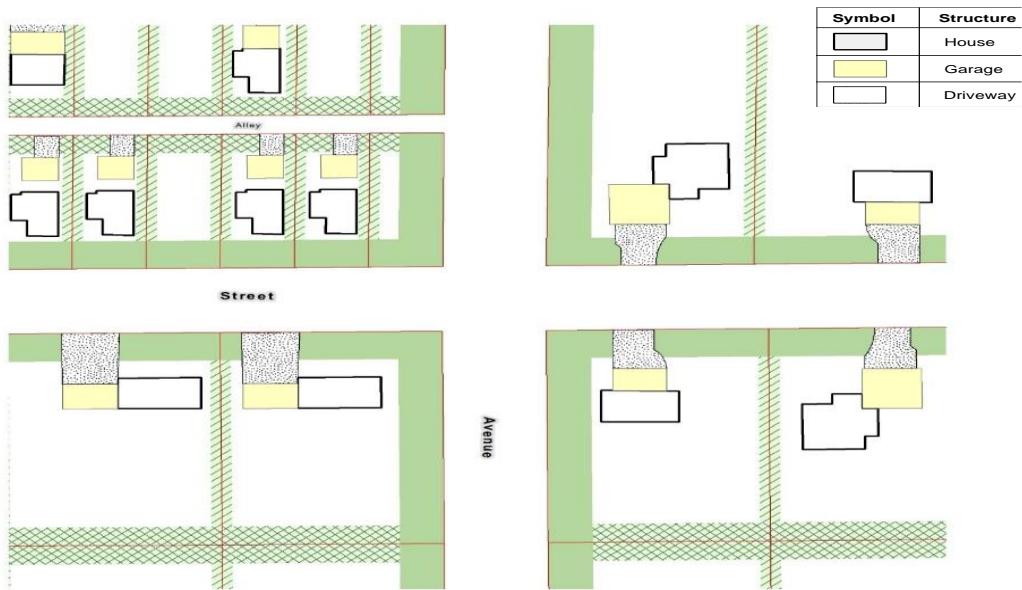
	Minimum Front Yard %		Minimum Rear Yard %*#	Minimum Side Yard %*#	
	Primary*	Secondary*		Party Wall Side	Non-Party Wall Side
SYMBOL					
Permitted Uses	75'	37.5'	50'	30'	
Other Permitted Uses/ Conditional Uses	To be determined by the Board of Adjustment				

\* To be measured from the wall line. The setback requirements on all required yards includes an allowable overhang of 24 inches or less.

% For the purpose of this chapter a porch and overhang shall be deemed to be part of said building except as provided for by § 155.001, Definitions "Yard, Front".

# Accessory structures may be placed no closer than ten (10) feet of an alley. Exception § 155.232.K

Figure 155.045.1



R1, SINGLE-FAMILY RESIDENTIAL DISTRICT

§ 155.055 PERMITTED USES.

The following uses and structures shall be permitted in the R1, Single-Family Residential District:

- (A) Site-built, single-family dwellings;
- (B) Modular homes;
- (C) Public parks and recreation areas;
- ~~(D) Real estate signs advertising the real estate for sale on which located. Signs are not to be larger than three feet by four feet and not to remain longer than two weeks following the closing of sale or such longer period as the Board of Adjustment may permit;~~ Essential public utilities and services required by the resident population;
- (E) Churches and parish houses; and
- (F) Public and private schools.

§ 155.056 PERMITTED ACCESSORY USES.

The following accessory uses and structures shall be permitted in the "R1" Single Family Residential District:

- (A) Accessory uses and structures customarily incidental to permitted uses, special permitted uses, or conditional uses, except stables, when established within the space limits of this district shall be permitted in the R1, Single Family Residential District. (see § 155.232);
- (B) Signs subject to 155.260;
- (C) Home occupations subject to 155.320.

§ 155.057 SPECIAL PERMITTED USES:

The following uses and structures shall be permitted as Special Permitted Use in the R1, Single Family Residential District.

- (A) Reserved.

§ 155.0578 CONDITIONAL USES.

- (A) The following uses may be permitted as a conditional use in the R1, Single-Family Residential District by the Board of Adjustment and subject to such requirements as the Board deems necessary to protect adjacent property, prevent objectionable or offensive conditions, and promote the health, safety, and general welfare:
  - (1) Bed and breakfast establishments subject to 155.330.

- (2) Two-family dwellings;
- (3) **Extended** Home Occupations **subject to 155.321.**
- (4) 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 square-foot in area, non-illuminated, and mounted flat against the wall of the principal building;
- (5) Public buildings or facilities established and operated by any governmental agency;
- (6) Hospitals, nursing homes, and homes for the aged. **Any building approved for such use shall be set back not less than 50 feet from the street on which it fronts and shall have side and rear setbacks of not less than 30 feet and shall meet other requirements of this subchapter;**
- (7) Licensed commercial day care facilities **not operated at a residence;**
- (8) Utility substations;
- (9) A shelter for battered women and children or who are otherwise adversely affected by domestic abuse which may also serve as a food pantry for the needy; and
- (10) Commercial storage buildings used exclusively for storage and not for performance of any other services.**
- (12)Telecommunication facilities;**
- (13)In-home nursing or convalescent homes with up to four (4) additional residents other than immediate family;**
- (B) The Board of Adjustment may grant these uses provided the written consent of more than 50% of the number of owners of property within 250 feet of any property line of the premises is obtained.**

§ 155.05~~89~~ PROHIBITED USES.

All uses and structures not specifically **permitted or not permitted** listed as a **Permitted Uses, Special Permitted Use, Accessory Use, or** by Conditional Use shall be prohibited in prohibited in the R1, Single-Family Residential District.

§ 155.05960 LOT, YARD, AND HEIGHT SPECIFICATIONS.

- (A) Minimum lot requirements. The minimum lot area for residences shall be 9,750 square feet. The minimum lot width for residences shall be 75 feet. The minimum lot depth for residences shall be 130 feet. Other permitted uses and uses permitted by conditional use shall have a minimum lot area, width, and depth as determined by the Board of Adjustment. All lots shall front on and have ingress and egress by means of a public right-of-way.
- (B) Maximum lot coverage. The maximum lot coverage for all buildings and structures shall not exceed 30% of the total lot area.
- (C) Minimum yard requirements. Residential dwellings shall have a minimum front yard of 30 feet, measuring the same from the most outward point of the building.
  - (1) For the purpose of this subchapter, a porch and overhang shall be deemed to be part of said building except as provided for by § 155.001 in the definition of front yard. In the case of corner lots, both frontage yards shall be provided according to the pattern of existing structures.
  - (2) Residential dwellings shall have minimum side yards of nine feet, and a minimum rear yard of 25 feet; however, accessory structures may be placed within five feet of an alley. Other permitted uses and uses permitted by conditional use shall have minimum yard requirements as determined by the Board of Adjustment. (See § 155.234.)
- (D) Height regulations.
  - (1) Single family dwellings should be no more than two and one-half stories, excluding basements, or 35 feet.
  - (2) Other allowable uses include 75 feet for towers or steeples and not more than 45 feet for the principal building.
 (Ord. passed — 2006)

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

**Table 155.060.1**

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential/Modular Home	9,750 square feet	75'	35'	35%
Two (2) Dwelling Units (A)	6,000 square feet/dwelling unit	100'	35'	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, 2024	30,000 square feet	75'	35'*	30%
Other Permitted Uses/Conditional Uses	To be determined by the Board of Adjustment			

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. Where individually owned, attached single-family units (i.e., Condominium, townhouse, duplex, etc.) are constructed, minimum lot area, width, and coverage are calculated on the basis of the lot upon which the shared structure is constructed.

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

**Table 155.060.2**

	Minimum Front Yard*%		Minimum Rear Yard*#	Minimum Side Yard*	
	Primary	Secondary**		Party Wall Side	Non-Party Wall Side
<b>SYMBOL</b>	■		▨	▧	
Single Family Residential/Type I Manufactured Home /Modular Home	25'	12.5'	20'	9'	
<b>Two Dwelling Units (A)</b>	25'	12.5'	20'	0'	9'
Hospitals, convalescent and nursing homes, supervised care facilities and congregate housing	50'	25'	30'	0'	25'
<b>Churches and other religious institutions established after January 1, 2024</b>	50'	25'	25'	0'	25'
<b>Other Permitted Uses/Conditional Uses</b>	To be determined by the Board of Adjustment				

\* To be measured from the wall line. The setback requirements on all required yards includes an allowable overhang of twenty-four (24) inches or less.

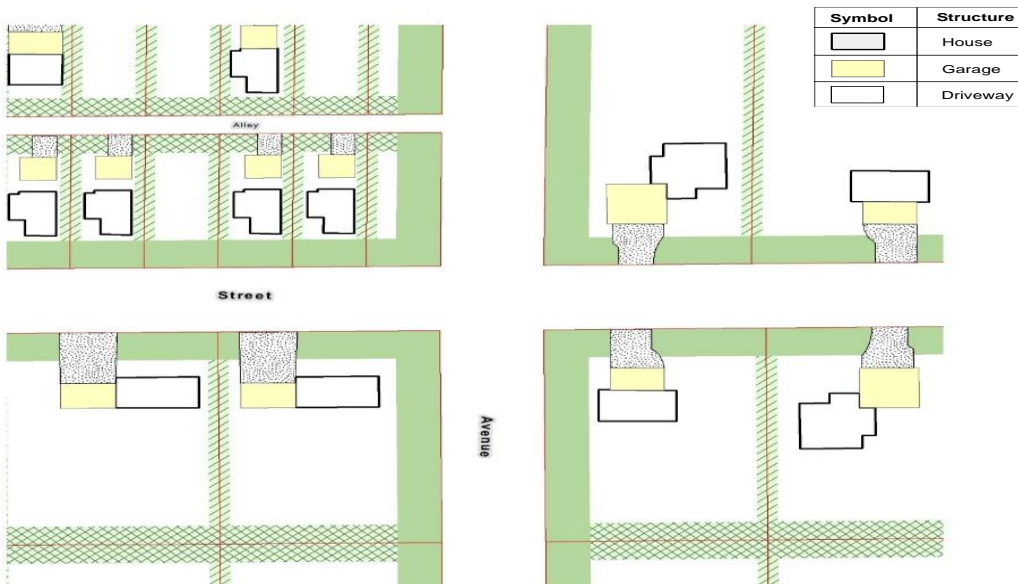
% For the purpose of this chapter a porch and overhang shall be deemed to be part of said building except as provided for by § 155.001, Definitions "Yard, Front".

# Accessory structures may be placed no closer than (10) feet of an alley. Exception § 155.232.K

\*\* When a setback distance greater or lesser than twenty-five (25) feet has been established setback distance of has been established in any block, then no building shall approach nearer than any street line than the general average of the setback distance as determined by the Administrative Official. At no time will the setback be less than twelve and one-half (12.5) feet.

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.

**Figure 155.060.1**





R2, GENERAL RESIDENTIAL DISTRICT

§ 155.070 PERMITTED USES.

The following uses and structures shall be permitted in the R2, General Residential District:

- (A) Any permitted use in the R1 District; Site-built, single-family dwellings;
- (B) Two-family dwellings;
- (C) Multiple-family dwellings; and
- (D) Type I manufactured homes.
- (E) Modular homes;
- (F) Public parks and recreation areas;
- (G) Churches and parish houses; and
- (H) Public and private schools.
- (I) Essential public utilities and services required by the resident population;

§ 155.071 PERMITTED ACCESSORY USES.

The following accessory uses and structures shall be permitted in the "R2" Single Family Residential District:

- (A) Accessory uses and structures customarily incidental to permitted uses, special permitted uses, or conditional uses, except stables, when established within the space limits of this district are permissible (see § 155.232);
- (B) Signs subject to 155.260.
- (C) Home occupations subject to 155.320.

§ 155.072 SPECIAL PERMITTED USES:

The following uses and structures shall be permitted Special Permitted Use in the R2, General Residential District.

- (A) Reserved.

§ 155.07~~23~~23 CONDITIONAL USES.

(A) The following uses may be permitted as a conditional use in the R2, General Residential District by the Board of Adjustment and subject to such requirements as the Board deems necessary to protect adjacent property, prevent objectionable or offensive conditions, and promote the health, safety and general welfare:

(1) ~~Any conditional use permitted in the R1 District except two family dwellings which are a permitted use in this district;~~ Bed and breakfast establishments subject to 155.330;

(2) 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 square-foot in area, non-illuminated, and mounted flat against the wall of the principal building;

(3) Public buildings or facilities established and operated by any governmental agency;

(4) Hospitals, nursing homes, and homes for the aged;

(5) Licensed commercial day care facilities not operated at a residence;

(6) Utility substations;

(7) A shelter for battered women and children or who are otherwise adversely affected by domestic abuse which may also serve as a food pantry for the needy; and

(8) Commercial storage buildings used exclusively for storage and not for performance of any other services.

~~(29)~~ The conversion of an existing single-family residential dwelling into a two-family or multiple-family dwelling; and

~~(310)~~ Type II manufactured home.

(11) Extended Home Occupations (subject to 155.321).

(13) Funeral homes;

(14) Clinics;

(15) In-home nursing or convalescent homes with up to four (4) additional residents other than immediate family;

(16) Telecommunication facilities.

~~(B) The Board of Adjustment may grant these uses provided the written consent of more than 50% of the number of owners of property within 250 feet of any property line of the premises is obtained.~~

§ 155.0734 PROHIBITED USES.

All uses and structures not specifically permitted or not permitted listed as a Permitted Uses, Special Permitted Use, Accessory Use, or by Conditional Use shall be prohibited in the R2, General Residential District.

§ 155.0745 LOT, YARD, AND HEIGHT SPECIFICATIONS.

~~(A) Minimum lot requirements. The minimum lot area for residences shall be 6,000 square feet. The minimum lot width for residences shall be 50 feet. The minimum lot depth for residences shall be 130 feet. For multiple family dwelling units up to four units, the minimum lot area for two family and multiple family dwellings shall have a minimum lot area of 6,000 square feet for the first dwelling unit plus 2,400 square feet for each additional dwelling unit. Multiple family apartments, condominiums, and townhouses for single family occupancy of more than four dwelling units shall have a minimum lot area of 13,200 square feet for the first four dwelling units plus 1,815 square feet for each additional dwelling unit. Other permitted uses and uses permitted by conditional use shall have a minimum lot area, width, and depth as determined by the Board of Adjustment. All lots shall front on and have ingress and egress by means of a public right of way.~~

~~(B) Maximum lot coverage. The maximum lot coverage for all buildings and structures shall not exceed 30% of the total lot area.~~

~~(C) Minimum yard requirements. Residential dwellings shall have a minimum front yard of 30 feet measuring the same from the most outward point of the building.~~

~~(1) For the purpose of this subchapter, a porch and overhang shall be deemed to be part of said building except as provided for by § 155.001 in the definition of front yard. In the case of corner lots, both frontage yards shall be provided according to the required depth for front yards in that district or according to the prevailing yard pattern of existing structures.~~

~~(2) Residential dwellings shall have minimum side yards of six feet, and a minimum rear yard of 25 feet; however, accessory structures may be placed within five feet of an alley. Other permitted uses and uses permitted by conditional use shall have minimum yard requirements as determined by the Board of Adjustment. (See § 155.234.)~~

~~(D) Height regulations.~~

~~(1) Single family dwellings should be no more than two and one-half stories, excluding basements, or 35 feet.~~

~~(2) Other allowable uses include 75 feet for towers or steeples and not more than 45 feet for the principal building.~~

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

**Table 155.075.1**

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential/Type I & II Manufactured Home /Modular Home	6,000 square feet	50'	35'	35%
Two (2) Dwelling Units (A)	6,000 square feet/dwelling unit	100'	35'	40%
Three or more 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, 2024	30,000 square feet	75'	35'*	30%
Other Permitted Uses/Conditional Uses	To be determined by the Board of Adjustment			

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. Where individually owned, attached single-family units (i.e., Condominium, townhouse, duplex, etc.) are constructed, minimum lot area, width, and coverage are calculated on the basis of the lot upon which the shared structure is constructed.

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

**Table 155.075.2**

	Minimum Front Yard*%		Minimum Rear Yard*#	Minimum Side Yard*	
	Primary	Secondary**		Primary	Secondary**
<b>SYMBOL</b>					
Single Family Residential/Type I & II Manufactured Home /Modular Home	25'	12.5'	20'		6'
Two Dwelling Units (A)	25'	12.5'	25'	0'	6'
Three or more Dwelling Units	30'	15'	25'	0'	15'
Hospitals, convalescent and nursing homes, supervised care facilities and congregate housing;	50'	25'	25'	0'	25'
Churches and other religious institutions established after January 1, 2024	50'	25'	25'	0'	25'
Other Permitted Uses/ Conditional Uses	To be determined by the Board of Adjustment				

\* To be measured from the wall line. The setback requirements on all required yards includes an allowable overhang of twenty-four (24) inches or less.

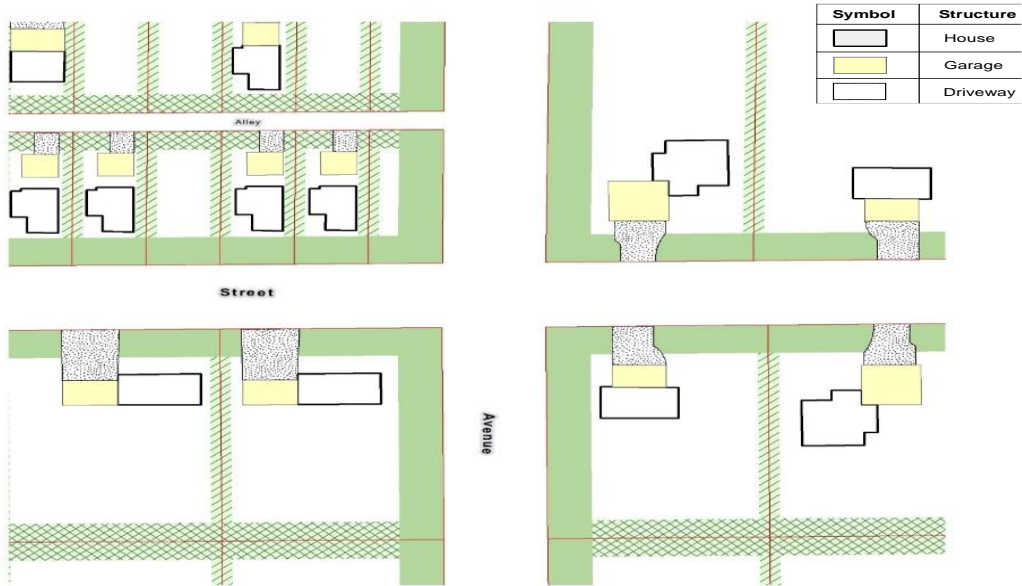
% For the purpose of this chapter a porch and overhang shall be deemed to be part of said building except as provided for by § 155.001, Definitions "Yard, Front".

# Accessory structures may be placed no closer than (10) feet of an alley. Exception § 155.232.K

\*\* When a setback distance greater or lesser than twenty-five (25) feet has been established setback distance of has been established in any block, then no building shall approach nearer than any street line than the general average of the setback distance as determined by the Administrative Official. At no time will the setback be less than twelve and one-half (12.5) feet.

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.

Figure 155.075.1



R3, RESIDENTIAL MANUFACTURED HOME COMBINED RESIDENTIAL DISTRICT

§ 155.085 PERMITTED USES.

The following uses and structures shall be permitted in the "R3" Combined Residential District:

- (A) Any permitted use in the R2 District; and; Site-built, single-family dwellings;
- (B) Type II manufactured homes;
- (C) Multiple-family dwellings;
- (D) Modular homes;
- (E) Public parks and recreation areas;
- (F) Churches and parish houses;
- (G) Public and private schools.
- (H) Essential public utilities and services required by the resident population;
- (I) Two-family dwellings;
- (J) Type I manufactured homes.

§ 155.086 PERMITTED ACCESSORY USES.

The following accessory uses and structures shall be permitted in the "R3" Combined Residential District:

- (A) Accessory uses and structures customarily incident there to, excluding stables incidental to permitted uses, special permitted uses, or conditional uses, except stables, when established within the space limits of this district (see § 155.232);
- (B) 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.
- (C) Signs subject to 155.260.
- (D) Home occupations (subject to 155.321).

§ 155.087 SPECIAL PERMITTED USES:

The following uses and structures shall be permitted Special Permitted Uses in the R3, Combined Residential District.

(A) Reserved.

§ 155.0878 CONDITIONAL USES.

(A) The following uses may be permitted as a conditional use in the R3, Combined District by the Board of Adjustment and 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:

- (1) Manufactured home park developments;
- (2) Manufactured home subdivisions; and
- (3) ~~Any conditional use permitted in the R1 District except two-family dwellings and type II manufactured homes which are a permitted use in this district.~~ Bed and breakfast establishments subject to 155.330;
- (3) 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 square-foot in area, non-illuminated, and mounted flat against the wall of the principal building;
- (4) Public buildings or facilities established and operated by any governmental agency;
- (5) Hospitals, nursing homes, and homes for the aged.;
- (6) Licensed commercial day care facilities not operated at a residence;
- (7) Utility substations;
- (8) A shelter for battered women and children or who are otherwise adversely affected by domestic abuse which may also serve as a food pantry for the needy; and
- (9) Commercial storage buildings used exclusively for storage and not for performance of any other services.
- (10) The conversion of an existing single-family residential dwelling into a two-family or multiple-family dwelling; and
- (11) Extended Home Occupations (subject to 155.321)
- (12) Funeral homes;
- (13) Clinics;

(14) In-home nursing or convalescent homes with up to four (4) additional residents other than immediate family;

~~(B) The Board of Adjustment may grant these uses provided the written consent of more than 50% of the property owners within 250 feet of any property line of the premises is obtained.~~

§ 155.08~~89~~ PROHIBITED USES.

All uses and structures not specifically ~~permitted or not permitted~~ listed as a Permitted Uses, Special Permitted Use, Accessory Use, or by Conditional Use shall be prohibited in the R3, Residential District.

§ 155.08~~90~~ MANUFACTURED HOME PARK MINIMUM STANDARDS.

Manufactured home parks shall meet the following minimum standards.

- (A) Streets. Each manufactured home shall abut or face a public or 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, there shall be a minimum right-of-way of **forty** (40) feet.
- (B) Open space or buffer zone. A landscape buffer area of ten feet in width shall be provided and maintained around the perimeter of the park except where walks and drives penetrate the buffer.
- (C) Lot area. Each lot provided for the occupancy of a single manufactured home unit shall not be less than **fifty** (50) 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.
- (D) Density. No park shall be permitted an average net density of manufactured home lots of more than seven **(7)** units per acre, and each park shall provide an area of not less than two **(2)** acres.
- (E) 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 subchapter will comply with the following.
  - (1) 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. (See § 155.234.)
  - (2) Side and rear yards. All manufactured homes shall have minimum side yards of seven **(7)** feet and a minimum rear yard of ten feet. (See § 155.234.)
  - (3) Exceptions to minimum yard requirements. (See also § 155.234.)
    - (a) A garage, canopy, or carport may project into a required side or rear yard provided it is located no closer than ten feet to another manufactured home garage, canopy, carport, or addition thereto and provided further that the maximum depth be **twenty-four** (24) feet.



- (b) A deck may project into a required side or rear yard provided it is located no closer than four feet to any other structure.
  - (c) 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.
  - (d) Detached accessory buildings with a projected room area of not more than **one hundred 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.
- (4) Maximum lot coverage. No manufactured home shall occupy more than **twenty-five percent (25%)** of the area of the lot on which it is situated.
- (F) Parking. Two off-street automobile parking spaces shall be provided for each manufactured home.
- (1) 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.
  - (2) 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.
- (G) Refuse collection.
- (1) One refuse collection station shall be provided with a minimum of one two-yard dumpster situated on concrete and screened on four sides for each **twelve (12)** families or fractions thereof.
  - (2) It shall be conveniently located to serve tenants not more than **one hundred fifty (150)** feet from any trailer unit served and be conveniently located for collection.
- (H) Recreation area. The developer of the manufactured home park shall dedicate no less than 8% of the gross site area to recreational facilities appropriate to the needs of the occupants. The Planning and Zoning Commission shall approve the designated recreation area.
- (I) On-site management.
- (1) Each manufactured home park shall provide on-site management by the owner or his or her representative.
  - (2) This requirement may be waived if a point of contact is established to ensure that the management, repairs, maintenance, and janitorial work connected with the manufactured home park and all provisions of this subchapter are complied with.
- (J) Water supply and distribution system and sewage disposal. Each manufactured home shall be connected to the city sanitary sewer and water system.

- (K) 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 TR-75, issued June 1972 by the U.S. Department of Defense.
- (L) Maximum age limitation. No manufactured home placed within a manufactured home park within the city limits may exceed ten years from the date of manufacture.
- (M) Expansion. Existing manufactured home parks may be extended to a total area of no less than two (2) acres provided the area of expansion complies with all other regulations herein set forth.
- (N) 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.
- (O) 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.

§ 155.09~~01~~<sup>01</sup> APPLICATION PROCEDURE.

- (A) 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:
  - (1) Location and topography of the proposed manufactured home park including adjacent property owners, 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 rights-of way;
  - (4) Proposed general layout including parking and recreation areas;
  - (5) General street and pedestrian walkway plan; and
  - (6) General utility, water, and sewer plan.
- B) 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.

§ 155.09~~12~~<sup>12</sup> MANUFACTURED HOUSING SUBDIVISIONS.

- (A) Nothing in this subchapter shall be construed to prohibit subdividing an approved manufactured home park development into individual owner-occupied lots.
- (B) However, any such development shall be required to meet the subdivision regulations of the city.

§ 155.0923 LOT, YARD, AND HEIGHT SPECIFICATIONS.

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

(B) Minimum lot area, maximum building height, maximum lot coverage and minimum yard requirements for Manufactured Home Parks shall be regulated in accordance § 155.089

**Table 155.093.1**

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Single Family Residential/Type I & II Manufactured Home /Modular Home	6,000 square feet	50'	35'	35%
Two (2) Dwelling Units (A)	6,000 square feet/dwelling unit	100'	35'	40%
Three or more 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, 2024	30,000 square feet	75'	35'*	30%
Other Permitted Uses/Conditional Uses	To be determined by the Board of Adjustment			

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. Where individually owned, attached single-family units (i.e., Condominium, townhouse, duplex, etc.) are constructed, minimum lot area, width, and coverage are calculated on the basis of the lot upon which the shared structure is constructed.

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

**Table 155.093.2**

SYMBOL	Minimum Front Yard*%		Minimum Rear Yard*#	Minimum Side Yard*	
	Primary	Secondary**		Primary	Secondary**
Single Family Residential/Type I Manufactured Home /Modular Home	25'	12.5'	20'	6'	
Two Dwelling Units (A)	25'	12.5'	10'	0'	0'
Three (3) to four (4) Dwelling Units	30'	15'	25'	0'	0'
Hospitals, convalescent and nursing homes, supervised care facilities and congregate housing	50'	25'	30'	0'	0'
Churches and other religious institutions established after January 1, 2024	50'	25'	25'	0'	0'
Conditional Uses	To be determined by the Board of Adjustment				

\* To be measured from the wall line. The setback requirements on all required yards includes an allowable overhang of twenty-four (24) inches or less.

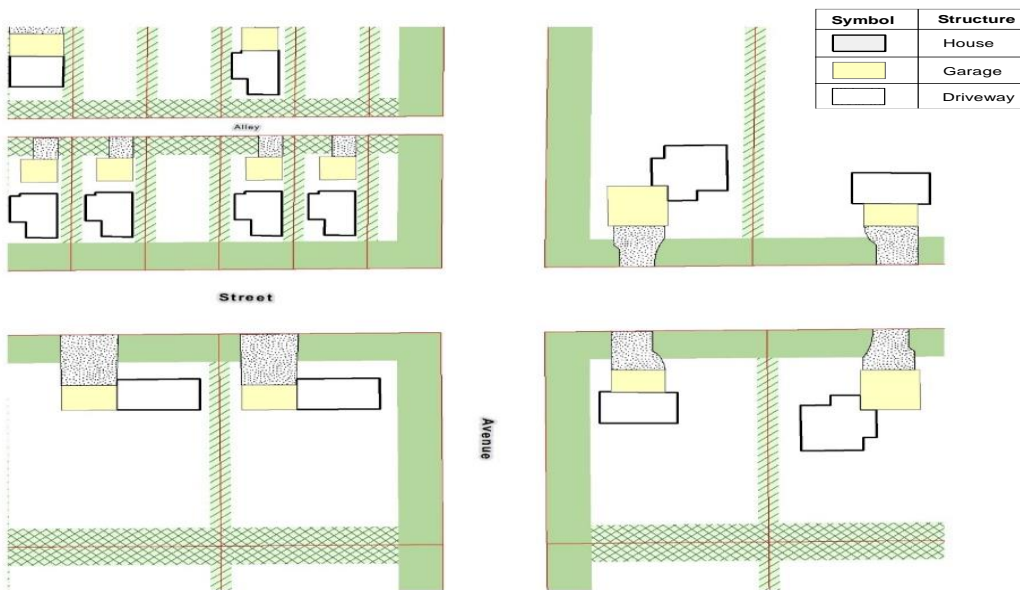
% For the purpose of this chapter a porch and overhang shall be deemed to be part of said building except as provided for by § 155.001, Definitions "Yard, Front".

# Accessory structures may be placed no closer than (10) feet of an alley. Exception § 155.232.K

\*\* When a setback distance greater or lesser than twenty-five (25) feet has been established setback distance of has been established in any block, then no building shall approach nearer than any street line than the general average of the setback distance as determined by the Administrative Official. At no time will the setback be less than twelve and one-half (12.5) feet.

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.

**Figure 155.093.1**



C1, CENTRAL COMMERCIAL DISTRICT

§ 155.105 PERMITTED USES.

The following uses and structures shall be permitted in the C1, Central Commercial District:

- (A) Retail and wholesale sales;
- (B) Finance, insurance, and real estate services;
- (C) Business services excluding any warehousing and storage services;
- (D) Churches, welfare, and charitable services; business associations, professional membership organizations, labor unions, and similar labor organizations; and civic, social, and fraternal associations;
- (E) Eating establishments;
- (F) ~~Communication and utility uses~~; Essential public utilities and services required by the resident population.
- (G) Public buildings and grounds;
- (H) Personal service establishments;
- (I) Professional, governmental, and education services;
- (J) ~~Communication and utility uses~~; Museum;
- (K) Printing and publishing establishments;
- (L) Offices;
- (M) Parking lot and/or parking garages;
- (N) Bed and breakfast subject to 155.330;
- (O) Hotels and/or motels; and
- (P) ~~Theaters, bowling alleys, and pool halls~~ Indoor commercial recreation facility;
- (Q) Theaters,

§ 155.106 PERMITTED ACCESSORY USES.

The following accessory uses and structures shall be permitted in the "C1" Central Commercial District:

- (A) Accessory buildings and uses and structures customarily incidental to permitted uses, special permitted uses, or conditional uses when established within the space limits of this district (see § 155.232);
- (B) Signs subject to 155.260.

§ 155.107 SPECIAL PERMITTED USES:

The following uses and structures shall be permitted as a Special Permitted Use in the C1, Central Commercial District.

- (A) Reserved.

§ 155.1078 CONDITIONAL USES.

The following uses may be permitted as a conditional use in the C1, Central Commercial District by the Board of Adjustment and subject to such requirements as the Board deems necessary to protect and promote the health, safety, and general welfare:

- (A) Bar or tavern;
- (B) Licensed day care centers;
- (C) On-sale and off-sale liquor establishments;
- (D) Lumberyards;
- (E) Public garages, repair shops, and automobile service stations;
- (F) Car washes provided that their operative machinery is within an enclosed structure and adequate drainage is provided;
- (G) Second floor Apartments seeing as apartments on the first floor are not allowed;
- (H) Lumberyard; Telecommunication facilities;
- (I) Site-built, single-family dwellings; and
- (J) Caretaker/Watchperson's quarters subject to § 155.245.
- (L) Private and Commercial storage buildings used exclusively for storage and not for performance of any other services;

§ 155.1089 PROHIBITED USES.

All uses and structures not specifically permitted or not permitted listed as a Permitted Use, Special Permitted Use, Accessory Use, or by Conditional Use shall be prohibited in the C1, Central Commercial District.

§ 155.10910 LOT, YARD, AND HEIGHT SPECIFICATIONS.

(A) Minimum lot requirements. Permitted uses shall have a minimum lot area of 3,500 square feet and a minimum lot width of 25 feet. Uses permitted by conditional use shall have a minimum lot area and width as determined by the Board of Adjustment.

(B) Minimum yard requirements. No yards shall be required in the C1, Central Commercial District provided, however, that all buildings located on lots adjacent to a residential district shall observe a yard requirement equivalent to the minimum yard requirements of the residential district on the side or sides adjacent. Uses permitted by conditional use shall have minimum yard requirements as determined by the Board of Adjustment. (See § 155.234.)

(C) Maximum lot coverage. The maximum lot coverage for all permitted uses shall not exceed 90%. The maximum lot coverage for all uses permitted by conditional use shall be as determined by the Board of Adjustment.

(D) Maximum height. The maximum height of all buildings and structures shall not exceed 35 feet.  
)

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

**Table 155.110.1**

	Minimum Lot Area	Minimum Lot Width	Maximum Height	Maximum Percent Lot Coverage
Permitted Uses	3,500 square feet	25'	35'	90%
Conditional Uses	To be determined by the Board of Adjustment			

**Table 155.110.2**

	Minimum Front Yard *\$		Minimum Rear Yard*#§		Minimum Side Yard*#§	
	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts
Symbol	■		▨		▩	
Permitted Uses	0'	25'	0'	20'	0'	7'
Conditional Uses	To be determined by the Board of Adjustment					

\* To be measured from the wall line. The setback requirements on all required yards to include an allowable overhang of 24 inches or less.

# Rear and side yards shall be landscaped or fenced in a suitable manner to buffer residential uses

§ No front, rear or side yard requirements for buildings except when lots adjacent to a residential district.

**Figure 155.110.1**



Symbol	Structure
■	Business
▨	Parking/ Driveway



HC, HIGHWAY COMMERCIAL DISTRICT

§ 155.120 PERMITTED USES.

The following uses and structures shall be permitted in the HC, Highway Commercial District:

- (A) Horticulture and the raising of field crops;
- (B) Public garages, automobile repair shops, and automobile service stations;
- (C) ~~On-site signs;~~ Essential public utilities and services;
- (D) Utility substations;
- (E) Wholesale or retail sales of: lumber and other building or construction materials, farm equipment, and farm and garden supplies; manufactured homes and trailers; fuel, marine crafts, motor vehicles, and automobile equipment; drugs, chemicals, and all allied products; dry goods and apparel; groceries, ice, and related products; electrical goods, hardware, and plumbing and heating equipment and supplies; machinery equipment and supplies; beer, wine, and distilled alcoholic beverages; paper and paper products; furniture and home furnishings; firearm equipment and supplies; ~~and eating establishments;~~
- (F) ~~general farm products, other than animals, household goods, and equipment maintenance;~~ Clinics;
- (G) ~~Mortuaries~~ Funeral Home;
- (H) Contract construction services with shop and/or yard;
- (I) ~~Off-site signs;~~ Eating establishments
- (J) Truck or bus terminals;
- (K) Wholesale merchandising or storage warehouse;
- (L) Hotels and/or motels;
- (M) Car washes provided that their operative machinery is within an enclosed structure and adequate drainage is provided;
- (N) Offices; ~~and~~
- (O) Finance, insurance, and real estate services;
- (P) Convenience stores;
- (R) Professional, governmental and education services;
- (S) Personal services;

(T) Bar/tavern and/or on-sale/off-sale liquor sales establishment;

(U) Private and Commercial storage buildings used exclusively for storage and not for performance of any other services;

§ 155.121 PERMITTED ACCESSORY USES.

The following accessory uses and structures shall be permitted in the HC" Highway Commercial District:

(A) Accessory buildings and uses and structures customarily incidental to permitted uses, special permitted uses, or conditional uses when established within the space limits of this district (see § 155.232);

(B) Signs subject to 155.260.

§ 155.122 CONDITIONAL USES.

The following uses may be permitted as a conditional use in the HC, Highway Commercial District by the City Board of Adjustment and subject to such requirements as the Board deems necessary to protect and promote the health, safety, and general welfare:

(A) Food lockers provided that any slaughtering, killing, eviscerating, skinning, or plucking be done indoors;

(B) Churches; and

(C) Caretaker/Watchperson's quarters subject to § 155.245;

(D) Cannabis Dispensary (Subject to § 155.380);

(E) Apartments;

(F) Bulk fuel or storage of petroleum products for wholesale.

(G) Adult Uses;

(H) Telecommunication facilities.

§ 155.123 PROHIBITED USES.

All uses and structures not specifically permitted or not permitted listed as a Permitted Use, Special Permitted Use, Accessory Use, or by Conditional Use shall be prohibited in the HC, Highway Commercial District.

§ 155.124 LOT, YARD, AND HEIGHT SPECIFICATIONS.

(A) Minimum lot requirements. The minimum lot area for permitted uses shall be 20,000 square feet. The minimum lot width for permitted uses shall be 100 feet. The minimum lot area and width for uses permitted by conditional use shall be as determined by the City Board of Adjustment.

(B) Minimum yard requirements. Permitted uses shall have a minimum front yard of 25 feet, minimum side yards of ten feet, and a minimum rear yard of 20 feet. The minimum yard requirement shall be 40 feet when the permitted or conditional use is adjacent to residentially zoned property. The minimum yard requirements for uses permitted by conditional use shall be as determined by the City Board of Adjustment. (See § 155.234.)

(C) Maximum lot coverage. The maximum lot coverage for all buildings and structures shall not exceed 75% of the total lot area. The maximum lot coverage for uses permitted by conditional use shall be as determined by the City Board of Adjustment.

(D) Maximum height. The maximum height of all buildings and structures shall not exceed 45 feet. (Ord. passed -- 2006)

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

(B) Screening - Where any use in the HC, Highway Commercial 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 § 155.230.

**Table 155.124.1**

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

**Table 155.124.2**

	Minimum Front Yard *#		Minimum Rear Yard*#		Minimum Side Yard*#	
	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts
Symbol	■		▨		▩	
Permitted Uses	25'	40'	20'	40'	10'	40'
Conditional Uses	To be determined by the Board of Adjustment					

\* To be measured from the wall line. The setback requirements on all required yards to include an allowable overhang of 24 inches or less.

# Rear and side yards shall be landscaped or fenced in a suitable manner to buffer residential uses

**Figure 155.124.1**



I, INDUSTRIAL DISTRICT

§ 155.135 PERMITTED USES.

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

- (A) Horticulture and the raising of field crops;
- (B) ~~On-site signs;~~ Essential public utilities and services
- (C) Utility substations;
- (D) Motor freight terminals, garaging, and equipment maintenance;
- (E) Contract construction services with shop and/or yard;
- (F) Storage plants, lumber yards, distributing stations, and warehouses;
- (G) Light manufacturing and assembly work, machine shops doing assembling or shaping, and light cutting and sampling;
- (H) Woodworking shops or plants; and
- (I) ~~Any industrial use, other than those permitted by conditional use, which can meet the performance standards listed in § 155.140.~~ Private and Commercial storage buildings used exclusively for storage and not for performance of any other services;
- (J) Automotive body repair;
- (K) Wholesale merchandising or storage warehouse.

§ 155.136 PERMITTED ACCESSORY USES.

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

- (A) Caretaker and watchperson's quarters subject to § 155.245; and
- (B) ~~Accessory buildings and structures~~ uses and structures customarily incidental to permitted uses, special permitted uses, or conditional uses when established within the space limits of this district shall be permitted in the I, Industrial Commercial District. (See § 155.232.)
- (C) Signs subject to 155.260.

§ 155.137 CONDITIONAL USES.

The following uses may be permitted as a conditional use in the I, Industrial District by the Board of Adjustment and subject to such requirements as the Board deems necessary to protect and promote the health, safety, and general welfare:

- (A) Junk or salvage yards provided that the area is enclosed or screened from public view **as required by the Board of Adjustment;**
- (B) Slaughterhouses;
- (C) Explosive manufacture or storage;
- (D) Fertilizer manufacture;
- (E) Incineration or reduction of garbage, dead animals, fat, or refuse;
- (F) Livestock sales or auction barns and yards;
- (G) Grain storage facilities;
- (H) Crematory;**
- (I) Telecommunication facilities;**
- (J) Adult uses;**
- (K) Cannabis dispensary;**
- (L) Cannabis product manufacturing facility;**
- (M) Cannabis cultivation facility.**

§ 155.138 PROHIBITED USES.

All uses and structures not specifically **permitted or not permitted** listed as a Permitted Use, Special Permitted Use, Accessory Use, **or** by Conditional Use shall be prohibited in the I, Industrial District.

§ 155.139 LOT, YARD, AND HEIGHT SPECIFICATIONS AND SCREENING REGULATIONS.

(A) Minimum lot requirements. The minimum lot area for permitted uses shall be 30,000 square feet. The minimum lot width for permitted uses shall be 150 feet. The minimum lot area and width for uses permitted by conditional use shall be as determined by the Board of Adjustment.

(B) Minimum yard requirements. Permitted uses shall have a minimum front yard of 50 feet. There shall be minimum side yards of ten feet except when bordering a residential district; in which case, a side yard should be 35 feet and such side yards shall be landscaped or fenced in a suitable manner to buffer residential uses. There shall be a minimum rear yard depth of 25 feet except when abutting a residential district; in which case, the rear yard shall be a minimum of 35 feet, and such rear yard shall be landscaped or fenced in a manner to buffer residential uses. The minimum yard requirements for uses permitted by conditional use shall be as determined by the Board of Adjustment. (See § 155.234.)

(C) Outdoor storage. 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 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 100 feet from any adjoining street line and 35 feet from any other property line and shall be screened by a solid wall at least two feet above the highest stock pile and maintained in a state of good repair. No storage yard for junk shall be allowed on any lot in an I, Industrial Zone that is within 500 feet of a residential zone.

(D) Maximum lot coverage. The maximum lot coverage for all buildings and structures shall not exceed 50% of the total lot area. The maximum lot coverage for uses permitted by conditional use shall be as determined by the Board of Adjustment.

(E) Maximum height. The maximum height of all buildings and structures shall not exceed 45 feet. (Ord. passed — 2006)

(A) Outdoor Storage and Screening. Where any use in the I, 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 § 155.230.

All outdoor storage within five hundred (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 stockpile 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 stockpile 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.

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

**Table 155.139.1**

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

**Table 155.139.2**

	Minimum Front Yard *#	Minimum Rear Yard*#		Minimum Side Yard*#	
	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts	Adjacent to Industrial, Ag, or Commercial Districts	Adjacent to (shared with) Residential Districts
<b>Symbol</b>					
<b>Permitted Uses</b>	50'	25'	35'	10'	35'
<b>Conditional Uses</b>	To be determined by the Board of Adjustment				

\* To be measured from the wall line. The setback requirements on all required yards to include an allowable overhang of 24 inches or less.

# Rear and side yards shall be landscaped or fenced in a suitable manner to buffer residential uses



**Figure 155.139.1**



§ 155.140 **NOISE, APPEARANCE, HAZARDS, AND THE LIKE PERFORMANCE STANDARDS**

- (A) Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat, frequency, or shrillness.
- (B) 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, or 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.
- (C) 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.

- (D) Glare, heat, or radiation. Every use shall be so operated that there is no emission of heat, glare, or radiation visible or discernable beyond the property line.
- (E) 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.
- (F) 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 radioactive nature or liquid wastes of chemical nature which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
- (G) 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.
- (H) Physical appearance. All operations shall be carried on within an enclosed building except that new or operable equipment and waste materials stored in enclosed containers not readily visible from the street may be displayed or stored in the open.

FP, FLOOD PLAIN DISTRICT

**§ 155.155 PURPOSE.**

—The purpose of this subchapter is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed;

—(A) To protect human life and health;

—(B) To minimize expenditure of public money for costly flood control projects;

—(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

—(D) To minimize prolonged business interruptions;

—(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;

—(F) To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;

—(G) To ensure that potential buyers are notified that property is in an area of special flood hazard; and

—(H) To ensure that those who occupy the areas of special flood hazards assume responsibility of their actions.

(Ord. passed — 2006)

**§ 155.156 GENERAL PROVISIONS.**

—(A) Subject to flooding. The flood hazard areas of the city are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief all of which adversely affect the public health, safety, and general welfare.

—(B) Causes of flood losses. The flood losses may be caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities and, when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

—(C) Methods and provisions. In order to accomplish its purposes, this subchapter includes methods and provisions for:

—(1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards or which result in damaging increased erosion or in flood heights or velocities;

—(2) Requiring that uses vulnerable to floods, including facilities which serve such uses, to be protected against flood damage at the time of initial construction;

—(3) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers which help accommodate or channel flood waters;

—(4) Controlling the filling, grading, dredging, and other development which may increase flood damage; and

—(5) Preventing or regulating the construction of flood barrier which will unnaturally divert flood waters or which may increase flood hazards in other areas.

—(D) Lands to which this subchapter applies. This subchapter shall apply to all areas of special flood hazards within the corporate limits of the city.

—(E) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for the City of Flandreau, South Dakota,” dated July 16, 1980, with the accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps is hereby adopted by reference and declared to be a part of this subchapter. The Flood Insurance Study is on file in the office of the City Finance Officer.

~~(F) Abrogation and greater restrictions. This subchapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and any ordinances, easements, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail.~~

~~(G) Interpretation. In the interpretation and application of this subchapter, all provisions shall be:~~

~~—(1) Considered as minimum requirements;~~

~~—(2) Liberally construed in favor of the governing body; and~~

~~—(3) Deemed neither to limit nor repeal any other powers granted under state statutes.~~

~~(H) Warning and disclaimer of liability. The degree of flood protection required by this subchapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by human-made or natural causes. This subchapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This subchapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this subchapter or any administrative decision lawfully made thereunder.~~

~~(Ord. passed — 2006)~~

#### ~~§ 155.157 DEFINITIONS.~~

~~—For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~—AREA OF SPECIAL FLOOD HAZARDS. Land in the flood plain within a community subject to a 1% or greater chance of flooding in any given year and are those lands designated on the Flood Insurance Rate Map (FIRM) as Zone A, A17, and A23.~~

~~—BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year.~~

~~—DEVELOPMENT. A human-made change to improve or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the area of special flood hazard.~~

~~—EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION. A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed, including the installation of utilities and either final site grading or the pouring of concrete pads and the construction of streets, is completed before the effective date of this subchapter.~~

~~—EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed including the installation of utilities, either final site grading or pouring of concrete, or the construction of streets.~~

~~—FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or the unusual and rapid accumulation or runoff of surface waters from any source.~~

~~—FLOOD INSURANCE RATE MAP (FIRM). The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.~~

~~—FLOOD INSURANCE STUDY. The official report provided in which the Federal Insurance Administration has provided flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.~~

—FLOODWAY. 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 more than one foot.

—HABITABLE FLOOR. Any floor usable for living purposes which includes working, sleeping, eating, cooking, recreation, or a combination thereof. This does not include a floor used only for storage purposes.

—MANUFACTURED HOME. A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

—NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of this subchapter.

—NEW MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION. A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lots, including the installation of utilities and either final site grading or the pouring of concrete pads and the construction of streets, is completed on or after the effective date of this subchapter.

—START OF CONSTRUCTION. The first placement of permanent construction of a structure, other than a manufactured home, on a site such as the pouring of slabs or footings or any work beyond the state of excavation. Permanent construction does not include land preparations such as clearing, grading, and filling; the installation of streets and/or walkways; excavation for basements, footings, piers, or foundations or the erection of temporary forms; nor the installation on the property of the accessory buildings such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure, other than a manufactured home, without a basement or poured footings, the START OF CONSTRUCTION includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For manufactured homes not within manufactured home park or manufactured home subdivision, START OF CONSTRUCTION is the date on which the construction of facilities for servicing the site on which the manufactured home is to be affixed, including the construction of streets and either final site grading or the pouring of concrete pads and installation of utilities, is completed.

—STRUCTURE. A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

—SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, SUBSTANTIAL IMPROVEMENT is considered to occur when the first alteration of any wall, ceiling, floor, other structural part of the building commences whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions nor any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places. (Ord. passed -- 2006)

#### § 155.158 PERMITTED USES.

—(A) The following open space uses shall be permitted within the Flood Plain District provided they do not require structures, landfills, or storage of materials or equipment:

—(1) Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting;

—(2) Industrial-commercial uses such as loading areas, parking areas, and airport landing strips; and

—(3) Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails.

—(B) No use shall adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributary to the main stream.

(Ord. passed — 2006)

#### § 155.159 USES PERMITTED UPON REVIEW.

—(A) No permit shall be issued for the construction of any building or structure including railroads, streets, buildings, and utility lines or for any use within the Flood Plain District until plans for construction have been submitted to the Board of Adjustment and approval is given in writing after the other provisions of this subchapter have been fulfilled.

—(B) In its review of plans submitted, the Board of Adjustment shall be guided by the following standards, keeping in mind that the purpose of this district is to prevent encroachment into the floodway which will unduly increase flood levels and endanger life and property.

—(1) Any structures or filling of land permitted shall be of a type not appreciably damaged by flood waters.

—(2) Any use permitted shall be in harmony with and not detrimental to the uses permitted in the adjoining district.

—(3) Any permitted structures or the filling of land shall be designed, constructed, and placed on the lot so as to offer the minimum obstruction to and affect upon the flow of water.

—(4) The storage or processing of materials that are, in times of flooding, buoyant, flammable, explosive, or injurious to human, animal, or plant life is prohibited.

—(5) Any structure shall be constructed on fill so that the first floor is at least one foot above the regulatory flood protection elevation. The fill, which shall include the access to the structure from a public street, shall have an elevation no less than one foot below the regulatory flood protection elevation for the particular area and the fill shall extend no less than ten feet beyond the limits of any structure or building erected thereon. Where existing streets or utilities are at elevations which make compliance with this provision impractical or in other special circumstances, the Board of Adjustment may authorize other techniques for elevation.

—(6) Any structure may, in special circumstances, be protected by other flood-proofing measures to a point at or above the regulatory flood protection elevation.

—(7) Where, in the opinion of the Board of Adjustment, engineering and other studies are needed to determine the effects of flooding on a proposed structure or fill and/or the effect of the structure or fill on the flow of water, the Board of Adjustment may require the applicant to submit such data.

—(8) The granting of approval of any structure or use shall not constitute a representation, guarantee, or warranty of any kind by the Board of Adjustment or by any officer or employee thereof of the practicality or safety of any structure or use proposed and shall create no liability upon or cause action against such public body, officer, or employee for any damage that may result pursuant thereto.

—(9) In the event an existing structure is damaged beyond 50% of its replacement value, repairs to and or replacement of the existing structure shall meet the provisions of this zoning district.

(Ord. passed — 2006)

#### § 155.160 AREA, HEIGHT, AND PARKING REGULATIONS.

—Any structure or use permitted shall comply with the minimum area, height, and parking regulations established for such structure and use in the most restrictive of the adjacent zoning districts and with other parts of the subchapter which regulate the use of its normal accessory uses.

(Ord. passed — 2006)

~~§ 155.161 DEVELOPMENT PERMIT.~~

~~—(A) Establishment of development permit. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 155.156. Application for development permits shall be made on forms furnished by the City Finance Officer and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; fill storage of materials; drainage facilities; and the location of the foregoing.~~

~~—(B) Specific information required. The following information is specifically required for applications of development permits:~~

- ~~—(1) Elevation in relation to mean sea level of the lowest floor, including basements, of all structures;~~
- ~~—(2) Elevation in relation to mean sea level to which any structure has been flood proofed;~~
- ~~—(3) Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in § 155.134(B)(2); and~~
- ~~—(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.~~

(Ord. passed — 2006)

~~§ 155.162 BOARD OF ADJUSTMENT.~~

~~—(A) Designation of the Board of Adjustment. The Board of Adjustment is hereby appointed to administer and implement this subchapter by granting or denying development permit applications in accordance with its provisions.~~

~~—(B) Duties and responsibilities of the Board of Adjustment. Duties of the Board of Adjustment shall include, but not be limited to, the following responsibilities outlined below.~~

- ~~—(1) Permit review. Permit review duties shall include:~~
  - ~~—(a) The review of all development permits to determine that the permit requirements of this subchapter have been satisfied;~~
  - ~~—(b) The review of all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies of which prior approval is required; and~~
  - ~~—(c) The review of all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure the encroachment provisions of § 155.164(B)(4)(a) are met.~~

~~—(2) Use of other base flood data. When base flood elevation data has not been provided in accordance with § 155.156 (E), the Board of Adjustment shall obtain, review, and reasonably utilize any floor elevation data available from a federal, state, or other source on order to administer § 155.164(B)(1) and (B)(2).~~

~~—(3) Information to be obtained and maintained. The Board of Adjustment shall:~~

- ~~—(a) Obtain and record the actual elevation in relation to mean sea level of the lowest habitable floor, including basements, of all new or substantially improved structures, and record whether or not the structure contains a basement; and~~
- ~~—(b) For all new substantially improved flood proofed structures:~~
  - ~~1. Verify and record the actual elevation in relation to mean sea level;~~
  - ~~2. Maintain the flood proofing certifications required in § 155.161; and~~
  - ~~3. Maintain for public inspection all records pertaining to the provisions of this subchapter.~~
- ~~—(4) Alteration of watercourses. In cases of watercourse alteration, the Board of Adjustment shall:~~

— (a) Notify the state's Department of Water and Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification of the Federal Insurance Administration; and

— (b) Require that maintenance be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

— (5) Interpretation of FIRM boundaries. The Board of Adjustment shall make interpretation, where needed, as to the exact location of the boundaries of the areas of special flood hazards like, for example, where there appears to be conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 155.163.

(Ord. passed -- 2006)

#### § 155.163 VARIANCES.

— (A) The Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of this subchapter and in such cases when it is alleged there is an error in any requirement, decision, or determination made by the Administrative Official in the enforcement or administration of this subchapter.

— (1) In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this subchapter, and:

— (a) The danger that materials may be swept onto other lands to the injury of others;

— (b) The danger of life and property due to flooding or erosion damage;

— (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

— (d) The importance of the services provided by the proposed facility to the community;

— (e) The necessity to the facility of a waterfront location where applicable;

— (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

— (g) The compatibility of the proposed use with existing and anticipated development;

— (h) The relationship of the proposed use to the Comprehensive Plan and Flood Plain Management Program of that area;

— (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

— (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effect of wave action, if applicable, expected at the site; and

— (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer gas, electrical, and water systems and streets and bridges.

— (2) Upon consideration of the factors of § 155.164 and the purposes of this subchapter, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this subchapter.

— (3) The City Finance Officer shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

— (4) Any taxpayer or those aggrieved by the decision of the Board of Adjustment may appeal such decision to the Circuit Court as provided in South Dakota Codified Laws.

— (B) Generally, 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 of existing structures constructed below the base flood level provided items in division (A)(1) above have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variances increases.



—(C) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places without regard to the procedures set forth in the remainder of this section.

—(D) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

—(E) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

—(F) Variances shall only be issued upon:

—(1) A showing of good and sufficient cause;

—(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

—(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, increase nuisances, cause fraud on or victimization of the public as identified in herein, or conflict with existing local laws or ordinances.

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

—(H) Approval or denial of any application for a variance shall be by a three-fourths' majority, or four votes, of all members of the Board of Adjustment.

(Ord. passed — 2006)

#### § 155.164 PROVISIONS FOR FLOOD HAZARD REDUCTION.

—(A) General provisions. In all areas of special flood hazards, the following standards are require.

—(1) Anchoring.

—(a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

—(b) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over the top and frame ties to ground anchors. Special requirements shall be that:

—1. Over the top ties be provided at each of the four corners of the manufactured home with two additional ties per side at intermediate locations. Manufactured homes less than 50 feet long require one additional tie per side;

—2. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points. Manufactured homes less than 50 feet long require additional ties per side;

—3. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

—4. Any additions to the manufactured home be similarly anchored.

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

—(3) Utilities.

—(a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

—(b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

—(c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

—(4) Subdivision proposals.

—(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

~~(b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.~~

~~(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.~~

~~(d) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres, whichever is less.~~

~~(B) Specific standards. In all areas of special flood hazards where base flood elevation data have been provided as set forth in §§ 155.156 and 155.162, the following standards are required.~~

~~(1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including the basement, elevated to or above base flood elevation.~~

~~(2) Nonresidential construction. New construction and substantial improvement for any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:~~

~~(a) Be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;~~

~~(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and~~

~~(c) Be certified by a registered professional engineer or architect that these standards are satisfied. Such certifications shall be provided to the Board of Adjustment.~~

~~(3) Manufactured homes:~~

~~(a) Manufactured homes shall be anchored in accordance with division (A)(1) above.~~

~~(b) New manufactured home parks and manufactured home subdivisions; expansions to existing manufactured home parks and manufactured home subdivisions; existing manufactured home parks and manufactured home subdivisions or improvement of the streets, utilities, and pads equal or exceeding 50% of the value of the streets, utilities and pads before the repair, reconstruction, or improvement has been commenced; and manufactured homes not placed in a manufactured home park or manufactured home subdivision require that:~~

~~1. Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level;~~

~~2. Adequate surface drainage and access for a hauler are provided; and~~

~~3. In the instance of elevation on pilings:~~

~~a. Lots are large enough to permit steps;~~

~~b. Piling foundations are placed in stable soil no more than ten feet apart;~~

~~c. Reinforcement is provided for pilings more than six feet apart; and~~

~~d. Reinforcement is provided for pilings more than six feet above the ground level.~~

~~(c) No manufactured home shall be placed on a floodway except in an existing manufactured home park or an existing manufactured home subdivision.~~

~~(4) Floodways. Located within areas of special flood hazards established in § 155.156 are areas designated as floodways. Since the floodways are extremely hazardous due to the velocity of flood water which carry debris, potential projectiles, and erosion potential, the following provisions apply.~~

~~(a) Encroachments including fill, new construction, substantial improvements, and other development are prohibited unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.~~

~~(b) If division (B)(4)(a) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.~~

~~(c) The placement of any manufactured homes is prohibited except in an existing manufactured home park or existing home subdivision. (Ord. passed -- 2006)~~

## FP, FLOOD PLAIN DISTRICT

### §155.155. Statutory Authorization, Findings of Fact, Purpose and Methods of Reducing Flood Losses.

#### (A) 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 Flandreau, South Dakota, ordains as follows:

The City of Flandreau 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 Flandreau'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.

#### (B) Findings of Fact

- 1) The flood hazard areas of the City of Flandreau 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 Flandreau.
- 2) These potential flood losses are caused by:
  - a) The cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities;
  - b) 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
  - c) Uses deemed unsuitable for floodplain areas or that do not account for the increased flood risk.

(C) Statement of Purpose. It is the purpose of these regulations to promote the public health safety, and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

- 1) To protect human life and health.
- 2) To minimize expenditure of public expenditures flood control projects.

- 3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- 4) To minimize prolonged business interruptions caused by flooding.
- 5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- 6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- 7) To ensure that potential buyers are notified that property is in an area of special flood hazard.

(D) Methods of Reducing Flood Losses. In order to accomplish its purpose, these regulations includes methods and provisions for:

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

#### 155.156. Definitions.

In addition to the Definitions in 155.001 of this chapter, unless specifically defined below, words or phrases used in 155.155 shall be interpreted so as to give them the meaning they have in common usage and to give these regulations its most reasonable application. The definitions contained in 155.1562 shall supersede the definitions in 155.001 of these regulations only in the interpretation of 155.155 of this chapter. In all other cases where these definitions conflict with the definitions in 155.001, the definitions in 155.001 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 these regulations 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 these regulations.

*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 44 CFR 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 one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. 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 155.155, 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 155.155, 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 fifty (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 fifty (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: 155.158.(E). 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.

#### 155.156. General Provisions.

(A) **Lands to Which These Regulations Apply.** These regulations shall apply to all areas of special flood hazard identified by FEMA within the jurisdiction of Flandreau.

(B) **Compliance.** No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of these regulations and other applicable regulations.

(C) **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 The City of Flandreau," dated November 4, 2009 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 these regulations.

(D) **Abrogation and Greater Restrictions.** These regulations is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(E) **Interpretation -** In the interpretation of these regulations, all provisions shall be:

1) Considered as minimum requirements;

2) Liberally construed in favor of the governing body; and

3) Deemed neither to limit nor repeal any other powers granted under State statute.

(F) **Warning and Disclaimer of Liability.**

(G) The degree of flood protection required by these regulations 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.

(H) These regulations 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. These regulations 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 these regulations, or any administrative decision lawfully made thereunder.

(I) 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.”

#### 155.157. Administration.

##### (A) Designation of the Floodplain Administrator.

The Administrative Official of these regulations is hereby appointed the Floodplain Administrator to administer and implement the provisions of these regulations and other appropriate sections of the NFIP Regulations and 44 CFR pertaining to floodplain management.

##### (B) Duties and Responsibilities of the Floodplain Administrator.

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

- 1) Uphold the goals of the community and the NFIP to reduce risk when possible and increase the community’s resistance to future disasters.
- 2) Maintain and hold open for public inspection all records pertaining to the provisions of these regulations, 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.
- 3) Maintain and hold open for public inspection maps that identify and locate the boundaries of the SFHAs to which these regulations apply, including, but not limited to, the FIRM.
- 4) 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.
- 5) Review, approve, or deny all applications for development permits required by adoption of these regulations.
- 6) 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.
- 7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

- 8) 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.
- 9) 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.
- 10) 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 these regulations.
- 11) 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.
- 12) 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.
- 13) 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.

#### (C) Requirement to Submit New Technical Data.

- 1) 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.
- 2) 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.
- 3) 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 these regulations and all applicable state federal, and local laws.



(D) Permit Procedures.

- 1) 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:
  - a) Duplicated plans drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations.
  - b) Duplicated plans drawn to scale showing the location, dimensions, and elevation of existing and proposed structures, including the placement of manufactured homes.
  - c) Location of the foregoing in relation to SFHAs.
  - d) Elevation (in relation to mean sea level), of the lowest floor (including basement and crawlspace) of all new and substantially improved structures, if applicable;
  - e) Elevation (in relation to mean sea level), to which any nonresidential structure (if applicable) shall be floodproofed.
  - f) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure (if applicable) shall meet the floodproofing criteria of these regulations and the NFIP Regulations.
  - g) Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development, if applicable.
  - h) At the community's discretion, the community may charge a fee for issuance of floodplain development permits.
  - i) Copies of all floodplain development permits, and the associated documents shall become property of the community and a permanent record.
    - i. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of these regulations and the following relevant factors:
      - a. The danger to life and property due to flooding or erosion damage.
      - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
      - c. The danger that materials may be swept onto other lands to the injury of others.
      - d. The compatibility of the proposed use with existing and anticipated development.
      - e. The safety of access to the property in times of flood for ordinary and emergency vehicles.

- f. 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.
- g. 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.
- h. The necessity to the facility of a waterfront location, where applicable.
- i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
- j. The relationship of the proposed use to the comprehensive plan for that area.

#### 155.158. Variance Procedures.

- (A) The Board of Adjustment as established by the community shall hear and render judgment on requests for variances from the requirements of these regulations.
- (B) 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 these regulations.
- (C) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (D) 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.
- (E) 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 these regulations.
- (F) 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 155.158.(J) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (G) Upon consideration of the factors noted above and the intent of these regulations, the Board of Adjustment and objectives of these regulations.
- (H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(I) 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.

(J) Prerequisites for granting variances:

1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

2) Variances shall only be issued upon:

a) showing a good and sufficient cause;

b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and

c) 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.

3) 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.

(K) 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:

1) the criteria outlined in 155.158.(E) are met, and

2) the structure or other development is protected by methods that minimize flood; and

3) damages during the base flood and create no additional threats to public safety.

Section 155.159. General Standards for Flood Hazard Reduction.

(A) General Standards.

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

1) 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.

2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

- 3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
- 4) 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.
- 5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- 6) 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.
- 7) On-site waste disposal systems shall be designed or located to avoid impairment to them or contamination from them during flooding.

#### (B) 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 fifty (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 155.159(C) SUBSTANTIAL DAMAGE. The term does not, however, include either:

- 1) 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.
- 2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

#### (C) 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 fifty (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 fifty (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 these regulations for substantial improvement.

#### (D) 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:

- 1) 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.
- 2) 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.
- 3) 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 155.155.(C) SUBSTANTIAL IMPROVEMENT.
- 4) Utilize FEMA's Substantial Improvement/Substantial Desk Reference when making any determination on Substantial Improvement and/or Substantial Damage.
- 5) 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.
- 6) 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.

#### 155.160. Specific Standards for Flood Hazard Reduction.

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

##### (A) 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 these regulations are satisfied.

## (B) 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 these regulations, Section 155.160(A) 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 these regulations.

## (C) 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:

- 1) A minimum of two openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- 2) The bottom of all openings shall be no higher than one (1) foot above grade.
- 3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- 4) 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.

## (D) 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:

- 1) 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 five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
- 2) 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 one (1) foot above the lowest adjacent grade (LAG).
- 3) 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 one (1) square foot of the enclosed area subject to flooding.
- 4) 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. 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.
- 5) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the LAG.
- 6) 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 four (4) feet at any point.
- 7) 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.
- 8) 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.

#### (E) Manufactured Homes

- 1) 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.

- 2) 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.
- 3) 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.

#### (F) Recreational Vehicles

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

- 1) Be on the site for fewer than one hundred eighty (180) consecutive days and be fully licensed and ready for highway use;
  - a. 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.
- 2) Or meet the permit requirements of 155.157(D), PERMIT PROCEDURES, and the elevation and anchoring requirements for "manufactured homes" of this section.

#### **155.161. Standards for Subdivision Proposals.**

- (A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of these regulations.
- (B) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (C) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of these regulations.
- (D) 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.
- (E) All subdivision proposals including the placement of manufactured home parks and subdivisions shall minimize flood damage.



(F) 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 155.162. 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:

(A) Designate a regulatory floodway that will not increase the base flood level more than one (1) foot.

(B) 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.

(C) All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of these regulations.

(D) 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.

## ADMINISTRATION

### § 155.175 PERMITS REQUIRED.

- (A) 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 chapter, unless he or she received 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 chapter.
- (B) It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit. A permit is also required for any filing, grading, lagooning, or dredging which is related to site preparation for future construction.
- (C) The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this regulation.
- (D) No building permit is necessary for the following: shingling, replacement siding, window replacement, painting of exterior, and any interior improvements that do not involve the moving of load-bearing walls.

### § 155.176 APPLICATIONS.

- (A) 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 any of the buildings that may already exist, and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Administrative Official including legal description; existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building 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 chapter. Such plans and data accompanying the permit shall be final and conclusive, and a deviation therefrom shall require a new permit.
- ~~(B) The Administrative Official shall return one copy of the permit application to the applicant, after such copy has been marked either approved or disapproved and attested to by his or her signature on such copy. The Administrative Official shall retain the original of the permit application and site plan, similarly marked. The Administrative Official shall then, if the application is approved, issue a signed building permit, or if the application is disapproved, he or she shall notify the party making the application as to rejection of said plans.~~

§ 155.177 FEE SCHEDULE.

- (A) The City Council shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, conditional use permits, variances, amendments, appeals, and other matters pertaining to this chapter. The schedule of fees may be altered or amended only by the City Council.
- (B) The current fee schedule shall be available from the Administrative Official. All fees shall be the property of the city and shall be paid over to the City 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.

§ 155.178 ISSUANCE AND EXPIRATION OF PERMITS.

- (A) 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. Other use, arrangement, or construction at variance with that authorized shall be deemed violation of this chapter and punishable as provided by § 155.999.
- (B) Expiration of use permit. If the work desired in any use permit has not begun within ~~90 days~~ **one (1) year** from the date of issuance thereof, said permit shall expire; it shall be canceled by the Administrative Official, and written notice thereof shall be given to the persons affected. **A six (6) month extension may be granted if requested in writing at least one (1) month prior to the expiration date. Maximum extension authorized is one (1) year.** ~~If the work described in any use permit has not been substantially completed within one year of the date of issuance thereof by the permit's expiration date,~~ said permit shall expire and be canceled by the Administrative Official, and written notice thereof shall be given to the persons affected along with notice that further work as described in the canceled permit shall not proceed unless and until a new permit has been obtained.

§ 155.179 BUILDING/USE PERMITS.

- (A) No new development, change of use, moving in or out of structures, demolition, or other action which may be regulated by the provisions of this chapter 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 as well as failure to obtain the necessary building permit shall be deemed a violation of this regulation and shall be punishable as provided by this regulation.
- (B) An application for a building permit accompanied with the appropriate fee, available from Administration Official, shall be completed by the landowner requesting the building permit. 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:

- (1) A site plan, which may be required to be drawn to scale showing 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; 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;
  - (2) The location of the said lot with respect to existing rights-of-way and adjacent lots;
  - (3) A letter of certification stating that the lot to be built upon has been accurately surveyed. This requirement may be waived by the Administrative Official in the event lot markers, or pins, have been located; and
  - (4) Any other information which the Administrative Official may deem necessary for consideration in enforcing the provisions of this subchapter.
- (C) The Administrative Official, in cases of permits to alter the interior of any existing structure, may waive any of the requirements set forth in division (B) above.
- (D) 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.
- (E) The Administrative Official shall then, if the applicant is approved, issue a signed building permit. If the Administrative Official determines the proposed action would not be in compliance with the provisions of this section, a building permit may not be issued, and the applicant may then appeal the action of the Administrative Official to the Board of Adjustment.
- (F) Building permits shall 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.
- (G) With application for a building permit, the site must be clearly staked out and/or plans that clearly indicate the structure to be erected or remodeled or alterations of the existing structure will be examined by the Administrative Official.
- (H) The Administrative Official will again examine the site after the completion of the foundation and rafters of the structure and will grant permission to proceed if complied with application.

§ 155.180 CONDITIONAL USE REQUESTS.

(A) Conditional uses are allowed for certain uses in some districts, as identified in individual district regulations. Uses not listed in the 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, and the Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A conditional use permit, from the terms of this subchapter, shall not be granted by the Board of Adjustment unless and until the following has occurred.

(1) An application for a conditional use permit, available from the Administrative Official, shall be completed by the landowner requesting the conditional use permit. Any required attachments and fees as in § 155.177 shall further accompany the application. The written application for a conditional use shall indicate the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested. Completed applications shall be returned to the Administrative Official for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required herein has changed since the original building permit application, the revised, updated, or corrected information shall accompany the application for a conditional use permit.

(2) The Administrative Official shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or not approve said application. The Administrative Official's recommendation shall include a summary of the application and reasons and justification for either approval of or disapproval of the application.

(3) The Administrative Official shall set the date, time, and place for a public hearing to be held by the Board of Adjustment. The Administrative Official shall notify the adjacent landowners, excluding streets and alley, by mail at the expense of the applicant at least one (1) week before the public hearing. The Administrative Official shall publish notice of the public hearing with all costs to be paid by the applicant not less than ten (10) days prior to the public hearing in a newspaper of general circulation in the area affected by the proposed conditional use permit.

(4) A public hearing shall be held; any party may appear in person or by agent or attorney.

(5) The Board of Adjustment shall rule make a finding that it is empowered by this under the section of these regulations as described in the application to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.

(B) Before any conditional use permit shall be issued, the Board of Adjustment shall make a written finding certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following where applicable:

- ~~(1) Utilities, refuse, and service areas with reference to locations, availability, and compatibility;~~
- ~~(2) Screening and buffering with reference to type, dimensions, and character;~~
- ~~(3) Required yards and other open space;~~
- ~~(4) General compatibility with adjacent properties and other property in the district;~~

- (5) Entrance and exit to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties; and
- (7) Off street parking and loading areas, where required, with particular attention to the affect of the conditional use on adjoining properties and properties generally within the district.

1. 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.

2. 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.

3. 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.

4. 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 to the specific property.

5. 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.

6. 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.

- (C) ~~In order to preserve the intent of these zoning regulations and to protect the public interest, the Board of Adjustment may attach conditions to a conditional use permit. A conditional use permit shall remain valid only as long as the original applicant complies with any terms and conditions of the conditional use permit as attached by the Board of Adjustment.~~ 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 these regulations.
- (D) ~~Approval or denial of any application for a conditional use permit shall be by a three-fourths majority, or four votes, of all members of the Board of Adjustment.~~ 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.
- (E) Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire if no actual construction has commenced within two (2) years from the date upon which the conditional use permit becomes effective or within two (2) years following the completion of any final appeal of the decision of the Board of Adjustment to issue the conditional use permit.

§ 155.181 VARIANCE REQUESTS.

- (A) Variances are designed to allow some flexibility in the zoning regulations in cases where there is an exceptional shape of a parcel of land, in cases where use of a property is overwhelmingly affected by exceptional topographic conditions, or in cases of any other extraordinary situation or condition of such a parcel of land. Variances are to be approved only when a property owner demonstrates that the provisions of all or part of these zoning regulations present an undue hardship on such property owner's use of such parcel land. A variance shall include a description of the specific regulatory item or items in these zoning regulations which are found to produce said undue hardship. Variances shall only be granted when the Board of Adjustments finds that such relief from these zoning regulations will be neither detrimental to the public good nor in conflict with the intent of these zoning regulations. The Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A variance from the terms of this section shall not be granted by the Board of Adjustment unless and until:
  - (1) An application for variance, available from the Administrative Official, shall be completed by the landowner requesting the variance and shall be accompanied by any required attachments and fees as in § 155.177. The written application for a variance shall indicate the section of this chapter under which the variance is sought and stating the grounds for which it is requested. Completed applications shall be returned to the Administrative Official for review. To be considered by the Board of Adjustment, the application form shall be completed. If any of the information required by § 155.180 has changed since the original building permit application, the revised, updated, or corrected information shall accompany the application for a variance;

- (2) The Administrative Official shall review the application and make a recommendation to the Board of Adjustment to either approve or not approve said application. The Administrative Official's recommendation shall include a summary of the application and reasons and justification for either approval or disapproval of the application;
- (3) The Administrative Official shall set the date, time, and place for a public hearing to be held by the Board of Adjustment. The Administrative Official shall notify the adjacent landowners, excluding streets and alleys, by mail at the expense of the applicant at least one (1) week before the public hearing. The Administrative Official shall publish notice of the public hearing with all costs to be paid by the applicant no less than ten (10) days prior to the public hearing in a newspaper of general circulation in the area affected by the proposed variance;
- (4) A public hearing shall be held; any party may appear in person or by agent or attorney; and
- (5) The Board of Adjustment shall follow the following procedure in considering the recommendation of the Administrative Official. A variance from the terms of this section shall ~~not only be granted by the Board of Adjustments unless and until a written application for a variance is submitted demonstrating~~ if all of the following are demonstrated by the applicant:
- (a) 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) The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
  - (c) The special conditions and circumstance do not result from the actions of the applicant; and/or
  - (d) Granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.
- (B) Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning, and 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.
- (C) The Board of Adjustment shall make findings that the requirements of division (A) above have been met by the applicant for a variance.
- (D) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
- (E) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.



- (F) Approval ~~or denial~~ of any variance shall be by a ~~three-fourths'~~ two-thirds (2/3) majority, or four votes, of all members of the Board of Adjustment. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. 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 chapter and punishable under § 155.999 of this code. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved or any use expressly, or implied to be, prohibited by the terms of this subchapter in said district.
- (G) Unless otherwise specified by the Board of Adjustment, a variance shall expire if no actual construction has commenced within two (2) years from the date upon which the variance becomes effective or within two (2) years following the completion of any final appeal of the decision of the Board of Adjustment to issue the variance.

#### § 155.182 APPEALS.

Any persons ~~or any board, taxpayer department, or bureau of the city~~ jointly or severally aggrieved by any decision of the Board of Adjustment ~~may seek review by a court of record of such decision in the manner provided by the laws of the state~~ 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.

#### § 155.183 ZONING AMENDMENTS.

- (A) ~~(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 ~~and Zoning~~ Commission, as provided herein, the City Council may change zoning district boundaries or use groups, or the regulations established by this chapter. A proposed change of zoning district boundaries or regulations may be initiated in the following manners:
- ~~(2)~~1. A proposed change of zoning district boundaries or textual regulations may be initiated by the City Planning ~~and Zoning~~ Commission, ~~or~~ City Council, ~~or by application of~~
  2. One (1) or more of the owners of property within the area requested to be ~~changed~~ rezoned may present a request to change the zoning district boundaries. ~~However, no such action may be taken until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard.~~
  3. Initiated petitions specifying and requesting amendments to the textual regulations of this Chapter may be presented to the Administrative Official if said petition(s) contain signatures of twenty (20) percent of the landowners in the zoning district(s) where the proposed textual amendment would apply. Initiated textual amendments of this chapter shall not be brought to a public vote.

(B) Any such amendment proposing a modification or repeal shall be proposed in an ordinance presented to the Planning Commission and City Council for adoption in the same manner and upon the same notice as required for the adoption of the original ordinance.

~~(3)~~(C) Notice of the time and place of such hearing(s) shall be published once ten (10) days prior to the date of the meetings as provided in SDCL Chapter 11-4, and its amendments. 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 and Zoning Commission has delivered a recommendation to either approve or not approve said ordinance.

~~(B)~~(D) The landowner or other person(s) requesting the amendment shall complete an application for amendment, available from the Administrative Official. Completed applications shall be returned to the Administrative Official for review. To be considered by the Planning and Zoning Commission and City Council, the application form shall be completed and shall be accompanied by the following items:

- (1) Any required attachments and fees including registered or certified mail costs in § 155.177; and
- (2) Any additional information requested by the Administrative Official as lawfully may be required to determine conformance with and provide for enforcement of this subchapter.

~~(C)~~(E) The Administrative Official shall review the application and shall forward a summary of the application and his or her comments regarding said application to the Planning and Zoning Commission for its review.

(D) ~~(1)~~ The Administrative Official shall set the date, time, and place for a joint public hearing to be held by the Planning and Zoning 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.

(E) ~~(2)~~ If the proposed amendment will change the boundaries of a zoning district, the Administrative Official shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change by registered or certified mail at the expense of the applicant at least one (1) week before the public hearing.

~~(E)~~ (F) The public hearing shall be held, and 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 and Zoning Commission.

~~(F)~~ (G) The Planning and Zoning Commission shall either recommend or not recommend approval of the amendment to the City Council.

~~(G)~~ (H) 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.

~~(H)~~ (I) 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 of the City Council. The protest shall be signed by at least **forty percent (40%)** of the owners of equity in the parcels in the area affected by the amendment and the parcels or parts of parcels within **two hundred fifty (250)** feet of the area affected by the amendment.

#### § 155.184 REAPPLICATION.

No application requesting a variance, conditional use, **special permitted 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** shall again be considered by the Planning **and Zoning** Commission, ~~or~~ Board of Adjustment or **City Council** before the expiration of six **(6)** months from the date of the final action of the Planning **and Zoning** Commission, ~~or~~ Board of Adjustment or **City Council**.

#### ADMINISTRATIVE OFFICIAL

#### § 155.195 ESTABLISHMENT AND PURPOSE.

The position of Administrative Official is hereby established for the city. The Administrative Official shall be appointed by the City Council. Further, he or she may be provided with the assistance of such other persons as the City Council may direct. The Administration Official shall administer and enforce this chapter. It is the intent of this subchapter 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.

#### § 155.196 POWERS AND DUTIES.

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

- (1) Issue all building permits and make and maintain records thereof;
- (2) Conduct inspections of buildings, structures, and the use of land to determine compliance with this chapter;
- (3) In writing, notify 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; alterations or structural changes; any illegal work being done; removal of illegal buildings or structures or of illegal additions; or shall take any other action authorized by this subchapter to ensure compliance with or to prevent violation of its provisions;
- (5) Revoke any permit which was unlawfully issued or any permit wherein defective work has been performed and when such work has not been corrected within **ninety** (90) days of notification;

- (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 subchapter;
- (8) Forward to the Planning ~~and Zoning~~ Commission all applications for amendments to this chapter;
- (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 chapter; and
- (10) Initiate, direct, and review, a study of the provisions of this chapter and to make such reports available to the Planning ~~and Zoning~~ Commission. The Administrative Official shall receive applications for building permits, conditional uses, **special permitted uses**, variances, and zoning amendments.
  - (b) For building permits/**use permits and special permitted use permits**, the Administrative Official shall approve the application only in accordance with the provisions of the city's zoning regulations.
  - (c) For conditional uses and variances, the Administrative Official shall review the application and make a recommendation to the Board of Adjustment to either approve or approve said application.
  - (c) For zoning amendments, the Administrative Official shall review the application and make comments regarding said application to the Planning and Zoning Commission and City Council.
- (B) If the Administrative official shall find that any of the provisions of this chapter are being violated, he or she 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 or 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 subchapter to ensure compliance with or to prevent violation of its provisions.

#### BOARD OF ADJUSTMENT

#### § 155.210 ESTABLISHMENT.

A Board of Adjustment is hereby established which shall consist of the members of the City Planning ~~and Zoning~~ Commission as provided for in the provisions of SDCL Chapter 11-4.

**The Mayor and City Council may appoint two (2) alternates for the Board of Adjustment. If a Board of Adjustment member is unable to attend a meeting, the first alternate, or second alternate in turn, shall serve in the member's place. Alternates may be appointed for a term of three (3) years.**

§ 155.211 PROCEDURES FOR MEETINGS.

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

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

§ 155.212 POWERS AND DUTIES.

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

(A) Administrative Review:

- 1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Administration Official in the enforcement of this chapter and for the interpretation of the Official Zoning Map.

~~(B) To hear and decide appeals to decisions made by the Administrative Official regarding building permits, conditional uses, variances, zoning amendments, and other matters relating to the enforcement of this chapter;~~

(B) Conditional Use Permits:

- (1) To hear and decide only such conditional uses as the Board of Adjustment is specifically authorized to pass on by the terms of this chapter, to decide such questions as are involved in determining whether conditional uses should be granted, and to grant conditional uses with such conditions and safeguards as are appropriate under this chapter or to deny conditional uses when not in harmony with the purpose and intent of this chapter.

(C) Variances:

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

§ 155.213 HEARINGS, APPEALS, AND NOTICE.

- (A) Appeals to the Board of Adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer, department, board, or bureau of the governing body of the city affected by any decision of the Administrative Official to grant or deny the permit. No other appeal, such as any relating to a ministerial act or other preliminary act to bring an application or matter before the board for hearing and a final decision on the merits is authorized. Such appeals shall be taken within a reasonable time not to exceed ~~60~~ twenty-one (21) days of or such lesser period as may be provided by the rules of the Board, and a notice of appeal specifying the grounds thereof shall be filed with the Administrative Official and the Board of Adjustment. The Administrative Official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. All appeals relating to a particular action or property shall be consolidated and heard on an expedited basis.
- (B) The Board of Adjustment shall hear and decide on appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination, or refusal made by the Administrative Official or other administrative officers in carrying out the enforcement of any provision of this chapter and for interpretation of the Official Zoning Map. There shall be a public notice with an affixed time and place posted not less than ten (10) days prior to said hearing so that any party may appear in person or by agent or attorney to said hearing.

§ 155.214 STAY OF PROCEEDINGS.

- (A) An appeal stays all proceedings in furtherance of the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the board of adjustment, or 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 or her that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause an imminent peril to life and property.
- (B) In such cases, 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.

§ 155.215 POWER OF APPEALS, REVERSE DECISION OF ADMINISTRATIVE OFFICIALS.

- (A) It is the intent of this subchapter 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.
1. All appeals filed in accordance with § 155.215 relating to a particular action, decision, or property shall be consolidated and heard at the same hearing.
  2. Ministerial acts or other preliminary acts to bring an application or matter before the Board may not be appealed to the Board of Adjustment.

- (B) In exercising the powers granted in § 155.212, the Board of Adjustment may, so long as such action is in conformity with the terms of this chapter, wholly or partly reverse, affirm, or 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.
- (C) The concurring vote ~~of three-fourths~~ **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 chapter or to affect any variation in the application of this chapter.

#### § 155.216. PROCEDURES FOR APPROVAL OF SPECIAL PERMITTED USE PERMIT

- (A) 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:
1. A written application for a special permitted use is submitted, indicating the section of this Chapter under which the special permitted use is sought and stating the grounds on which it is requested.
  2. The Administrative Official shall review the application for conformance with any prescribed performance standard(s).
  3. 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.
  4. The Administrative Official shall then issue the special permitted use permit subject to the applicant agreeing to any conditions within this chapter.
  5. The Administrative Official shall then issue any other associated building/use permits.
  6. 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 this chapter and appropriate special permitted use standards. The applicant may, as appropriate:
    - a. Apply for a variance from lot area, size of structure(s) or size of yards and open spaces.

b. Apply for Conditional Use Permit, if eligible.

c. Appeal the decision of the Administrative Official in accordance with § 155.213 and § 155.213

7. 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.

8. 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.

#### § 155.217. Planning Commission

#### § 155.218. Commission Established

There is hereby created a Planning Commission for the City of Flandreau, South Dakota and for land within three (3) miles of its corporate limits.

#### § 155.219. Membership of the Planning Commission.

The Mayor, with approval of the City Council body shall appoint a commission to be known as the planning Commission which shall consist of city residents qualified by knowledge or experience to act in matters pertaining to the development and administration of the Comprehensive Land Use Plan. Administrative officials may be appointed as ex-officio members of the commission by the President.

#### § 155.220. Terms of Members.

The term of each member of the Planning Commission shall be for three (3) years and may be reappointed for successive terms.

#### § 155.221. Compensation.

Per Diem and expenses of the Planning Commission shall be established by the City Council and paid by the City.

#### § 155.222. Organizations, Rules, Staff, and Finances.

Such Planning Commission shall elect its chairperson from among its members for a term of one (1) year with eligibility for re-election, and may fill such other of its offices as it may create in a manner prescribed by the rules of such Commission. The Commission shall adopt rules for transaction of its business and keep a record of its resolutions, transactions, findings and determinations which shall be a public record. The Planning Commission may appoint such employees as it may deem necessary for its work whose appointment, promotion, demotion, and removal shall be subject to the same provisions of law, including Civil Service Regulations as govern other corresponding civil employees of the municipality. The Commission may also contract with planners, engineers, architects, and other



consultants for such services as it may require. The expenditures of the Commission, exclusive of those made from funds received by it, shall be within the amount appropriated for the purpose by the City Council which shall provide the funds, equipment, and accommodations necessary for the commission's work.

§ 155.223. Duties.

The Planning Commission shall have the following duties:

(A) Comprehensive Land Use Plan:

1. The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the City of Flandreau. Upon preparation the Planning Commission shall make recommendation to the City Council after complying with the public hearing and noticing requirements.
2. The comprehensive plan shall be for the purpose of protecting and guiding the physical, social, economic, and environmental development of the City; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources.

(B) Zoning Ordinance:

1. For the purpose of promoting health, safety, or the general welfare of the City, the City Council, upon recommendation from the Planning Commission, may adopt a zoning Ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.
2. The City Council may divide the City into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one (1) district may differ from those in other districts.
3. The regulations shall be made in accordance with the Comprehensive Plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks; and other public requirements.

4. The regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.
5. Upon preparation of a zoning Ordinance, or any amendment thereto, the Planning Commission shall make a recommendation to the City Council after complying with the public hearing and noticing requirements.

(C) Subdivision Ordinance:

1. The Planning Commission may make recommendations to the City Council for the adoption of a subdivision Ordinance which shall be made in accordance with the Comprehensive Plan. The regulations may establish standards and procedures to be employed in land development including subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring future dedication or acquisition and general design of physical improvements.
2. To review proposals for subdivision Ordinance adoption, or amendments thereto, to determine whether such subdivisions comply with the subdivision Ordinance of the City of Flandreau and make recommendation to the City Council relating to the approval of subdivisions.
3. Upon preparation of a subdivision Ordinance, or any amendment thereto, the Planning Commission shall make a recommendation to the City Council after complying with the public hearing and noticing requirements.

(D) Amendments:

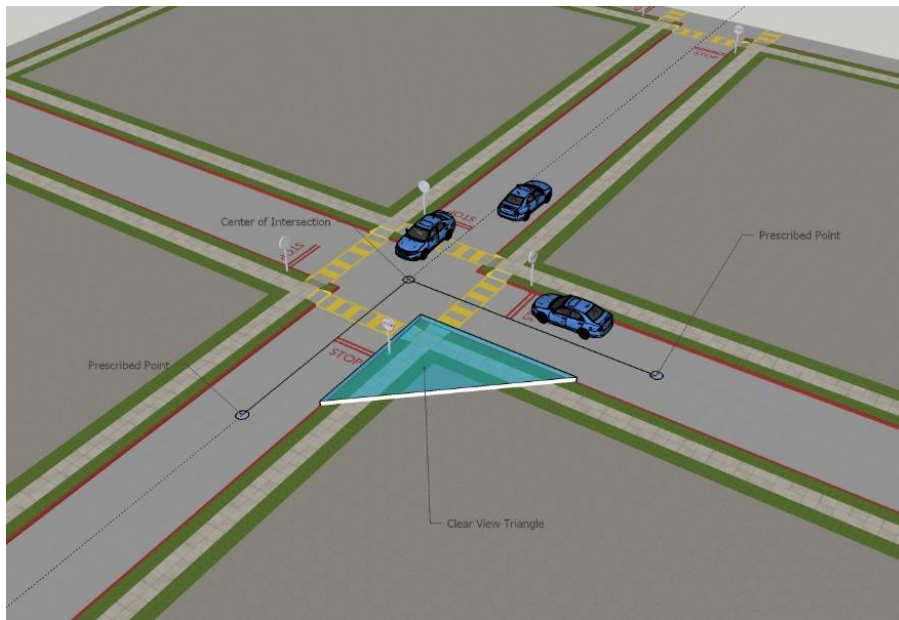
1. The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning Ordinance, and subdivision regulations to the City Council after complying with the public hearing and noticing requirements.

## SUPPLEMENTAL REGULATIONS

### § 155.230 VISIBILITY AT INTERSECTIONS.

On a corner lot in any zoning district, excluding the C1 District, no planting, structure, or obstruction to impede the vision between the range of three (3) and eight (8) feet above the centerline grades of the intersecting streets in height measured from the center line of the road shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line, each of which is fifty (50) feet distance from the point of intersection (Clear View Triangle). See Figure 155.230

**Figure 155.230**



### § 155.231 CONSTRUCTION LIMITATIONS OF FENCES.

- (A) Notwithstanding other provisions of this chapter, fences, walls, and hedges may be permitted in any required yard or along the edge of any required yard provided in accordance with Table 155.231 and Figures 155.231.1, 155.231.2, and 155.231.3 that no solid fences, walls, or hedges extending past the building setback into the front yard and side yard setback shall not exceed 24 inches in height above the ground level.
- (2) Fences of a chain link material extending past the building setback into the front yard shall not exceed 48 inches in height above the ground level. However, if the fence, wall, or hedge running parallel to the street is further than 40 feet from the street line, it may be seven feet high.

(B) ~~(1)~~ No person shall hereafter construct, erect, or maintain or cause to be constructed, erected, or maintained in the city limits any fences of any character or material without first securing permission from the Administrative Official. Further, no such fence of any kind shall be built closer than one (1) foot to the inside sidewalk line or street right-of-way. Exception: A fence/wall/hedge may be placed on the property line provided application includes both owners of the shared property line.

~~(2) No electric fence or fence with barbed wire may be constructed in any residential district within the city limits 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.~~

(C) ~~Fences that are adjacent to alleys shall be set back five feet from the street/boulevard right of way. 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, except that barbed wire may be used in connection with a security fence when the barbed wire is at least six (6) feet from the ground and/or a conditional use permit is issued for an electric or barb wire fence in the agricultural zoning district. No electric fences are allowed adjacent to a residential zoning district.~~

(D) The side of the fence considered being the face, facing as applied to fence post, should face abutting property.

(E) ~~In the event a fence is to be constructed on the property line, abutting property owners shall be notified prior to the issuance of a permit.~~ Fences, walls, walls, and hedges which are more than thirty (30) percent solid shall abide by § 155.230.

(F) The installation of a fence shall be in a manner as to which access to the city for the purposes of reading utility meters is provided.

(G) The height of fences shall be determined as measured from the highest-grade elevation on either side of the fence wall to the top of the fence.

#### (H) Fences in Front, Side and Rear Yards

1) Notwithstanding other provisions of this ordinance, fences, walls, and hedges, fences/walls and hedges may be allowed in accordance with Table 155.231 and Figures 155.231.1, 155.231.2, and 155.231.3.

2) The administrative official is authorized to permit fences/walls/hedges up to seven (7) feet in height provided said fence/wall/hedge is located outside the required front yard.

**Table 155.231**

Fence Requirements	Corner Lot		Interior Lot	
	Setback	Maximum Fence Height	Setback	Maximum Fence Height
Front yard – Fence (Less than 30% solid)	1' foot from sidewalk line (ROW)	4'	1' foot from sidewalk line (ROW)	4'
Front yard – Fence (more than 30% solid)	Minimum Setback in applicable Zoning District	7'	Minimum Setback in applicable Zoning District	7'
Rear yard no Alley	1'	7'	1'	7'
Rear yard with Alley	10' from alley line and street line	7'	10' from alley line	7'
Side yard	1'	7'	1'	7'

**Figure 155.231.1**



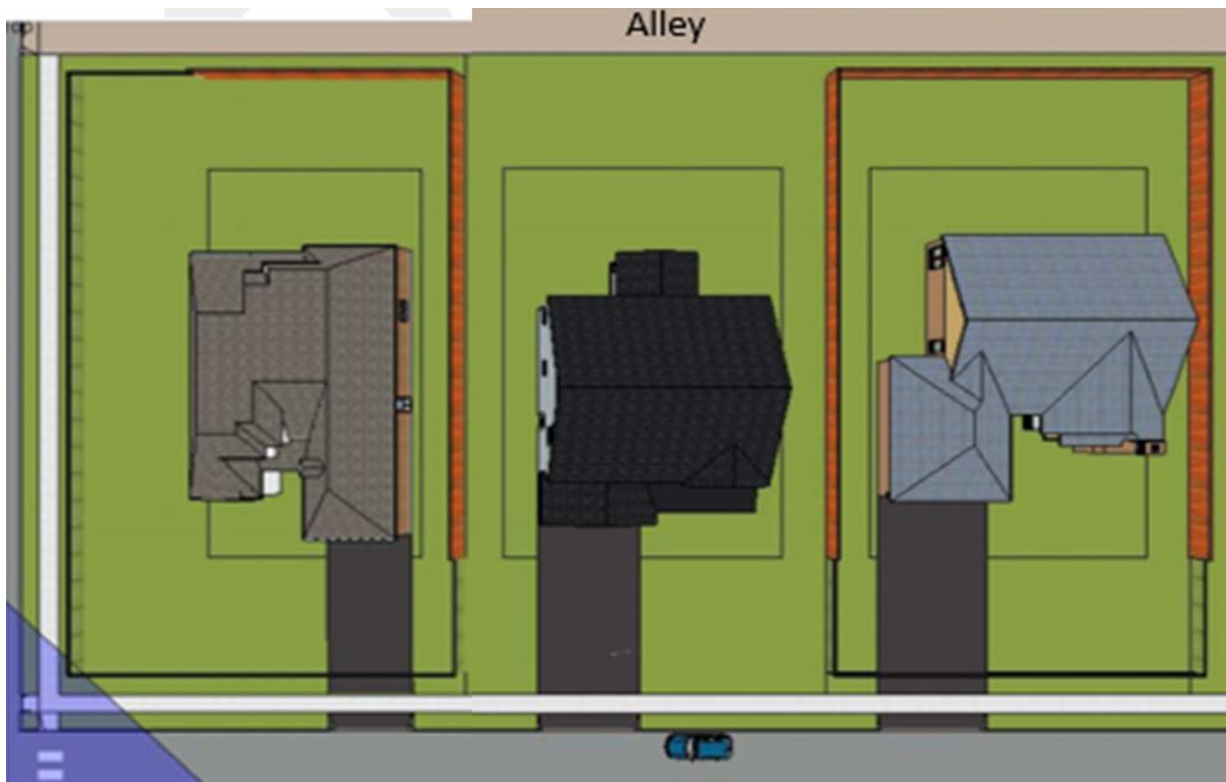
Corner Lot: 4-foot-tall fence which is less than 30% solid in front yard [(1 foot from sidewalk line (ROW)); 7-foot-tall fence which is more than 30% solid [1 foot from rear and side yard property lines and no closer than required front yard setback of underlying district.

Figure 155.231.2



Interior Lot: 4-foot-tall fence which is less than 30% solid in front yard [(1 foot from sidewalk line (ROW))]; 7-foot-tall fence which is more than 30% solid [1 foot from rear and side yard property lines and no closer than required front yard setback of underlying district.

Figure 155.231.3

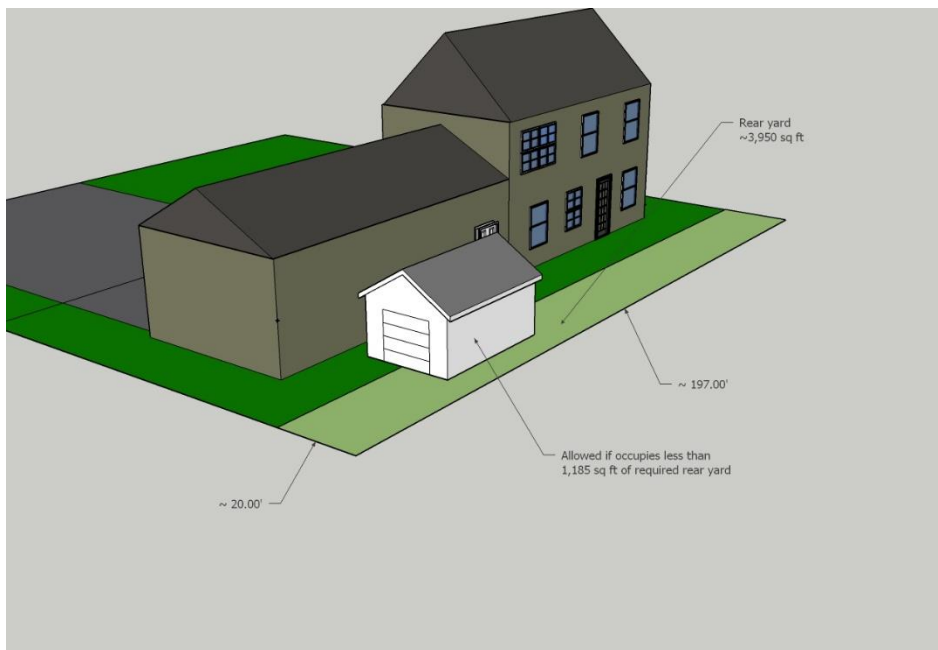


Corner and interior Lot: 4-foot-tall fence which is less than 30% solid in front yard [(1 foot from sidewalk line (ROW))]; 7-foot-tall fence which is more than 30% solid not to be located closer than required front yard setback of underlying district and one (1) foot from rear and side yard property lines. Exception: All fences adjacent to alleys are to be set back five (5) feet from alley line. (blue triangle is clear view safety triangle)

§ 155.232 ACCESSORY BUILDINGS; PERMITTED USES:

- (A) Only specifically authorized accessory uses are allowed; accessory uses must be subordinate to principal use.
- (B) ~~(1)~~ No accessory use shall be permitted in any district unless such use is specifically authorized by this chapter. ~~(2)~~ No accessory use shall be deemed to be authorized by this chapter unless such use is subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
- (C) ~~No accessory use, building, or structure which is attached to or within ten feet of the principal structure permitted by this chapter may be located in a front yard except by conditional use permit. No accessory building and no structure, equipment, or material of any kind may be located or erected in a required side yard.~~ No separate accessory building shall be erected within five (5) feet of any side or rear lot line. Accessory buildings, not part of the main building, may be located in a rear yard but may not occupy more than thirty percent (30%) of a rear yard. See Figure 155.232.1.

Figure 155.232.1.



- (D) In any commercial or industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted except those uses specifically prohibited in the applicable district.
- (E) No accessory building may be used for residential dwelling purposes at any time.
- (F) Accessory uses in residential districts shall be permitted for the principal permitted uses and conditional uses of the residential districts only in accordance with the provisions in division (G) below hereby adopted by reference and declared to be part of this subchapter.



(G) For single-family dwellings, duplexes, townhouses and multiple-family dwellings, and nursery schools and day care centers, the following are permitted accessory uses:

1) Private garages:

- (a) Attached garages shall be limited to maximum dimensions of 30 feet by 36 feet a total area less than or equal to the gross floor area of the house and conform to the design of the house; Corrugated galvanized steel siding is prohibited. Unless a special permitted use permit is granted, other steel panel siding is prohibited. Attached garages may receive a special permitted use permit to use steel panel siding and roofing materials if written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site has been received.
- (b) Unattached garages shall be limited to maximum sidewalls of ten of fourteen (14) feet as measured from the highest grade elevation on either side of the wall to the top of the eave. They shall have overall maximum dimensions of 30 feet by 36 feet and have a total area less than or equal to the gross floor area of the house and a maximum of minimum 4/12 roof pitch or to conform to the design of the house.
- (c) Unattached garages shall have roofing and siding materials shall be of a type customarily used on site-constructed residences (Roofing – Asphalt Shingle, Wood Shingle, Clay Tile, Slate, and/or Steel; Siding - Vinyl, Wood, Stone Veneer, Brick, Composite, Fiber Cement, and/or Stucco and roofing and siding materials as determined by the Board of Adjustment). This is not to include corrugated galvanized steel or steel panel siding. Corrugated galvanized steel is prohibited. Siding and roofing material requirements may receive a variance if consent of all adjacent landowners is obtained. Unless a special permitted use permit is granted, other steel panel siding is prohibited. Unattached garages may receive a special permitted use permit to use steel panel siding if written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site has been received.
- (d) Detached and unattached garages may receive a special permitted use permit to exceed maximum area dimensions and height requirements if written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and of fifty (50) percent of the property owners within two hundred fifty (250) feet (excluding streets and alleys) of said proposed location has been received and the maximum lot coverage for all buildings and structures shall not exceed thirty (35) percent of the total lot area.

(2) Buildings or structures for customary residential storage purposes including weather protective canopies (carports), not over ten twelve (12) feet in height and not exceeding 150 two hundred (200) square feet in gross floor area with a door opening no wider than seven (7) feet.

(3) Readily moveable sports, recreation, or outdoor cooking equipment;

(4) Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved;



- (5) Home occupations and **extended home occupations** but only as defined herein;
- (6) Non-commercial greenhouses provided that greenhouses over **one hundred (100)** square feet in floor area must have an approved site plan; and
- (7) Off-street parking and storage of vehicles but only as provided in §§ 155.275 through 155.277.

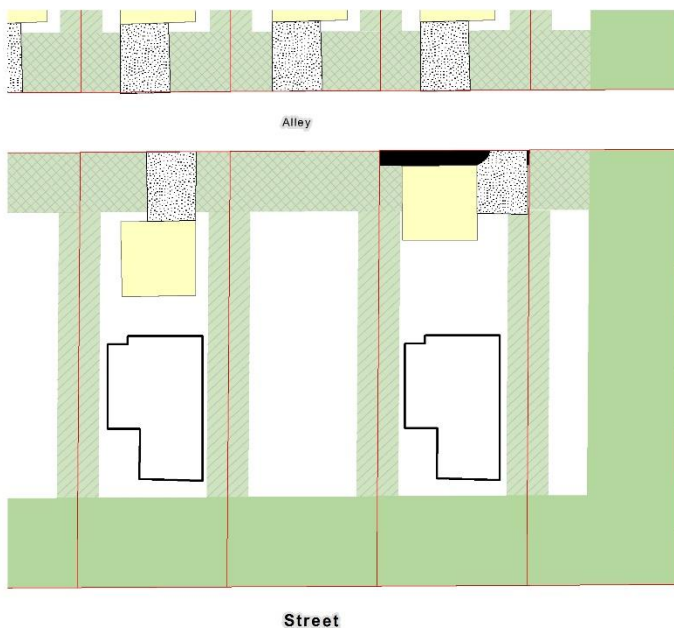
**(8) Dog enclosures.**

- (H) **For churches, convents, and monasteries religious institutions,** all customarily incidental uses reasonably necessary to allow the free exercise of religion but not to include commercial use are permitted accessory uses.
- (I) For all conditional use principal establishments, all customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use, are permitted accessory uses.
- (I) **For all other principal use establishments, no accessory uses are permitted. No separate accessory building shall be erected within five (5) feet of any other building.**

**(J) 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.**

**(K) 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 155.232.2**

**Figure 155.232.2.**



Symbol	Structure	
	House	
	Garage	
	Driveway	
Symbol	Required Yard	Setback*
	Front Yard	25'
	Rear Yard	20'
	Side Yard	7'
	Parallel Accessory Building	5'

§ 155.233 ACCESSIBLE STRUCTURES.

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.

§ 155.234 YARDS.

- (A) 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 subchapter shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.
- (B) No yard or lot existing at the time of passage of this subchapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards and lots created after the effective date of this subchapter shall meet at least the minimum requirements established by division (C) below.
- (C) The following yard requirements must be observed in addition to the yard requirements of the various districts.
  - (1) Except in the A and C1 Districts, a corner lot must have a front yard on both streets.
  - (2) On lots in any residentially zoned block fronting on one (1) side of the street between two (2) streets where one or more residences already exist, no building shall hereafter be erected, and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line. However, on lots in any block fronting one side of a street between two intersecting streets in the above districts, the setback line may be increased provided that the owners of three-fourths (3/4) of the front footing on said side of the street in said block shall petition the Planning and Zoning Commission Board of Adjustment to establish the set-back line at a certain distance named in the petition. If the Planning and Zoning Commission Board of Adjustment shall approve of establishing the setback line as petitioned, it may be so established.
  - (3) On through lots and reversed frontage lots, a front yard must be provided on both streets.
  - (4) 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.
- (D) 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.

~~(3) Any accessory buildings closer than ten feet to a main building shall be considered as part of the main building and shall be provided with the same side and rear yard requirements as the main building.~~

§ 155.235 MULTIPLE PRINCIPAL STRUCTURES ON LOT.

In any district, only one structure housing a permitted or permissible principal use may be erected on single lot provided that yard and other requirements are met.

§ 155.236 EXCEPTIONS TO HEIGHT REQUIREMENTS.

The height limitations contained in individual district regulations 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.

§ 155.237 PRIVATE WASTEWATER TREATMENT SYSTEMS.

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 Board of Adjustment. An exception to this is that on-site septic systems installed per regulations of the state's Department of Environment and Natural Resources may be allowed on property owned or developed by the city if the said property is located further than one-fourth of mile from an existing city sanitary sewer collection line. On-site septic systems shall be required to be removed and connected to the city sanitary sewer system when such system is within 200 feet of a lot containing said septic system. Minimum requirements include watertight septic tank connected to a drain field and no drain area to be deeper than five feet. If the city sanitary sewer system is available within two hundred (200) feet, all such structures must be connected at the landowner's cost.

§ 155.238 MANUFACTURED MODULAR HOMES.

Modular homes shall:

- (A) Meet or exceed ~~Uniform Building Codes~~ the current International Building Code (IBC);
- (B) Include all off-site constructed homes which may be transported to the site in one or more sections;
- (C) Have more than **one thousand (1,000)** square feet in ranch style and **eight hundred fifty (850)** square feet split and be placed on a permanent foundation;
- (D) Not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch;
- (E) Have a minimum of a four-twelfths **(4/12)** roof pitch;
- (F) Have siding material of a type customarily used on site-constructed residences; and
- (G) Have roofing material of a type customarily used on site-constructed residences.

§ 155.239 TYPE I AND TYPE II MANUFACTURED HOMES.

(A) Manufactured homes defined. For the purpose of this chapter manufactured homes will be regulated by type. Two types of homes are defined under these regulations.

(1) Type I manufactured homes 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:

- (a) Have more than 1,100 square feet of occupied space in a double section or larger multi-section unit;
- (b) Have removed running gear and hitch;
- (c) Have been anchored to a permanent foundation, permanent perimeter enclosure, and permanent footing;
- (d) Have been inspected and approved by the Administrative Official prior to placement of a home on the foundation;
- (e) Have a gabled roof with a pitch of at least four-twelfths (4/12) feet;
- (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; and
- (h) Not be older than ten fifteen (15) years from the date of manufacture.

(2) Type II manufactured homes 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:

- (a) Have more than 700 square feet of occupied space in a single, double, expando, or multi-section unit;
- (b) Utilize a perimeter enclosure in accordance with approved installation standards, as specified herein;
- (c) Be anchored to the ground in accordance with manufacturer's specifications or as prescribed by the ~~TR-75, issued June 1972, by the U.S. Department of Defense or by the ANTI/NFPA 501A Standards~~ Federal Manufactured Housing Construction and Safety Standards Code;
- (d) Have siding material of a type customarily used on site-constructed residences;
- (e) Have roofing material of a type customarily used on site-constructed residences;

- (f) Have a gabled roof with a pitch of at least three-twelfths (3/12) feet;
- (g) Not be older than ten fifteen (15) years from the date of manufacture; and
- (h) Be placed onto a support system in accordance with approved installation standards, as specified in § 155.237 herein.

(B) Installation standards.

(1) Permanent foundation, or permanent perimeter enclosure, as required for Type I manufactured homes. Those Type I manufactured homes designated in this subchapter, 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.

(a) A crawl space must be constructed of concrete or masonry block grouted solid with one number four horizontal rebar that is one-half inch and tied to number four rebar verticals placed in the footing four feet on center.

(b) The foundation shall be an approved wood basement constructed of two (2) by six (6) framework and treated with water-resistant materials or be constructed with eight (8) inches poured concrete or concrete block.

(c) The footing is to be a minimum of eight inches thick by 16 inches wide poured concrete with top of footing to be sixteen (16) inches below grade and the bottom of the footing to be below the frost line.

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

(3) Support system.

(a) 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.

(b) 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 in the 1977 ANTI/NFPA 501A installation standards Federal Manufactured Housing Construction and Safety Standards Code.

(C) Non-conforming homes. A manufactured home placed and maintained on a tract of land and deemed to be a legal non-conforming use prior to the adoption of this chapter shall continue to be a legal non-conforming use. If the non-conforming use is discontinued for a period of one (1) year, the land thereafter must be used in conformity with all provisions of this chapter.

(D) Replacement of non-conforming homes. Type I and Type II manufactured homes located upon any lot or lots of record at the time of the adoption of this chapter 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. ~~If a replacement type I and/or type II manufactured home is of larger dimension than the replaced Type I and/or Type II manufactured home, application must first be made to the City Planning and Zoning Commission for special permit.~~

(E) 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.

(F) Exception to Maximum Age Requirement. Type I and Type II manufactured homes may receive a special permitted use permit to allow a manufactured home older than fifteen (15) years from the date of manufacture § 155.239.A.1.h and 155.239.A.2.h. The Administrative Official may approve a special permitted use permit if the manufactured home meets the following requirements:

- 1) The applicant shall provide a photograph of the manufactured home's exterior and interior.
- 2) 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 Flandreau.
- 3) That the applicant obtain the written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building.

#### § 155.240 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. Exempt from this requirement are type I and type II manufactured homes without a permanent foundation located in appropriately zoned areas of the community 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.

#### § 155.241 UTILITY EASEMENTS.

No building or addition thereto shall be erected over or across any existing public utility or upon any platted easement.

#### § 155.242 MOVED ~~IN~~ BUILDINGS.

(A) 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.

- (1) The fee for said permit as prescribed in § 155.177 shall have been paid.

- (2) 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.
  - (3) The work is to be completed within **twelve (12)** months after the permit has been issued by the Administrative Official.
  - (4) The applicant shall also file with the City Finance Officer a sufficient bond 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 subchapter.
- (B) Any building which is not newly constructed to be used for first occupancy shall also receive the written consent of all property owners of immediately adjacent property, excluding streets and alleys, to the proposed building site and the consent of more than **fifty percent (50%)** of the number of owners of property within **one hundred fifty (150)** feet, excluding streets and alleys, of said proposed location has been received.
- (C) 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.
- 1) The fee for said permit as prescribed in § 155.177, shall have been paid.
  - 2) That the work is to be completed within **twelve (12)** months after the permit has been issued by the Administrative Official.
  - 3) The applicant shall also file with the Administrative Official 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.
  - 4) 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.
  - 5) 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.

- 6) 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 reseeding.

§ 155.243 SCREENING.

Where any C1, HC, and I use is adjacent to any residential zone, that use, whether it be building, parking, or storage, shall be appropriately screened from the residential use district by planting or fencing except where planting or fencing may be in conflict with §§ 155.230 or 155.231.

§ 155.244 ADOPTION OF BUILDING CODE.

~~There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use, and occupancy location and maintenance of buildings and structures, including permits and penalties, a certain building code known as the Uniform Building Code, abbreviated edition, recommended by the National Board of Fire Underwriters, thereof and the whole thereof save and except such portions that are hereinafter deleted, modified, or amended, of which not less than one copy has been and now is filed in the office of the City Finance Officer. The same are hereby adopted and incorporated as fully as if set out at length herein. From the date on which this chapter shall take effect, the provisions thereof shall be controlling in the construction of all buildings and other structures within the corporate city limits.~~

The City of Flandreau has not adopted the 2021 edition of the International Building Code as published by the International Code Council (IBC Code). With the exception of residential structures (one-family or two-family dwelling and townhouses not more than three (3) stories in height with separate means of egress), manufactured homes, and accessory structures thereto, the design standard for the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of any other building commenced after July 1, 2021, within the boundaries of the City of Flandreau shall be based on the IBC Code. The City does not provide inspection services related to the enforcement of the IBC Code. All applicants for all structures that are required to comply with the IBC Code shall provide legal affidavit that said structure(s) have been designed and constructed to IBC Code.

§ 155.245 CARETAKER/WATCHPERSON'S QUARTERS.

- (A) A caretaker or watchperson's quarters on parcels with a C1, HC or I zoning district shall require a conditional use permit.
- (B) A caretaker or watchperson's living quarters shall be limited to not more than one (1) dwelling unit which shall be occupied by person(s) associated with the operation or maintenance of the business or building. If it is found that the occupant(s) are not associated with such operation or maintenance, the living area shall be removed.
- (C) The total area of the dwelling unit shall consist of not more than thirty percent (30%) of the total area of the building.



- (D) The dwelling unit shall be physically separated from the business area, and the door entering into the dwelling unit shall remain locked during all hours during which business patrons are allowed in the building.
- (E) The dwelling unit shall maintain a second means of egress other than that of the business area associated with the caretaker or watchperson's living quarters. That means of egress may be from a door that accesses the outside of the building from within the living quarters or through an egress window within the living quarters that is compliant with IBC requirements.

#### § 155.260 SIGNS

#### § 155.2601 PURPOSE AND INTENT.

The purpose of this subchapter is to establish a set of standards for the fabrication, erection, and use of signs, symbols, markings, or advertising devices within the city. These standards are designed to protect and promote the general welfare, health, and safety of persons within the community to aid and assist in the development and promotion of business and industry by providing regulations which allow and encourage creativity, effectiveness, and flexibility in the design and use of such devices.

#### § 155.261 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**FLAG.** Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols used as a symbol of a government, political subdivision, or other entity.

**SIGN.** Any object, device, or structure or part thereof situated outdoors or visible from outdoors which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. This definition does not include national or state flags or their emblem or insignia, interior window displays, athletic scoreboards, or the official announcements or signs of government.

**SIGN, AREA.** The entire area within a single continuous perimeter enclosing the extreme limits of the actual sign copy surface excluding any structural or supporting elements such as uprights, aprons, poles, beams, or standards.

**SIGN, AREA IDENTIFICATION OR NAMEPLATE.** A freestanding ground sign or pylon which identifies the names of neighborhoods, a residential subdivision, a multiple residential complex, or a commercial or industrial complex consisting of three or more businesses.

**SIGN, CHANGEABLE COPY/READER BOARD.** An outdoor sign or any portion thereof which is permanently affixed or mounted to a support structure or building which has removable characters, letters, or illustrations that may be manually changed or rearranged without altering the underlying sign surface.

**SIGN, ELECTRONIC MESSAGE CENTER.** A sign utilizing electronic technology such as light emitting diodes (LEDs), incandescent bulbs, or magnetized flipping devices to display messages, advertising, or animation.

**SIGN, FLASHING.** An illuminated sign on which such illumination is not kept constant in intensity or color at all times when such sign is in use.

**SIGN, FREESTANDING.** A sign attached to or a part of a self-supporting structure. Any supporting structure shall be set firmly below the ground surface and shall not be attached to any building or any other structure, pylon, or ground sign.

**SIGN, GOVERNMENT.** Any sign which directs traffic, displays street names, or which serves any public purpose duly authorized by governing body having jurisdiction thereof.

**SIGN, GROUND.** A sign supported or upon standards, poles, beams, or other supports directly affixed to the ground.

**SIGN, IDENTIFICATION OR NAMEPLATE.** A sign which bears the name or address or both of the business or the occupant of the building on which it is located.

**SIGN, ILLUMINATED.** A sign which has artificial light source directed upon it or which has an interior light source.

**SIGN, INFORMATIONAL.** A sign erected on private property providing general information about the use or uses on such property that the sign relates to, such as name and address, for the following uses: church, school, hospital, club, library, civic, or other similar types.

**SIGN, INSTITUTIONAL.** A sign which identifies such uses as hospitals, clinics, churches, schools, government buildings, libraries, museums, apartment complexes, and retirement homes.

**SIGN, MARQUEE AND/OR CANOPY.** Any message or identification which is affixed to a projection or extension of a building or structure and erected in such a manner as to provide a shelter or cover over the approach of any structure of a store, building, or place of public assembly being at least ten feet above any public sidewalk and being at least two feet behind the face of the curb.

**SIGN, MOTION.** A sign which revolves, rotates, or moves in any way by mechanical means.

**SIGN, OFF-PREMISES.** A sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

**SIGN, ON-PREMISES.** A sign which directs attention to a business or profession conducted or to a commodity or service sold, offered, or manufactured or to an entertainment offered on the premises where the sign is located.

**SIGN, PERMANENT.** A sign permanently attached to framing or a sign with a support member at or below the frost line or attached to a building or other structure by direct attachment to a rigid wall, frame, or structure.

**SIGN, PYLON.** A freestanding ground sign erected upon a post or posts not more than 15 feet apart.

**SIGN, PROJECTING.** A sign affixed to an exterior wall or roof of a building and which extends more than 18 inches from the face of the building wall and which is perpendicular to the building wall being at least ten feet above sidewalk and being at least two feet behind face of curb.

**SIGN, ROOF.** A sign erected upon the roof or parapet wall of a building or structure.

**SIGN, TEMPORARY.** Any sign used for varying periods of time which is not permanently attached to the ground or other permanent structure. The following are examples of TEMPORARY SIGNS:

(1) **BANNER SIGN.** A sign constructed of cloth, canvas, fabric, paper, cardboard, or any other lightweight material. National, state, or municipal flags or the official flag of any institution or business shall not be considered BANNERS.

(2) **CONSTRUCTION SIGN.** A temporary sign identifying a building or construction site, architects, engineers, contractors, or suppliers.

(3) **INFLATABLE SIGN.** A sign capable of expanding due to the injection of air, gas, water, or vapor.

(4) **POLITICAL SIGN.** A temporary sign, such as poster card or lawn sign, advertising a candidate or issue to be voted upon a definite election day.

(5) **PORTABLE SIGN.** 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.

(6) **REAL ESTATE SIGN.** A temporary sign advertising the sale or lease of property or buildings.

**SIGN, WALL.** A sign attached to or erected against the wall of a building or structure with the exposed face of the sign in a plane approximately parallel to the face of said wall and extending not more than 18 inches from the building wall face.

**§ 155.262 DISTRICT REGULATIONS.**

(A) (1) Signs shall be allowed on private property in accordance with the table below. If the letter “Y” appears for a sign type in a column, such sign is allowed. (2) If the letter “N” appears for a sign type in a column, such a sign is not allowed in the zoning districts represented by that column under any circumstances.

**Table 155.262.1  
SIGNS BY TYPE AND ZONING DISTRICT**

	ZONING DISTRICT					
	R1 R2 R3	C1	HC	I	AG	INS (g)
<b>Sign Type-Freestanding</b>						
Ground	Y (b)	Y	Y	Y	Y	Y
Pole	Y (b)	Y	Y	Y	Y	Y
Off-Premises Sign	N	Y	Y	Y	Y	N
<b>Sign Type-Building</b>						
Identification	Y (c)	Y	Y	Y	Y	Y
Marquee/Canopy	N	Y	Y	N	N	N
Projecting	N	Y	Y	Y	N	N
Roof	N	Y	Y	N	N	N
Wall	Y	Y	Y	Y	Y	Y
Window	Y	Y	Y	Y	Y	N
Off-Premises Sign	N	Y	Y	Y	Y	N
<b>Sign Type-Miscellaneous</b>						
Banner (g)	N	Y	Y	Y	N	Y
Flag	Y	Y	Y	Y	Y	Y
Inflatable (g)	N	Y	Y	N	N	Y
Portable (g)	N	Y	Y	Y	N	Y
Temporary	Y (d)	Y	Y	Y	Y	Y
<b>Sign Characteristics</b>						
Changeable Copy	N	Y	Y	Y	N	Y
Electronic Message Center	N	Y	Y	Y	Y	Y
Illuminated (e)	N	Y	Y	Y	Y	Y
Indexing	N	Y	Y	Y	Y	Y
Neon	N	Y	Y	Y	Y	N
Non-Illuminated	Y	Y	Y	Y	Y	Y
On-Premise Sign	Y (f)	Y	Y	Y	Y	Y

**Notes on Table 155.262.1**

- (a) This column does not represent a zoning district. It applies to institutional and certain residential uses permitted in residential districts. Such uses include hospitals, clinics, churches, schools, government buildings, libraries, museums, apartment complexes, and retirement homes.
- (b) Pylon and ground signs shall be reserved for institutional uses.
- (c) Single-family residential identification limited to one nameplate not more than one square foot per unit.
- (d) Temporary signs shall not include banner, pennant, inflatable, or portable signs.
- (e) On-premises signs shall be limited to signs advertising home occupations. The sign advertising the home occupation shall be limited to a single sign with a maximum area of four (4) square feet.

- (f) Signs shall be illuminated so as not to emit lighting directly on any adjoining property. No sign shall include a source of illumination that produces glare clearly visible beyond a property line.
- (g) Permitted only in accordance with § 155.263.

(B) Individual signs shall not exceed the maximum number or square footage nor encroach into the minimum setback shown on the table below.

**Table 155.262.2**

<b>Sign Type: Free Standing</b>						
<b>Zoning District</b>	<b>R1, R2, R3</b>	<b>C1</b>	<b>HC</b>	<b>I</b>	<b>A</b>	<b>Ins (a)</b>
<b>Number Permitted Per Feet Of Street Frontage (c)</b>	<b>NA</b>	<b>1 For Each Building with up to 200' of Frontage; 201' to 400' of Frontage is Allowed one Additional Sign</b>	<b>1 For Each Building with up to 200' of Frontage; 201' to 400' of Frontage is Allowed one Additional Sign</b>	<b>1 For Each 500' of Frontage</b>	<b>1 For Each 500' of Frontage</b>	<b>1 For Each Frontage</b>
<b>Setback From Right Of Way and/or property lines (Feet) (b)</b>	<b>NA</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>10</b>	<b>6</b>
<b>Maximum Area (Sq. Ft)</b>	<b>NA</b>	<b>1 Sq. Ft For Each 2 Lineal Ft Of Frontage Or 75 Sq Ft. Whichever Is Less</b>	<b>2 Sq. Ft For Each 1 Lineal Ft Of Frontage Or 300 Sq Ft. Whichever Is Less</b>	<b>1.33 Sq. Ft For Each 2 Lineal Ft Of Frontage Or 200 Sq Ft. Whichever Is Less</b>	<b>1 Sq. Ft For Each 2 Lineal Ft Of Frontage Or 200 Sq Ft. Whichever Is Less</b>	<b>64</b>
<b>Maximum Height (Feet)</b>	<b>NA</b>	<b>20</b>	<b>Street Frontage (SF) of 1-50' = 20' SF of 51-150' = 25' SF Over 151' = 30' *f</b>	<b>Street Frontage (SF) of 1-50' = 20' SF of 51-150' = 25' SF Over 151' = 30'; *f</b>	<b>20</b>	<b>10</b>
<b>Minimum Clearance (Feet) (d)</b>	<b>NA</b>	<b>10</b>	<b>6</b>	<b>10</b>	<b>10</b>	<b>6</b>
<b>Sign Type: Building</b>						
<b>Zoning District</b>	<b>R1, R2, R3</b>	<b>C1</b>	<b>HC</b>	<b>I</b>	<b>A</b>	<b>Ins</b>
<b>Area (Sq. Ft)</b>	<b>4</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>24</b>
<b>Wall Area (%) (e)</b>	<b>NA</b>	<b>15</b>	<b>20</b>	<b>5</b>	<b>10</b>	<b>NA</b>
<b>Maximum Total Sign Area (f) (g) (h)</b>						
<b>Zoning District</b>	<b>R1, R2, R3</b>	<b>C1</b>	<b>HC</b>	<b>I</b>	<b>A</b>	<b>Ins</b>
<b>Maximum Total Square Feet – Single Frontage</b>	<b>4</b>	<b>400</b>	<b>800</b>	<b>800</b>	<b>750</b>	<b>88</b>
<b>Maximum Total Square Feet For Lots With 2 Or More Frontage</b>	<b>NA</b>	<b>600</b>	<b>1000</b>	<b>1000</b>	<b>1000</b>	<b>280</b>

**Notes on Table 155.262.2**

(a) This column does not represent a zoning district. It applies to institutional and certain residential uses permitted in residential districts. Such uses include hospitals, clinics, churches, schools, government buildings, libraries, museums, apartment complexes, and retirement homes.

(b) No part of any sign shall protrude into the horizontal or vertical setback line.

(c) Lots with two or more frontages shall be regulated as show herein. However, signage cannot be accumulated and used on one frontage in excess of that allowed for lots with only one street frontage.

- (d) Projecting business signs shall be at least twelve (12) feet above the sidewalk and shall not extend over the sidewalk to a point closer than two (2) feet from the face of the curb.
- (e) The percentage figure here shall mean the percentage of the area of the wall which such sign is a part of, attached to, or most nearly parallel to.
- (f) Lots with buildings that function as malls or shopping centers and contain more than five businesses shall be allowed fifty (50) square feet of additional signage for each additional business over five businesses located within said building.
- (g) Window signs shall not count toward maximum total sign area.
- (h) In the case where two (2) or more buildings reside on a lot with an identical legal description, the buildings will share in an apportioned amount of signage contingent upon the amount of building frontage.

(Ord. passed — 2006)

#### § 155.263 GENERALLY APPLICABLE REGULATIONS TO ALL DISTRICTS:

##### (A) Off-premises signs.

- (1) Off-premises signs shall not be located within one hundred (100) feet of an existing residential zone.
- (2) Off-premises signs shall not be located closer than five hundred (500) feet to another off-premises sign.
- (3) Off-premises signs shall be fabricated to withstand a minimum wind load factor of thirty (30) pounds per square foot.
- (4) Off-premises signs shall not be longer than thirty (30) feet with a maximum square footage per the table in § 155.262(B).
- (5) For the purpose of this subchapter, a BACK-TO-BACK or V-TYPE SIGN shall be considered as one (1) structure not to contain more than two (2) signs with a maximum square footage per facing per the table in § 155.262(B).
- (6) No off-premises sign shall be permitted within the public right-of-way.

##### (B) Limitations on use of inflatable signs. Inflatable signs, excluding balloons smaller than twenty four (24) inches in diameter, may be displayed under the following conditions:

- (1) They do not interfere with utility lines, antennas, or towers.
- (2) No cabling, tie-downs, or tether lines are located on or across public property.
- (3) They are not located in any airport approach zone.
- (4) Inflatable signs may be displayed on a lot for forty five (45) days per calendar year. A permit may be issued for fifteen (15) consecutive days with not less than thirty (30) calendar days between permit expiration and issuance of a new permit.

##### (C) Limitations on use of banners. Banner signs shall be regulated as follows:

- (1) Banners shall be secured to a structure or building at all times.
- (2) Banners shall not contain a commercial message.
- (3) Banners are permitted for the opening of a new business for not more than fifteen (15) days.

##### (D) Limitations on use of portable signs. Portable signs shall be regulated as follows:

- (1) (a) Portable signs may be displayed on a lot for forty five (45) days per calendar year.
- (2) (b) Permits shall be issued for fifteen (15) consecutive days with not less than thirty (30) calendar days between permit expiration and issuance of a new permit.
- (3) Portable signs shall be secured against overturning.
- (4) Portable signs shall not exceed 48 square feet.

##### (E) Miscellaneous:

- (1) No sign shall be erected which resembles any official marker erected by a government agency.

- (2) No sign shall be installed which by reason of position, shape, or color would conflict with the proper functioning or interpretation of any traffic sign or signal. They shall not be located any place that would obstruct visibility at street intersections.
- (3) There shall be no use of revolving beacons, zip flashers, or similar devices that would so distract automobile traffic as to constitute a safety hazard.
- (4) No sign shall be permitted to obstruct any door, fire escape, or stairway of any building or structure.
- (5) All signs shall be maintained in good condition and the area around them kept free from debris, bushes, high weeds, and from anything else which would be an eyesore or nuisance. The surface of all signs must be repainted whenever necessary as determined by inspection to prevent the sign surface from becoming unkempt in appearance.
- (6) Signs which become unsafe shall be repaired or removed upon notification by the Administrative Official. When any sign is removed, the entire surrounding area shall be cleared of all debris and unsightly projections and protrusions which were part of the sign structure.
- (7) Temporary political signs may be permitted for a period of not more than 30 days before and ten days after an election, and removal shall be the responsibility of the candidate or his or her campaign manager. They shall not be fastened to power poles or located on any public property.
- (8) Temporary real estate development signs or construction site signs may be erected provided they do not exceed thirty two (32) square feet square feet of area, are not more than fifteen (15) feet above grade, and not within one hundred (100) feet of an existing residential structure. They shall not be fastened to power poles or located on any public property.
- (9) Temporary signs advertising buildings for rent or sale may be placed in the yard of such building provided such signs are not closer than ten (10) feet to any property line and do not exceed forty (40) square feet in industrial areas and fifteen (15) square feet in other areas. They shall not be fastened to power poles or located on any public property.
- (10) No roof sign shall be erected higher than fifteen (15) feet above the roof or outside parapet wall.
- (11) No signs shall be painted on, attached to, or affixed to any trees, rocks, or other similar organic or inorganic natural matter.
- (12) No signs shall be fastened to power poles or located on any public property.
- (13) For the purpose of this subchapter, maximum square footage of a sign shall be computed on the basis of one side of any multi-faced sign.
- (14) Nothing in this subchapter shall require removal or discontinuance of a previously legally existing display sign that is not enlarged, extended, or relocated, but the same shall be deemed a non-conforming use under the terms of this subchapter. Such signs may be modernized but not enlarged except in conformity with the provisions of this subchapter.
- (15) With the exception of government signs, signs shall not be located in the public right of way.

#### § 155.262. Prohibited Signs:

1. No private sign shall be erected or maintained which:
  - a. Creates a hazard due to collapse, fire, collision, decay, or abandonment; or
  - b. Creates traffic hazards, by either:
    - i. Confusing or distracting motorists; or

- ii. Impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or
- iii. Impairing the driver's ability to see and interpret any official traffic sign, signal, or device; or
- iv. Creates a nuisance to persons using a public right-of-way; or
- v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement.

#### §155.263 General Requirements

Signs where allowed in specified in zoning districts, are 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 155.130.
4. 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.

#### § 155.264 Signs in the Residential Zoning Districts.

1. Permanent freestanding signs and wall signs are prohibited in Residential Zoning Districts. Exception: Apartment complexes, churches, schools, public buildings, hospitals, nursing homes, licensed day care facilities, commercial storage buildings and manufactured home parks.
2. Temporary signs for Permitted and Conditional Uses in Residential Zoning Districts shall comply with the requirements of Table 155.264.
3. Freestanding and wall signs erected accessory to any permitted use or 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 155.264.
  - 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. 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 155.264**

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	

**§ 155.265 Signs in Commercial and Industrial Zoning Districts.**

Freestanding and wall signs erected in the Highway 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 155.265.

1. The sign structure or sign shall have a maximum height of thirty (30) 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. 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 155.265**

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 240 square feet on a single frontage lot;</li> <li>• 2 sq. ft. per lineal foot of frontage not to exceed 120 square feet per sign or cumulative 240 square feet on a single sign on 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.



#### § 155.266 Portable Signs.

Temporary use of portable or moveable signs shall be allowed in commercial 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 fourteen (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 one hundred fifty (150) feet of lot frontage;

#### § 155.267 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.

#### § 155.268 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.

#### PARKING AND HIGHWAY

#### § 155.275 PARKING, STORAGE, AND USE OF MAJOR RECREATION EQUIPMENT.

(A) Off-street parking of motor vehicles, recreational vehicles, watercraft, or trailers shall not be permitted in the required front or side yard of any residence except as follows: (see Figure 155.275.1):

(1) Upon a driveway providing direct access to the garage or rear yard; and

(2) Upon a any other driveway or parking pad, provided there is only one driveway, and which is no wider than twenty-two (22) feet in width, and the location of the driveway or parking pad complies with the minimum side yard setback, and there is no additional driveway providing direct access to the garage or rear yard is not located directly in front of the primary structure.

Figure 155.275.1

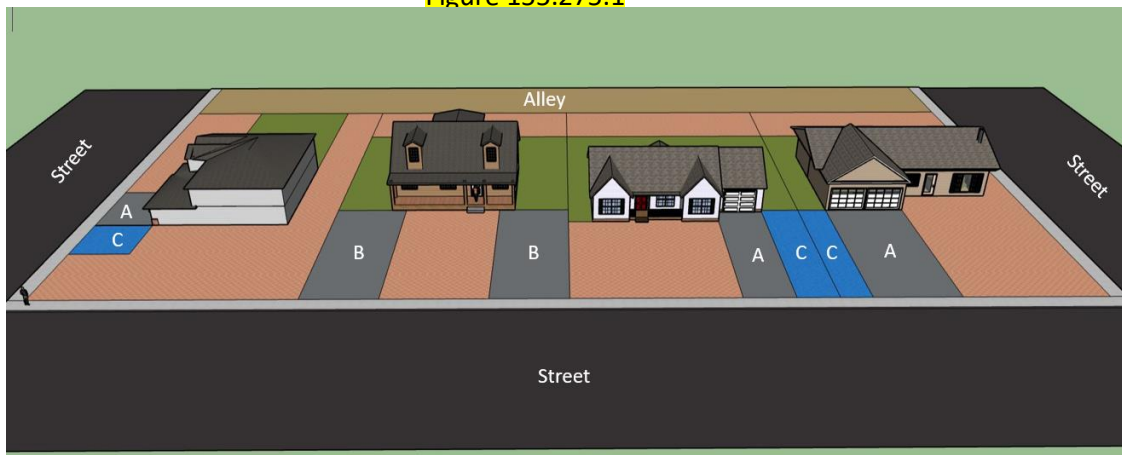


Figure 155.275.1Notes

Letter B above shows two options for the placement of a driveway, only one option may be utilized.

Red area above denotes no off-street parking locations.

Green area above denotes acceptable side and non-rear yard parking areas.

(B) 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.

#### § 155.276 PARKING AND STORAGE OF VEHICLES.

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

(B) Automobiles, trailers, and recreation equipment shall not be parked on residentially zoned lots which do not contain a structure.

(C) Vehicles not in use and without a current license may not be kept in any uncovered area other than designated junk or salvage yard.

§ 155.277 OFF-STREET PARKING REQUIREMENTS.

(A) Except in the C1 Central 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 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 ~~Planning and Zoning Commission~~ 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.

(B) The following off-street parking and loading specifications are minimum requirements:

Use or Structure	Minimum Off-Street Parking Requirements	Minimum Off-Street Loading Requirements
Bed and breakfast	One space for each guest room	None
Bowling alleys	Four spaces per alley	One space per establishment
Car Wash	Three (3) spaces per wash stall	None
Churches	One space for each four seats in the main seating area	None
Eating and drinking places	One space for each three-customer seating spaces	One space per establishment
Eating & Drinking Places	One (1) space for each three- (3) customer seating spaces	One space per establishment
Hospitals	One space for each three beds	Three spaces per establishment
Hotels and motels	One space for each guest room	One space per establishment
Industrial uses	One space for each two employees on the maximum working shift	Two spaces per establishment
Libraries	One space for each 500 square feet of floor area	One space per establishment
Manufactured home parks	Two (2) spaces for each manufactured home	None
Medical or dental clinics	One space for each examining or operating room plus one space for each doctor and employee	None
<del>Mortuaries and</del> Funeral homes	Five spaces for each reposing room	Two spaces per establishment
Multiple-family dwellings and nursing, convalescent, and rest homes	Two spaces for each dwelling unit exclusive of required yards; one space for each five beds	None
Office	1 per 250 sq. ft. gross floor area	None
Private clubs, lodges, and social or fraternal organizations	One space for each 100 square feet or one space for each three seats at bars or dining tables; whichever is greater	None
Schools	One space for each 25 students	One space per school
Retail sales establishments	One space for each 300 square feet of floor area	One space per establishment

Use or Structure	Minimum Off-Street Parking Requirements	Minimum Off-Street Loading Requirements
Service establishments	One space for each 300 square feet of floor area	One space per establishment
Single-family dwellings	One space for each 300 square feet of floor area	None
Theaters, auditoriums, and places of public assembly	Two spaces for each dwelling unit exclusive or required yards	One space per establishment
Warehouse, Wholesale and distribution	One space for each four seats of design capacity, and one space for each two employees on the maximum working shift	Two spaces per establishment

§ 155.278 SOUTH DAKOTA HIGHWAY 32 REGULATIONS.

With respect to all property and improvements located on South Dakota Highway 32 from the Big Sioux River east to the Junction with South Dakota Highway 13, the following rules and limitations regarding encroachments on the public right-of-way shall be complied with.

- (A) All encroachments on or above the right-of-way shall be prohibited.
- (B) The use of the right-of-way by owners or leases of abutting property for the storage of vehicles, placement of portable signs, or other private use thereof shall be prohibited.
- (C) Where the highway passes through established business districts and the buildings are at the property line and are continuous or very closely spaced, encroachments overhanging the right-of-way will be prohibited except under the following conditions.
  - (1) Awnings, canopies, marquees, and similar installations on building shall be permitted to remain in place until such time that they become functionally or structurally obsolete provided that the edge of such encroachment be not less than one meter back from the face of the curb.
  - (2) Advertising or similar signs which are less than one meter back from the face of the curb and are supported wholly from the front of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete provided that the bottom of such encroachment be not less than four and one-half meters, approximately 14.5 feet, above the curb elevation.
  - (3) The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs, or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than one meter back from the face of the curb and two and one-half meters, approximately eight feet, above the curb elevation.
  - (4) In the event the encroachments referred to in divisions (C)(1), (C)(2), and (C)(3) above by reason of color or placement or obscures or in any way detracts from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interferes with the free or safe flow of traffic, the city may cause the removal of such encroachments or take appropriate measures to improve highway signs or traffic signals and traffic safety.

(5) The provisions of divisions (C)(1) through (C)(4) above shall not apply to isolated businesses or commercial buildings in outlying areas.

(6) In cases where there are encroachments of long standing which will in no way impair the highway operation or interfere with the free and safe flow of traffic and, in the opinion of the state's Transportation Commission, the immediate removal would impose unreasonable hardship, the State's Transportation Commission may, at its discretion, permit the encroachment to remain for a specific period. The permission is subject to revocation or extension at the Commission's discretion. On federal aid projects, the permitting of such encroachments, as described herein, shall be in conformance with 23 C.F.R. § 1.23.

(D) No access to the street/highway at points other than constructed as part of the highway project will be permitted without prior approval of the Department of Transportation or their authorized representatives.

#### § 155.290 SMALL CELL WIRELESS COMMUNICATION FACILITIES

##### § 155.291 PURPOSE.

(A) The provisions of this subchapter shall be known as the small cell facilities regulation. It is the purpose of these provisions to develop standards and siting criteria and to establish removal procedures.

(B) It is further the purpose of these provisions:

(1) To establish regulations and siting standards for small cell wireless communication facilities (SCFs), whether in the public right-of-way or on other public or private property, in a manner that will protect the public's health, safety, and welfare and maintain the aesthetic integrity of the community;

(2) To facilitate the provisions of wireless communication services; and

(3) To provide regulations which are specifically not intended to and shall not be interpreted or applied to prohibit or effectively prohibit the provision of wireless services, unreasonably discriminate among functionally equivalent service providers, or regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

##### § 155.291 DEFINITIONS. (Reserved)

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~ADMINISTRATIVE OFFICIAL. The City Administrator for the City of Flandreau, South Dakota, or such other person(s) designated by either act of ordinance, resolution, motion, or such other official appointment determination made by the City Council for the purpose of overseeing the enforcement of this subchapter.~~

**ANTENNA.** Any communications equipment that transmits or receives electromagnetic radio frequency signals used in the provisions of wireless services. This definition does not include broadcast radio or television antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

**APPLICANT.** Any person who submits an application as, or on behalf of, a wireless provider.

**CITY.** The City of Flandreau, South Dakota.

**COLLOCATION.** The mounting or installation of an antenna or a small cell facility on a pre-existing utility pole or SCF support structure and/or modifying a utility pole or SCF support structure for the purpose of mounting or installing an antenna or SCF on that utility pole or SCF support structure in order to transmit and/or receive radio frequency signals for communications purposes.

**FCC.** The Federal Communications Commission.

**HEIGHT.** The vertical distance measured from the base of the structure at grade to the highest point of the structure including the antenna.

**NETWORK INTERFACE DEVICE.** The telecommunications demarcation and test point separating the wireless facility and the wireline backhaul facility.

**PERSON.** An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization including the city.

**PUBLIC RIGHT OF WAY or RIGHT OF WAY or ROW.** The surface and space above and below any street, sidewalk, avenue, boulevard, alley, lane, easement, right-of-way, highway, or thoroughfare open for public use in which the city has an interest in law or equity whether held in fee or other estate or interest or as a trustee for the public.

**SMALL CELL FACILITY or SCF.** A wireless facility that either meets all of the following qualifications or is within a stealth design that is consistent with the design guidelines.

(1) Each antenna is located inside an enclosure of not more than three cubic feet in volume, or in the case of an antenna that has been exposed to the elements, the antenna and all of its exposed elements could fit within an enclosure of no more than three cubic feet.

(2) Each provider's equipment enclosures shall be no larger than 28 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meters, concealment measures, network interface devices, underground enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, cables, conduits, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

(3) The facility is mounted on a utility pole or SCF support structure 50 feet or less in height, including antennas, on a utility pole or SCF support structure no more than 10% taller than other adjacent structures of substantially similar design or on an existing utility pole or SCF support structure on which it is to be located to a height of more than the greater of either 50 feet or the height of such utility pole or SCF support structure plus 10%.

**SMALL CELL FACILITY PERMIT.** A permit authorizing the installation, construction, and maintenance of a small cell facility.

**SMALL CELL FACILITY SUPPORT STRUCTURE or SCF SUPPORT STRUCTURE.** A structure such as a monopole or tower either guyed or self-supporting, billboard, building, or other existing structure designed to support, or capable of supporting, SCFs. Such term does not include a utility pole.

**STEALTH DESIGN.** Any SCF that is integrated as an architectural feature of a utility pole or changes a support structure design so that the purpose of the utility pole or SCF support structure for providing wireless services is not readily apparent. This includes the ability of SCFs to blend into the neighborhood environment at a given location and camouflage or conceal the SCF subject to applicable law.

~~UTILITY POLE. A pole or similar structure that is or may be used, in whole or in part, to facilitate telecommunications, electric, distribution, lighting, traffic control, signage, or to carry lines, cables, or other similar function or for location or collocation of small cell facilities. Such term does not include a SCF support structure.~~

~~WIRELINE BACKHAUL FACILITY. An above-ground or underground wireline facility used to transport communications data from a wireless facility network interface device to a network.~~

~~WIRELESS FACILITY. Equipment at a fixed location that enables wireless services between user equipment and a communications network including equipment associated with wireless communications, radio transceivers, antennas, coaxial or fiber optic cable located on a utility pole or SCF support structure or immediately adjacent to the utility pole or SCF support structure or directly associated with equipment located on the utility pole or SCF support structure, regular and backup power supplies and rectifiers, and comparable equipment regardless of technological configuration. The term includes SCFs but does not include the structure or improvements on, under, or within which the equipment is collocated or wireline backhaul facilities.~~

~~WIRELESS INFRASTRUCTURE PROVIDER. A person that builds or installs wireless facilities or utility poles or SCF support structures but not a wireless provider.~~

~~WIRELESS PROVIDER. A wireless infrastructure provider or a wireless service provider.~~

~~WIRELESS SERVICES. Any services using licensed or unlicensed spectrum including the use of WiFi, whether at a fixed location or mobile, provided to the public.~~

~~WIRELESS SERVICES PROVIDER. A person who provides wireless services.~~

#### § 155.292 APPLICABILITY.

- (A) Permit processing. For all SCF installation types, including new and replacement utility poles and SCF collocation to existing SCF support structures or existing utility poles, the Administrative Official shall issue permits in accordance with the terms and procedures set forth in this subchapter.
- (B) Zoning exemption. All SCF installations shall be exempt from general zoning restrictions unless a provision of such zoning code is explicitly cited by a section of this subchapter.
- (C) Exempt activities. This subchapter shall not apply to routine maintenance or the replacement of an SCF, utility pole, or SCF support structure which was previously approved pursuant to this subchapter with another SCF, utility pole, or SCF support structure that is the same or substantially similar.

#### § 155.293 SITING AND COLLOCATION CRITERIA.

(A) SCFs shall:

- (1) Be located on existing structures such as utility poles or SCF support structures; or
- (2) Be located on public property and structures if the controlling public entity agrees to the placement.

(B) Applications to collocate SCFs at locations other than those listed above in division (A) above may not be approved administratively. However, if an applicant certifies that it is not technically feasible, economically feasible, or places an undue burden to collocate an SCF at a location designated in division (A) above, the applicant may request a special review of the application as provided under § 155.295.

Such certification shall include a written statement indicating the reason why said location is not feasible.

§ 155.294 PERMIT REQUIRED.

An SCF permit shall be required to install any SCF, utility pole, or SCF support structure. Applications for an SCF permit shall be considered and approved pursuant to the provisions of this section. An SCF permit shall be deemed to include all other municipal permits which may be necessary to place and construct an SCF, utility pole, or SCF support structure as represented in an approved application. The granting of an SCF permit pursuant to this subchapter is not a grant of any franchise. All applications shall first be reviewed administratively and then, if not eligible for administrative approval, may be considered via the special review process.

§ 155.295 PERMIT PROVISIONS AND PROCESS.

(A) General review provisions.

- (1) Review period. The Administrative Official must approve or deny all SCF permit applications pursuant to this subchapter within **ninety (90)** days after the date an application is filed for an SCF permit application to place a new utility pole or SCF support structure or within **sixty (60)** days after the date an application is filed for collocation of an SCF. If approved, the permit shall be issued on or before day **ninety (90)** or **day sixty (60)**.
- (2) Tolling of review period. An applicant and the Administrative Official can mutually agree in writing to toll the applicable review period at any time.
- (3) Final decision. By the end of the applicable review period, the city must advise the applicant in writing of its final decision. If the final decision is to deny the application, the final decision shall state the basis for denial including specific code provisions on which the denial is based.
- (4) Nondiscrimination. The Administrative Official shall process all applicants under this subchapter in a nondiscriminatory manner. Aesthetic requirements shall be reasonable, no more burdensome than for other types of infrastructure deployments, objective, and published in advance.

(B) Administrative review process. An application submitted pursuant to this subchapter shall be reviewed as follows:

- (1) Submission of application. Applicant shall submit a complete SCF application accompanied by any corresponding application fee to the Administrative Official.
- (2) Review for completeness.
  - (a) The Administrative Official shall review the application for completeness following submittal. The Administrative Official must provide a written notice of incompleteness to the applicant within ten days of receipt of the SCF permit application clearly and specifically delineating all missing information. Information specified in a notice of incompleteness shall



be limited to that which is relevant to the approval or denial of an application under this subchapter.

- (b) The applicant shall then submit all information specified in the notice of incompleteness. The applicable review period shall restart at zero on the date the applicant provides the missing information to complete the application.
  - (c) For subsequent determinations of incompleteness, the applicable review period shall be tolled if the Administrative Official provides written notice within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The applicable review period will continue and shall not restart at zero on the date the applicant provides the missing information identified in a subsequent incompleteness review.
- (3) Approval. An application may not be approved via the administrative review process unless the proposed SCF, utility pole, or SCF support structure meets all applicable location and design requirements of this subchapter. An application shall be approved via the administrative review process if the proposed SCF, utility pole, or SCF support structure meets all applicable location and design requirements of this subchapter.
- (C) Special review process. An applicant may request a special review of an application which is not eligible for administrative approval due to not meeting the applicable location or design requirements of this subchapter and where compliance with said requirements is not technically feasible, economically feasible, or poses an undue burden. Special reviews shall be conducted by the Board of Adjustment in a public meeting. Notice of such meeting shall comply with SDCL § 1-25-1.1. The review hearing and final decision shall take place within the applicable 60-or-90-day review period which shall begin on the date a complete application is submitted to the Administrative Official.
  - (D) Vote of approval. The Board of Adjustment must approve, by majority vote of all members, an SCF application upon finding that the proposed installation has no reasonable alternative which better fits the location and design requirements of this subchapter. The Board shall deny an application which does have a reasonable alternative which better fits the location and design requirements of this subchapter. For an alternative to be reasonable, the alternative must be technically feasible, economically feasible, and must not impose an undue burden.
  - (E) After final determination. After the Board of Adjustment has made a determination on an SCF application, the Administrative Official shall issue an SCF permit if the application was approved. If denied, the Administrative Official shall provide a notice of final decision including the grounds upon which the Board of Adjustment denied the application.

#### § 155.296 PERMIT CONDITIONS.

- (A) A permittee shall comply with all applicable law including, but not limited to, applicable historic preservation ordinances of the city and utility undergrounding requirements.
- (B) Issuance of any permit pursuant to this subchapter shall not confer any ownership rights in the public right-of-way.

- (C) No permittee may construct, operate, place, locate, or maintain any small cell facility so as to interfere with the use of the public right-of-way by the city, the general public, or any other persons authorized to use or be present in or upon the public right-of-way.
- (D) No permittee or affiliate thereof shall take any action or cause any action to be done which may impair or damage any ROW or other property located in, on, or adjacent thereto. Any and all public right-of-way, public property, or private property that is disturbed or damaged by the permittee or affiliate thereof during the construction, operation, maintenance, or repair of a small cell facility shall be promptly repaired by permittee. In the event the permittee fails to make such repairs within a reasonable time period, the city may complete or cause to be completed the repair work and bill the actual and reasonable costs to the permittee. Public property, private property, and public right-of-way must be restored to as good a condition as before the disturbance or damage occurred to the reasonable satisfaction of the city.
- (E) In the event of an unexpected repair or emergency, the owner of a small cell facility may commence such repair and emergency response work as required under the circumstances provided it shall notify the city promptly before such repair or emergency work or the next day thereafter if advance notice is not practicable.
- (F) Each permittee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements. The permittee shall be responsible for all electrical or other utility costs associated with operating each installed SCF.
- (G) Every small cell facility shall be subject to the right of periodic inspection by the city after notification to the small cell facility owner. Each operator must respond to requests for information regarding its system and plans for the system as the city may from time-to-time issue including requests for information regarding its plans for construction, operation, and repair of the public right-of-way.
- (H) The city retains the right and privilege, after notifying the small cell facility owner, to move any small cell facility located within the public right-of-way as the city may determine to be necessary in response to any public health or safety emergency.
- (I) To the extent permitted by state law, the city shall not be liable for any damage to any small cell facility within the public right-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public right-of-way by or on behalf of the city except to the extent such damage is due to or caused by the city's negligence or willful misconduct.
- (J) Restoration shall comply with the following.
  - (1) When a permittee or any person acting on its behalf does any work in or affecting any public right-of-way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such right-of-way or property to the same or better than the condition which existed before the work was undertaken. As used in this section, PROMPTLY shall mean as soon as required by the city in the reasonable exercise of the city's discretion.

- (2) If weather or other conditions do not permit the complete restoration required hereunder, the permittee shall temporarily restore the affected right-of-way or property. Such temporary restoration shall be at the permittee's sole expense, and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
  - (3) A permittee or other person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle, or property by reason of such work in or affecting the right-of-way.
  - (4) Restoration and repair work shall be the responsibility of the permittee for two (2) years after completion thereof. Such work shall be limited to further restoration or repairs arising out of deficient completion of the initial work but shall not include further restoration or repairs arising out of events not related to the initial completion of the work.
- (K) The site and small cell facilities and SCF support structures including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans. This includes, but is not limited to, mowing, weeding, and trimming.
- (L) All graffiti on small cell facilities must be removed at the sole expense of the permit holder after notification by the city to the owner or operator of the small cell facilities.
- (M) A certificate of completion shall be required.
- (1) A certificate of completion will only be granted upon satisfactory evidence that the SCF was installed in substantial compliance with the approved plans and photo simulations.
  - (2) If it is found that the SCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the SCF installation into compliance within the time frame established by the municipality. Failing to obtain a certificate of completion within the applicable time frame shall cause a permit to be revoked.
- (N) All small cell facilities must comply with all standards and regulations of the FCC and any state or other federal government agency with the authority to regulate small cell facilities.
- (O) Each applicant shall secure and maintain liability insurance policies, as accepted by the city, insuring the applicant, the city, and the city's elected and appointed officers, officials, boards, commissions, agents, representatives, and employees as additional insureds as their interest may appear under this section except workers compensation and employer's liability which insurance shall be maintained during and for one year after termination of the permit. Expected coverage shall be the same or substantially similar to the following:
- (1) General liability insurance with limits of:
    - (d) Five million dollars (\$5,000,000) per occurrence for bodily injury including death;

- (e) Two million dollars **(\$10,000,000)** for property damage resulting from any one accident; and
  - (c) Five million dollars **(\$5,000,000)** general aggregate including premises operations, products, completed operations, explosions, collapse, and underground hazards.
- (2) Automobile liability for owned, non-owned, and hired vehicles in the amount of **two million dollars** (\$2,000,000) combined single limit for each accident for bodily injury and property damage; and
  - (3) Worker's compensation within state statutory limits and employer's liability insurance with limits of **one million dollars** (\$1,000,000) each accident, disease, or policy limit.
- (P) Upon receipt of notice from its insurer(s), an applicant shall provide the city with 30 days prior written notice of cancellation of any required coverage. The applicant shall obtain and furnish to the city replacement insurance policies meeting the requirements of this section.
- (Q) Upon approval of an SCF application, the permittee shall post a bond, letter of credit, or other form of surety acceptable to the city.
- (1) The purpose of such financial assurance shall be to:
    - (a) Provide for the removal of abandoned or improperly maintained SCFs including those that the city determines need to be removed to protect public health, safety, or welfare;
    - (b) Restoration of the ROW in connection with removals as provided for in this subchapter; or
    - (c) Recoup rates or fees that have not been paid by the permittee in over 12 months, so long as the permittee has received reasonable notice from the city of any of the non-compliance listed above and an opportunity to cure.
  - (2) The amount of the financial assurance shall be **two hundred dollars (\$200)** per approved SCF permit. For permittees with multiple SCFs within the city, the total amount of financial assurance across all facilities may not exceed **ten thousand dollars (\$10,000)** which amount may be combined into one **(1)** surety instrument.

#### § 155.297 APPLICATIONS, FEES, AND RATES.

- (A) Application form. The Administrative Official shall designate or develop an application form for an SCF permit. An applicant may include requests for new or replacement utility poles or SCF support structures. The Administrative Official shall allow for applications to be consolidated pursuant to this subchapter. Each applicant must submit a complete application for each permit desired.
- (B) Consolidated applications. Each SCF permit request in a consolidated application shall be considered individually.
- (C) Application requirements. All applications for the placement of an SCF, including modification or construction of a utility pole or SCF support structure submitted under this subchapter, shall include the following:

- (1) Photo simulations. A photo simulation of a reasonably representative installation type that includes to-scale visual simulations that show unobstructed before-and-after construction daytime views from at least two angles together with a map that shows the location of the proposed installation including all equipment shall be submitted. A separate set of such materials shall be required for any design which is materially different.
- (2) Noise study. A noise study shall be conducted and submitted for the SCF when requested by the city, when the proposed site is within twenty (20) feet of a residential structure, and when the application proposes to utilize equipment which may produce a persistent or chronic audible tone at such distance.
- (3) Radio frequency (RF) emissions compliance. Whereas the FCC has exclusive jurisdiction to establish radio frequency emission safety standards, the city may only require a written report or statement signed and sealed by a state licensed engineer or signed by a competent employee of the applicant which explains compliance with the RF emissions limits established by the FCC.
- (4) Utility pole or SCF support structure inspection. For collocations or modifications to existing utility poles or SCF support structures, applicants shall inspect the structure to which a proposed SCF would be attached and determine, based on a structural engineering analysis by a state registered professional engineer, the suitability of the pole or structure for the applicant's purposes. The structural engineering analysis shall be submitted to the Administrative Official and shall certify that the utility pole or SCF support structure can reasonably support the proposed SCF.
- (5) New and replacement utility poles and SCF support structures. For new and replaced utility poles and SCF support structures, applicants shall submit foundation drawings demonstrating the foundation and new or replacement utility pole or SCF support structure can reasonably support the SCF.
- (6) Design justification. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under § 155.298 below. A complete design justification must identify all applicable design standards under this subchapter and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
- (7) Site plan. A site plan clearly indicating the location, type, height, and width of the proposed pole, on-site land uses and zoning, adjacent land uses and zoning, distances to nearby objects, structures, property lines, adjacent roadways, proposed means of access, utility runs, and other information which may uniquely impact the SCF's fitness for a particular site.
- (8) Aesthetic compliance summary. An explanatory statement of aesthetic considerations and requirements factored into applicant's design such as stealthing, finishing, fencing, landscaping, or other elements which may impact the visual appeal of the SCF.
- (9) Written Statement. A clear and complete written statement of purpose which shall minimally include a description of the technical objective to be achieved, a to-scale map that identifies the proposed site location and the targeted service area to be benefitted by the proposed project, and full-color signal propagation maps.

- (D) Application fees. A permit for SCF including a utility pole or SCF structure shall be limited to **five hundred dollars (\$500)** for up to five SCFs and **one hundred dollars (\$100)** for each additional SCF on the application.
- (E) Recurring fees. A wireless provider authorized under this subchapter to place SCFs upon any related utility pole or SCF support structure in the ROW shall pay to the city an annual ROW access fee of up to **two hundred seventy dollars (\$270)** per site per year to cover all recurring fees including the cost of ongoing monitoring of each site for compliance with the terms of this subchapter and for the health, safety, and welfare of the general public and for the attachment of SCFs to city-owned or controlled utility poles or SCF support structures. Recurring fees shall be paid annually in accordance with the city's standard billing or invoicing procedures as the case may be. The City Council shall establish and adjust recurring fee rates by resolution.
- (F) Reasonable fee increases. The application fee and the recurring fees under this section shall be the sole compensation that the wireless provider shall be required to pay the city. However, the rates of either the application fee or the recurring fees may be increased due to extreme circumstances, but in no case may such fees exceed a reasonable approximation of the city's actual and reasonable costs. In addition, such fees must be objectively reasonable and no higher than charged to similarly-situated competitors in similar situations.

§ 155.298 STANDARDS FOR DESIGN, EQUIPMENT, AESTHETICS, AND THE LIKE.

- (A) Utility pole design. An existing utility pole may be replaced or extended to accommodate small cell facilities subject to the following requirements.
- (1) Replacement and new utility poles. Replacement utility poles shall be substantially similar to the width, color, and material of the original or adjacent utility poles. The city may approve minor deviations up to the minimum additional height needed to allow for the required clearance from electrical wires to accommodate an antenna or antennas and may also approve minor deviations up to **fifty percent (50%)** of the pole width at its base, not exceeding **thirty (30)** inches, when housing equipment is placed within the pole base. Replacement utility poles shall be located as close as possible to the existing utility pole, and the replaced utility pole shall be removed. Replacement streetlights and poles shall conform to the adopted streetscape design standard for the zoning district. New utility poles shall mimic the design of a replacement utility pole that is most suitable for the proposed location.
  - (2) Replacement and existing utility pole height. The height of any antennas at the top of a replacement or existing utility pole or any pole extender shall be no higher than the greater of either **fifty (50)** feet or the height of such utility pole or SCF support structure plus **ten percent (10%)**.
  - (3) Equipment concealed. Whenever technically feasible, antennas, cabling, and equipment shall be fully concealed within a pole or otherwise camouflaged to appear to be an integrated part of a pole.

- (4) Flush-mounting and pole-top antennas. When technically feasible, antennas will be flush-mounted on a pole which means either mounted directly to the pole with no gap other than that which may be required for screws, bolts, or similar hardware; located at the top of the pole; or side mounted by mounted arm as needed for required clearance. Canisters attached to the top of a pole shall not exceed the diameter of the pole unless technically required and then shall not be more than **fifty percent (50%)** greater than the diameter of the pole at the point of attachment or up to **sixteen (16)** inches in diameter, whichever is greater.
  - (5) Antenna design. Each antenna shall be located in an enclosure of no more than three cubic feet in volume, or in case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of no more than three cubic feet.
  - (6) No illumination. Small cell facilities shall not be illuminated except for small status LEDs installed by the manufacturer. Such LEDs may not be of a nature which is likely to distract a vehicle or pedestrian due to brightness, size, blinking, other similar condition, or any combination thereof.
  - (9) Generators and battery backup. Generators are not permitted for small cell facilities. A battery backup may be permitted if it is concealed consistent with the provisions of this subchapter.
  - (8) Cabinet location and dimensions. Any equipment cabinet for a small cell facility shall utilize the smallest cabinet enclosure that is technically feasible to enclose the equipment. Disconnect switches may be located outside of the primary equipment cabinet.
  - (9) Painting, coating, or finish material. The exterior of an SCF shall be painted, coated, or be of a material which draws minimal attention from an observer. For example, an SCF painted in blaze orange or safety green is highly likely to draw attention and be distracting, and an SCF finished with polished aluminum is more likely to be distracting than an SCF finished with matte grey paint.
- (B) Ground-mounted equipment. To allow full use of the public rights-of-way by pedestrians, bicyclists, and other users, all ground-mounted equipment, excluding antennas, shall to the extent feasible be either underground, incorporated into street furniture, or concealed in the base of a pole and in all cases shall comply with the Americans with Disabilities Act (ADA), city construction standards, and any applicable state or federal regulations in order to provide clear and safe passage within the public rights-of-way. The location of any ground-mounted equipment shall also comply with the Americans with Disabilities Act (ADA), city construction standards, and any applicable state or federal regulations in order to provide clear and safe passage within the public rights-of-way.
- (C) Building-mounted small cell facilities. Antennas may be mounted to a building if the antennas do not interrupt the building's architectural theme.
- (1) Balanced design. Small cell facilities attached to the side or roof of buildings shall employ a symmetrical or balanced design for all facade-mounted antennas. Subsequent deployments on a structure's exterior will be required to ensure consistent design, architectural treatment, and symmetry with any existing small cell facilities on the same side of the structure.
  - (2) Architectural preservation. The interruption of architectural lines or horizontal or vertical reveals is prohibited unless demonstrated to be unavoidable.

- (3) Complementary architecture. New architectural features such as columns, pilasters, corbels, or other ornamentation that conceals an antenna or antennas may be used only if the new feature complements the architecture of the existing building.
  - (4) Mounting brackets. Small cell facilities shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building.
  - (5) Concealment. Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed conduit cabling and wiring is prohibited.
  - (6) Matching paint. Small cell facilities and all visible mounting hardware shall be painted and textured to match adjacent building surfaces.
  - (7) Permission. All installations of a small cell facility shall have permission from the utility pole or SCF support structure owner to install the small cell facility on such utility pole or SCF support structure. Nothing in this section affects the need for an applicant seeking to place a small cell facility on a utility pole or SCF support structure that is not owned by the city to obtain from the owner of the utility pole or SCF support structure any necessary authority to place the small cell facility nor shall any provision of this section be deemed to affect the rates, terms, and conditions for access to or placement of a small cell facility on a utility pole or SCF support structure not owned by the city. This section does not affect any existing agreement between the Administrative Official and an entity concerning the placement of small cell facilities on any city-owned utility pole or SCF support structure.
- (D) Preferred projecting or marquee sign. Small cell facilities replicating a projecting or marquee sign must comply with the city's sign regulations. All antennas shall be completely screened by the facade of the sign. All cables and conduit to and from the sign shall be routed from within a building wall. Cable coverings may be allowed on the exterior of the building wall in limited circumstances and in situations where the coverings are minimally visible and concealed to match the adjacent building surfaces.
- (E) Parking lot lighting. Small cell facilities are permitted as attachments to or replacements of existing parking lot light fixtures. The design of the parking lot light fixture shall be in accordance with applicable municipal code and construction standards except that a pole extender up to five feet in height may be utilized.
- (F) Purely aesthetic standards. To the extent that a requirement is purely aesthetic, an SCF applicant shall not be required to meet a more burdensome standard than other users of the right-of-way. Other users of the right-of-way shall meet the purely aesthetic standards of this subchapter for new or replacement deployments to the extent which is technically and economically feasible.



§ 155.299 RELOCATION AND REMOVAL.

- (A) Relocation. All small cell facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel on or safety of the public right-of-way or obstruct any legal use of the city's right-of-way or uses of the right-of-way by utilities or other providers. If, in the reasonable determination of the city, a small cell facility needs to be relocated for reasons of public health, safety, or welfare or ROW maintenance or construction projects, the small cell facility shall be relocated at the owner's or operator's expense. If the owner or operator of the small cell facility fails to complete any relocation as required by the city within 90 days of mailing of written notice, the city may commence and complete the relocation and charge the owner or operator of the small cell facility for the actual and reasonable costs of the relocation including any reasonable attorney fees and expenses.
- (B) Removal of abandoned small cell facilities, utility poles, and other SCF support structures. Any SCF, utility pole, or other SCF support structure that is not operated for a continuous period of **twelve (12)** months or is no longer authorized by a small cell facility permit or other permit shall be considered abandoned, and the owner of such SCF, utility pole or other SCF support structure shall so notify the city in writing and remove the same within **ninety (90)** days of giving notice to the city of such abandonment. Failure to remove an SCF, utility pole, or other SCF support structure within said **ninety (90)** days shall be grounds for the city to remove the SCF, utility pole, or SCF support structure at the owner's expense including all costs and reasonable attorney fees.
- (C) Multiple users. If there are two or more users of a single utility pole or SCF support structure, these provisions shall not become effective until all users cease using the utility pole or SCF support structure.

§ 155.300 GENERAL INDEMNIFICATION.

In addition to, and distinct from, the insurance requirements of this subchapter, each applicant hereby agrees to defend, indemnify, and hold harmless the city and its officers, officials, boards, commissions, employees, agents, and representatives from and against any and all damages, losses, claims, and expenses including reasonable attorney fees and costs of suit or defense arising out of, resulting from, or alleged to arise out of or result from the acts, omissions, failure to act, or misconduct of the applicant or its affiliates in the construction, installation, operation, maintenance, repair, removal, or replacement of the SCF. This shall not require the applicant to indemnify or hold harmless the city for any losses, claims, damages, and expenses arising out of or resulting from the negligence or willful misconduct of the city.

§ 155.301 **APPEAL PROCESS. (reserved)**

**If a permit is denied in the administrative review process, then the applicant may appeal that decision to a court of competent jurisdiction or the Federal Communications Commission. (Ord. 591, passed 10-21-2019)**

§ 155.302 SEVERABILITY AND CONFLICT.

(A) Severability. The various divisions, sections, and provisions of this subchapter are hereby declared to be severable. If any division, section, and provision is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

(B) (A) Conflict. Subject to the limitation set forth in this subchapter, these small cell facility regulations are in addition to other regulations in the municipal code. In case of a conflict between regulations, and provided the regulation is consistent with federal law, the more restrictive provisions shall apply.

§ 155.320 HOME OCCUPATION

§ 155.321 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 Flandreau has established minimum performance standards for Home Occupations.

§155.322 Performance Standards.

(A) No person other than members of the family residing on the premises shall be engaged in such occupation;

(B) 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 twelve (12) children in a 24-hour period may utilize more than twenty-five percent (25%) of the floor area of the dwelling unit;

(C) 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

(D) 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.

(E) 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.

(F) Notwithstanding the preceding standards, any operation that provides care for more than twelve (12) children in a 24-hour period shall not be considered a home occupation.

#### § 155.330 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:

- (A) 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.
- (B) 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.
- (C) 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.
- (D) 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.
- (E) 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.
- (F) The length of stay shall not exceed fourteen (14) days during any one hundred twenty (120) day consecutive period.
- (G) 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.
- (H) 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.

#### §155.340 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.

§155.341 Setbacks.

(A) None of the following uses may be established, operated, or maintained within four hundred (400) 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.

- 1) Adult bookstore.
- 2) Adult motion picture theater.
- 3) Adult photo studio.
- 4) Adult Entertainment Facility.
- 5) 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.
- 6) Any use intended to provide adult amusement or entertainment.

(B) Not more than two of the following uses may be established, operated, or maintained within three hundred fifty (350) feet of each other:

- 1) Adult bookstore.
- 2) Adult motion picture theater.
- 3) Adult photo studio.
- 4) Adult entertainment facility.
- 5) 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.
- 6) Any use intended to provide adult amusement or entertainment.

7) A bar.

8) A liquor store.

(C) The three hundred fifty (35) foot restriction provided for in 155.340.01.B above may be waived and a conditional use permit issued upon proper application if the Board of Adjustment finds:

- 1) 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.
- 2) That the proposed use will not enlarge or encourage the development of a 'skid row' area.
- 3) That all applicable regulations will be observed.

§155.342 Required License.

It shall be unlawful for any person to engage in the business of operating an adult use in the City of Flandreau without first having obtained a license from the City Council.

§155.343 Application; Standards for Issuance.

(A) Application for an adult use license shall be made in writing and shall state the following:

- 1) The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.
- 2) The location of the adult use business.
- 3) The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.
- 4) A statement by the applicant that he is familiar with the provisions of this article and is in compliance with them.
- 5) A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.
- 6) A statement that no manager or principal operating the business has been convicted of any offense of prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use in any other community revoked within the last two (2) years.

(B) Within fifteen (15) days after receipt of an application for an adult use license, the City Council shall investigate the information contained in the application and shall determine the following:

- 1) That the premises designated by the applicant as the location of the business are in full compliance with all applicable ordinances of the City, including zoning ordinances.
- 2) That the premises and each manager and employee comply with the provisions of 155.343.A as such provisions apply to them.
- 3) That the applicant, each manager, and each employee are over twenty-one (21) years of age.
- 4) That no manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use revoked within the last two (2) years.

(C) If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted and each manager and employee, if applicable, with each of the requirements established in subsections (A) and (B) of this section, and with the conditions and regulations set forth in Section 155.343 within fifteen (15) days after completion of such investigation, the City Council shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.

(D) If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (A) of this section, and with the conditions and regulations set forth in Section 155.344 within fifteen (15) days after completion of such investigation, the City Council shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the City with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

#### §155.344 Conditions & Regulations Governing Operation; Violation; Penalty.

(A) The following regulations shall govern and control the business of operating an adult use in the City of Flandreau:

- 1) No person under twenty-one (21) years of age shall be allowed on the licensed premises.
- 2) 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.
- 3) Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the City Council written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five (5) regular business days, provide the information concerning the new manager which is required in 155.343.
- 4) 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.
- 5) No adult use shall be permitted unless the premise on which such business is located complies with the requirements of the zoning ordinance.
- 6) No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the South Dakota Compiled Statutes.
- 7) 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.
- 8) 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.

(B) In addition to the requirements established in 155.344.A, 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:

- 1) 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.
- 2) There shall be no aperture whatsoever in any wall or partition between viewing areas.
- 3) Each viewing area shall be lit at a minimum level of ten (10) foot candles in all parts thereof.

(C) 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:

- 1) All performers shall be at least twenty-one (21) years of age.
- 2) 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.
- 3) No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.
- 4) 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.

(D) It shall be unlawful for any person licensed to engage in the business of operating an adult use within the City to fail to comply with the conditions and regulations set forth in 155.343 and 155.34 as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.

#### § 155.345 Suspension or Revocation.

(A) Nothing in the terms of this article shall preclude the right of the City Council to suspend or revoke the license of the licensee, as follows:

- 1) The City Council may temporarily suspend any license issued under the terms of this article when he has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the seven (7)-day period, and further

provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.

- 2) The City Council may suspend or revoke any license issued under the terms of this article upon ten (10) days' notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the City Council determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

#### §155.350 SHOP-STYLE DWELLING STANDARDS.

(A) 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 § 155.240 Permanent Foundations Required for Dwellings;
- 2) Shop-style dwellings shall have a gross floor area of not less than fifty (50) percent of the structure dedicated to dwelling purposes;
- 3) Gross area is the sum of the gross horizontal area of all floors of a building measured from the exterior walls, but not including the basement or attic areas not intended for living space.
- 4) The owner of the building must actively reside in the living area of the structure a minimum of six months a year;
- 5) The owner of the building may not lease any or all portion of the building to any other person;
- 6) The storage/garage area must be completely within the enclosed building;
- 7) There must be separate outside entrances for the living area and storage/garage area;
- 8) The separation wall between the storage/garage and living area shall be 5/8-inch fire-code drywall;
- 9) The living area must include a full kitchen, living area, full bathroom, at least one bedroom and laundry facilities;
- 10) Shop-style dwellings do not include structures with corrugated steel siding.
- 11) Shop-style dwellings shall include more than one (1) roofline.



12) Shop-style dwellings are required to obtain written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and of fifty (50) percent of the property owners within two hundred fifty (250) feet (excluding streets and alleys) of said proposed shop-style dwelling property line.

13) Figures 155.350.1 and 155.350.2 (below) includes examples of dwellings which may meet the definition of “Shop-style dwellings” and the conditions of this section.

Figure 155.350.1



Figure 155.350.2



14) Figures 155.350.3 and 155.350.4 (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 this section:

Figure 155.350.3



Figure 155.350.4



#### §155.360. EXTENDED HOME OCCUPATION.

(D) There are significant differences between home occupations conducted in residential dwellings on small tracts and those which may be operated in an accessory structure on the same property as a residential dwelling. The nature of resources available for use, the benefits and disadvantages created by home occupations, and the problems generated necessitate a distinction between home occupations and extended home occupations. Each concept is based on supplementing income, but due to density of development and different requirements on the placement of accessory structures extended home occupations typically require unique considerations. For the aforesaid reasons, certain types of uses may be permitted as extended home occupations in certain districts provided certain considerations are made.

1) For the purpose of this section, provided all requirements are met, the following shall be considered extended home occupations:

a. Personal services;

b. Finance, insurance, and real estate services;

c. Sale of products grown or produced by the residents of the property;

d. Light manufacturing/repair/other services provided all performance standards are met or exceeded;

2) Performance Standards

a. An extended home occupation may not be changed to another extended home occupation except by the issuance of a separate conditional use permit.

b. Individuals engaged in such occupation shall consist of family members residing on the premises and up to one (1) non-family employee.

c. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign, not to exceed sixteen (16) square feet in area, non-illuminated.

d. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity.

e. There shall be no outdoor storage of materials, vehicles, etc. related to the extended home occupation unless the aforementioned storage is placed behind a fence approved by the Board of Adjustment.

f. Extended home occupations shall be conducted in an accessory building.

g. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.

h. No equipment or process shall be used in such extended 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.

## §155.370. REFUSE

In all zoning districts, refuse (rubbish, garbage, trash, waste or debris) shall be kept within a completely 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.

## §155.380. CANNABIS DISPENSARIES

### (A) Maximum Number of Cannabis Dispensaries.

- 1) 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.
- 2) The City shall allow one (1) cannabis dispensary provided the time, place, and manner of said dispensaries comply with this chapter.

### (B) Required Separation Distances

- 1) 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;
- 2) A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public park and recreation area existing before the date of the cannabis dispensary application;
- 3) Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
  - a. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- 4) Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed.

### (C) Other Locational Requirements

- 1) Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- 2) 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.

(D) 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.

(E) Hours of operation:

1) Cannabis dispensaries are allowed to be open daily between the hours of 7:00 a.m. and 7:00 p.m.

(F) Documentation of State Licensure.

1) 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.

(G) The Administrative Official is authorized to issue permits (building/use) for cannabis dispensaries subject to following:

1) Submission of a site plan containing the following:  
Any information required for applicable building permit.

a) Ingress and egress plan

b) Parking plan

c) Lighting plan (including security lighting)

d) Screening/security fencing plan,

e) Refuse plan;

f) Hours of Operation;

g) Any other information as lawfully may be required by the Administrative Official to determine compliance with this chapter.

2) Documentation of ability to meet setback/separation requirements.

3) Documentation of State Licensure.

(H) All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

§155.381. CANNABIS PRODUCT MANUFACTURING FACILITY/ CANNABIS CULTIVATION FACILITY

(A) Required Separation Distances

- 1) A cannabis product manufacturing facility and/or cannabis cultivation facility 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;
- 2) A cannabis product manufacturing facility and/or cannabis cultivation facility shall be located not less than one thousand (1,000) feet from a public park and recreation area existing before the date of the cannabis dispensary application;
- 3) A cannabis product manufacturing facility and/or cannabis cultivation facility shall be located not less than five hundred (500) feet from a residential use existing before the date of the cannabis dispensary application;
- 4) Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
  - a. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- 5) Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed.

(B) Other Locational Requirements

- 1) Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- 2) 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.

(C) 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.

(D) Documentation of State Licensure.

- 1) No cannabis product manufacturing facility and/or cannabis cultivation facility shall acquire, possess, store, deliver, transfer, transport, supply or dispense cannabis, or cannabis products, without providing documentation of licensure from the State of South Dakota.

(E) Minimum application information to include:

- 1) Submission of a site plan containing any information normally required for a building permit.
- 2) Ingress and egress plan

- 3) Parking plan
- 4) Lighting plan (including security lighting)
- 5) Screening/security fencing plan,
- 6) Refuse plan;
- 7) Documentation of ability to meet setback/separation requirements.
- 8) Documentation of State Licensure.
- 9) Any other information as lawfully may be required by the Board of Adjustment to determine compliance with this chapter.

(F) All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

§ 155.999 PENALTY.

Violations shall be treated in the manner specified below.

- A) Any person who starts work for which a permit (building, conditional use, special permitted, variance, rezoning) is required by this chapter without first securing such permit and paying the prescribed fee shall be charged according to the provisions hereafter. All fees assessed thereunder shall be rounded to the nearest whole dollar.
- (B) Upon finding such violation, the city 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 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)** including the postage costs.
- (C) 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 therefor, there shall be imposed an administrative fee in the amount of **two (2)** times the building permit fee. The payment of the administrative fee shall not relieve such person from the provisions of division ~~(C)~~ (E) below.
- (D) Any administrative fee or penalty imposed under the provisions of this chapter shall be in addition to any other fees or charges required herein.

- (E) It is declared unlawful for any person 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 chapter may be subject to a civil or criminal penalty. The penalty for violation of this chapter shall be ~~\$200~~ 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.
- (F) In the event any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of these regulations, the appropriate city authorities, in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct, or abate such violation or threatened violation.
- (G) 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.