

CITY OF WAGNER
MUNICIPAL CODES
Amended through 2021

WAGNER MUNICIPAL CODE

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**CHAPTER 1-1
CITY BOUNDARIES, WARDS & STREETS**

SECTION

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1-1-2	Wards
1-1-3	Streets
1-1-4	Truck Route
1-1-4.1	Vehicles Required to Utilize Truck Route
1-1-4.2	Violation

1-1-1 City Boundaries.

The City of Wagner shall include all territory embraced within the original townsite of Wagner, Milwaukee Land Company's First Addition, Milwaukee Land Company's Second Addition, Milwaukee Land Company's Third Addition, Grimes and Absher Addition, Catholic Church Addition, Fourth Addition, Patton's Replat of Block 24 of Fourth Addition, Town of East Wagner, Cihlar's Replat of Blocks 8 and 9 of East Wagner, Hick's Addition of East Wagner, Strohhahn's Addition, the S ½ NW ¼ , and the N ½ SW ¼ SW ¼ SW ¼ , all of which are embraced and included in Sections Three (3) and Four (4) of Township Ninety-five (95), Range Sixty-three (63), and Sections Thirty-three (33), and Thirty-four (34), in Township Ninety-six (96) North, of Range Sixty-three (63), West of the 5th P.M., Charles Mix County, South Dakota, together with all subsequent additions taken into the City since that time, less territory legally excluded therefrom, if any, according to the recording plats thereof recorded in the office of the Charles Mix County Register of Deeds.

SOURCE:

1-1-2 Wards. The City shall be divided into three wards, and said wards shall be designated respectively as Wards One, Two and Three. The wards shall be described by setting forth the certain street or avenue designations or other landmarks that divide and border the wards. Any reference to street or avenue below shall mean an imaginary line running down the approximate middle of each street or avenue. The wards of the City of Wagner are set forth below and the map thereof. Any discrepancies shall be resolved by reference to the map, attached and incorporated herein by reference, rather than the physical descriptions set forth herein.

WARD 1: Commencing at the intersection of S. Main Avenue SW and Seventh Street SW; then west to 394th Avenue; then north to the city limits line; then west to the city limits line; then north to the city limits line; then northeasterly on the city limits line to the intersection of 394th Avenue and Memorial Garden Drive NW; then east to the city limits line; then north to the city limits line; then east to N. Main Avenue NW; then south to B Street NW; then west to West Avenue NW; then south to A Street NW; then west to High

Avenue NW; then south to North Street NW; then west to Washington Avenue NW; then south to South Park Street NW; then east to High Avenue NW; then south to First Street SW; then east to West Avenue SW; then south to Second Street SW; then west to Hickory Avenue SW; then south to Fourth Street SW; then east to S. Main Avenue SW; then south to the point of beginning at the intersection of S. Main Avenue SW and Seventh Street SW. (Please see attached map of Wards 1, 2 and 3)

WARD 2: Commencing at the intersection of S. Main Avenue SW and Seventh Street SW; then south to the city limits line; then east to 395th Avenue; then north to Fourth Street SE; then east to Elm Avenue SE; then north to First Street SE; then west to Front Avenue SE; then north to South Park Street NE; then west to High Avenue NW; then south to First Street SW; then east to West Avenue SW; then south to Second Street SW; then west to Hickory Avenue SW; then south to Fourth Street SW; then east to S. Main Avenue SW; then south to the point of beginning at the intersection of S. Main Avenue SW and Seventh Street SW. (Please see attached map of Wards 1, 2, and 3)

WARD 3: Commencing at the intersection of 395th Avenue and Seventh Street SE; then east to the city limits line; then north to the city limits line; then west on the city limits line to N. Main Avenue NE; then south to B Street NE; then west to West Avenue NW; then south to A Street NW; then west to High Avenue NW; then south to North Street NW; then west to Washington Avenue NW; then south to South Park Street NW; then east to the intersection of 395th Avenue (also known as Front Avenue) and South Park Street NE; then south to First Street SE; then east to Elm Avenue SE; then south to Fourth Street SE; then west to 395th Avenue (also known as Front Avenue); then south to the point of beginning at the intersection of 395th Avenue and Seventh Street SE. (Please see attached map of Wards 1, 2, and 3)

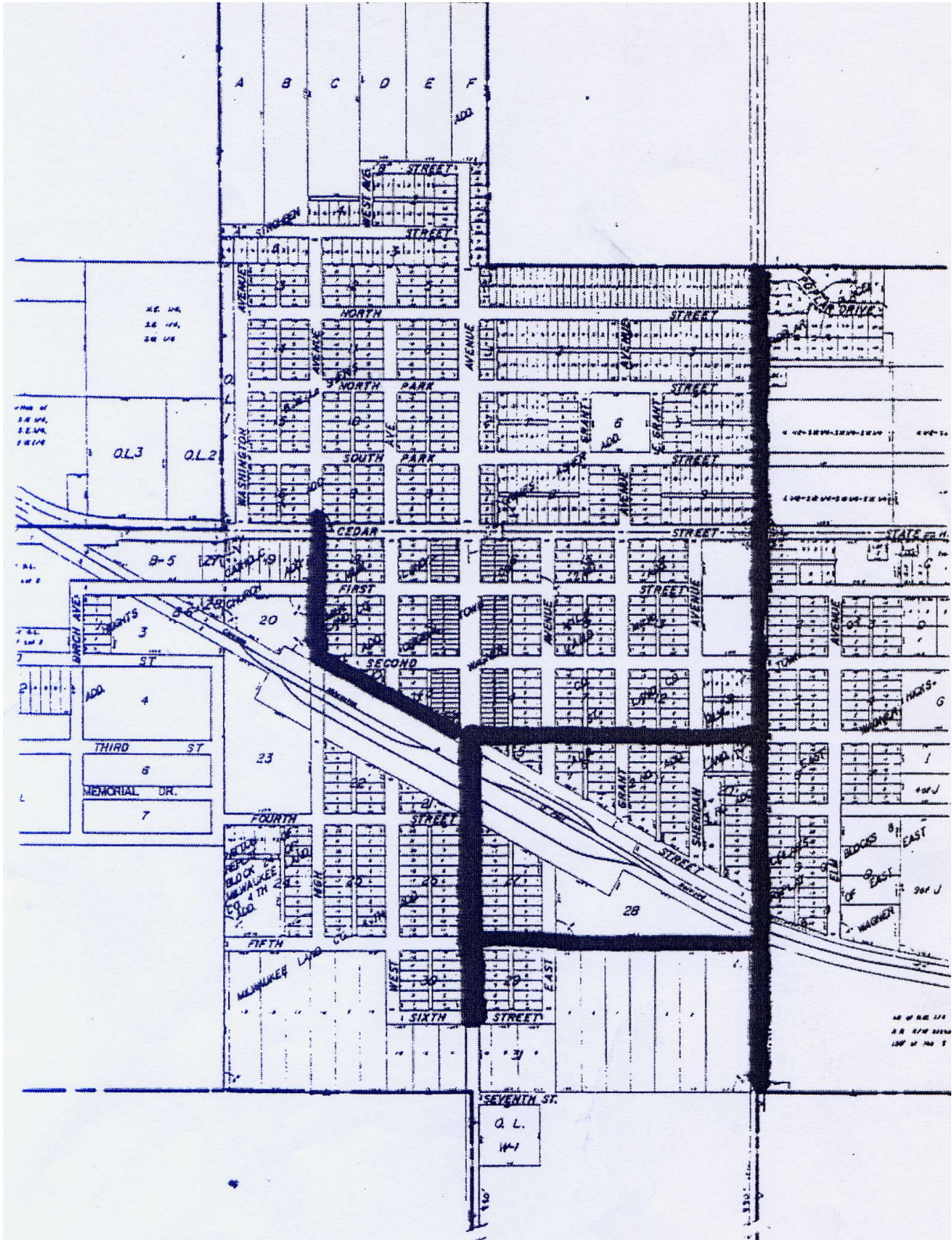
1-1-3 Streets. All thoroughfares of the City running east and west, except alleys, shall be called streets and all thoroughfares running north and south call be called avenues; the principal business thoroughfare of the city, being the only thoroughfare that is one hundred (100) feet in width, shall be known as Main Avenue, and the first avenue west of Main Avenue shall be known as West Avenue and the first avenue West of Main Avenue (in Strohbehn Addition) between Main Street and A Street and B Street shall be known as West Avenue, and the next Avenue west of West Avenue shall be known as High Avenue, and the next avenue shall be known as Washington Avenue, and the next avenue west shall be known as Walnut Avenue, and the next avenue west shall be known as Lake Avenue; the first avenue east of Main Avenue, north to the township line, shall be known as East Avenue, and the next avenue east of that shall be known as Grant Avenue, and the third avenue east of Main shall be known as Sheridan Avenue north to the township line, the next or fourth avenue east of Main avenue is a section line and shall hereafter be known as Front Avenue, and the next avenue east of Front Avenue shall be known as Elm Avenue; except that the thoroughfare west of and adjacent to Block 6, in Grimes and Absher Addition shall be known as Grant Avenue and the thoroughfare east of and adjacent to said Block 6, shall be known as East Grant Avenue. The township line highway, which traverses the city east and west shall hereafter be known as Cedar Street; the next one south shall be called First Street; and from First Street the streets shall be numbered consecutively toward the south as Second Street, Third Street, Fourth Street, Fifth Street, and Sixth Street; and the first street north of Cedar Street shall be known as South Park Street, then north the next one shall be known as North Park Street, then north the next street shall be known as North Street, and the nest one north (in Strohbehn Addition) shall be known as “A” Street and the next one shall be known as “B” Street. The street along the railroad right of way, from High Avenue to Front Avenue shall be known as Railroad Street. The east-west street in Poplar Place Addition shall be known as Poplar Drive with the north-south streets being known as Wendy Avenue being the street furthest west with the next street east being Wyatt Avenue. In the Wagner Heights Addition, the north-south streets, the northernmost street, shall be known as First Street, with the next street to the south being known as Second Street, with the next street to the south being known as Third Street, with the next street to the south being known as Memorial Drive, with the next street being known as Fourth Street, with the next street to the south being known as Fifth Street, and the street south of Cedar Street and West of Main Avenue, after High Avenue, and going from east to west the streets shall be known as Hickory Avenue, with the next avenue to the west being known as Birch Avenue, with the next avenue to the west being known as Walnut Avenue.

SOURCE: SDCL 9-45-1

1-1-4 Truck Route

Below is a plat map of the city of Wagner, South Dakota, which shows the streets and alleyways of the city of Wagner, South Dakota. The streets marked there on a thick solid black line shall constitute the designated truck route in and out of Wagner, South Dakota.

CITY OF WAGNER TRUCK ROUTE



1-1-4.1 Vehicles Required to Utilize Truck Route. All vehicles with a gross vehicle Weight (GVW) of 20,000 lbs. or more must use the designated truck route and it shall be unlawful for any said vehicle to be driving or parked upon any other public street or alleyway within the city limits of Wagner, South Dakota, other than those designated as part of the truck route established herein. Vehicles making truck cargo deliveries to Wagner businesses or residences may leave the designated truck routes for purposes of making deliveries or pick-ups, and shall leave and enter truck routes by the shortest possible route.

1-1-4.2 Violation. Violations of this ordinance shall be a misdemeanor and upon jurisdiction of guilt the driver of any vehicle violating this ordinance shall be fined up to one hundred dollars (\$100.00) per occurrence.

CHAPTER 1-2 CITY COUNCIL

SECTION

- 1-2-1 Regular Meetings
- 1-2-2 Special Meetings
- 1-2-3 Notice of Special Meetings
- 1-2-4 Rules and Order
- 1-2-5 Parliamentary Authority
- 1-2-6 Composition of City Council
- 1-2-7 Commissioners
- 1-2-8 Annual Budget
- 1-2-9 Required Appropriations
- 1-2-10 Permissive Expenditures
- 1-2-11 Rules of Procedure
- 1-2-12 Salaries

1-2-1 Regular Meetings. The regular meetings of the City Council shall be held on the first Monday of each month, at such time and place as the City Council may from time to time establish. In the event of inclement weather the Mayor or Council President may cancel any regular or special meeting of the City Council upon notice to all citizens, the press and any individual citizen that has asked to be placed on the agenda for the meeting to be cancelled. It shall be deemed sufficient notice to all set forth herein that a regular or special meeting of the City Council has been cancelled by television or radio announcements stating that the said regular or special meeting of the City Council is cancelled due to inclement weather and has been rescheduled to a different date and time. **(Ordinance #2015-01, amending 1-2-1 Regular Meetings. Effective Date: February 11th, 2015)**
Source: SDCL 9-8.

1-2-2 Special Meetings. Special meetings of the City Council may be held at any time on

Call of the Mayor, or, in case of his or her absence or inability to act, then such call shall be made by the President of the Council, or on the request of three (3) aldermen in case of inability or refusal to act by the Mayor or President of the Council.

Source: See also: SDCL 9-8.

1-2-3 **Notice of Special Meeting.** Upon call for a special meeting, the City Finance Officer shall notify either orally or by written notice, as the City Finance Officer shall determine most likely to satisfy each council person then present in the City, at least twenty-four (24) hours previous to the time fixed for such meeting, or in the case of emergency, at least three (3) hours before a special meeting. Such notice shall also state the purpose and object for which such special meeting is to be held; and the call and object as well as the disposition thereof shall be entered upon the records of the Council. The written of a special meeting shall be posted at City Hall and another copy hand-delivered to the local newspaper. **(Ordinance #2015-01, amending 1-2- Notice of Special Meetings. Effective Date: February 11th, 2015)**
Source: See also: SDCL 9-8.

1-2-4 **Rules and Order.** The City Council shall from time to time determine the rules and order of business for City Council meetings.
Source: See also SDCL 9-8.

1-2-5 **Parliamentary Authority.** Robert's Rules of Order, as periodically revised, may be utilized as the parliamentary authority governing the conduct of meetings of the City Council.
Source: See also: SDCL 9-8.

1-2-6 **Composition of City Council.** A Mayor elected for a two-year term by the voters of entire city and six (6) aldermen duly elected to a two-year term, with alderman being elected from each ward in the City.
Source:

1-2-7 **Commissioners.** The member of the council appointed to a Standing Committee shall be known as the Commissioner. As such Commissioner, he shall have full and complete authority to regulate, supervise and manage his department, subject however, to the paramount authority of the governing body.

1-2-8 **Annual Budget.** There shall be adapted an annual budget during the month of September in each year. The City Finance Officer shall present a proposed budget for the ensuing year to the governing body at the regular September meeting.

1-2-9 **Required Appropriations.** The governing body shall annually at the time of the adoption of the annual budget, make appropriations for the departments of the General Fund as set out in Chapter 1-8 of this Code.

1-2-10 **Permissive Expenditures.** The governing body may, if in its judgment the finances

of the city warrant, appropriate and expend funds for the following purposes: For aid to public recreation programs up to \$1,000.00 each, or as the City Council shall determine to be in the interests of the citizens of the City of Wagner.

1-2-11 **Rules of Procedure.** In the transaction of all business, the governing body shall be governed by the following rules:

- Rule 1. At the time appointed for the meeting of the council, the City Finance Officer shall, on the order of the presiding Officer, call the roll of members, noting the absentees, and those present may compel the attendance of any absent member.
- Rule 2. At regular meetings the following order of business shall be observed:
 1. Roll Call
 2. Reading correction and approval of minutes.
 3. Allowance of claims.
 4. Reports of officers.
 5. Reports of standing committees.
 6. Reports of special committees.
 7. Ordinances and resolutions.
 8. Petitions and communications.
 9. Unfinished business.
 10. New business.
- Rule 3. All questions of order shall be decided by the presiding officer without debate, subject to appeal to the council.
- Rule 4. Every member present, when a question is put, shall vote, unless the presiding officer shall, for special reasons, excuse him.
- Rule 5. All petitions shall be presented by the City Finance Officer, and the contents being briefly stated in the minutes, shall be referred to the appropriate standing committee or to a special committee named by the presiding officer.
- Rule 6. Committees on making their reports shall retain the petition, account or other papers containing the subject matter, so referred.
- Rule 7. All reports and resolutions shall be entered on the minutes and filed with the City Finance Officer.
- Rule 8. Ordinances may be published separately or as part of the minutes, but an affidavit of publication together with a printed copy of the ordinance, shall be permanently attached to a page in the official ordinance book provided for that purpose. This shall be the duty of the City Finance Officer.

- Rule 9. An ordinance may be introduced at any regular meeting, or at any special meeting called for that purpose, and shall be read at length, but shall not be finally acted upon until the expiration of at least one week thereafter. At the next regular, adjourned or special meeting if at least one week has expired, such ordinance shall again be read at length, and may then be placed upon it's final passage by motion.
- Rule 10. Any member may dissent from, and protest against any ordinance, resolution or order of the city council, which he may think injurious to the public, or to any individual, and have the reason of his dissent entered in the journal.
- Rule 11. At special meetings of the council, no business shall be transacted except that for which the meeting shall have been called, unless by unanimous consent of the members present.
- Rule 12. Any member who voted on any question, either for or against, when the council was equally divided, may move a reconsideration of such vote at the same or next succeeding regular meeting of the council, but a motion to reconsider having been once put and lost, shall not again be in order.
- Rule 13. An Alderman, acting as presiding officer, shall have the right to vote on all questions as an Alderman.
- Rule 14. Any or all of these rules may be temporarily suspended by a two-thirds vote of all the Aldermen in attendance at the meeting.

1-2-12 **Salaries.** (See 1.0204) Salaries for the Mayor and Council, and expenses, shall be set by separate ordinance from time to time as the council deem appropriate.

The salary of the Mayor is to be \$4,000.00 per year. The salary of the Alderman is to be \$150.00 per month plus \$50.00 per special meeting. Salaries are to be paid quarterly.

(Amended March 2nd, 2009)

CHAPTER 1-3 CITY OFFICERS & EMPLOYEES

SECTION

- 1-3-1 Appointive Officers – Terms of Office
- 1-3-2 General Policies
- 1-3-3 Bonds of City Officials
- 1-3-4 Approval and Filing of Bond

1-3-1 **Appointive Officers-Terms of Office.** At the first regular meeting of the City

Council after the annual city election in each year the Mayor, subject to confirmation by the City Council, shall appoint the following city officers, who shall hold their offices for one year, except as herein otherwise provided, and until their successors are appointed and qualified, to wit:

City Engineer, City Attorney, City Zoning Administrators and board members, City Health Officer and City Health Board.

Regarding the City Health Board, the Mayor shall, at the regular May meeting of the Council in each year appoint five (5) citizens to said Health Board, and the Mayor shall designate one of the members of the City Health Board to be its Chairperson. There shall be one person from each of the three (3) wards of the city, and two at large members. At large members are not required to be residing within the City of Wagner if they are licensed health care professionals by the State of South Dakota. This shall include Physicians, Dentists, veterinarians, Physician Assistants, Certified Nurse Practitioners, Registered Nurses, or other licensed members of the health care field. The appointment to the City Health Board shall be for one (1) year, and the City Health Board, at the first meeting of each year shall designate one of its members as Secretary and report same to the City Finance Officer.

All other working for the City of Wagner, including, but not limited to, the Finance Officer, Police Chief, Street Superintendent, Water and Sewer Superintendent, and all others shall be considered paid employees.

1-3-2 **General Policies.** Refer to the City Of Wagner’s *Municipal Personnel Handbook*.

1-3-3 **Bonds of City Officials.** The amount of bond for all compensated city officials shall be as follows:

- Mayor \$1,000.00
- Councilman \$1,000.00
- Finance Officer \$150,000.00

(Ordinance #2015-01, amending 1-3-1 Appointive Officers-Terms of Office. Effective Date: February 11th, 2015)

1-3-4 **Approval and Filing of Bonds.** The bonds shall be presented to the City Council for It’s approval. After such approval, the bonds shall be filed with the City Finance Officer.

CHAPTER 1-4 POLICE DEPARTMENT

SECTION

1-4-1 Police Force Established

- 1-4-2 Chief of Police
- 1-4-3 Duties of Members
- 1-4-4 Appointment. Repealed. (Ordinance #2015-01, effective date: February 11th, 2015)

1-4-1 **Police Force Established.** The police force of the City of Wagner shall consist of the Chief of Police and such additional policeman as from time to time the Mayor may appoint, subject to the approval of the City Council. However, in case of emergency, the Mayor may appoint such extra policemen, without the approval of the Council, for temporary services. For the purposes of this section, “temporary” is defined to mean a period of time less than two weeks.

1-4-2 **Chief of Police.** It shall be the duty of the Chief of Police and he is hereby authorized and empowered to diligently inquire into any violation of the city ordinances and to prosecute all persons guilty thereof. All policemen shall be under the control of the Mayor and the Chief of Police and shall be subject to their order.

1-4-3 **Duties of Members.** The members of the police department shall be charged with the enforcement of all state statutes and city ordinances and regulations of the City of Wagner.

1-4-4 **Appointment. Repealed. (Ordinance #2015-01, effective date: February 11th, 2015)**

CHAPTER 1-5 STREET COMMISSIONER

SECTION

- 1-5-1 Duties of Street Commissioner
- 1-5-2 Accounting for City Property

1-5-1 **Duties of Street Commissioner.** IT shall be the duty of the Street Commissioner, under the direction of the City Council, to take charge of all the streets, alleys and highways in the city and superintend all work being done thereon, whether under contract or otherwise. He shall report to the City Council, from time to time on the progress of any street improvements made.

1-5-2 **Accounting for City Property.** It shall be the duty of the Street Commissioner to take charge of all street maintenance machinery, graders, engines and tools of every kind, see that the same are kept in good condition and properly cared for. At the expiration of his term of office, he shall deliver to his successor in office, or to whomever the City Council shall authorize to receive the same, all such machinery, tools and property, and all books, papers and vouchers under his control and belonging to the city, and shall leave a list of all such property with the City Finance Officer.

**CHAPTER 1-6
CITY ENGINEER**

SECTION

1-6-1 Duties

1-6-1 **Duties.** It shall be the duty of the City Engineer at any time when required by the City Council to survey and plat and make as accurate an estimate as possible of any improvements in the streets, alleys and highways of the city, contemplated by said council. If the Council contracts with a registered engineer to work for the City, such engineer shall oversee the streets work as the City's agent and make regular reports as to the progress of same to the City Council. The City Council may, from time to time, designate other duties for the City Engineer. The City Engineer shall be appointed as provided for in Chapter 1-3 of this Code.

**CHAPTER 1-7
ELECTIONS**

SECTION

1-7-1 Wards

1-7-2 Voting Places

1-7-1 **Wards.** The City of Wagner is divided into three (3) wards known as Ward 1, Ward 2 and Ward 3 for election and voting purposes.

1-7-2 **Voting Places.** That should any requirement in SD state law be met that would allow for the consolidation of polling places into one polling place at Wagner City Hall that the City Council will consolidate the polling place for municipal elections at Wagner City Hall.

(1-7-1 and 1-7-2 repealed in its entirety)
(Replaced with Ordinance No. 2012-04)

**CHAPTER 1-8
FINANCES**

SECTION

1-8-1 Funds Kept

1-8-2 Disposition on Funds

1-8-3 Supplies

1-8-4 Inventories

1-8-1 **Funds Kept.** The City Finance Officer shall keep full, true and just accounts of all the financial affairs and property, real and personal, of the City of Wagner. The Finance Officer shall keep such funds and accounts as may be necessary to show at

all times the exact condition of the financial affairs of the City and of each branch of the public service, and , for this purpose, the Finance Officer shall keep the following funds and accounts:

General Fund, which shall be broken down into the following accounts:

- Contingency Fund
- Mayor & Council
- Elections
- Attorney
- Finance Office
- Govt. Bldgs.
- Govt. Bldg. Armory
- Police
- PBT (Preliminary Breath Testing – 24/7 Program)
- Prisoner Housing
- Civil Defense
- Streets
- Street Lights
- Solid Waste
- Electric Utility
- Airport
- Health Regulation & Inspection
- Mosquito Control
- Swimming Pool
- General Recreation
- Parks
- Library
- Museums
- Urban Housing & Redevelopment (HRC)
- Economic Development
- Planning & Zoning
- Liquor Fund
- Water Fund
- Sewer Fund
- Special Revenue Fund
- Debt Service Fund
- Capital Improvements Funds

And such other funds and accounts as may be from time to time by it deemed necessary by the City Finance Officer.

(Amended Ordinance #2015-01, Funds Kept. Effective Date: February 11th, 2015)

1-8-2 Disposition of Funds. All money derived from licenses, fines, and all miscellaneous

revenues received from any and all sources other than taxation shall be credited to the General Fund, except Water Department revenues which shall be credited to the Waterworks Fund, Sewer Department revenues which shall be credited to the Sewer Fund. Special revenues shall be credited to the Special Revenue Fund. **(Amended Ordinance #2015-01, Disposition of Funds. Effective Date: February 11th, 2015)**

1-8-3 **Supplies.** The City Finance Officer shall purchase all supplies, shall have charge thereof, and shall make all sales there from; providing no purchase involving an expenditure of more than two thousand five hundred and 00/100 dollars (\$2,500.00) shall be made without the consent of the Mayor or proper Councilperson of the city council being first obtained. Every order for material or supplies shall be made in writing and a duplicate thereof filed with the City Finance Officer. All materials and supplies shall, when received be checked over by the officer or agent receiving the same, and a bill thereof, showing the name of the article and each article with the price thereof shall immediately be filed with the City Finance Officer, and shall bear the endorsement of such officer or agent showing in what respect, if any, the material or articles failed to correspond with the material or article ordered. **(Amended, Ordinance #2015-01, Supplies. Effective Date: February 11th, 2015)**

1-8-4 **Inventories.** The Superintendent or person in charge of each department of the City of Wagner shall on or before the 1st day of January of each year, or as otherwise designated by the City Council; make a full, true and correct inventory of all stock, tools, and other property belonging to the city, and shall file the same with the City Finance Officer. **(Amended, Ordinance #2015-01, Inventories. Effective Date: February 11th, 2015)**

CHAPTER 1-9 CITY ARMORY BOARD

SECTION

- 1-9-1 Armory Board Established
- 1-9-2 Mayor to Appoint Councilman to Board
- 1-9-3 Functions of the Board
- 1-9-4 Secretary to make Annual Report to Council

1-9-1 **Armory Board Established.** There is hereby established an Armory Board to be composed of three (3) members, who shall have direct charge of the interest of the city in the Auditorium jointly used with the Wagner Community School District No. 11-4, and the South Dakota National Guard. **(Amended, Ordinance #2015-01. Effective Date: February 11th, 2015)**

1-9-2 **Mayor to Appoint Councilman to Board.** The Mayor shall, at the regular May meeting in each year, appoint one Councilman to the Armory Board. This appointment shall be for one year.

1-9-3 **Function of Board.** The Board shall have direct charge of all interests of the city in meeting with the committee of the Wagner Community School District No. 11-4 and the South Dakota National Guard, and is authorized to work out such joint use of the Armory by the city and school as it may deem proper. **(Amended, Ordinance #2015-01. Effective Date: February 11th, 2015)**

1-9-4 **Finance Officer to make Monthly Report to City Council.** The Finance Officer of the Armory Board shall make a monthly report to the City Council concerning the Board activities for the past month and future matters anticipated by the Board. **(Amended, Ordinance #2015-01, Finance Officer to make Monthly Report to City Council. Effective Date: February 11th, 2015)**

CHAPTER 1-10 MUNICIPAL ADVERTISING BOARD

SECTION

- 1-10-1 Wagner Chamber of Commerce Recognized
- 1-10-2 City May Disburse Grant to Chamber
- 1-10-3 Procedure for Requesting Grant
- 1-10-4 Secretary to Make Report on use of Grant

1-10-1 **Wagner Chamber of Commerce Recognized.** The Wagner Chamber of Commerce, being a member of the incorporated United States Chamber of Commerce, is recognized as a proper advertising agency in this city.

1-10-2 **City May Disburse Grant to Chamber.** In accordance with the provisions of this municipal code, the City of Wagner is empowered and may disburse the sum of \$600.00 per year, plus an additional per employee charge which is set by the Wagner Chamber of Commerce each year for advertising and promoting the City of Wagner. **(Amended, Ordinance #2015-01, City May Disburse Grant to Chamber. Effective Date: February 11th, 2015)**

1-10-3 **Procedure for Requesting Grant.** The Wagner Chamber of Commerce, through a claim filed by its Secretary, may be entitled to receive such grant at such time as the Council may approve.

1-10-4 **Secretary to make Report on use of Grant.** At the regular February meeting of the City Council, the Secretary of the Wagner Chamber of Commerce shall file with the City Council a written report showing the specific use to which such grant was put for the past calendar year.

CHAPTER 1-11
MUNICIPAL DEFENSE BOARD

SECTION

1-11-1 Municipal Defense Board Established

1-11-2 Functions of Board

1-11-3 Duty to Coordinate Activities

1-11-4 Formation of Subcommittees

1-11-1 Municipal Defense Board Established. There is hereby created the Municipal Defense Board of the City of Wagner to be composed of the Mayor as Chairman and such other persons, not exceeding eleven in number, as the Mayor may from time to time appoint. The Mayor shall designate one of the members so appointed as Vice-Chairman who shall be the Coordinator for the City of Wagner. Each member shall serve at the pleasure of the Mayor or until the repeal of this chapter.

1-11-2 Functions of the Board. The Board shall have full and plenary powers to employ such persons as may be necessary to carry out the functions of the Board. These persons shall be subject, however, to all regulations now provided by law governing this municipality.

1-11-3 Duty to Coordinate Activities. The Municipal Defense Board shall be charged with the duty of coordinating all defense activities in this city, and in particular as follows:
It shall:

1. Coordinate the activities of municipal and private agencies cooperating in the defense program;
2. Keep in contact with the Office of Civilian Defense to the end that all Requests and suggestions from that Office shall receive prompt and efficient response;
3. Conduct studies regarding defense problems of the City of Wagner to the end that the municipal government of the city of Wagner will be abreast of the problems of defense, and information desired by Federal agencies will be readily available;
4. Survey existing facilities, proffers of facilities, services and ideas originating within the City and make appropriate disposition of them;
5. Act as a clearinghouse on municipal defense information for all Governmental and private agencies cooperating in the defense program;
6. Direct information regarding the defense program to all municipal departments or agencies which are or may be affected thereby;

7. Make recommendations, from time to time, for improvements in the handling of defense problems affecting the City of Wagner.
8. Perform such other advisory functions as may be requested by the Federal Government in connection with the National Defense program; and,
9. Do whatever is necessary and proper to carry out the intent and purpose of this Chapter, tending to protect life and property.

1-11-4 Formations of Subcommittees. The Municipal Defense Council or Board may expediate procedure by organizing itself into subcommittees and may subdivide its work and prescribe such rules and regulations as are not in conflict with the provisions of this ordinance. It shall prescribe the training regulations for its members. It may delegate the authority of preliminary hearings for dismissal of voluntary workers to the heads of Departments of city government. It may appoint additional committees to meet any emergency that may arise, but shall report the same promptly to the City Council, which shall have authority, as its discretion, to order the discontinuance of such committee. Any person appointed to any position created under this Chapter may be removed by the appointing authority for any reason deemed by it to be sufficient.

There is hereby established a City Planning Board to be composed of five (5) members, whose purpose is to plan for the future development of this City.

**CHAPTER 1-12 (REPEALED, Ordinance #2015-01.
Effective Date: February 11th, 2015)
CITY PLANNING BOARD**

**CHAPTER 2
HEALTH AND NUISANCES**

SECTION

- 2-1-1 Board of Health Established
- 2-1-2 Board Members
- 2-1-3 City Health Officer
- 2-1-4 Assistant Health Officer
- 2-1-5 Board Powers and Duties

2-1-1 Board of Health Established. That there shall be and hereby is created and established a City Board of Health consisting of three (3) members as hereinafter provided.

2-1-2 Board Membership. The Mayor, the City Health Officer and the Assistant City

Health Officer shall constitute the City Board of Health. The Mayor shall serve as the board chairman.

2-1-3 City Health Officer. The City Health Officer shall be a duly licensed health care professional practicing in the City who shall be appointed by the Mayor at the regular meeting of the City Council in May of each year and shall hold office for one (1) year. If there is no health care professional practicing in the City, then the Council may appoint any other licensed health care professional to serve as the City Health Officer.

2-1-4 Assistant Health Officer. The Assistant Health Officer shall be a duly licensed veterinarian practicing his profession in said city, who shall be appointed to that office by the City Health Officer and shall hold office for a period of one (1) year. If there is no veterinarian practicing in the City, then the Council may appoint any other licensed veterinarian to serve as the Assistant City Health Officer.

2-1-5 Board Powers and Duties. Subject to the supervising control of the State Board of Health, the City Board of Health, within the city limits of said city, shall have power:

1. To enforce any and all necessary rules and regulations made by the State Board for the prevention and cure, and to prevent the spread of contagious diseases.
2. To establish quarantine and isolate any person afflicted with contagious disease.
3. To remove or cause to be removed any dead, decayed or putrid body, or any decayed, putrid or other substance that may endanger the health of persons or domestic animals.
4. To perform any and all duties that may be required by law and the city ordinances.
5. To examine into all nuisances, sources of filth and cause of sickness, and make such rules or regulations respecting the same as it may deem necessary for the public health.

CHAPTER 2-2 DOGS AND CATS

SECTION

- 2-2-1 Dog & Cat Licenses Required; Proof of Vaccination
- 2-2-2 License Application
- 2-2-3 License Fee
- 2-2-4 Finance Officer to Keep Records
- 2-2-5 Vicious Dogs; Definitions
- 2-2-6 Confinement of Vicious Dogs

- 2-2-7 Leash and Muzzle for Vicious Dogs
- 2-2-8 Signs; Vicious Dogs
- 2-2-9 Dog Fighting
- 2-2-10 Insurance
- 2-2-11 Application

2-2-1 Dog & Cat Licenses Required; Proof of Vaccination. No person who is the owner of or has in his or her possession any dog or cat, male or female, shall permit the same to run at large within the city limits. No license may be issued until the applicant has presented proof of rabies vaccination signed by a licensed veterinarian to the appropriate licensing official.

2-2-2 License Application. Any person desiring to keep, maintain or have in his custody or control by himself or agent, within the said city, any dog or cat, shall, before the first day of May in each year, at the City Finance Office, apply for and fill out a license to keep such dog or cat, and will include the name, sex, color and other distinguishing characteristics of said dog or cat, and the name of the owner thereof, and shall state that said dog or cat has no vicious propensities so far as known to the applicant, and shall provide documentation of current rabies vaccination. Such application shall be on a printed blank to be prepared by the City Finance Officer, and shall be filed with that office.

2-2-3 License Fee. The dog or cat owner or possessor shall pay to the City Finance Officer, or its designee, a fee of \$5.00 for each license issued, whether it be for a dog or cat. The Finance Officer shall issue a license suitable for attachment to a dog or cat collar. Such license shall expire on the 31st day of December of every year.

2-2-4 Finance Officer to Keep Records. The City Finance Officer shall provide at the expense of said city, numbered tags to be issued to persons paying taxes on dogs and cats and shall enter in a book kept for that purpose the number of each tag and the name of the owner or keeper of such dog or cat. The City Finance Officer shall keep a separate book for dogs and a separate book for cats and dog and cat licenses shall be of a different color.

2-2-5 Vicious Dogs; Definitions.

A) Owner” means any person, firm, corporation, organization, or department possessing or harboring or having the care and custody of a dog.

B) “Vicious dog” means,

1. Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals; or
2. Any dog which because of its size, physical nature, or vicious propensity is capable of inflicting serious physical harm or death to humans and which would constitute a danger to human life or property if it were not kept in the manner required by this ordinance; or

3. Any dog which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or
4. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

C) A vicious dog is “unconfined” if the dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the dog. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one (1) foot. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition.

2-2-6 Confinement of Vicious Dogs. The owner of a vicious dog shall not suffer or permit the dog to go unconfined.

2-2-7 Leash and Muzzle for Vicious Dogs. The owner of a vicious dog shall not suffer or permit the dog to go beyond the premises of the owner unless the dog is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person at least 16 years of age. The muzzle shall be made in such a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

2-2-8 Signs; Vicious Dogs. The owner of a vicious dog shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

2-2-9 Dog Fighting. No person, firm, corporation, organization or department shall possess or harbor or maintain care or custody of any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purpose of causing or encouraging the dog to attack human beings or domestic animals.

2-2-10 Insurance. Owners of vicious dogs must within 14 days of the effective date of this chapter provide proof to the Finance Officer of public liability insurance in the amount of at least \$25,000.00, insuring the owner for any personal injuries inflicted by his or her vicious dog.

2-2-11 Application. The ordinances contained in this chapter shall apply equally to all Wild animals, including but not limited to, wolves, wolf-dog crosses, tigers, mountain lions, bears, and any and all other wild or exotic animals.

(Chapter 2-2 Amended January 5th, 2009, Ordinance #2008-07 to include cats)

CHAPTER 2-3 CITY POUND

SECTION

- 2-3-1 City Pound Established
- 2-3-2 Stray Animal Impounded
- 2-3-3 Stray Stock Impounded
- 2-3-4 Chief of Police as Pound Master; Duties
- 2-3-5 Fees
- 2-3-6 Illegal Acts

2-3-1 City Pound Established. The public pound shall be and hereby is established and located at such places and locations as the City Council of Wagner, South Dakota shall from time to time direct.

2-3-2 Stray Animal Impounded. Any animal or animals found running at large may be impounded in the public pound and shall not be released until the owner, or some other person designated by the owner, shall pay to the Chief of Police, or his designee, the fees and penalties hereinafter provided.”

2-3-3 Stray Stock Impounded. If any cattle, horses, sheep, swine, dog, cat, or other livestock shall be found running at large contrary to the ordinances of the City, they shall likewise be impounded in the public pound of the City, from which they shall not be released until the owner, or some other person designated by the owner, shall pay to the Chief of Police, or his designee, the fees and penalties hereinafter provided.

2-3-4 Chief of Police as Pound Master; Duties. It shall be the duty of the Chief of Police, or his designee, who is hereby made Pound Master, to detain and impound all animals found running at large contrary to the ordinances of the City, and immediately give notice of such impounding to the owner or person last in charge of the animal or animals impounded, if known. An impounded animal shall not be released unless the owner or some designated person on his or her behalf, within 72 hours, pays to the City a claim fee of \$25 for the first offense and \$75 for each offense thereafter, for each animal so impounded belonging to the same owner. In addition, the owner of said impounded animal or animals, or his or her designated person, shall also be responsible for the rabies shot and current City dog or cat tags for the impounded animal or animals, plus any additional expenses incurred for each animal or animals so impounded. In addition, no impounded animal or animals shall be released until the animal is current on the rabies vaccination and has a properly issued and current dog or cat tag. This charge for the rabies vaccination and dog or cat City tags will not be charged upon proof that the animal or animals have a current rabies vaccination and have current City dog or cat tags. Any impounded animal or animals not picked up by the owner, or the owner’s designated person, within 72 hours of impounding shall be disposed of in a humane manner, with the Chief of Police, or his designee’s discretion.

- 2-3-5 **Fees.** The fees for impounding any animal or animals under this chapter shall be \$25 for the first offense and \$75 for each offense thereafter, per animal or animals, on a per head basis, plus, any rabies shots or current City dog or cat tags required, if any, plus, any other incidental expenses incurred for the benefit of the impounded animal or animals.
- 2-3-6 **Illegal Acts.** No person shall interfere with the Chief of Police, the Pound Master, or his or her's assistant's, in the performance of their duties under this chapter. Further, any person who shall remove or undertake to remove such impounded animal or animals from the pound, or the possession of the Pound Master, without paying the appropriate charges set out in this ordinance and with the permission of the Pound Master, shall be guilty of an offense, and upon conviction thereof, be subject to a fine of up to \$200.00 per occurrence.

**(Chapter 2-3 Amended January 5th, 2009, Ordinance #2008-07 to include cats)
(Chapter 2-3 Amended August 3rd, 2016, Ordinance #2016-04)**

CHAPTER 2-4 NUISANCES

SECTION

- 2-4-1 Nuisances Generally; Definitions
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- 2-4-1 Nuisances Generally; Definitions.** It shall be unlawful for any person, company or corporation to keep or maintain or permit upon their property under their control or upon any public property within the City any nuisance as defined in SDCL 21-10-1, as amended.
- 2-4-2 Nuisances Designated Prohibited. Designed –Prohibited.**
- a. No person or persons, owner, occupant or person in charge of any house, building, lot or premises, shall create, maintain or commit, or permit to be created, maintained or committed, any public nuisance as

defined in subsection B of this section, or as enumerated in subsection C of this section.

- b. Within the meaning of this section, a public nuisance consists in doing an act without lawful authority, or omitting to perform a duty, within the corporate limits of the city, or within one mile of the corporate limits of the city not within another municipality, or any public grounds, or park belonging to the city, which act or omission either:
 - 1. Annoys, injures or endangers the comfort, repose, health or safety of others; or
 - 2. Offends contemporary community moral standards; or
 - 3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any lake or river, bay, stream, canal or basin, or any public park, square, street, right-of-way or highway; or
 - 4. In any way renders other persons insecure in life, or in the use of property and which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.
- c. Nuisances shall include, but are not limited to, the following enumerations, which are deemed and declared nuisances:
 - 1. Waste, including, but not limited to, items such as paper, Rags, trash, garbage, discarded clothing, shoes, curtains, linen or other apparel, tin cans, aluminum cans, boxes, bales or baled items, plastic containers, glass containers, plastic wrap, cleaning utensils, cooking utensils, and discarded household fixtures, when such items are stored, collected, piled, collected, piled or kept on private or public property, and in view of adjacent properties or public right-of-ways:
 - 2. Used building materials and waste, including, but not limited to, such items as lumber, lath, gyp-sum board, pallets, plaster, old iron or other metals, concrete, brick and tile, piles of rock, sand, dirt or gravel when not used for landscaping purposes, doors, windows, and scrap or salvage building materials, when such items are stored, collected, piled or kept and are not stored inside a building; except for building materials that are temporarily stored for work on the premise authorized by a valid building permit obtained for the premises and in compliance with Section 15.44.010; provided that such used or waste building materials shall not remain on the premises more than thirty days after the expiration of the building permits;
 - 3. Appliances, fixtures and furniture including, but not limited to, items such as stoves, refrigerators, freezers, sinks, cabinet

and other kitchen appliances, bedroom furniture, mattresses, tables, chairs, clothes washing and drying machines, bathroom appliances and fixtures, light fixtures, wash tubs, lawn mowers, tillers, chainsaws, snowblowers, and garden equipment when such items are stored, collected, piled or kept and are not stored inside a building; except that patio furniture and other furniture designed for outdoor use shall not constitute a nuisance when kept in any district and in view of adjacent properties or public right-of-ways;

4. Dismantled motor vehicles, motor vehicle bodies, and disassembled parts thereof, disassembled bicycles and bicycle parts, and other mechanical machines or motors or parts thereof when such items are stored, collected, piled or kept and are not stored inside a building in compliance with Sections 10.56.010 and 10.56.020;
5. Carcasses of animals and hides-all carcasses of animals remaining exposed one hour after death, excepting legally caught and tagged game, which shall be twenty-four hours; and all green or salted hides left deposited in any open place;
6. Liquid refuse- all slop, foul or chemically polluted water, liquor or beer washings, all filth, refuse or offal, grease, lard, discharged through drains or spouts or otherwise thrown or deposited in or upon any street, alley, sidewalk, public way, lot, park, public square, public enclosure, or any pond or pool of water;
7. Vegetables or vegetable matters emitting noxious odors. All vegetables, vegetable matters, or other articles that emit or cause an offensive, noxious or disagreeable smell or odor; and any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease carrying pests, animals, or insects, except that the presence of earthworms in a compost pile shall not constitute a nuisance;
8. Any other condition the city council shall deem and declare to be a nuisance.

2-4-3 Abandoned or Junked Vehicles.

(a) Definitions. For the purpose of this section the following terms shall mean:

- 1) **Motor Vehicle** is any vehicle which is self-propelled and designed to travel along the ground and shall include, but not limited to, automobiles, busses, motorbikes, motorcycles, motor scooters, trucks, tractors, farm machinery, construction equipment, go carts, campers, snowmobiles, ATV's, and trailers. For purposes of this chapter, the term, "motor

Vehicle” is also meant to include all boats and personal watercrafts.

- 2) **Junked Motor Vehicle** is any motor vehicle, as defined in this section, or any part thereof, the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned, or discarded.
- (b) No person shall park, store, leave, or permit the parking, storing, or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, inoperative, rusted, junked, or partially dismantled condition, whether attended or not, upon any private property within the city for a period of time in excess of seventy – two (72) hours. The presence of such vehicle or parts thereof, on private property is hereby declared a public nuisance, which shall be abated as such in accordance with the provisions of this section. This section shall not apply to any vehicle enclosed within a building on private property or any vehicle held in connection with a business enterprise, lawfully licensed in the city and properly operated in the appropriate business zone pursuant to the zoning laws of the city, or to any motor vehicle in operable condition specifically adapted or designed for operation on drag strips or raceways, and is in operable condition, or any vehicle retained by the owner for antique collection purposes which has affixed thereto a special license plate for historical cars as provided in SDCL – 32-5-77.
- (c) Whenever it comes to the attention of the Wagner Police Department that any nuisance as defined in this section exists in the City of Wagner, a notice in writing shall be served upon the occupant of the land where the nuisance exists, or in case there is no such occupant, then upon the owner of the property or his agent, notifying them of the existence of the nuisance and requesting its removal in the time specified in this section by a Wagner City Police Officer or a designated agent.
- (d) Upon property notice and opportunity to be heard, the owner of such vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the event of removal and disposition by the city, the owner, or occupant, or both, shall be liable for the expense incurred.
- (e) The Wagner Police Department shall give notice of removal of the junked vehicle or public nuisance to the owner or occupant of the private property where the junked vehicle or public nuisance is located at least five (5) days before the time that compliance with this nuisance ordinance is required. It shall constitute sufficient notice when a copy of said notice or removal is posted in a conspicuous place upon the junked motor vehicle or upon the private property on which the vehicle is located and duplicate copies are sent by regular U.S. Mail to the owner or occupant of the private property at the owner or occupants last known address. If the owner or occupant of the private property where the junked motor vehicle or public notice is located cannot be determined, placing of

the notice on the junked vehicle or public nuisance shall be considered sufficient notice for the purpose of this section. **(AMENDED Ordinance NO. 2015-03, effective date February 11th, 2015)**

- (f) The notice to comply shall contain the request for removal of the junked vehicle or public nuisance within the time specified in Section 2-4-3(e), is amended to include the proper Wagner Municipal Code cite, and shall continue to read, and the notice shall advise that upon failure to comply with the notice to comply, then the city, or its designees, shall undertake such removal of the said junked vehicle or public nuisance, with the cost of the removal of the junked vehicle or public nuisance being either assessed against the real property, or charged through judgment in the courts of this state against the real property owner upon which is found the junked motor vehicle or against the person who is the occupant or owner of the junked motor vehicle or public nuisance, as the city may so elect. **(AMENDED Ordinance NO. 2015-03, effective date February 11th, 2015)**
- (g) Repealed. **(REPEALED Ordinance NO. 2015-03, effective date February 11th, 2015)**
- (h) Repealed. **(REPEALED Ordinance NO. 2015-03, effective date February 11th, 2015)**
- (i) It shall be unlawful for any person to interfere with, hinder, or refuse to allow the city, or its designees, to enter upon private property for the purpose of removing a junked motor vehicle or public nuisance under the provisions of this section. Conviction for a violation of this section shall be a misdemeanor and shall be punishable by a fine of up to \$100.00 per conviction. **(AMENDED Ordinance NO. 2015-03, effective date February 11th, 2015)**
- (j) Within forty-eight (48) hours of the removal of such vehicle, the police department shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property from which the vehicle was removed, that said vehicle has been impounded and stored for violation of this section. The notice shall give the location of where the vehicle is stored and cost incurred by the city for removal.
- (k) Upon removal the vehicle under the provisions of paragraph (i), the title to such vehicle shall be vested in the city, if, after thirty (30) days from the date of such removal, the vehicle remains unclaimed. The proceeds of any such disposal shall first be applied to the costs incurred in the removal of the vehicle with the balance to be deposited to the general fund of the city.
- (l) The notice of sale shall state:
 - (1) The sale is of abandoned property in the possession of the city.

- (2) A description of the vehicle, including make, model, license number, and any other information which will accurately identify the vehicle.
 - (3) The terms of the sale.
 - (4) The date, time, and place of the sale.
- (m) The vehicle shall be sold to the highest and best bidder. At the time of payment of the purchase price, the mayor shall execute a certificate of sale in duplicate, the original of which shall be given to the purchaser and a copy thereof filed with the finance officer of the city. Should the sale for any reason be invalid, the city's liability shall be limited to the return of the purchase price.
 - (n) The owner of any vehicle seized under the provisions of this section may redeem such vehicle at any time after its removal but prior to the sale or destruction thereof upon proof of ownership and payment to the City Finance officer of such sum as it may determine and fix for the actual and reasonable expense of removal and any preliminary sale advertising expenses, any expenses incurred by the police department or any other city department, plus the current per diem storage rate for each vehicle redeemed.
 - (o) Upon the failure of the owner or occupant of property from which abandoned or junked vehicles have been removed by the city to pay the unrecovered expenses incurred by the city in such removal, a lien shall be placed upon the property for the amount of the expenses.

2-4-4 Abandoned Property.

- (a) No person shall abandon or leave or place with intent to abandon in any street, alley, or public place in the city any property of any kind. Further, no person shall abandon or leave or place with intent to abandon any property of any kind on any private property not owned by him. All such abandoned property is hereby declared to be a public nuisance and an obstruction and menace to the public welfare, comfort, safety, and health.
- (b) The city police or designee shall remove or cause the removal of any property abandoned or left or placed in any street, alley, or public place in the city in violation of this section as soon as is reasonably possible.
- (c) It shall be the duty of the city police to take possession of any property abandoned, left or placed on any public or private property in violation of this section, and if the article is believed to have any value, to keep it and make an attempt to find the owner thereof. If the owner is not found, the city police shall retain any such abandoned article and it shall be the duty of the city police to maintain a place for the keeping of any such article until that same shall be

claimed or otherwise disposed of. Abandoned property without apparent value or of only slight value may be forthwith destroyed. The city shall have a lien thereof for the reasonable expense incurred or value and cost of the time and effort necessary in taking, removing, destroying or storing such article, and for the value of the storage and keeping thereof, and may retain possession of any article of value until any and all such liens are paid and discharged.

- (d) If any such article of property has been or is kept for ninety (90) days or more without being claimed and redeemed, the same may be disposed of by the city. If the same shall be of slight value, but of use to the city, it may be kept by the City and used until claimed, and the charges thereby made a lien thereon shall be regarded as a sufficient offset to the value of any such use. If such property shall be of more than slight value it shall be sold by the city ten (10) days after Notice of such sale has been given by one publication in a legal newspaper Published by the city, and the city may be a bidder at such sale. If on such sale An amount is bid in excess of the charges or lien of the city, such excess shall be deposited to the credit of the general fund of the city.

2-4-5 Debris on Public or Private Property.

- (a) **“Debris”** as the term is herein used shall mean any trash, refuse, waste, or dysfunctional article, item, or structure, and any fragments, parts, or scattered remains of something destroyed or damaged, whether of an organic or inorganic nature.
- (b) Debris whether located on public or private property within the City of Wagner, is hereby deemed to be a hazard to health, welfare, and the well-being of the public and therefore is hereby declared to be a public nuisance.
- (c) No person shall allow, permit, or maintain any debris on his or her property within the City of Wagner. Both owner and occupant shall be equally responsible and punishable for any violation hereof.
- (d) Any person in violation of this section shall be notified in writing by the city, or its designees, that he or she is permitting, allowing, or maintaining a nuisance upon real property as described in said notice and that unless abated within five (5) days from the date of such notice, the city shall abate the said nuisance and recover the cost thereof from such person. **(AMENDED Ordinance NO. 2015-03, effective date February 11th, 2015)**
- (e) Any person accused of a violation of this section may contest such violation by demanding in writing a hearing before the Circuit Court Magistrate prior to the expiration of the compliance period. The notice in (d) aforesaid shall generally advise any accused person that he or she has the right to such hearing.

- (f) Notice is sufficient if same is served personally or sent by regular U.S. Mail to the last known address of the owner, and occupant, if any. If the owner cannot be located by personal service or by mailing, the posting of such notice conspicuously on the property upon which the debris is located shall be deemed to constitute sufficient notice to the property owner or occupant. **(AMENDED Ordinance NO. 2015-03, effective date February 11th, 2015)**
- (g) If no hearing is demanded, or is so ordered by the aforesaid court, the person in violation hereof fails to abate the nuisance within the time set for compliance, the city shall remove or cause the abatement thereof and shall have a lien against the real property upon which the nuisance is situated for all costs, expenses, and fees related to such abatement.
- (h) In lieu of the procedure described herein, the costs incurred by the city under this chapter may, in the discretion of the city council, be removed in a civil action against the owner or occupant of the property.

2-4-6 Noxious Matter, Weeds, Unhealthy Vegetation Deemed Nuisances.

- (a) For the purpose of this section:
 - “Noxious matter” means and includes trash, garbage, and all other material which has been strewn about or otherwise apparently abandoned, or of no apparent value, which is unsightly or which may be potentially hazardous as a breeding ground for insects and rodents and other undesirable animals, or which may prove hazardous to individuals using the area upon which these noxious matters exist.
 - “Stabilize” means the taking of reasonable measures to prevent the erosion, future growth of weeds or the prevention of future collection of noxious matter on said area.
 - “Weeds” means and includes all weeds of the kind known as Russian Thistle, Canada Thistle, cocklebur, ragweed, golden rod, burdock, barberry, creeping jennie, quack grass or sunflower, and all other noxious or unhealthy vegetation as defined by the State of South Dakota Weed Board. **(AMENDED Ordinance NO. 2015-03, effective date February 11th, 2015)**
 - “Unhealthy Vegetation” means and includes all weeds and plants declared to be primary and secondary noxious weeds by the state weed board and including all grasses over eight (8) inches in height or which have gone to seed or about to go to seed. This shall not apply to vegetation which is not a primary or secondary noxious weed and is being grown as a crop, livestock pasture, native prairie display garden, wildflower display or other nature area approved by the City Council, as areas requiring natural prairie grass to prevent soil erosion as approved by the City Council. The application of this section shall

be limited with respect to land currently being used for agricultural purposes.

All weeds, unhealthy vegetation and other noxious matter are declared a nuisance and no owner of any lot, place or area within the city, or the agent of such owner of the occupant of such lot, place or area, shall permit on such lot, place or area, any parkway, or upon any sidewalk abutting the same, any weeds, unhealthy vegetation or other noxious matter to grow, lie, or be located thereon.

- (b) It shall be the duty of the occupant, person in charge or owner of any lot in the city to keep such lot free from the aforesaid weeds and vegetation and to cut or treat same at such time as may be necessary to prevent their growth or spread.
- (c) The city may, at the beginning of or during the growing season by public notice to each occupant, person in charge, or owner of any lot, require all such weeds and vegetation upon a lot to be cut and removed within three (3) days after giving notice to said occupant, person in charge, or owner of any lot or real property within the City of Wagner's corporate city limits. Such notice need not be given personally but may be given generally by publication in the City of Wagner's official newspaper. The notice shall provide that each occupant, person in charge, or owner of any lot shall cut and keep cut at all times during the growing season all nuisance weeds and vegetation, and shall further provide that in case of failure to so cut weeds and vegetation, the city will cause the same to be cut and assess the cost thereof as a lien against the real property benefited. One such public notice shall be sufficient for each growing season. **(AMENDED Ordinance NO. 2015-03, effective date February 11th, 2015)**
- (d) The occupant, person in charge, or owner shall within five (5) days after the the publication of such notice and all times subsequent thereto during the growing season as may be necessary cut and keep cut all such weeds and vegetation.
- (e) The city may, at its election, provide notice and opportunity to be heard in the same manner as set forth above in Section (5), provisions (d) through (h) inclusive.
- (f) If the occupant, person in charge or owner of any lot fails to cut such weeds and vegetation upon any such lot as required, the city shall cause such weeds and noxious vegetation to be cut during the growing season and shall the right to enter upon any such lot or parcel of land for this purpose.
- (g) The city finance officer shall cause an account to be kept against each lot of the cost for the cutting of weeds and noxious vegetation during the growing season of each year, and the same shall be certified by the City Finance Officer.
- (g) Any lien against real property authorized herein, or by state law shall be

collectible as a special assessment provided that:

- (1) The City Finance Officer shall certify the costs, fees, and disbursements as accurately and fairly reflecting expenses incurred by the city in abating the nuisances.
- (2) The governing body of the city shall by resolution find and determined that the owner of such real property was provided sufficient notice and opportunity to be heard regarding the claimed nuisance and that the amount assessed against the real property is due and owing.
- (3) The governing body of the city shall by resolution make and file with the City Finance Officer a special assessment roll which specifies the owner(s) name, the real property subject to such assessment, the amount of such assessment, the year of assessment, and the interest due which shall not exceed the rate of interest authorized by statute for post judgment interest.
- (4) Upon the filing of the assessment roll with the City Finance Officer, the governing body shall fix a time and place for the hearing upon the same, not less than twenty (20) days from the date of the filing thereof. The City Finance Officer shall thereof publish a notice of the time and place of hearing in the official newspaper no less than one week prior to the date set for the hearing. The notice shall in general terms describe the expenses for which the special assessment is levied, the date of filing of the assessment roll, the time and place of the hearing thereon, and that the roll will be open for the public inspection at the office of the City Finance Officer and shall refer to the special assessment roll for further particulars.

In addition to the publication of the notice of hearing, the City Finance Officer shall mail a copy, by first class mail, addressed to the owner(s) or occupant(s).

2-4-7 Leasing premises for unlawful purposes.

No person shall knowingly lease or rent to another any house, building, shed, booth, lot or other place or premises or any thereof for use or conduct of gambling activities, prostitution, unlawful sale or distribution of alcoholic beverages, or activities which annoy or injure the health or safety of others.

2-4-8 Premises used for unlawful purposes.

All places used for the unlawful purposes described in section 8.16.060 are declared to be common nuisances and, upon the judgment of the municipal court for violation for any of the offenses so described, the chief of police shall be directed to abate and shut up such place by taking possession of all devices and all other property used in maintaining such nuisance and such personal property so taken shall be forthwith publicly destroyed by such officer.

2-4-9 Open Burning Prohibited. It is declared to be unlawful for any person to openly burn refuse, garbage, rubbish, paper, leaves or all other materials and matter within the City, except where written permission has been granted by the Fire District and notice being provided to the City of Wagner.

2-4-9(a) Manual Discharge or Breach of Propane Tanks Prohibited.

It shall be illegal for any person or entity to manually discharge or breach any propane tank within the City of Wagner; or to salvage or prepare for salvage any propane tank or tanks by the release of liquid or vapor in excess of twenty-five (25) gallons of propane or two hundred and fifty (250) square feet of propane vapor within a twenty-four (24) hour period within the City of Wagner; or to at any time release propane or ethyl mercaptan odorant of any kind or type into the soil or the atmosphere of the City of Wagner in excess of the above quantities within a 24 hour period.

All discharges of propane liquid or vapor within the City of Wagner shall be in accordance with NFPA 58 (National Fire Protection Association—Liquefied petroleum code, and this ordinance.

Any person or business that shall be found to have intentionally violated the terms and conditions of this ordinance shall be guilty of an offense as provided by the Wagner Municipal Code and shall be subject to a fine of up to \$200.00 per tank, per day, for a violation of this ordinance.

2-4-10 Remedies. The remedies against a public nuisance, in addition to those prescribed herein, shall be those prescribed by state law.

2-4-11 Abatement.

- (a) A public nuisance may be abated without civil action by the city or officer authorized thereto by law. Any private person may likewise abate a public nuisance which is specially injurious to him or any private nuisance injurious to him in any manner by removing or, if necessary, destroying that which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice shall be given to him before entering to abate it. The city may defray the cost of abating a public nuisance by taxing the cost thereof by

special assessment against the real property on which the nuisance occurred.

Any act or omission made unlawful or prohibited by any of the foregoing provisions shall be punishable as an offense, notwithstanding the fact that the person in violation thereof shall be subject to abatement proceedings as provided herein, or as State Law may provide.

- (b) Each day said nuisance remains unabated, after notice to abate has been given, shall constitute a separate offense punishable by a fine not to exceed \$100.00 per day.
- (c) Any lien against real property authorized by the foregoing provisions shall be collectible as a special assessment provided that:
 - (1) The City Finance Officer shall certify the costs, fees, and disbursements as accurately and fairly reflecting the actual expenses incurred by the city in abating the nuisance.
 - (2) The governing body of the city shall by resolution find and determine that the owner of such real property was provided sufficient notice and opportunity to be heard regarding the claimed nuisance and that the amount assessed against the real property is due and owing.
 - (3) The governing body of the city shall by resolution make and file with the city auditor/finance officer a special assessment roll which specifies the owner(s) name, the real property subject to such assessment, the amount of such assessment, the year of assessment, and the interest due which shall not exceed that rate of interest authorized by statute for post judgment interest.
 - (4) Upon the filing of the assessment roll with the City Finance Officer, the governing body shall fix a time and place for hearing upon the same, not less than twenty (20) days from the date of the filing thereof. The City Finance Officer shall thereupon publish a notice of the time and place of hearing in the official newspaper one week prior to the date set for the hearing. The notice shall in general terms describe the expenses for which the special assessment is levied, the date of filing of the assessment roll, the time and place of the hearing thereon, and that the roll will be open for public inspection at the office of the City Finance Officer and shall refer to the special assessment roll for further particulars.

In addition to the publication of the notice of hearing, the City Finance Officer shall mail a copy of the notice, by first class mail, addressed to the owner or owners of any property to be assessed for the expenses at his, her or their address as shown by the records of the county assessor. The mailing shall be at least one week prior to the date set for the hearing.

- (5) At the time and place fixed for such hearing, the governing body shall meet to consider the assessment roll and hear any objections thereto. Upon such hearing it may approve, amend, or reject the same.
- (6) If the governing body shall reject the assessment roll, a new one shall be made and filed, and notice thereof shall be given and hearing thereon shall be had as in the first instance.
- (7) If the governing body shall amend the assessment roll, a list of all items of assessment so changed or amended shall be published once at least one week prior to the date upon which the assessment roll, as amended, is to be considered, together with notice of hearing upon such changes or amendments, and notice if such changes or amendments shall be mailed to the owners of property affected thereby in the same manner as provided or notice of hearing on the original assessment.
- (8) After any errors in the assessment roll have been corrected, the governing body by resolution shall approve the same and levy such assessment, describing therein the assessment and the character of the expenses, referring to the dates of the official approval of the assessment roll, and stating that same is immediately due and payable.
- (9) Each item of assessment shall be numbered consecutively by the city auditor/finance officer without regard to date, character of expenses, or description of property. No such number shall be duplicated.
- (10) The City Finance Officer shall provide a permanent record of special assessments to be known as the special tax book in which shall be kept a record of all special assessments, and which tax book shall show the consecutive number of the tax item, the date or dates upon which the same became

or will become due, the name of the person in whom the title to the property rests, as shown by the assessment roll, a brief description of the property, the amount assessed against each lot, the character of the expenses for which the assessment is made, and the date of payment of each assessment thereof which is paid to the city. He shall include in the tax book a suitable index to the real property against which special assessments have been levied.

- (11) Upon the approval of any special assessment roll, the city auditor/finance officer shall forthwith file same in his office and deliver to the county auditor a certified copy of such roll and the resolution approving same, and cause a true copy of such resolution to be published once. There shall also be published with said resolution, a notice stating that the special assessment is due and payable, that any such assessment may be paid without interest to the city finance officer within thirty days after the filing of the roll in the office of the city finance officer stating where such assessments are payable, the due date, the date of filing the assessment roll with the city finance officer and the rate of interest.
- (12) In addition to the publication of notice required above, the City finance officer shall immediately mail to the owner or owners of each lot, parcel or piece of ground as shown by the special assessment roll, a notice giving the amount of the assessment, the date of the filing of the assessment roll with the County Auditor and a statement that the assessment may be paid without interest at the office of the city finance officer within thirty (30) days from the date of filing with the roll in his office; and that after said thirty-day period, the unpaid balance will draw interest at the rate fixed by the governing body from the date of the filing of said assessment roll in the office of the finance officer.
- (13) Any special assessment lawfully levied upon real property assessed pursuant hereto is a continuing lien thereon as against all person except the United States and this State. The lien shall continue from the date of the filing of the certified copy of the assessment roll in the office of the city auditor/finance officer until barred by state law.
- (14) Upon full payment of such special assessment, including all interest due thereon, the city auditor/finance officer shall note such payment in the special tax book, provide a receipt

to the owner or owners of the real property, and shall notify the County Auditor that same has been paid in full. Thereupon, the special assessment lien shall be discharged.

- (d) As an alternative to collection by special assessment as provided above the city may bring an action for the recovery of its costs, fees, expenses, and disbursements in abating the nuisance against the owner or owners of the affected real property in any Court competent to hear the matter and thereby obtain a judgment and judgment lien therefore. This remedy shall be construed as an alternative and additional remedy and not required of the city as a condition of levying a special assessment.

CHAPTER 2-5 OWNERSHIP/USAGE OF ANIMALS

SECTION

- 2-5-1 Definitions
- 2-5-2 Keeping and Maintaining Livestock
- 2-5-3 Animals and Fowl Running at Large
- 2-5-4 Cruelty to Animals
- 2-5-5 Penalty

2-5-1 **Definitions.**

“**Livestock**” shall mean all farm animals including but not limited to cattle, horses, sheep, swine, and goats.

“**Fowl**” shall mean any farm bird including but not limited to chickens, turkeys, geese, and ducks.

2-5-2 **Keeping and Maintaining Livestock.**

A. No person or entity shall be permitted to keep livestock of any kind within the City Limits, except in connection with the buying, selling, or veterinary care of the same, in which event such livestock shall not be kept within the City Limits for more than seventy-two (72) consecutive hours, except as otherwise permitted by this chapter.

B. Any person or entity who, under the provisions of this ordinance is permitted to keep livestock within the city limits, shall keep the premises on which the livestock is situated in a sanitary and healthful condition, and control unpleasant or noxious

orders, files, and other pests thereon, or in accordance with the rules and regulations of the City Council and the State Department of Health.

C. It shall not be a violation of this chapter for animals which are being kept specifically for the purpose of necessary veterinary care; however, animals kept for this purpose must not be allowed to violate any other ordinances of the City of Wagner, specifically including, but not limited to, those relating to insects, odors, etc.

2-5-3 Animals and Fowl Running at Large.

A. No person or entity shall allow any horse, cattle, swine, sheep, goats, or dogs to run at large.

B. No person or entity shall allow any ducks, geese, chickens, or other domestic fowl to run at large.

2-5-4 Cruelty to Animals.

No person or entity shall cruelly or immoderately beat, torture, or injure any animal, nor shall any person or entity willfully or negligently maltreat or abuse or treat or neglect in a cruel or inhumane manner.

2-5-5 Penalty.

A. The punishment for a violation of any section of this ordinance shall be a fine not to exceed \$200.00 per animal for each day that a violation occurs.

B. A violation of any section of this chapter shall be deemed to constitute a nuisance.

**CHAPTER 2-6
LITTER**

SECTION

2-6-1 Definitions

2-6-2 Throwing or Depositing in or Upon Streets, Sidewalks or Public or Private Places

2-6-3 Sweeping into gutters, streets or other public places

2-6-4 Property owner's responsibility to maintain abutting sidewalks and alleys

2-6-5 Uncontainerized litter prohibited

2-6-6 Hauling

2-6-7 Construction sites

2-6-8 Loading or Unloading operations

2-6-9 Distributions of handbills

2-6-10 Violation-Penalty

2-6-1 Definitions.

“Garbage” means put rescible animal and vegetable wastes resulting from the distribution handling, preparation, cooking and consumption of food.

“Handbill” means any printed or written matter, any sample, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any printed, or otherwise reproduced original or copy of any matter of literature.

“Litter” means any quantity of uncontainerized garbage, trash, refuse, rubbish, debris or other waste material including, but not limited to, cans, bottles jars, treated or untreated paper, wrappings, ashes cigarettes, cardboard, rags, yard clippings, leaves, grass, wood glass, crockery, dead animals, scrap metal, salvaged metal and motor vehicle parts.

“Uncontainerized litter” means any litter which is not enclosed within a building or placed securely in a container designed or reasonably adapted for use as a place for storing litter for the purpose of collection for disposal.

2-6-2 Throwing or Depositing in or Upon Streets, Sidewalks or Public or Private Places.

No person shall throw or deposit any litter in or upon any street, sidewalk or other public place or any private property except in public or private containers designed and intended for the collection of litter. Persons placing litter in such containers shall do so in such manner as to prevent its being carried or deposited by the elements upon any street, sidewalk or other public place or private property.

2-6-3 Sweeping Into Gutters, Streets or Other Public Places.

No person shall sweep into or deposit in any gutter, street, or other public place within the city any accumulation of litter from any building or lot or from any public or private sidewalk or driveway.

2-6-4 Property Owner’s Responsibility to Maintain Abutting Sidewalks and Alleys.

Every person owning or occupying property shall keep the sidewalks and alleys abutting such property free of litter.

2-6-5 Uncontainerized Litter Prohibited.

Any person being the owner, tenant or person in control of any private property shall at all times maintain the premises free of uncontainerized litter.

2-6-6 Hauling.

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

2-6-7 Construction Sites.

A. No person being the owner or person in charge of any property upon which a structure is being constructed or demolished shall permit the accumulation of uncontainerized litter upon such property or permit litter therefrom to become blown or scattered upon such property or any other property or public place.

- B.** No person being the owner of any property upon which a structure is being constructed or demolished shall fail to provide adequate containers to hold all litter produced upon such property or otherwise appearing thereon.

2-6-8 Loading and Unloading Operations.

No person owning or having charge of any premises upon which objects or materials are being loaded upon or unloaded from any vehicle or other device for conveyance shall permit any uncontainerized litter resulting from such loading or unloading to accumulate upon such property or any other property of public place.

2-6-9 Distribution of Handbills.

No person shall throw or deposit any handbill in or upon any street, sidewalk or public place, nor shall any person throw, deposit or place and handbill upon any vehicle without the specific and immediate consent of the person having charge of such vehicle. This section shall not prohibit the handing out of handbills to persons willing to receive such handbill.

2-6-10 Violations – Penalty.

Violation of any provision of this chapter may be punishable by not more than thirty (30) days in jail or a fine of not more than one hundred (\$100.00) dollars, or both, or as allowed under applicable State or Federal Law.

**CHAPTER 3
COMMERCIAL REGULATION**

SECTION

- 3-1-1 License; Unlawful to do Business Without
- 3-1-2 License; How Obtained
- 3-1-3 Rates of License and Special Requirements
- 3-1-4 License required for dog
- 3-1-5 License required for auction store
- 3-1-6 License required for transient merchant
- 3-1-7 License required for peddler or hawker
- 3-1-8 License required for junk dealer; regulations
- 3-1-9 License required for building mover
- 3-1-10 Penalty for violation
- 3-1-11 License; Expiration
- 3-1-12 Finance Officer To Keep Record
- 3-1-13 Issuance of License
- 3-1-14 Revocation; Notice of; Hearing
- 3-1-15 Hearing on Revocation/ Suspension

3-1-1 License; Unlawful to do Business Without.

It shall be unlawful for any person, persons, firm or corporation to engage in any trade, business or occupation within the corporate limits of the City for which a

license is provided for in this title, without first having obtained such license as hereinafter provided. The provisions of this chapter shall not apply to any public officer, who may in pursuance of legal process sell at public auction, any property of any kind whatsoever, nor shall the provisions of this chapter include or apply to persons engaged in the sale of farm products raised by themselves only.

3-1-2 License; How Obtained.

Any person, persons, firms or corporation wishing to obtain a license to engage in any trade, business or occupation, as herein provided, shall pay to the City Finance Officer the amount provided by this Title for the license applied for, who shall issue a receipt therefore, and shall make written application to the City Council. The application shall state the names of the person, post office address, business, calling or vocation in which such person desires to engage, the length of time for which said license is wanted, and the particular place at which said license is to be used.

3-1-3 Rates of License and special requirements.

Fees and special requirements for the various licenses provided in this Chapter are fixed as follows:

DOGS---

See Chapter 2 of this Code

AUCTION STORES---

License Fee: The owner, manager or person in charge of any auction store, or business place where public auctions are conducted shall pay a license fee of \$10.00 per day, \$50.00 per week, or \$200.00 per month, provided that this shall not apply to regularly established merchants' occasional sales at their places of business or employing an auctioneer for such occasional sales.

Special requirements: None. May be issued by City Auditor alone.

TRANSIENT MERCHANTS---

License Fee: Transient merchants shall pay a license fee of \$50.00 per day, \$175.00 per week, or \$250 per year.

Special requirements: None. May be issued by City Finance Officer alone.

PEDDLER OR HAWKER---

License Fee: A peddler or hawker shall pay a license fee of \$2.00 per day.

Special requirements: The City Auditor shall have the right to examine the credentials of any person, firm or corporation making application to sell magazine subscriptions, books, wearing apparel, merchandise, etc. by taking orders or making delivery house to house, but this shall not apply to traveling men dealing only with business establishments in this city.

THEATRES---

License Fee: The license fee is established at \$20.00 per year.

Special Requirements: License shall be issued only by approval of the application by the City Council, and shall run from the first day of January of each year. The fee shall not be pro-rated for part of a year.

JUNK DEALERS---

License Fee: The license fee is fixed at \$10.00 per year.

Special Requirements: None. The license is to be granted only upon approval of the application by the City Council, and shall run from the first day of January of each year. The fee shall not be pro-rated for part of a year.

BUILDING MOVER---

License Fee: License fee established at \$5.00 per year.

See Chapter 3-4 of this Code for details.

(Amended May 04; Ordinance #No. 2004-01)

3-1-4 License required for dog.

See Chapter 2 of the Municipal Code.

3-1-5 License required for auction store.

It shall be unlawful to operate an auction store within the territorial limits of the City of Wagner without first having obtained a license therefore as provided in Section 3-1-3.

3-1-6 License required for transient merchant. For the purpose of this section, a transient merchant is defined to be any person, firm or corporation who shall bring any stock of goods, wares or merchandise into the city of Wagner and shall engage in the sale of such stock which is not intended to be replenished by the purchase of new goods at its normal value, or shall sell the same from a truck, trailer, wagon, or other vehicle, or from a railway cart or some temporary building or place; provided, however, that this section shall not apply to any person retailing any produce, goods, wares or merchandise which are either raised or manufactured by him. It shall be unlawful for any person, firm or corporation coming within the meaning of this section to engage in the business of transient merchant within the territorial limits of the City of Wagner without first obtaining a license as provided in Section 3-1-3 of this Code.

3-1-7 License required for peddlers or hawker.

For the purpose of this section, a peddler is defined to be any person who sells or solicits sales of any goods, wares or merchandise, books, pictures, or any other articles of Commerce, inclusive of magazines, from house to house, or upon the streets in the City. Provided that this section shall not be construed to include vending machines being operated by a business establishment in this city, nor shall it apply to any person retailing any produce, goods, wares or merchandise which are either raised or manufactured by him. A peddler or hawker, as herein defined shall first obtain a license pursuant to Section 3-1-3, and a violation of this section is

declared to be unlawful.

3-1-8 License required for junk dealers; regulations.

It shall be unlawful for any person to engage in the business of buying and selling old iron, junk or second hand goods, without first having obtained a license as required in Section 3-1-3 of this Code. For the purpose of this section, the city specifically reserves its territorial police jurisdiction. Such a business shall be subject to the following specific regulations, the violation of anyone of which is hereby declared to be unlawful, to-wit: (1) All deposit of junk, junked automobiles, used equipment which is being junked, etc. shall be screened from public view; (2) bones and hides shall be kept in a fully enclosed structure; and (3) all dealers in junk or second hand goods within said city and its police jurisdiction are required to keep a book, which shall be open to the inspection of the public, in which shall be entered by such dealer the name of every person from whom he shall have made a purchase, the date thereof and the amount paid therefore, and a description of the article purchased; and (4) the purchase of old iron and second hand articles is prohibited from minors without the written consent of a parent or guardian of said minor, which consents shall be securely fastened in the back of such book for public inspection.

3-1-9 License required for building mover. See Section 3-4-1 of this Code.

3-1-10 Penalty for Violation.

Any person violating any provision of this Chapter which has been declared unlawful, or any regulation hereof, or fails to obtain a license where such license is required, shall upon a first conviction be deemed guilty of a violation, as hereinafter defined, and upon a second or subsequent offense shall be deemed guilty of a Misdemeanor, as hereinafter defined, and shall be punishable as in this Code provided.

3-1-11 License; Expiration.

All annual licenses granted under the provisions of this chapter shall expire on the 31st day of December next following the granting thereof, except as in this Chapter otherwise provided, and shall not be granted for any sum less than the annual rate, and there shall be no rebate made on the termination of said calling, vocation or kind for which said license was issued.

3-1-12 Finance Officer to Keep Record.

The City Finance Officer shall keep a record of all licenses issued by said City Council stating when and to whom issued, for what purpose and for what length of time issued, and the amount of money paid for said license, and the place where said business is to be carried on.

3-1-13 Issuance of License.

Except as otherwise provided, all licenses shall be issued by the City Finance Officer, if the issuance of the license be approved by the licensing authority and the applicant have complied with all requirements for issuance of the license. Unless otherwise

provided, all licenses shall be signed by the City Finance Officer and shall have affixed thereto the official seal of the City.

3-1-14 Revocation; Notice of; Hearing.

The Council shall have power to cancel any license issued by the City, for failure of the licensee to comply with any ordinance or regulation of the City or State Law respecting such license or the manner of exercise thereof or for other good cause, after hearing upon notice to the licenses. Notice of hearing before the Council for the revocation of any license shall be given by mailing to said licensee by registered mail a notice of said hearing upon said licensee at least one week prior to the time set for said hearing.

3-1-15 Hearing on Revocation/Suspension.

At the hearing, the City Council shall, after reviewing such written or oral evidence that the licensee and city wish to present, decide whether or not to revoke or suspend the license. The revocation or suspension may be subject to such conditions as may be warranted by the evidence presented.

**CHAPTER 3-2
SALES OF ALCOHOLIC BEVERAGES**

SECTION

3-2-1 Definitions

3-2-2 Regulating Licenses

3-2-3 Purchase of Malt Beverages

3-2-4 Jurisdiction

3-2-5 Public Consumption of Possession

3-2-6 On Sale Liquor Operating Agreement

3-2-7 Authority

3-2-8 Controlling Law

3-2-8(a) Authorized Time to Sell Off-Sale Alcoholic Beverages.

3-2-8(b) Authorizing Special Alcoholic Beverage License Issued in Conjunction with Special Events.

3-2-9 Fee for Video Lottery Machines on Premises

3-2-1 Definitions.

As set out in SDCL 35-1-1, the terms used in this Chapter, unless the context otherwise plainly required, shall mean:

- (1) "Alcoholic Beverage", any distilled spirits, wine and malt beverages as defined in this title;
- (2) "Bulk Container", any package, or any container within which container are one or more packages;
- (3) "Carrier", a person who for hire transports passengers and who sells or furnishes to passengers for consumption alcoholic beverages aboard any means of conveyance;

- (3A) “Cider”, any alcoholic beverage obtained by the fermentation of the juice of apples that contains not less than one-half of one percent of alcohol by volume and not more than ten percent of alcohol by weight, including flavored, sparkling, or carbonated cider;
- (4) “Department”, the department of revenue of the State of South Dakota;
- (5) “Dispenser”, a duly licensed physician, dentist, veterinarian, osteopath, podiatrist, chiropractor, or pharmacist; or a druggist, sanitarium, hospital, clinic, educational institution, industrial company, or industrial corporation who purchases alcohol for scientific and medicinal purposes only;
- (6) “Distilled spirits”, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use containing not less than one-half of one percent of alcohol by weight;
- (7) “Distiller”, any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending, or bottling of distilled spirits;
- (8) “Malt beverage”, a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by weight;
- (9) “Manufactured”, any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any establishment for the brewing, production, bottling, or blending of malt beverages or wine;
- (10) “Minibar”, any closed container, either refrigerated or nonrefrigerated, access to the interior of which is restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or controlled by the licensee at all times;
- (11) “Municipality”, any incorporated city or town, and any unincorporated platted town having a United States Post Office, provided that the withdrawal of a United States Post Office from any of the herein described municipalities shall not affect the right of established liquor licenses to be continued, renewed or transferred; and shall not prevent the owner or bona fide lessee of the licensed premises from receiving a renewal or reissuance of such license;
- (12) “Off-Sale”, the sale of any alcoholic beverage, for consumption off the premises where sold;
- (13) “On- Sale”, the sale of any alcoholic beverage for consumption only upon the premises where sold;
- (14) “On-Sale Dealer”, any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold;
- (15) “Package”, the bottle or immediate container of any alcoholic beverage;
- (16) “Package Dealer”, any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for

- consumption off the premises where sold;
- (17) “Population”, number of inhabitants as determined as determined by the last preceding federal census;
 - (18) “Retail License”, an on or off-sale license issued under the provisions of this title;
 - (19) “Retailer”, or “Retail Dealer”, any person who sells alcoholic beverages for other than resale;
 - (20) “Sale”, the transfer, for a consideration, of title to any alcoholic beverage;
 - (21) “Secretary”, the Secretary of Revenue of the State of South Dakota;
 - (22) “Solicitor” any person employed by a licensed wholesaler within this state, or by any distiller or manufacturer within or without this state, who contacts a wholesaler or retail dealer within this state for the purpose of selling, promoting, or advertising alcoholic beverages or for any other reason connected with the alcoholic beverage industry but shall not include employees of wholesaler or transporter licensees who only deliver such beverages;
 - (23) “Transportation Company”, or “Transporter”, any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverages, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside the state;
 - (24) “Wholesaler”, any person who sells alcoholic beverages to retailers for resale;
 - (25) “Wine”, any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent of alcohol by weight but not more than twenty-four percent of alcohol by weight.
- SOURCE:SDCL 35-1-1

3-2-2 Regulating Licensees.

This ordinance shall regulate the transaction of business involving alcoholic beverages by licensees who purchase the same from the Municipal Liquor Store pursuant to the provisions of SDCL 35-4-13.1 (C 211 Laws of 1971) as amended.

(a) Purpose

The purpose of this ordinance is to implement the provisions of Chapter 211, Laws of 1971 amending Title 35 of the South Dakota Compiled laws and to provide for a classification of distilled spirit establishments in the said municipality which shall be permitted to operate therein through the purchase of alcoholic beverages from the municipal off-sale establishment.

(b) Classification of Fees

The following classifications and fees are established for certain on sale dealers in distilled spirits, wines and malt beverages who, pursuant to SDCL 35-4-13.1, are required to purchase alcoholic beverages for resale from the municipal off-sale establishment.

- (1) Club- Previously licensed as a Class M licensee under SDCL 35-4-2 (13) and now authorized by SDCL 35-41-13.1 and having the

facilities referred to therein \$800.00.

(c) **Purchase of Alcoholic Beverages**

Each licensee classified under this ordinance and pursuant to SDCL 35-4-13.1 (Chapter 211, Laws of 1971), as amended, shall buy its alcoholic beverages from the municipal off-sale establishment and shall be subject to all provisions of Title 35, SDCL, relating to the operation of an on-sale licensee. Alcoholic beverages, excluding malt beverages, will be purchased by such licensee at 15 percent over and above actual costs, including costs of transportation. All other vendors of alcoholic beverages acting under an operating agreement with the City of Wagner shall purchase their alcoholic beverages from the municipal off-sale establishment, and shall be subject to all provisions of Title 35, SDCL, relating to the operation of an on-sale licensee. Alcoholic beverages, excluding malt beverages, will be purchased by such parties at 15 percent over and above actual costs, including costs of transportation.

3-2-3 Purchase of Malt Beverages.

All malt beverage Licensees within the jurisdiction of the City of Wagner, Charles-Mix County, South Dakota are required to purchase all of their Malt Beverages from the City of Wagner's Municipal Liquor Store, pursuant to SDCL 35-4-60.2, as amended by HB 1035 and to SDCL Title 35 as amended.

All malt beverage licensees within the jurisdiction of the City of Wagner, Charles-Mix County, South Dakota, shall purchase the malt beverage it sells from the Wagner Municipal Liquor Store.

The cost of malt beverages sold by the Wagner Municipal Liquor Store to said malt beverage licensees shall be the City of Wagner's actual cost, plus 5%.

3-2-4 Jurisdiction.

The City of Wagner hereby extends its city territorial limits one (1) mile beyond existing city territorial limits of the City of Wagner, pursuant to SDCL 35-3-1, and any acts amendatory thereto, for the purposes of police supervision and enforcement of the provisions of Title 35 of the South Dakota Codified Laws, 1977 Revision, and any acts amendatory thereto.

This ordinance shall empower the City of Wagner to police, supervise and enforce its municipal ordinances dealing with the sale, use and possession of alcoholic and low-point beer beverages within the one (1) mile extraterritorial jurisdictional area herein provided for.

3-2-5 Public Consumption of Possession.

It shall be unlawful for any person to consume or have in his possession an open bottle or can of alcoholic beverage as the same is defined in Title 35 of the South Dakota Codified Laws of 1967, as amended, upon any public street or alley either within or without a motor vehicle within the City Limits or upon any public right-of-way or highway within one (1) mile of the City Limits of Wagner, Charles-Mix County, South Dakota.

Any person who shall violate any Section of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not exceeding two hundred dollars (\$200.00) or by imprisonment not exceeding thirty (30) days in jail or by both such fine and imprisonment.

3-2-6 On Sale Liquor Operating Agreement.

The City may set the terms and conditions for, and enter into, on sale operating agreements with parties or entities of its choosing, pursuant to SDCL Title 35-4 and SDCL Title 35 as amended.

3-2-7 Authority.

The City of Wagner shall have the authority granted it by its citizens and the authority granted it under SDCL in relation to any activities or policies that it may engage in with relation to alcoholic beverages or the sale thereof.

3-2-8 Controlling Law.

The provisions set forth in SDCL Title 35 shall be deemed to be in effect in addition to the provisions set forth in this Code.

3-2-8 (a) Authorize Time to Sell Off-Sale Alcoholic Beverages. (See Ord. No. 2012-02)

To authorize and allow on and off sale alcoholic beverage license holders to sell on and off sale alcoholic beverages on any day of the year within the corporate limits of the City of Wagner, between the hours of 7:00 o'clock A.M. and 2:00 o'clock a.m.

(Added June 5, 2006; Ordinance No. 2006-01)

(Ordinance No. 2006-01 repealed in 2012)

(Added May 8th, 2012; Ordinance No. 2012-02)

(Added July 2nd, 2019; Ordinance No. 2019-02)

3-2-8 (b) Authorizing Special Alcoholic Beverage Licenses Issued in Conjunction with Special Events.

Non-profit Organizations. Non-profit Organizations within the City of Wagner may obtain a special event alcoholic beverage license for property that said non-profit owns, or club rooms in which they hold their meetings, for the fee of \$100.00.

Private Organizations, Entities or Persons. All private organizations, entities or persons requesting and applying for a special event alcoholic beverage license, special one day malt beverage license, or special one day liquor license must hold their special event in either a licensed on-sale licensee's establishment within the City of Wagner, the Wagner National Guard Armory, or the American Legion Hall, and the fee for said special event alcoholic beverage license will be the sum of \$100.00.

Publication of Applications to be Approved by Finance Officer. All applications for a special event alcoholic beverage license may be approved by the Finance Officer and immediately published to set the date for public hearing by the City Council.

Penalty. Any recipient of a special event alcoholic beverage license that shall be found to not have abided by the terms and conditions of this ordinance shall be guilty of an offense as provided by the Wagner Municipal Code and shall be subject to a fine of up to \$200.00.

(Added July 3rd, 2012, Ordinance No. 2012-05)

(Repealed and Recodified March 2nd, 2016, Ordinance No. 2016-02)

3-2-9 Fee for Video Lottery Machines on Premises.

License

For the purpose of this additional license fee, any premises located in the City of Wagner that is licensed to sell alcoholic beverages directly from the State of South Dakota, or is operating under an On Sale Operating Liquor Management Agreement in accordance with a municipal on-sale license is deemed to be licensed for on-sale, airport on-sale, convention facility on-sale, on-sale Sunday wine, or malt beverage, intoxication beverage sales for the purposes herein.

Fee

The fee paid for the privilege of locating video lottery machines on any licensed premises shall be fifty dollars for each video lottery machine in the licensed premises. The fee is in addition to any alcoholic beverage licensing fee or video lottery establishment license fee. The City of Wagner may not impose this additional fee on more than one license per location.

Payment of Fee

The video lottery machine fee shall be payable to the City of Wagner by the person holding the license by presenting a signed statement, to the City Finance Officer, giving the location of the licensed premises and the number of video lottery machines located thereon, along with payment of the amount so required. Said payment shall be made not later than July 1 annually. If one or more video lottery machines are added to a licensed premises after July 1, of any given year, the person holding the license shall forthwith notify the City Finance Office of the addition and payment shall be made thereon. If any video lottery machine is removed from said premises no refund of this fee shall be made. The fee shall be deposited by the City Finance Officer into the general fund of the City of Wagner.

CHAPTER 3-3 LOCAL TAXATION

SECTION

- 3-3-1 Purpose
- 3-3-2 Effective Date and Enactment of Tax
- 3-3-3 Use Tax
- 3-3-4 Collection
- 3-3-5 Interpretation
- 3-3-6 Penalty
- 3-3-7 Separability

3-3-1 Purpose.

The purpose of this ordinance is to provide additional needed revenue for the Municipality of Wagner, Charles Mix County, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

3-3-2 Effective Date and Enactment of Tax.

From and after the first day of January, 2006, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by two percent (2%) on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Wagner, Charles Mix County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

3-3-3 Use Tax.

In addition there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchased from and after the first of January 2006, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL 10-46, and acts amendatory thereto.

3-3-4 Collection.

Such tax is levied pursuant to authorization granted by SDCL 10-52 and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue and Regulation of the State of South Dakota shall lawfully prescribe.

3-3-5 Interpretation.

It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto and the South Dakota Use Tax, SDCL 10-46 and acts amendatory hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

3-3-6 Penalty.

Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$200 or imprisoned in the municipal jail for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

3-3-7 Separability..

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

(Amended September 3, 2003; Ordinance No. 349)

(Amended June 7, 2004; Ordinance No. 2004-02)

(Amended March 7, 2005; Ordinance No. 2005-01)

(Amended September 27, 2005; Ordinance No. 2005-03)

**CHAPTER 3-4
MOVING OF BUILDINGS**

SECTION

- 3-4-1 License Required; Exceptions
- 3-4-2 License Application; Fees
- 3-4-3 Bond Required
- 3-4-4 Protection of Streets
- 3-4-5 Permit to Move Buildings
- 3-4-6 Time Limit

3-4-1 License Required; Exceptions.

No person, except a licensed building mover, shall remove, or move from one lot to another, any building or part of a building, within the City limits. Before engaging in this occupation, every person shall annually obtain a license as herein provided. This section shall not apply to the moving of a building within the confines of a lot or contiguous lots when it is not necessary to move the same over public property or public streets, or property belonging to another person.

3-4-2 License Application; Fees.

Any person who wants a license shall make written application to the City Council, through the Finance Officer. When the Council is satisfied that the applicant is able to move buildings with a minimum of damage to persons or property, it shall approve the application. The fee for a license shall be \$50.00 per year.

Application is to be submitted to the City Council, and it shall be accompanied with a bond of the applicant, with two (2) good and sufficient sureties or the surety of a surety company authorized to do business in this state, running to the City of Wagner, that the applicant will in pursuing the business of building-mover, conform, with such regulations as may be established by the City Council, that he will promptly repair and make good to the satisfaction of the Street Commissioner any and all damage to any pavement, sidewalk, curb, crosswalk, hydrant, street or public building, and that he will indemnify and keep harmless said city against all liability or damages, costs or expenses arising or which may arise in favor of any person by reason of any negligence or misconduct on his part or on the part of his servants or employees in connection with the use of any street or public ground for that purpose. See also Section 3-4-3.

Such license shall be issued by the City Finance Officer, upon approval of the application by the City Council, and shall expire in one year from date of issuance.

The city shall not issue such permit if in their judgment the proposed new location of the structure would seriously increase the fire hazard to the surrounding buildings, or if moving the building or structure will or probably will result in unreasonable damage to streets, trees, or other property along the over which such building or structure is proposed to be moved.

3-4-3 Bond Required.

Any applicant for such a license shall file a bond with the Finance Officer guaranteeing that:

1. He will promptly repair any damage to public streets, alleys, sidewalks, buildings, utility fixtures, or any other public or private property, and
2. He will indemnify and hold harmless the city against any liability for damages, costs or expenses, rising, or which may arise in favor of any person by reason of any negligence on his part, or on account of his employees or agents in connection with the moving of any building or the use of any public street or ground for that purpose.

The amount of the bond shall be fixed by the City Council. Said bond shall be in an amount to assure that any damage to City property or adjoining property shall be repaid. The moving of any building or structure with the City of Wagner shall be done in such fashion so as to avoid damage to the streets, the adjacent parking, the

trees or shrubs along such streets, the property of any municipal utility or the property of any person. After the building or structure has been moved from its location, the property shall be reclaimed to such a condition so that same does not pose a danger to the public at large.

3-4-4 Protection of Streets.

Any person moving buildings over public streets is responsible for protecting the streets, alleys, or sidewalks by the use of planks or other suitable materials.

3-4-5 Permit to Move Buildings.

Before any person may move a building or buildings over any public street or grounds and not covered in the exception contained in 3-4-1 of this Code, he must secure a permit to do so by the Council. A written application describing the route over which the building is to be moved and the time it will take to do so shall be submitted, through the Finance Officer, to the Council. Before the permit may be issued by the Finance Officer, the applicant shall pay a fee for the permit, to be determined by the Council of up to 3% of assessed.

3-4-6 Time Limit.

No building or any part of a building shall be allowed to stand still in any public street or on any public ground in the City for more than twenty-four (24) consecutive hours.

**CHAPTER 3-5
MISCELLANEOUS PROVISIONS**

SECTION

3-5-1 Regulation on using Debris as Fill

3-5-2 Completion of Infrastructure Required Prior to Dedication

3-5-1 Regulation on using Debris as Fill.

For the purpose of this Ordinance, the word Debris shall refer to and mean: rock, asphalt, concrete, wood, and/or metals.

No residential or commercial landowner or occupier shall allow or cause debris to be permanently placed upon any real property located in the City of Wagner. Any fill materials used by any landowner must consist of sand, gravel or dirt.

Any residential or commercial landowner or occupier determined to be in violation of this Section shall be fined in the amount of two-hundred dollars (\$200.00); each day that said debris occupies the above-described real property shall constitute a new and separate offense subject to the aforementioned penalty.

3-5-2 Completion of Infrastructure Required Prior to Dedication.

Any and all real property developments, offered as additions to the City of Wagner, be, prior to the City's acceptance of said real property developments, platted showing

any and all streets set forth therein, and that any streets so platted shall be constructed with curb and gutter and in such manner and grade as required by the ordinances of the City of Wagner, and that sewer and water lines be in place, all before being accepted by the City of Wagner, South Dakota.

CHAPTER 3-6 MEDICAL CANNABIS LICENSING

SECTION

3-6 Medical Cannabis Licensing

- 3-6-1 Purpose and Intent
- 3-6-2 Definitions
- 3-6-3 License Required
- 3-6-4 License Application
- 3-6-5 Issuance of License
- 3-6-6 City Neutrality as to Applicants
- 3-6-7 Number of Cannabis Dispensaries
- 3-6-8 Expiration of License and Renewal
- 3-6-9 Suspension
- 3-6-10 Revocation
- 3-6-11 Suspension and Revocation Process
- 3-6-12 Appeal
- 3-6-13 Licenses Not Transferrable
- 3-6-14 Hours of Operation For Dispensaries
- 3-6-15 Liability For Violations
- 3-6-16 Penalties
- 3-6-17 Severability

3-6-1 PURPOSE AND INTENT

The City Council of the City of Wagner enacts the following licensing ordinance in order to ensure that cannabis establishments within the City, to include its municipalities, operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

3-6-2 DEFINITIONS

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

Cannabis (or Marijuana): 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. 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: in addition to the definition in SDCL 34-20G-1, this term is further 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: in addition to the definition in SDCL 34-20G-1, this term is further 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: cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Cannabis Product Manufacturing Facility: in addition to the definition in SDCL 34-20G-1, this term is further 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: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

Department: the South Dakota Department of Health

3-6-3 LICENSE REQUIRED

- (a) No cannabis establishment may be located or operate within the City, without the appropriate valid and current cannabis establishment license issued by the City pursuant to this article. A violation of this provision is subject to the general penalty provision in Chapter 182.16. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate within the City, to include its municipalities, without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in

182.16. Each day of the violation constitutes a separate offense.

3-6-4 LICENSE APPLICATION

- (a) An application for a cannabis establishment license must be made on a form provided by the City. No other application form will be considered.
- (b) The applicant must submit the following:
 - 1. Application fee of \$5,000. The City will not reimburse the fee for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
 - 2. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective cannabis establishment;
 - ii. The physical address of the prospective cannabis establishment that meets the zoning requirements in General Commercial District (C-1), as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.
 - iii. The name, address, and birth date of each principal officer, owner, and member of the proposed cannabis establishment.
 - iv. A sworn statement that no principal officer, owner, or City member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
 - v. Any additional information requested by the City.

3-6-5 ISSUANCE OF LICENSE

- (a) The City will issue a license unless:
 - 1. The applicant has made a false statement on the application or submits false records or documentation; or
 - 2. Any owners, principal officer, or City member of the applicant is under the age of twenty-one (21) years; or
 - 3. Any owner, principal officer, or City member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction;
 - 4. The proposed location does not meet the applicable zoning requirements under General Commercial District (C-1);

5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
 6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
 7. Any owner, principal officer, or City member of the applicant has had a cannabis establishment license revoked by the City or a registration certificate revoked by the state; or
 8. An applicant, or an owner, principal officer, or City member thereof, is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
 9. The applicant will not be operating the business for which the license would be issued.
- (b) In the case of an application for a cannabis dispensary license, the City will reject the application if the limit on the number of cannabis dispensaries has been reached.
- (c) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

3-6-6 CITY NEUTRALITY AS TO APPLICANTS

- (a) Upon request from the Department as to the City's preference of applicants, the City will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the City will abstain from endorsing any application as beneficial to the community.

3-6-7 NUMBER OF CANNABIS DISPENSARIES

- (a) No more than one (1) cannabis dispensary shall be allowed to operate within the City, at any time.

3-6-8 EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license expires one (1) year from the date of issuance and may be renewed only by making application as provided in Section 182.04. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (b) The renewal fee is \$5,000. The City will not reimburse the fee for applicants who fail to obtain a renewal of their registration certificate from the Department.

(c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the City may order closure of the cannabis establishment.

(d) If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

3-6-9 SUSPENSION

(a) A license may be suspended if the license holder or an employee or agent of the license holder:

1. Violates or is otherwise not in compliance with any section of this article.
2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.

(b) A license may be suspended if the license holder has its Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.

(c) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

3-6-10 REVOCATION

(a) A license may be revoked if the license is suspended under Section 182.10 and the cause for the suspension is not remedied.

(b) A license may be revoked if the license is subject to suspension under Section 182.10 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.

(c) A license is subject to revocation if a license holder or employee of a license holder:

1. Gave false or misleading information in the material submitted during the application process;
2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
3. Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;

4. Repeated violations of Section 182.11;
5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
6. A license holder, or an owner, principal officer, or City member thereof, is delinquent in payment to the City or State for any taxes or fees related to the cannabis establishment;
7. A license holder, or an owner, principal officers, or City member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G; or
8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
9. The license holder allows a public nuisance to continue after notice from the City.

3-6-11 SUSPENSION AND REVOCATION PROCESS

- (a) The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the City's intention to suspend or revoke the license. The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested to the physical address of the cannabis establishment.
- (b) If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Board President, Finance Officer and Sheriff.
- (c) A suspension will be for thirty (30) days and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises its rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- (d) A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- (e) The license holder who has had the license revoked may not be issued any cannabis establishment license for one (1) year from the date the revocation became effective.

3-6-12 APPEAL

An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the City by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City of Wagner, 60 S Main Avenue, Wagner, SD 57380. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

3-6-13 LICENSES NOT TRANSFERRABLE

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.

3-6-14 HOURS OF OPERATION FOR DISPENSARIES

Cannabis dispensary may operate between the hours of 9:00 AM and 5:00 PM, Monday-Friday and 9:00 AM and 12:00 PM Saturdays.

No medical cannabis establishment shall be permitted to operate on Federal holidays, Sundays, Christmas Day, and Good Friday.

3-6-15 LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.

3-6-16 PENALTIES

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

3-6-17 SEVERABILITY

The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application. **(Ordinance #2021-05 added November 9th, 2021)**

**CHAPTER 4-1
STREETS AND TRAFFIC**

SECTION

- 4-1-1 Definition
- 4-1-2 Speed Limits
- 4-1-3 Vehicle Brakes
 - 4-1-3 (a) Excessive Noises and the Use of Dynamic Braking Devices
- 4-1-4 Motor Vehicle Lights, Horn, Mufflers, and Turn Signals
- 4-1-5 Emergency Vehicles Right of Way
- 4-1-6 Fire Hydrants; Stopping; Traffic
- 4-1-7 General Traffic Rules
- 4-1-8 Traffic Regulations
- 4-1-9 Driving Permits Required
- 4-1-10 License Plates Required
- 4-1-11 Parking Provisions
- 4-1-12 Towing of Vehicles

4-1-1 Definition.

“Motor Vehicle” shall mean an automobile, truck, motorcycle, or other self-propelled vehicle designed primarily to transport persons or property, or any other licensed vehicle, trailer, farm implement, All Terrain Vehicle “ATV” over public streets or highways.

4-1-2 Speed Limits.

No person or persons shall run, use or operate any motor vehicle upon the streets of said City at a rate greater than is reasonable and proper, having due regard to the traffic and use of the street, or so as to endanger the life, limb or property of any person, nor in any event at a greater rate of speed than twenty (20) miles per hour, unless otherwise posted.

4-1-3 Vehicle Brakes.

No person shall use, run, or operate any motor vehicle upon the streets of the City of Wagner unless such vehicle shall be provided with adequate brakes in good working order sufficient to control such vehicle at all times when the same is in use.

4-1-3 (a) Excess Noises and the Use of Dynamic Braking Devices.

Excessive Noises. It shall be unlawful for any person or entity to willfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood, or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

Standards. The standards which may be considered in determining whether a violation of the provisions of this section exists may include, but are not limited to, the following:

1. The level of the noise;
2. Whether the nature of the noise is usual or unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level and intensity of the background noise, if any;
5. The proximity of the noise to residential sleeping facilities;
6. The nature and zoning of the area within which the noise emanates;
7. The density of the inhabitation of the area within which the noise emanates;
8. The time of the day or night the noise occurs;
9. The duration of the noise; and,
10. Whether the noise is recurrent, intermittent, or constant.

Dynamic Braking Device. It shall be unlawful to operate a dynamic braking device (commonly referred to as Jacobs Brake) on any motor vehicle, except to avert imminent danger, within the City limits of the City of Wagner, SD. This device converts the internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.

Penalty. Any person or entity that shall be found to have violated the terms of this ordinance by either causing excessive noises, or by using a dynamic braking system, within the city limits of Wagner, SD shall be guilty of an offense as provided by the Wagner Municipal Code and shall be subject to a fine of \$200.00.

(Added, May 3rd, 2016, Ordinance No. 2016-03)

4-1-4 Motor Vehicle Lights, Horns, Mufflers, and Turn Signals.

All motor vehicles operated upon the streets and roads within the City of Wagner shall have proper lights, horns, and turn signals as required by Title 35 of the South Dakota Codified Laws.

4-1-5 Emergency Vehicles Right of Way.

Any ambulance, physician's automobile, police car, fire truck, or those volunteer's vehicle responding to a call shall have the rights provided for in SDCL 32-31-1 et. seq. of way over any other vehicle upon any of the streets of the City.

4-1-6 Fire Hydrants; Stopping; Traffic.

No person driving or operating any vehicle in the City shall stop the same or permit it to remain parked upon any of the streets of the City in such a way as to interfere with the traffic of said street nor within ten (10) feet of a fire hydrant. Nothing in this section shall prohibit the parking of vehicles at the curb or sidewalk line of said street in accordance with the parking rules as hereinafter stated, except those vehicles being operated pursuant to 4-1-5 *supra*.

4-1-7 General Traffic Rules.

The use of Main Avenue in the City of Wagner between Fifth Street and South Park Street by wagons, trucks, motor vehicles, and all other vehicles, shall be subject to and governed by the following rules and regulations, viz:

(a) Keep to Right.

A vehicle shall keep to the right of the center of the street.

(b) Parking.

Any person desiring to park his motor vehicle in said district shall turn said car to the curb at his right hand and park at an angle of 45 degrees And as near the curb or walk line as possible, and shall park his or her Motor vehicle as per designated marking or signage. No motor Vehicle shall be parked within ten (10) feet of any fire hydrant.

(c) Loading or unloading.

No automobile or other vehicle, except an automobile parked as Heretofore provided, shall be permitted to stand and remain at the curb on said street except when loading or unloading.

(d) Stop or Yield Intersections.

The City Council shall, from time to time as it deems necessary, designate certain streets intersecting and crossing Main Street as “STOP OR YIELD CROSSINGS,” and shall cause such intersections to be plainly marked by a painted sign with the words “STOP” or “YIELD” painted thereon placed at the point of stop on such streets, and every driver of a motor vehicle shall, when driving onto any street from such streets bring his automobile or motor vehicle to a full stop at the point designated by such STOP sign, and shall not drive into any street until traffic conditions thereon permit him to do so to do with perfect safety. This ordinance shall also apply to all electronic signal devices located within the city limits of Wagner.

4-1-8 Traffic Regulations.

To whom applicable.

The provisions of this Chapter shall apply to the driver of any motor vehicle driven or propelled upon the streets, alleys, or public places of the City of Wagner.

Careless Driving.

Any person who drives any vehicle upon a highway or alley or upon the property of a public school, college or university carelessly and without due caution, at a speed or in a manner so as to endanger any person or property not amounting to reckless driving, is guilty of careless driving. (Amended: Ordinance No. 2018-03, February 5th, 2019)

Reckless Driving.

Any person who drives any vehicle upon a highway or alley or upon the property of a public or private school, college, or university careless and heedlessly in disregard to the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving. **(Amended: Ordinance No. 2018-03, February 5th, 2019)**

Exhibition Driving.

No person shall drive within the limits of the City of Wagner, South Dakota in such a manner that creates unnecessary engine noise; tire squeal, skid or slide upon acceleration or stopping; or unnecessary sounding of the horn or that causes a temporary race; or causes the vehicle to turn abruptly or sway. This ordinance is intended to work in conjunction with all applicable state and federal laws or statutes.

Keep to right.

Vehicles shall keep to the right of the center of the street, and when moving slowly shall give way to more swiftly moving vehicles by keeping as close as possible to the curb on the right.

Turning to right or left.

Vehicles turning to the right into an intersecting street shall turn the corner as near the right hand curb of the street as possible. Vehicles turning to the left into intersecting streets shall, if possible, assume position in the inside lane and shall make a left turn just inside the center of the street intersection.

Vehicles meeting and passing.

Vehicles meeting shall pass each other to the right. Vehicles traveling in the same direction shall keep to the left of the overtaken vehicle in passing. Every vehicle shall pull to the right side of the street or road when signaled by a vehicle behind which desires to pass.

Backing and Turning.

No vehicle shall back from the curb, or any other part of the street, if by so doing it interferes with an approaching vehicle, unless the driver gives visual or audible signal of his intention to back and allows sufficient time for approaching vehicles to stop or move out of the way. No vehicle shall turn in the center of the street.

Backing to Curb.

It shall be unlawful to back a vehicle to the curb, except for the purpose of loading or unloading, and in such case it shall not be allowed to remain there for a longer period than the actual loading or unloading requires.

Obstruction To Vision.

It shall be unlawful for the driver of a vehicle to drive the same vehicle when the vehicle is so loaded, or when there are in the front seat such a number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control of the vehicle.

nor shall any passenger ride in a vehicle as to interfere with the driver's control over the motor vehicle. **(Amended: Ordinance No. 2018-03, February 5th, 2019)**

Duty Toward Police Officer.

Refusing to obey the command of an Officer. No person shall refuse to obey the command and direction of any police officer or policeman who may be doing duty for the purpose of preserving order and enforcing this code or the laws of the State of South Dakota. **(Amended: Ordinance No. 2018-03, February 5th, 2019)**

Speed Limits; traffic signs to be obeyed.

No motor vehicle shall be driven on any street, alley or public grounds in this city at a greater rate of speed than is reasonable, careful and prudent, having due regard to the traffic and use of the roadway, or in such a manner as to endanger the life or limb of any person; nor, in any event, at a greater rate of speed than Twenty (20) miles per hour on Main Street, and Twenty-five (25) miles per hour on all other streets, alleys and public grounds. The governing body of this city is granted the right to cause appropriate traffic signs to be erected, and may designate certain streets and avenues as arterial highways and cause to be erected and maintained such stop signs as may appear necessary, and is also granted the right to provide no parking areas in front of such buildings as to it may seem advisable. All such stop, turn, no parking and other traffic signs placed upon the streets and avenues of this city, with the consent of the governing body, much be complied with according to the tenor thereof, and the disobedience thereof shall be punishable as hereinafter provided. See also Section 4-1-2.

“U” turns.

It shall be unlawful to make turns, known as “U” turns, at the intersections of Main Street and Second Avenue, at the intersections of Main Street and Third Avenue, and at the intersections of Main Street and Fourth Avenue.

Turning at Street Corners.

It shall be unlawful to make turns between intersections, except that right turns may be made for the purpose of going into driveways.

Cut –outs and mufflers.

It shall be unlawful to operate any motor vehicle within this city from which gases are allowed to escape without passing through a muffler sufficient to deaden the noise thereof, except when such motor vehicle is being driven to a garage or place in order to repair the same.

When required to stop or pullover.

The driver of any vehicle shall stop upon signal from any police officer, and no vehicle other than that of a police officer, an ambulance, or that of the Fire Department shall be driven through any procession, except with the permission of a Police Officer. The driver of a vehicle, upon the approach of a fire wagon or other Fire apparatus, shall immediately draw up as near to the right curb and parallel thereto as practicable, and bring it to a standstill. Right of way is hereby given to Police Officer, firemen and ambulances when the same are being used in the performance of their duties.

Penalty for Violations.

Any person violating any provision of this Chapter shall, upon plea of guilty or upon being found guilty of said violation shall be deemed guilty of an offense, and such offense shall be punishable by a fine of up to \$200.00. **(Amended: Ordinance No. 2018-03, February 5th, 2019)**

4-1-9 Driving Permit Required.

It shall be unlawful for any person who drives a motor vehicle on any public street or alley within or upon the public right-of-way or highways within one mile of the city limits of Wagner, Charles Mix County, South Dakota, at a time when his or her driver license is:

- (1) revoked; or
- (2) suspended; or
- (3) cancelled.

That any person who shall violate any section of this ordinance shall be deemed guilty of violating this ordinance and upon conviction thereof, shall be subject to a fine not exceeding \$200.00.

(Amended December 5, 2005)

4-1-10 License Plates Required

It shall be unlawful for any person to operate upon the public streets and alleys within or upon the public right-of-way or highways within one mile of the city limits of Wagner, Charles Mix County, South Dakota, any motor vehicle which is not currently licensed, registered, and possesses current license plates and tags;

That any person who shall violate any section of this ordinance shall be deemed guilty of a violation and upon conviction thereof, shall be subject to a fine not exceeding \$200.00.

(Amended December 5th 2005)

4-1-11 Parking Provisions.

Parking and Double Parking.

The driver of a motor vehicle desiring to park along any of the streets abutting on and adjacent to the following described properties, to-wit: West Half of Blocks 5, 4, and 1 of the original plat of the Town on Wagner; West Half of Block 16, Milwaukee Land Company's Second Addition to the City of Wagner; the East Half of Blocks 2 and 3, of the original plat of Wagner, the East Half of Block 17 of Milwaukee Land Company's Second Street Addition to the City of Wagner; West Half of Block 1 in Grimes & Absher Addition to the City of Wagner; and the East Half of Block 8 in B.W. LaShier's First Addition to the City of Wagner; shall approach the curbing of such street on his right hand side and bring his motor vehicle to rest at the curbing at an angle of about 45 degrees and between the proper colored stripes, and shall not park elsewhere along said described properties, nor in front of any entrance driveway or sidewalk crossing so as to obstruct the same, nor shall such driver park within 15 feet of the City Fire Station or within such distance of any hydrant in this City. Provided further that double parking is hereby prohibited, unless the motor of such vehicle parked in the rear or along-side of another is kept running, and after sunset, the lights kept burning, but in no event shall double parking be permitted for a longer period than five (5) minutes.

Parking When Snow Accumulates.

It shall be unlawful for any person or entity to park, place, or allow to remain, along any curb or edge of any street or roadway within the corporate limits of Wagner, South Dakota, any vehicle, boat, trailer, camper, farm implement or machinery, or any other item, after snowfall accumulations have exceeded two (2") inches in any given twenty-four hour (24 hr.) period of time, on the following described routes:

North Street from Front Avenue to Washington Avenue; Washington Avenue from North Street to State Highway 46-50; Front Avenue from the intersection of Polar Drive and Front Avenue to Seventh Street; Second Street from Front Avenue to Walnut Avenue; Walnut Avenue from State Highway 46-50 to Fourth Street; Fourth Street SW from Walnut Avenue to Hickory Avenue; from Hickory Avenue to Fourth Street SW to High Ave SW; High Avenue SW from Fourth Street SW to Fifth Street SW; and Fifth Street SW from High Avenue SW to Front Avenue SW; **Birch Avenue SW from SD Highway 46 south to Fourth Street.**

(The above bolded portion added November 7th, 2011; Ordinance No. 2011-03)

(This above paragraph amended November 6, 2006; Ordinance No. 2006-03)

(This above paragraph amended March 3, 2008; Ordinance No. 2008-01)

The Wagner City Street Superintendent, or his designee, shall be authorized to declare a snowfall emergency, based upon their knowledge and experience, for all streets and roadways within the corporate limits of the City of Wagner, except those

streets and roadways designated, which shall be subject to a snowfall emergency, which is defined as an accumulation of two (2") inches in a twenty-four (24hr.) period.

The official notice of a snowfall emergency shall be promptly related to WNAX AM radio in Yankton, SD and Kelo Land TV in Sioux Falls, SD, by the Wagner City Street Superintendent, or his designee immediately upon declaring a snowfall emergency. Notice to the public of a snowfall emergency is deemed sufficient immediately upon said WNAX AM radio and Kelo Land TV radio being made. **(Amended: Ordinance No. 2018-04, February 5th, 2019)**

That any person or entity who shall violate any section of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not exceeding One Hundred Dollars (\$100.00).

That any vehicle, boat, trailer, camper, farm implement or machinery or any other item owned by any person or entity, that shall be in violation of this ordinance shall be towed from the street curb or edge, at owner's expense, without further warning.

(This above paragraph amended November 6, 2006; Ordinance No. 2006-03)
(This above paragraph amended March 3, 2008; Ordinance No. 2008-01)

That any person or entity may resume parking or placing along said curbs or edges of streets or roadways any of said items immediately after the street or roadway has been cleared of snow.

Parking vehicles over 20 feet long.

No motor vehicle, trailer, trailer house or other vehicle more than 20 feet in length or eight feet in width shall be permitted to stand continuously for more than one hour upon the street, alley or other public place in the City nor be parked on any streets adjacent to the properties set forth in Section 2.1108 of this Chapter, except for the purpose of loading and unloading merchandise or passengers, and then for no longer than fifteen (15) minutes at a time, and for such purpose, said motor vehicle may park in the center of the street; however, the Chief of Police may authorize longer periods of time when necessary in special instances.

Obstructing Roads.

It shall be unlawful to willfully blockade or obstruct any street, avenue, or alley in this city, and the abandonment of a motor vehicle, unless the same is parked as hereinbefore provided, for an unreasonable length of time, shall be regarded as an obstruction within the meaning of this section.

Penalty for Violations.

Any person violating any provision of this Chapter shall be deemed guilty of an Offense and such offense shall be punishable by a fine not exceeding \$200.00; unless otherwise stated.

4-1-12 Towing of Vehicle

(A) Notification of Police Department required.

Any individual, firm, business or corporation which tows a motor vehicle within the city limits of Wagner at the request of any person other than the registered owner of the motor vehicle, shall before towing such vehicle notify the Wagner Police Department, giving the license number or vehicle registration and a general description of the vehicle, including make, model, color and any other information that may be required by the police department.

(B) Notification of owner required.

Any person so towing a vehicle described in Section 4-1-11 (A) shall forthwith send by certified mail with return receipt notice to the registered owner of the vehicle notifying the owner that the vehicle is in their custody.

(C) Inability to Locate Owner.

If the person towing a vehicle is unable to locate the owner within a period of ten (10) days, they shall notify the Wagner Police Department in writing that he has been unable to locate the owner.

(D) Recordkeeping Requirements.

In addition, any person towing a vehicle shall keep record of who requested that the vehicle be towed, including the name and address of such person requesting such service.

(E) Provisions not applicable when requested by city official or Police Department.

Nothing in this Chapter shall be construed to apply to any person who tows a vehicle at the request of a city official or member of the Wagner Police Department acting in their official capacity.

(F) Violation-Penalty.

Any person violating this chapter shall be fined not less than one dollar (\$1) or more than one hundred dollars (\$100) or imprisoned not longer than thirty (30) days, or both such fine and imprisonment.

CHAPTER 4-2 STREETS AND PUBLIC GROUNDS

SECTION

- 4-2-1 Objects in Streets
- 4-2-2 Removal of Objects from Streets
- 4-2-3 Exceptions to Section 4-2-2
- 4-2-4 Signs in Streets; Exceptions

- 4-2-5 Obstruction of Sidewalks
- 4-2-6 Building Materials in Streets
- 4-2-7 Cleaning Streets of Rubbish
- 4-2-8 Tearing up Sidewalks
- 4-2-9 Permit to Move Buildings
- 4-2-10 Hindering Passerby
- 4-2-11 Injuring Trees or Other Public Property
- 4-2-12 Buildings on Streets
- 4-2-13 Stair Railings and Grates
- 4-2-14 Eave Pipes
- 4-2-15 Hindering Street Improvement
- 4-2-16 Picketing Animals
- 4-2-17 Trimming Trees
- 4-2-18 Prohibiting of Planting of Trees, Shrubs or any Plant of Any Kind or Type.
- 4-2-19 Penalty

4-2-1 Objects in Streets and Public Grounds.

Objects in Streets and Public Grounds: No person or entity shall place, leave, or keep on any street, gutters, road, alley, sidewalk, or other public ground any vehicle, except in actual use, to include loading and unloading. No person shall throw or deposit in any street, gutter, alley, road, driveway, highway, or any other public place, paper, rubbish, grass clippings, leaves, or yard waste produced in conjunction with yard maintenance or gardening, animal waste, vegetable waste, or permit such substances and wastes to be carried by wind or water into any such street, gutter or gutters, alley, road, or any other public way, or public property. Further, it shall be unlawful to possess or cause to be present glass beverage containers on any public property within the City of Wagner. **(Amended: Ordinance No. 2018-05, February 5th, 2019)**

4-2-1 (a) City of Wagner, SD is not liable for any damage to private property placed within any platted street or alley right of way within the City of Wagner, SD.

Any person or entity that places any private property within any platted street or alley right of way within the city limits of Wagner, SD, shall not be reimbursed by the City of Wagner for any damage to said private property by the City of Wagner, SD while doing anything associated with said street or alley, including, but not limited to, grading, blading, chip sealing, removing snow and/or ice, or any other matter or thing that the City of Wagner, SD would be doing in order to maintain its streets and alleys.

Private property includes any and all items such as mail boxes, address signs, decorations, for sale and similar signs, trees, shrubs, plants and all other private property placed on said Wagner, SD platted streets or alleys.

(4-2-1 (a) added May 1st, 2017, Ordinance No. 2017-01)

4-2-2 Removal of Objects from Street.

Whenever any article, substance or material whatever is found lying or remaining upon any street, alley, sidewalk or other public ground in this city in violation of the foregoing section it shall be the duty of forthwith to notify or require by written notice the person who placed or caused or permitted to be placed or left such article. The notice shall require that the person immediately remove such object, and if the person fails to do so, it shall be the duty of the Chief of Police or any policeman to remove the same or cause it to be removed from such street, alley, sidewalk, or other public grounds to some convenient and suitable place in this city at the expense of such person or persons, to be recovered in an action to be prosecuted by the city against such person or persons.

4-2-3 Exceptions to Section 4-2-2.

It shall be lawful notwithstanding anything hereinbefore contained to the contrary, for any person to place, hand or set out in a safe manner, wares or merchandise on or over the sidewalk on front of and not farther than four (4) feet from the building occupied by himself or by his employer. It shall also be lawful for any person to place and leave for a period not exceeding two hours on three feet of the outer edge of the sidewalk adjacent to the building occupied by his merchandise, which he shall be in the act of leaving. This section shall not apply to any sidewalk less than ten (10) feet in width.

4-2-4 Signs in Streets; Exceptions.

No owner or occupant or any store or other building shall fix, put up, or erect or suffer to remain fixed, put up, hung or erected, any sign, show bill, show case, canvas or any other thing projecting from any such building or store or over hang the sidewalk, more than six feet, but that this section shall not be construed to forbid any person from maintaining an awning in front of his place of business which is at least seven feet above the sidewalk. Nor shall any person set a post or other obstruction in any street or alley in this city for the purpose of fastening thereto any awning or sign or for any other purpose.

4-2-5 Obstruction of Sidewalks.

No person shall place, push, draw or back any vehicle on any sidewalk in this city, or use, ride, or leave any vehicle thereon unless it be in crossing the same to go into any alley or upon a lot where no other crossing or other means of access is provided. Foot traffic only shall be allowed on the sidewalks along Main Street and one block on each side adjacent thereto. Any person operating a bicycle shall do so pursuant to SDCL 32-20B, or any acts amendatory thereto.

4-2-6 Building Materials in Streets.

The Mayor or Finance Officer is authorized to grant written permission for time therein limited and in no case to exceed three (3) consecutive months, to any person to place and keep building materials in any street adjacent to the lot whereon such material is about to be used in the construction or repair of any building or other improvement. Such permit shall not authorize the obstruction with any such building

material or otherwise of more than one third in width of the sidewalk or of the carriageway adjacent to such lot. Such materials shall not be placed or kept as to obstruct the free flow of water in the gutters of such street.

4-2-7 Cleaning Streets of Rubbish.

Every person to whom a permit may be granted as in accordance with the preceding section to place or keep any material in any street or alley shall cause all such material and all the rubbish resulting therefrom to be removed from such street, alley or sidewalk before the expiration of the time limited in such permit. Such time may for good cause be extended by the Mayor by endorsing such extension on the original permit; and any person placing or keeping any material in any street or alley under such permit from the Mayor shall during every night that any of the same shall remain there, keep one or more lighted lanterns so placed that such material may be easily seen by any person or animal passing along such street, alley or sidewalk.

4-2-8 Tearing up Sidewalks.

No person shall injure or tear up any pavement, sidewalk or crosswalk, drain or sewer or any part thereof or dig any hole, ditch or drain in any street, alley sidewalk, crossing or other public ground in this city, or remove any gravel, sand or soil from any street or alley without authority from the City Council or the written permission of the Street Commissioner.

4-2-9 Permit to Move Buildings.

No person shall, without first having obtained the written permission of the Finance Officer or Mayor, move any building on any street, alley or other public ground in this city. A permit must be obtained pursuant to the provisions set forth in Chapter 3-4 *supra*.

4-2-10 Hindering Passerby.

No person or persons, upon any street or building entrance on such street shall either physically, or through language likely to put a person in fear of imminent bodily harm, prevent other persons from passing or attempting to pass on such street or entering a building on such street.

4-2-11 Injuring Trees or Other Public Property.

No person shall without the written permission of the City Council, signed and counter-signed by the Mayor and Finance Officer, destroy, mutilate, cut, deface or otherwise injure any tree, shrub, plant, building, fence, gate or any other protection or guards of such tree, shrub, plant, upon any street, alley or other public ground in this city, nor shall any person interfere with the soil in any street, alley, or other public ground in this city without the written permission of the Mayor. Provided, that this section shall not be construed to forbid the owner of any lot or parcel of land to remove trees standing opposite thereto on that side of the street.

4-2-12 Buidings on Streets.

No person shall erect or maintain any building in such a position that the same shall stand in whole or in part upon any street, alley, sidewalk or other public grounds in this city, or so constructed that any part of such building proper shall project into or over such street, alley, sidewalk or other public ground. Jut windows, bulks, cornices and other necessary projections above the first story may extend over the adjoining street, alley or sidewalk not exceeding eighteen (18) inches. No person shall construct any basement or cellar stairway extending into any street, alley or sidewalk more than three and one half feet; or any step, area or other appurtenance to any building so extending more than thirty (30) inches, nor shall any person erect in any street, alley or sidewalk any flight of stairs leading to the second or any height story of any building without the written permission of the City Council.

4-2-13 Stair Railings and Grates.

The owner of any building in this city, having a stairway leading from an adjoining sidewalk to the cellar or basement of such building shall guard such stairway with a substantial railing not less than three (3) feet high, and the entrance of such stairway shall be at right angles to the street from which the entry is made. Any person who shall make or cause to be made any permanent opening in any sidewalk for the purpose of letting light into the basement or cellar or for any other purpose, shall guard the same with substantial iron grate, or other strong and substantial cover, the opening of which shall be greater than one and one fourth inches, but no such railing shall occupy more than two feet of the sidewalk, measuring from the inner side thereof.

4-2-14 Eave Pipes.

No person shall in any street or alley of the city place or maintain any pipe leading from the eaves of any building in such a position that the water discharged thereby may flow onto or over any sidewalk in any street or alley of this city. Any existing eave pipes in place at the inception of this ordinance shall not be in violation of this ordinance; however, any new construction shall be required to be in compliance with the provisions contained in this ordinance.

4-2-15 Hindering Street Improvement.

No person shall hinder or obstruct any employee of this city in lawfully making any improvement or doing any work on any street, alley or other public ground in this city.

4-2-16 Picketing Animals.

It shall be unlawful for any person to picket or otherwise fasten any horse, mule, cow, or any other animal in the city so that the same can, while so picketed or fastened, be in, or upon the street, alley, roadway, pathway or sidewalk.

4-2-17 Trimming Trees.

The occupant of any lot or parcel of land in this city, adjacent to any street or alley, or the owner, of said lot or land be unoccupied, shall keep all trees standing on such premises or between the same and the center of the street, adjoining the same, so

trimmed that no bough or branch thereof shall hang lower than 14 (fourteen) feet above the surface of the street or alley or any sidewalk therein.

(4-2-17 amended December 13th, 2017 through Ordinance No. 2017-07)

4-2-18 Prohibiting of Planting of Trees, Shrubs or any Plant of Any Kind or Type.

The purpose of this ordinance is to prohibit any person or entity from the planting of trees, shrubs or any plant of any kind or type that would grow in excess of 24 (twenty-four) inches from the height of the curb in the city of Wagner rights-of-way located within the City of Wagner, Charles Mix County, South Dakota.

It shall be unlawful for any person or entity to plant trees, shrubs, or any plant of any kind or type that would grow in excess of 24 (twenty-four) inches from the height of the curb in the city of Wagner rights-of-way lying within the corporate limits of the City of Wagner, Charles Mix County, South Dakota.

Any person or entity that shall be found to have violated the terms of this ordinance by planting a tree, shrub, or any plant of any kind or type that would grow in excess of 24 (twenty-four) inches from the height of the curb in the city of Wagner rights-of-way within the city limits of Wagner, Charles Mix County, South Dakota shall be guilty of an offense as provided by the Wagner Municipal Code and may be subject to a fine of up to \$200.00 and the prompt removal of thereof as directed by the City of Wagner.

(4-2-18 added December 13th, 2017 through Ordinance No. 2017-08)

4-2-19 Penalty.

Any person or entity that shall be found to have violated any of the terms set forth in Wagner Municipal Code Section 4-2-1, et. Seq. shall be guilty of an offense and will be subject to a fine of up to \$200.00 per violation of this ordinance. **(Added: Ordinance No. 2018-06, February 5th, 2019)**

**CHAPTER 4-3
GRADES OF STREETS AND SIDEWALKS**

SECTION

- 4-3-1 Establishment of Grades
- 4-3-2 Grades Lines to be Uniform Slope
- 4-3-3 Slopes of Sidewalks
- 4-3-4 Grade to Center of Street
- 4-3-5 Records of File with City Finance Officer and City Engineer
- 4-3-6 Grades of Streets

4-3-1 Establishment of Grades.

All grades of streets and alleys as established by the Revised Ordinance of 1929 of the City of Wagner are on file at the office of the Finance Officer. This 2001 Municipal Code shall not be construed to alter or abolish those street and alley grades previously established.

4-3-2 Grades Line to be Uniform Slope.

The grade line from one corner of a block or part of a block at which grade is established in this ordinance shall be a uniform slope ascending or descending grade to be regulated by said City Council.

4-3-3 Slope of Sidewalks.

The slope of the sidewalk shall be one-quarter of an inch per foot descending from the lot line to the curb line.

4-3-4 Grade to Center of Street.

The grade along the center line of the streets shall be four inches below a straight line drawn from the curb line on one side of the street of the curb line on the opposite side.

4-3-5 Records of File with City Finance Officer.

The records and plats on the surveys made for the purpose of establishing this grade shall be kept on file in the office of the City Finance Officer open to public inspection.

4-3-6 Grades of Streets.

Grades of Sidewalks and Streets. The "Street Grade Survey, Wagner, South Dakota", on file in the office of the City Finance Officer, establishes the official grade elevations of all streets, alley, avenues, and sidewalks in this City. It is designated as Schedule "A". It is hereby specifically provided: (1) That the grade elevation given at the corners of street intersections as shown on said Schedule "A" are the grade heights of the sidewalks at said points; (2) That the grade elevation given for the curbs at the corners of street intersections as shown on said Schedule "A" are the grade heights for the curbs at the said points; (3) That the grade for the gutter shall parallel the grade line for the curb unless otherwise noted on said Schedule "A"; (4) That the grade heights given on the profile sheets and designated as crown line are the grade heights of the crown line of the streets as shown on Schedule "A"; (5) That all intermediate grades shall be on a straight line between the two nearest grade points; (6) That the grade elevations as shown on Schedule "A" are calculated in feet and decimals of feet above a horizontal plane called datum plane, one hundred feet below a certain brass cap, (U.S.G.S. Marker) set in concrete and located 81 feet southeast of the railroad depot on the railroad grounds in the City of Wagner; and (7) That whenever any grade hereinbefore established shall cause expense to the city or cause unusual damage to the adjoining property, such grade may be modified by

Resolution of the governing body; provided, however, that if in so doing any damage results to any driveway or curbing, the city shall rebuild at its expense.

CHAPTER 4-4 SIDEWALKS

SECTION

- 4-4-1 Grades
- 4-4-2 Width
- 4-4-3 Sidewalks in Business District
- 4-4-4 Approval of Sidewalk Construction
- 4-4-5 Petitions for Sidewalks
- 4-4-6 Notice to be Given
- 4-4-7 Manner of Giving Notice; Assessments
- 4-4-8 Assessments; Publishing of
- 4-4-9 Enforcement of Lien
- 4-4-10 Owner to Maintain Sidewalks
- 4-4-11 Failure to Repair or Replace
- 4-4-12 Assessment of Cost of Repair or Replacement
- 4-4-13 Compliance with Applicable Laws
- 4-4-14 Bicycles on Sidewalks Adjacent to Main Street

4-4-1 Grades.

All sidewalks in the City of Wagner shall be built to the established grade and of the material and construction as hereinafter provided.

4-4-2 Width.

All side-walks in the city of Wagner shall be five feet wide, and four inches thick, and shall be located one foot outside the lot or property line, provided, however, that in the less populous sections of the city, and when recommended by the Street Commissioner, the governing body may by Resolution authorize a sidewalk to be constructed four feet wide where the walks do not connect with an already constructed sidewalk of five foot width. Provided further that sidewalks crossing any alley shall be six inches thick and that the grade of all sidewalks hereafter constructed shall be one-fourth inch to each foot commencing from that portion nearest the property or lot line to the street and may be modified by the Street Commissioner to one-half inch to each foot commencing from that portion nearest the property or lot line to the street, with the minimum standards to be adhered to being, that these sidewalks are to be built with a parking space extending from the outer edge of such sidewalk, and on a level therewith, a distance of seven feet, to the curb or gutter, and eleven feet and eight inches from the lot line, and if a retaining wall is necessary, said wall should be constructed on the property side of the sidewalk. Refer to the appropriate zoning ordinance.

4-4-3 Sidewalks in Business District.

All sidewalks in the business portion of said City of Wagner hereinafter to be built or constructed shall be twelve feet in width, and flush with the gutter or curb in the street. For the purposes of this section, "business district" means the portion of Main Street and any other streets in the City where commercial establishments open to the public operate.

4-4-4 Approval of Sidewalk Construction.

That all sidewalks hereinafter to be built or constructed in said City of Wagner shall be built and constructed of good and durable cement or paving brick, in a good substantial manner, to be approved by the Street Commissioner of said City, and in accordance with the established grade of said city.

4-4-5 Petitions for Sidewalks.

Whenever two-thirds of the resident owners in number or value of real estate bounding both sides of any street, not less than one square block, shall petition to have sidewalks built or repaired along such streets, or when two-thirds of the resident owners in number or in value of real estate on one side of such street shall petition to have a sidewalk built or repaired on one side of such street, it shall be the duty of the City Council, subject to the provisions of this ordinance, to order such sidewalk built or repaired in front of each of the said respective lots or at the side of any corner lots thereon.

4-4-6 Notice to be Given.

Notice to owner to construct sidewalk and curb and gutter and procedure. That the Superintendent of Streets or Street Commissioner is required to notify all resident owners and occupants of lots where sidewalks or curb and gutter or both are to be constructed, replaced or repaired, to construct, replace or repair the same at his or their own expense within thirty days after service of such notice, and to serve notice upon non-residents either personally, or by publication in the official newspaper of this city, stating the character of the work to be done by such owner and the time in which they are required to complete such sidewalk, curb and gutter, repair or replacement. When notice is given by publication, it shall appear in two consecutive issues of the official paper, but the 30 day period shall not commence to run until the completed publication of said notice. The said notice, when published, may contain any number of tracts of property or lots, but each lot shall be separately described and shall recite the name of the owner of record thereof. If such work is not done after due notice has been given as hereinbefore provided for, within the time mentioned in said notice, then the Superintendent of Streets or the Street Commissioner is authorized and empowered to have said work done, and he shall assess the cost thereof against said lot or lots, as the case may be, and shall make a return of his proceedings to the city council. The City Auditor shall thereupon certify to said assessment roll, and file the same with the County Auditor of Charles Mix County, South Dakota, and the amount so advanced by the city shall thereafter be collected as

a special assessment and shall bear interest at the rate of 6 percent per annum from the date of filing with the County Auditor.

Whenever the City Council of the said City of Wagner, either upon its own initiative or in response to a proper petition as provided for in the preceding section, shall deem it necessary that new sidewalks be constructed along any street or streets in said city, it shall by resolution appoint a time for the meeting of said City Council for the purpose of considering a resolution ordering the construction of said sidewalks. Ten days notice of the time so appointed (90 days) shall be given by posting notices on said street or streets, and along the adjoining land or lots affected, said notices setting forth the width and material of the walk proposed and the location of the same, also the date and place of the meeting of the City Council at which the resolution ordering the construction of said sidewalks will be entertained, with said notice to be given in accordance with state law.

4-4-7 Manner of Giving Notice; Assessments.

Whenever the City Council of the City of Wagner, South Dakota, pursuant to this chapter shall order the construction of new sidewalks along any street or streets in said City of Wagner, it shall require the Street Commissioner to notify in writing all resident owners and occupants of any lot or lots or parcels of land adjoining such sidewalk to construct the same at his or their own proper expense and charge, within a time designated in such notice, and not less than thirty days from the date of the giving of said notice.

Non-resident owners shall be notified by publication of said notice in the official paper of said city for two (2) consecutive weeks and a copy of notice shall be mailed to their address shown on the tax rolls. If such sidewalks are not constructed in the manner and within the time required in said notice, then the City Council of said city shall order the same to be done by the Street Commissioner, at the expense of the lot or lots or parcels of land from such sidewalk by the Street Commissioner of the City of Wagner, South Dakota, and by him returned to the City Council of said city.

The Notice provided for in this ordinance is to be provided under the terms described herein, and in accordance with SDCL 9-46-3 and any acts amendatory thereto.

4-4-8 Assessments; Publishing of.

When the assessment provided for in section 4-4-7 has been returned to the City Council by the Street Commissioner, the City Finance Officer of said city shall thereupon cause the assessment so returned by the Street Commissioner, together with notice of the time and place when the City Council of said city shall meet to consider the same, to be published in the official paper of said City of Wagner for two (2) consecutive weeks, the last publication thereof being at least ten (10) days prior to the date of said meeting.

4-4-9 Enforcement of Lien.

The City Council shall consider and act upon such assessments. If the Council approves the same, these assessments shall become a lien upon the property so benefited and assessed. Payment of such assessment shall be enforced according to state statute.

4-4-10 Owner to Maintain Sidewalks.

It shall be the duty of the owner of any lot, lots or parcel of land along or in front of which sidewalks have been constructed, to keep walks in a proper condition or repair and in a safe condition for public use at all times; and to rebuild or replace such walks when necessary.

4-4-11 Failure to Repair or Replace.

Whenever the owner of any lot or lots or parcel of ground along or in front of which a sidewalk has been constructed shall fail to keep such walk in proper repair, or to replace same when necessary, the Street Commissioner shall notify such owner by written notice. Such notice shall describe the walk that needs repair and indicate necessary, or the walk to be renewed or replaced. That notice to repair shall be mailed to the owner at his address shown on the tax rolls.

This notice shall require such owner to repair or replace such walk within thirty (30) days after service by personal service or posting as aforesaid, and in the event that such owner fails to repair or replace such walk or walks within the time specified in such notice, the same shall be done by or under the supervision of the Street Commissioner, and the cost thereof assessed against such lot.

4-4-12 Assessment of Cost of Repair or Replacement.

The Street Commissioner, after such repairs or replacements are made, shall return and file with the City Finance Officer a complete statement of the cost thereof, and the City Finance Officer shall cause the same to be published in the official paper of said city for two (2) consecutive issues together with a notice of the time and place when the City Council shall meet to consider the same.

4-4-13 Compliance with Applicable Laws.

The City of Wagner shall be in compliance with all applicable state and federal laws and statutes when implementing the provisions of this Chapter.

4-4-14 Bicycles on Sidewalks Adjacent to Main Street.

It shall be unlawful for any person to ride a bicycle or skateboard upon the sidewalks adjoining Main Street in Wagner, South Dakota. That any person who shall violate any section of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine not exceeding One Hundred Dollars (\$100.00).

**CHAPTER 4-5
SNOW REMOVAL FROM SIDEWALKS**

SECTION

- 4-5-1 Duty of Owner or Occupant
- 4-5-2 Neglect of Duty; Removal by City
- 4-5-3 Assessment for Cost of Removal; Unpaid Assessments
- 4-5-4 Enforcement of Assessments; Sale of Property

4-5-1 Duty of Owner or Occupant.

The occupant or owner of any premises in the City of Wagner, adjacent to any sidewalk, shall within twenty-four (24) hours after the fall of snow or the formation of ice on sidewalk, remove said snow and ice from so much of said sidewalks as adjoins said premises.

However, any sidewalk belonging to any property owner that is adjacent to and directly abuts South Dakota Highways 46-50 within the city limits of Wagner, SD, shall not be subject to this section, but rather, the property owner being adjacent to said sidewalk and highways shall be required to remove snow and ice within a reasonable time after a snow or ice event, taking into account the amount and volume of snow and ice falling, the duration of the snow and ice event, whether the snow or ice that has accumulated on said sidewalk is frozen, and the volume of the snow or ice located on the said sidewalk, from the period commencing October 15, 2007, and ending on April 15, 2008, and like timeframes in subsequent years thereafter.

(Added December 21, 2007; Ordinance No. 2007-08)

4-5-2 Neglect of Duty; Removal by City.

If the owner or occupant of any such premises shall fail, neglect or refuse to remove said snow or ice from the adjacent sidewalks within the time specified in section 4-5-1, it shall be the duty of the Street Commissioner to remove or cause the removal of said snow or ice from said sidewalks and to assess the cost of such removal upon the lots or parcels of land adjacent to said sidewalks, and to make return of said assessments to the City Council, for its approval and publication of same as provided in Chapter 4-4 of this Code.

However, as to any sidewalk belonging to any property owner that directly abuts or is adjacent to South Dakota Highways 46-50, the city street superintendent shall not be subject to the time-frames set out in the first paragraph of Wagner Municipal Code 4-5-2 during the timeframes commencing October 15, 2007, and ending on April 15, 2008, and like periods of time in subsequent years.

(Added December 21, 2007; Ordinance No. 2007-08)

4-5-3 Assessment for Costs of Removal; Unpaid Assessments.

Within ten (10) days after such assessments have been approved by the City Council, the Finance Officer shall prepare a certified copy of the same. The Finance Officer shall mail a copy of the assessment to the property owner or occupier at his last known address, and it shall be due and payable upon receipt. If it is not paid within sixty (60) days of receipt by the owner or occupier, interest on said assessment shall accrue at the rate for Category D rates of interest as established by SDCL 54-3-16 as amended.

4-5-4 Enforcement of Assessments; Sale of Property.

Said assessments shall be collected in the same manner as sidewalk assessments are now collected, and the premises upon which said assessments are made may be sold for said assessments and the sale thereof shall be conducted in the same manner and at the same time and shall be governed by the same regulations as are provided for the sale of real property for sidewalk assessments. The sale of real property for sidewalk or snow removal assessments shall be governed by SDCL Chapter 10-23 as amended.

**CHAPTER 5
FIRE PREVENTION**

SECTION

- 5-1-1 Fire Limits Established
- 5-1-2 Permits
- 5-1-3 Limitations within Fire Limits
- 5-1-4 Walls
- 5-1-5 Construction Material
- 5-1-6 Definition of Wooden Buildings
- 5-1-7 Roof Coverings
- 5-1-8 Chimneys
- 5-1-9 Electrical Installation
- 5-1-10 Sale of Firecrackers and Fireworks
- 5-1-11 Relating to Liquefied Petroleum Gases
- 5-1-12 Relating to Gunpowder and Explosives
- 5-1-13 Penalty for Violations
- 5-1-14 Regulating Open Burning
- 5-1-15 Permissible Open Burning
- 5-1-16 Damage or deterioration; Appraisal
- 5-1-17 Building Permits
- 5-1-18 Building Permits; Lot Lines
- 5-1-19 Abatement of Certain Buildings
- 5-1-20 Fire Escapes
- 5-1-21 Exits in Public Buildings
- 5-1-22 Definitions of Public Buildings
- 5-1-23 Penalties

5-1-1 Fire Limits Established.

The following blocks, part of block, including the lots therein, are hereby declared to be within the fire limits of the City, viz:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Block 1;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Block 2;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Block 3;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Block 4;

and;

Lots 1, 2, 3 and 4 of Block 5; all in the Original Town of Wagner.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Block 16; and;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Block 17; all in Milwaukee Land Company's Second Addition.

All of that part of the Chicago, Milwaukee, St. Paul and Pacific Railway Right-of-way that is 200 feet wide.

Lots 1, 2, 3, and 4 of Block 21;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of Block 22:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of Block 27; and the West 100 feet of Block 28; all in Milwaukee Land Company's Fourth Addition.

Lots 12 and 13 of Block 8 in Grimes and Absher Addition.

Lots 1, 2, 3, 4, 5, and 6 of Block 1;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Block 8, all in B.W. LaShier's First Addition.

5-1-2 Permits.

No wall, structure, building or part thereof, shall hereafter be built, enlarged, or altered within the Fire Limits of this City, until a plan of the proposed work shall have been submitted to the Chief of the Fire Department who shall, if not in conformity with the provisions of this Chapter, issue a permit for the proposed construction. Structures hereafter erected without a permit, or not in conformity with this Chapter, are declared to be a public nuisance and shall be removed.

5-1-3 Limitations within Fire Limits.

It shall be unlawful to do any of the following things within the Fire Limits of the City:

- (1) To start fires for the purpose of burning rubbish, leaves, paper, wood or other material, of a like kind:
- (2) To pile or deposit, or to maintain, any shavings, sawdust, leaves, manure, or straw, hay, corn fodder, or combustible rubbish or matter of a like kind. Within the said Fire Limits or within one half block

- of such limits;
- (3) To pass a stovepipe through any partition, wall or ceiling of a building without protecting such stovepipe with a suitable tin or other metallic container, with sufficient air chambers surrounding the stovepipe, to secure such partition, wall or ceiling against fire.
 - (4) To construct or use a building or room, to be used by the public, in which the doors affording ingress or egress, swing inward from the interior of said place, but this limitation shall apply only to doors that lead to the outside of such building or room; and
 - (5) To erect or place or be engaged, in erecting or placing, within the Fire Limits, and building or addition thereto, the outer walls of which are wood, or any building having a wood cornice, or roof composed of wood or other combustible material; or to move such a structure of building from one part of the Fire Limits to another part of the Fire Limits. Provided, however, that under the provisions of this Code, sheds, which shall not extend in length more than ten (10) feet, in width ten (10) feet, and to the highest point of the roof ten (10) feet; and the enclosure of existing outside stairways; shall not be construed as a building, and the construction thereof shall be deemed permissible.

5-1-4 Walls.

Outside walls, within the Fire Limits, shall be constructed of brick backed with hollow tile, masonry, cement blocks, or hollow tile, sheet iron, and/or other metallic substance. The thickness of masonry bearing walls shall not be less than twelve (12) inches, except that reinforced concrete walls may have a minimum thickness of eight inches. Parapets shall be provided on all firewalls, party walls and exterior walls of masonry or reinforced concrete. Such parapets shall not be less than twelve inches thick for masonry and eight inches for reinforced concrete construction and carried not less than eighteen inches above the roof.

5-1-5 Construction Materials.

No person shall erect, or cause to be erected, or place within the fire limits of the City of Wagner, any building or part thereof unless the entire outside walls are constructed of stone, cement, brick or other hard and incombustible materials, and roofed with slate, tin, zinc, iron, cement, or other approved fire-proof roofing. No person shall repair or rebuild any wooden building which has been damaged by fire or otherwise, or decayed, to the extent of fifty percent or more of the value thereof.

5-1-6 Definition of Wooden Buildings.

A frame or wooden building of which the external or divisional walls are constructed in whole or in part of wood, and having more wood on the exterior than that required for the door and window frames, doors, sash, shutters, verandas and steps, and all frame buildings and sheds, although the sides and ends are proposed to be covered with corrugated iron or other metal, or veneered with brick, shall be deemed a wooden building under this chapter.

5-1-7 Roof Coverings.

Every roof hereafter placed on a building shall be covered with a roofing of brick, concrete, tile, slate, metal, asbestos or built up roofing finished with asphalt or gravel.

5-1-8 Chimneys.

All chimneys shall be built of masonry not less than four inches thick. Every such chimney shall be lined with a flue lining and shall be built upon a solid masonry foundation and shall extend at least two feet and six inches above the roof.

5-1-9 Electrical Installations.

All electrical wiring, apparatus, or appliance for furnishing light, heat or power shall be in strict conformity with the statutes of the State of South Dakota and with approved methods of construction for safety to life and property. The regulations in the National Electrical Code shall be prima facie evidence of such approval methods.

5-1-10 Fireworks. It shall be unlawful for any person or entity to buy, sell, give away, receive, deal in, have in possession, transport, use, discharge, or cause to be discharged, any pyrotechnics (commonly known as fireworks) of any kind whatsoever within the corporate city limits of Wagner, South Dakota, except as provided herein.

5-1-10(a) **Sale of Fireworks.** It shall be unlawful for any person or entity to sell, buy or deal in the selling or buying of fireworks within the city limits of Wagner, South Dakota.

5-1-10(b) **Discharge of Fireworks.** Fireworks may be discharged within the city limits of Wagner, South Dakota, during the period beginning June 27th and extending through the end of the first Sunday after July 4th and during the period beginning December 28th and extending through January 1st of each year from and after the effective date of this ordinance.

The daily times where fireworks shall be allowed to be discharged within the city limits of Wagner, South Dakota, shall be from 8:00 o'clock a.m. to 10:00 o'clock p.m. of each day as set forth above, with the exception of July 4th of each year when fireworks may be discharged within the city limits of Wagner, South Dakota, from 8:00 o'clock a.m. to 11:59 p.m. on July 4th of each year; and on December 31st from 8:00 o'clock a.m. to 1:00 o'clock a.m. on January 1st of each year.

**(Ordinance #2014-01 replaced existing 5-1-10(b) Discharge of Fireworks.
Effective date: July 1st, 2014)**

**(Ordinance #2015-02 replaced existing 5-1-10(b) Discharge of Fireworks.
Effective date: February 11th, 2015)**

5-1-10(c) **Fireworks Displays.** Nothing contained herein shall prohibit the use of supervised and controlled public displays of fireworks by an organization or association of persons, provided that such organization or

association shall request permission from the city council and secure said council's permission prior to the public display.

5-1-10(d) It shall be illegal to throw at, or from, any motor vehicle, any type of fireworks within the city limits of Wagner, South Dakota.

5-1-10(e) **Drought or Dry Conditions.** No fireworks are to be discharged within the city limits of Wagner, South Dakota if there is a danger of fire due to drought or dry conditions, or if there is a burn ban established either by Charles Mix County or the City of Wagner or such other authority having the legal authority to impose a burn ban.

5-1-10(f) **Bottle Rockets Banned.** No bottle rockets shall be allowed to be discharged within the corporate city limits.

5-1-10(g) **Locations Banned from Fireworks.** No discharging of fireworks at Hennies Ball field, McCormick Field, Wagner City Park, Wagner Lake, Wagner Swimming Pool area, Wagner Rodeo Grounds, or Wagner Speedway, unless specifically granted permission from the Wagner City Council.

5-1-10(h) **Violation.** Any violation of any of the above regulations shall constitute a misdemeanor and each violation shall be construed to be a separate offense.

(Ordinance #2009-05 replaced existing 5-1-10 Sale of Firecrackers and Fireworks. Effective date: December 1st, 2009)

(Ordinance #2010-02 replaced existing 5-1-10 Sale of Firecrackers and Fireworks. Effective date: October 5th, 2010)

5-1-11 Relating to Liquefied Petroleum Gases.

The State Fire Marshal is granted the power and authority to prescribe uniform regulations for safety in the design, construction, location, installation, and operation of equipment for storing, handling, and transporting by tank, truck, or tank trailer, and utilizing liquefied petroleum gases, and for the odorization of said gases used therewith; and this section shall be applied and shall be enforced as follows:

- (1) The term "liquefied" petroleum gases as used in this section shall mean and include any material which is composed predominantly of any of the following hydro-carbons or mixtures of the same: propane, propylene, butanes (normal butane and inobutane), and butylenes.
- (2) The State Fire Marshal shall make promulgate and enforce regulations for the design, construction, location, installation, and operation of

equipment for storing, handling, transporting by tank, truck, tank trailer, utilizing liquefied petroleum gases, and for the odorization of said gases used therewith. Such regulations shall be substantially in conformity with the published standards of the National Board of Fire Underwriters except as to location of bulk storage. Such regulations shall be made by the State Fire Marshal in accordance with Chapter 101, South Dakota Session Laws of 1941.

- (3) It shall be unlawful for any person, firm, association, or corporation, on and after the effective date of this Code, or any of the regulations of the State Fire Marshal, made subsequent to this Code, to violate any of the provisions of this section.
- (4) Specific Penalty. Any person, firm, association, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than fifty dollars (\$50.00), and each ten (10) days that such violation is permitted to exist shall constitute a separate offense.

5-1-11 (a) Manual Discharge or Breach of Propane Tanks

It shall be illegal for any person or entity to manually discharge or breach any propane tank within the City of Wagner, or to salvage or prepare for salvage any propane tank or tanks by the release of liquid or vapor in excess of twenty-five (25) gallons of propane or two hundred and fifty (250) square feet of propane vapor within a twenty-four (24) hour period within the City of Wagner; or to at any time release propane or ethyl mercaptan odorant of any kind or type into the soil or the atmosphere of the City of Wagner in excess of the above quantities within a 24 hour period.

All discharges of propane liquid or vapor within the City of Wagner shall be in accordance with NFPA 58 (National Fire Protection Association), Liquefied petroleum code, and this ordinance.

Any person or business that shall be found to have intentionally violated the terms and conditions of this ordinance shall be guilty of an offense as provided by the Wagner Municipal Code and shall be subject to a fine of up to \$200.00 per tank, per day, for a violation of this ordinance. **(Added, Ordinance #2012-06. Effective Date: September 4th, 2012)**

5-1-12 Relating to Gunpowder and Explosives.

It shall be unlawful for any person, firm, or corporation to keep gunpowder, giant powder, dynamite or other higher explosives except for immediate use and only then when the same is to be used by persons experienced in the use thereof, within said City of Wagner, provided that nothing in this section contained shall prohibit the keeping of reasonable supplies of gunpowder for giant powder for sale.

5-1-13 Penalty for Violation.

Except where in this Chapter a specific penalty is otherwise provided, any person who violates a provision of this Chapter or fails to comply with a directory provisions thereof, shall be deemed guilty of an Offense and shall be punishable as provided in 4.0404 of this Code.

5-1-14 Regulating Open Burning.

No person shall dispose of refuse and /or other combustible material by open burning, or cause, suffer, allow or permit open burning of refuse and/or combustible material, and no person shall conduct or cause or permit the conducting of a salvage operation by open burning.

5-1-15 Permissible Open Burning

The open burning of refuse and/ or other combustible materials is prohibited unless conducted for the specified purposes and conducted in conformity with the subsection set forth below. No open burning activities shall be conducted in such a manner as to constitute a public nuisance or in violation of ordinances or regulations. The authority to conduct open burning under the provisions of this section does not exempt or excuse a person from the consequences, damages, or injuries, which may result there from.

- a. Fires purposely set for the instruction and training of public and industrial fire-fighting personnel, when authorized by the City of Wagner.
- b. Fires set for the elimination of a fire hazard, which cannot be abated by any other means, when authorized by the City of Wagner.
- c. Fires set for the removal of hazardous or dangerous material where there is no other practical or lawful method of disposal, when authorized by the City of Wagner.
- d. Campfires and other fires used solely for recreational purposed, for ceremonial occasions, or for outdoor preparation of food.

5-1-16 Damage or deterioration; Appraisal.

The amount of extent of damage or decay or deterioration which may be done to any building, when in doubt, may be determined by three disinterested persons, resident of the City, one of whom shall be appointed by the Mayor, one by the owner of the building or his agent, and the two thus chosen shall select a third. If the owner of the building or his agent refuse to make a selection, the City Council shall select for him and the decision of the persons thus selected, or a majority of them, shall be final and conclusive and shall be reported in writing to the City Council.

5-1-17 Building Permits.

Any person desiring to erect, alter or repair, or remove any fire damaged building shall apply to the City Council for a permit for such purpose, and furnish a plan and specifications sufficient to enable the City Council to determine whether such building, alteration or repair is in compliance with the provisions of this chapter, and, if granted, such permit shall be signed by the Mayor and City Finance Officer.

5-1-18 Building Permits; Lot Lines.

Residential buildings may be constructed to within ten feet of the lot line or adjacent lots. Such residential buildings may not be constructed closer than five feet from the nearest edge of an alley. Structures used for commercial purposes may be constructed up to the lot line. This section is to be in compliance with the Wagner Zoning Ordinance.

5-1-19 Abatement of Certain Buildings.

No wooden building or part of a wooden building within the Fire Limits shall be raised or enlarged, nor, shall any wooden building within said limits which may hereafter be damaged by fire or otherwise to the extent of fifty percent of its value, be replaced or rebuilt; and if damaged less than fifty per centum of its value, be made higher or enlarged, or occupy a space more than before the damage thereto; and in case of disagreement as to the per centum of damage done to a building, the amount of damage may be determined by three disinterested persons, electors of this City, one of whom shall be chosen by the Mayor, one by the owner of the building and the third by the two so chosen, and the decision of these persons shall be final. All buildings and additions to buildings hereinafter erected or constructed within the fire limits of the city in violation of the terms of this chapter are hereby declared to be a public nuisance. It shall be the duty of the Chief of Police to forthwith abate the same, and the cost of abating such nuisance shall be collectible from the owner of the property and may be established as a lien upon the real estate, building or material thereof.

5-1-20 Fire Escapes.

All public buildings of two or more stories in height shall be provided with one or more metallic ladders or fire escapes, subject to the approval of the council. In case the owner, agent, lessee or occupant, or either of them, fails to provide such fire escape or fire escapes within thirty days after notice from the City Council shall be served upon him or them, such fire escape or fire escapes shall be constructed by the City Council. The cost thereof recovered from such owner, agent, lessee or occupant, and if not paid, the same shall be filed as a lien against such building and property.

5-1-21 Exits in Public Buildings.

Every public building designated to accommodate two hundred people or more shall have at least two (2) exits, each at least four feet in width. The doors to such exits shall open outward, and no chairs or seats shall be allowed in the aisles when the audience is present.

5-1-22 Definition of Public Buildings.

Every building used as an opera house, theater, dance hall, moving picture theater, lodge hall, and any place where public meetings or assemblies are held, is hereby declared to be a public building within the meaning of this chapter.

5-1-23 Penalties.

Each day's violation of any of the provisions of this chapter shall constitute a separate and distinct offense.

NOTES –

Authority for various provisions of this Chapter: For right of Chief of Fire Department to inspect premises for fire hazards, see SDC 31.0305; to establish Fire Districts, examine buildings and provide for remedying dangerous construction, see SDC 45.0201 (52) and (55).

**CHAPTER 5-2
DANGEROUS BUILDING**

SECTION

5-2-1 Definitions – Dangerous Building

5-2-2 Dangerous Buildings; Nuisance; Abatement Procedure

5-2-1 Definitions.

For the purpose of this code, certain terms, phrases, words and their derivatives shall be construed as specified in either this chapter or as specified in the Building Code or the Housing Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. *Webster's Third New International Dictionary of the English Language, Unabridged*, copyright 1986, shall be construed as providing ordinary accepted meanings. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BUILDING CODE is the Uniform Building Code promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

DANGEROUS BUILDING is any building or structure deemed to be dangerous under the provisions of Section 302 of this code.

HOUSING CODE is the Uniform Housing Code promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

DANGEROUS BUILDING.

For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent of the life, health, property or safety of the public or its occupants are endangered.

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

3. Whenever the stress of any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structures, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.
7. Whenever any portion thereof has cracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. Whenever the building structure, or any portion thereof, because of (i) dilapidations, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.
11. Whenever the building or structure, exclusive of the foundation, show 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii)

enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in Building Code or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.
14. Whenever any building or structure which, whether or not erected in accordance with applicable laws and ordinance, has in any non-supporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.
17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

5-2-2 Dangerous Buildings; Nuisance; Abatement Procedure.

Any dangerous building as defined in 5-2-1 of this Code is hereby deemed to be a nuisance and shall be abated in the manner and method provided by state law from nuisances; hazardous, unsafe, or dangerous buildings or structures.

CHAPTER 5-3 FLOOD DAMAGE CONTROL

SECTION

- 5-3-1 Findings of Facts
- 5-3-2 Statement of Purpose
- 5-3-3 Methods of Reducing Flood Losses
- 5-3-4 Definitions
- 5-3-5 Lands of Which this Ordinance Applies
- 5-3-6 Basis for Establishing the Areas of Special Flood Hazard
- 5-3-7 Compliance
- 5-3-8 Abrogation and Greater Restrictions
- 5-3-9 Interpretation
- 5-3-10 Warning and Disclaimer of Liability
- 5-3-11 Administration – Establishment of Development Permit
- 5-3-12 Designation of the Zoning and Planning Board
- 5-3-13 Duties and Responsibilities of the Zoning and Planning Board
- 5-3-14 Use of Other Flood Data
- 5-3-15 Information to be Obtained and Maintained
- 5-3-16 Alteration of Watercourses
- 5-3-17 Interpretation of Firm Boundaries
- 5-3-18 Provisions for Flood Hazard Reduction
- 5-3-19 Specific Standards

5-3-1 Findings of Facts

- (1) The flooding hazard areas of Wagner, South Dakota, 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.

- (2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard 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.

5-3-2 Statement of Purpose.

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

- (1) To protect human life and health;
- (2) To minimize expenditures of public money for costly flood control projects;

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

5-3-3 Methods of Reducing Flood Losses.

In order to accomplish its purpose, this ordinance includes methods and provisions for:

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

5-3-4 Definitions.

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

“Area of Special Flood Hazard”, means the land in the floodplain within a community subject to one percent or greater chance of flooding in any given year.

“Base Flood”, means the flood having a one percent chance of being equaled or exceeded in any given year.

“Development”, means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging,

filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

“Flood” or “flooding”, means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Insurance Rate Map”, (FIRM), means an official map of a community on which the Federal Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

“Manufactured Home”, means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term “manufactured home” also includes park-trailers, and other similar vehicles placed on a site for more than 180 days. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.

“Structure”, means a walled and roofed building or mobile home that is principally above ground.

“Substantial Improvement”, means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- a. Before the improvement or repair is started, or
- b. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or the structural part of the building commences, whether or not the alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state and local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
2. any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

5-3-5 Lands to Which This Ordinance Applies.

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Wagner.

5-3-6 Basis for Establishing the Areas of Special Flood Hazard.

The areas for special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map (FIRM), dated October 1, 1986, is adopted by reference and declared to be part of this ordinance. The FIRM is on file at the City Finance Officer's Office, P.O. Box 40, Wagner, South Dakota 57380.

5-3-7 Compliance.

No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of this ordinance and other applicable regulations.

5-3-8 Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5-3-9 Interpretation.

In the interpretation of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

5-3-10 Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of the areas of special flood hazards or uses permitted within such areas of special flood hazards or uses permitted within such areas will be free from flooding and flood damage. This ordinance shall not create liability on the part of the City of Wagner, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

5-3-11 Administration- Establishment of Development Permit.

A Development Permit shall be obtained before construction or development begins within any area of special flood hazard as determined by applicable State and Federal guidelines or the Zoning and Planning Board. Application for a Development Permit shall be made on forms furnished by the City and may include, but not limited to; plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which any structure has been flood-proofed;
3. Certification by a registered professional engineer or architect that the flood proofing methods for any non-residential structure meet any flood proofing criteria which may be set out in state or federal regulations or by the Zoning and Planning Board; and,
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

5-3-12 Designation of the Zoning and Planning Board.

The Zoning and Planning Board is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

5-3-13 Duties and Responsibilities of the Zoning and Planning Board.

Duties of the Zoning and Planning Board shall include, but not be limited to:

Permit Review

1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
3. Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purposes of this ordinance, “adversely affects” means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas.
 - (a) If it is determined that there is no adverse affects and the development is not a building, then the permit shall be granted without further consideration.
 - (b) If it is determined that there is an adverse effect, then technical justification, (i.e., a registered professional engineer) for the proposed development shall be required.
 - (c) If the proposed development is a building, then the provisions of this ordinance shall apply.

5-3-14 Use of Other Flood Data.

When base flood elevation data has not been provided in accordance with State or Federal Guidelines, or within the parameters set forth by the Zoning and Planning Board, the Zoning and Planning Board shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source as criteria for requiring that new construction substantial improvements or other development in Zone A meets (Cite appropriate sections containing specific elevation and flood proofing requirements for residential and nonresidential structures).

5-3-15 Information to be Obtained and Maintained.

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor structure (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved flood-proofed structures:
 - (a) verify and record the actual elevation (in relation to mean sea level) to which the structure has been flood-proofed.
 - (b) maintain the flood proofing certifications required by all applicable State or Federal Guidelines, or within the parameters set forth by the Zoning and Planning Board.
- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.
- (4) For the purpose of this chapter, “lowest floor” is defined to mean the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the 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 this chapter.

5-3-16 Alteration of Watercourses.

- (1) Notify adjacent communities and the South Dakota Division of Emergency and Disaster Service prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5-3-17 Interpretation of Firm Boundaries.

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

5-3-18 Provisions for Flood Hazard Reduction.

5-3-18.1 General Standards

In all areas of special flood hazards the following standards are required:

5-3-18.2 Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (2) All mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
 - a) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, with mobile homes less than 50 feet long requiring one additional tie per side;
 - b) frame ties to be provided at each corner of the home with five additional ties per side at intermediate points, with mobile homes less than 50 feet long requiring four additional ties per side;
 - c) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and,
 - d) any additions to the mobile home be similarly anchored.

5-3-18.3 Construction Materials and Methods.

electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5-3-18.4 Nonresidential Construction.

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

- 1) be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- 2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
- 3) be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth by all applicable State and Federal Guidelines, or within the parameters set forth by the Zoning and Planning Board.

CHAPTER 5-4 BUILDING PERMITS

SECTION

5-4-1 Permits Required

5-4-1 Permits Required.

See Wagner Zoning Ordinance

CHAPTER 6 OFFENSES

SECTION

- 6-1-1 Disorderly Conduct
- 6-1-2 Public Nudity
- 6-1-3 Dog and Cock Fights
- 6-1-4 Vagrancy
- 6-1-5 Cruelty to Animals
- 6-1-6 Turning False Alarms
- 6-1-7 Flammable Substances Storage of
- 6-1-8 Curfew

6-1-1 Disorderly Conduct.

A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, he willfully does any of the following acts in a public place:

- a) Commits an act in a violent and tumultuous manner towards another whereby the other person is placed in danger of his life, limb, or health;
- b) Commits an act in a violent and tumultuous manner towards another whereby the property of another is placed in danger of being damaged or destroyed.
- c) Causes, provokes, or engages in any fight, brawl, or riotous conduct so as to endanger the life, limb, health, or property of another.

6-1-2 Public Nudity.

No person shall appear in any public place in this city in a state of nudity.

6-1-3 Dog & Cock Fights.

No person shall keep or harbor dogs for fighting purposes or incite dogs to fight, or shall keep or harbor cocks for fighting purposes, or who shall incite cocks to fight.

6-1-4 Vagrancy.

It shall be unlawful for any vagrant to be or remain within the limits of the city.

A vagrant is an idle person, having no legitimate means of support, who does not seek or desire lawful employment, and who subsists through charity of others or by unlawful means. Whenever it shall, in a prosecution under this section, be shown that any person who is able to work:

- A) Wanders about in idleness or lives in idleness without property sufficient for his support; or
- B) Leads an idle, immoral or profligate life and does not work; or

- C) Loafs, loiters, or idles in the City, upon a public highway, or about any public place without any regular employment and without sufficient property for his support; or
- D) Trades or barter stolen property; or
- E) Unlawfully sells or barter any spirituous, vinous, malt or other intoxicating liquors; or
- F) Attends or operates any gambling device or apparatus; or
- G) Engages in practicing any trick or device to procure money or other things of value; or
- H) Engages in any unlawful calling; or
- I) If an able-bodied married man, neglects or refuses, without lawful excuse to provide support for his family; or
- J) Begs in any public place or from house to house, or induces children or others to do so; or
- K) Falsely represents himself as a collector or alms for a charitable institution or purpose; it shall constitute a prima facie presumption that such person is a vagrant as defined in this section.

6-1-5 Cruelty to Animals.

No person shall in this city brutally or immoderately beat any horse, mule, cow or any other animal or wantonly or maliciously torture any animal, or shall overload, overwork or overdrive any horse or other animal, or who shall knowingly or negligently allow such animal to be without food or drink or to stand exposed in severe weather for any unusual time.

6-1-6 Turning in False Alarms.

No person shall in this city knowingly or unlawfully create or cause to be given a false alarm of fire.

6-1-7 Flammable Substance Storage of.

No person, firm or corporation shall keep in store in any building, basement or cellar of any building, or any place within the corporate limits of the city, a greater amount of petroleum, gasoline, kerosene, camphor, carbon, benzene, naphtha, burning fluid or other inflammable substance than five barrels at one time, without first obtaining the consent of the City Council. Nothing in this section is to supercede any state or federal laws or regulations dealing with the storage of flammable substances, and all state federal laws and regulations are to be adhered to by all citizens and entities within the city of Wagner. Also, all state, local, and federal provisions for providing notice to the fire department/district are also to be complied with, and in addition to these notice provisions, the City of Wagner should also be notified in writing.

6-1-8 Curfew

6-1-8.1

It shall be unlawful for any person under the age of eighteen years, hereinafter

referred to as a “minor,” to be upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, and public buildings, places of amusement and entertainment, vacant lots, or other unsupervised places within the city limits of Wagner, Charles Mix County, South Dakota, between the hours of 10:00 P.M. and 7:00 A.M., on the following day, on Sunday through Friday morning of each week, and between the hours of Midnight (12:00 A.M.) and 7:00 A.M. on the following day, on Friday and Saturday nights of each week. Provided however, that the provisions of this section do not apply to a minor accompanied by his or her parent, guardian, or other adult standing in place of a parent or guardian, having the custody of minor, or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian, or such other adult person having the care and custody of the minor; and provided further, that the said minor shall have one hour following any entertainment, game, or other activity sponsored by a public or parochial school or church, providing said entertainment is attended by said minor, in which to return to his or her respective individual home.

6-1-8.2

It shall be unlawful for the parent, guardians, or other adult persons standing in the place of parents or guardians, having the care and custody of a minor, to permit said minor to be upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, and public buildings, places of amusement and entertainment, vacant lots, or other unsupervised places within the City limits of Wagner, Charles Mix County, South Dakota, between the hours of 10:00 P.M. and 7:00 A.M. on the following day, on Sunday through Friday morning of each week, and between the hours of midnight (12:00 A.M.) and 7:00 A.M. on the following day, on Friday and Saturday nights of each week, subject to and as modified by the provisions contained in section 2.0501 hereof, as they may from time to time be amended.

6-1-8.3

It shall be unlawful for the owner, manager, or person in charge of any show or any other place for amusement to permit a minor to enter or remain in said show or other place of amusement after 10:00 P.M. and until 7:00 A.M. on the following day, on Sunday through Friday mornings, and between midnight (12:00 A.M.) and 7:00 A.M. on the following day on Friday and Saturday evenings, unless said minor is accompanied by his or her parent, guardian, or other adult standing in place of parent or guardian, having the custody of minor.

6-1-8.4

Except in those cases between the hours of 10:00 P.M. and 7:00 A.M. the following day on Sunday through Friday morning, and between midnight (12:00 A.M.) and 7:00 A.M., on the following day on Friday and Saturday evenings, when a person under the age of eighteen years is returning home

from an entertainment, game, or other activity sponsored by a public or parochial school or church, the fact that said minor is unaccompanied by parent, guardian, or such other adult person standing in position of parent or guardian and having the custody of said minor, is found upon any public street, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places between the hours and days of the week as set forth in 2.0501, as it may from time to time be amended, as aforesaid, shall be prima facie evidence that said minor is there unlawfully and that no reasonable excuse exists therefore.

6-1-8.5

Any minor who is in violation of Section 6-1-8 of this Code, as it may from time to time be amended shall be subject to immediate arrest and or detention by any police officer or other law enforcement officer having jurisdiction within the City of Wagner, Charles Mix County, South Dakota. Further, that upon the first arrest and/or detention by a police officer, said minor shall immediately be taken to the Wagner Police Department where said minor's parents or guardians will be promptly notified to come and get said minor, or, in the event said parent or guardian is unable to be contacted by reasonable methods, then and in that event said minor shall be delivered by the arresting and or detaining officer to the authority deemed most responsible for the care of said minor. Further, should a minor be arrested and/ or detained for a second violation of Section 6-1-8 as amended from time to time, that said minor shall then be immediately arrested or detained by a police officer, and then immediately delivered to an acceptable detention center where said minor shall be kept for as long as said detention center deems appropriate, and said minor's parent or guardian will promptly be notified of said arrest and or detention, and subsequent placement of said child in detention center. Further, that should a minor violate Section 6-1-8 as it may from time to time be amended , three or more times that said minor shall then immediately be arrested or detained, and after his or her parent or guardian has been notified as set forth above, said minor shall then be taken and delivered to the nearest appropriate detention center, and said minor's continual violation of this Chapter shall immediately be referred to the Charles Mix County States Attorney's Office for immediate juvenile proceedings pursuant to the juvenile statutes of the State of South Dakota.

6-1-8.6

Any minor is in violation of 6-1-8 of this Code as it may from time to time be amended shall be punished by a fine not to exceed the sum of Two Hundred (\$200.00 Dollars. Further, any parent, or guardian, of a minor child arrested or detained for a violation of section 6-1-8, et. seq., as said section shall from time to time be amended, shall be punished by a fine not exceeding Two Hundred (\$200.00) dollars.

6-1-8.7

Any person other than a minor, parent, or guardian who shall be in violation of 6-1-8 of this Code, et. seq., as it may from time to time be amended, shall be punished by a fine not to exceed Two Hundred (\$200.00) Dollars.

6-1-8.8

In addition to the duties herein before provided for the handling of a minor in violation of this chapter, the Chief of Police or any other policeman on duty during the nighttime shall blow one short blast of the City siren at the hour of 9:30 P.M. on Sunday through Thursday evenings to announce the curfew hour. The governing body may by resolution dispense with the City siren sounding the curfew, as they deem appropriate.

**CHAPTER 7
WATER & SEWER**

SECTION

- 7-1-1 Waterworks department established
- 7-1-2 Department directed by a Commissioner
- 7-1-3 Department operated by a Superintendent
- 7-1-4 Water Works Superintendent; Consolidation of Positions
- 7-1-5 Duties of Water Works Superintendent
- 7-1-6 Implied contract between City, user, and property owner
- 7-1-7 Application for water
- 7-1-8 Regulations Governing Consumers
- 7-1-9 Meters to be either radio read or self-read, accessible and deposit required
- 7-1-10 When meter is defective
- 7-1-11 Materials and inspection
- 7-1-12 Consumers to take water at own risk
- 7-1-13 City owns materials to lot line
- 7-1-14 Acts declared unlawful
- 7-1-15 Missing meters to be installed
- 7-1-16 Trenches to remain open until inspected
- 7-1-17 General Regulations of Water System
- 7-1-18 Mandatory Use of Water Meters
- 7-1-19 Installation of Water Meters
- 7-1-20 Unlawfully Turning on Water
- 7-1-21 Water Rates
- 7-1-22 Water Connection Fees
- 7-1-23 Payment of Water Bills
- 7-1-24 Resumption of Service Charge
- 7-1-25 Penalty for violation

7-1-1 Waterworks department established.

A department of city government is hereby established for the purpose of operating and maintaining a water system to supply water for domestic use, for general purposes and for fire protection, and for said purposes may impose and collect assessments, dues, and charges from water users, and may levy a general assessment to provide fire protection in the manner provided by law.

7-1-2 Department directed by a Commissioner.

The Commissioner shall have the supervisory control of the Waterworks Department, but his acts and decisions may be reviewed by the governing body and, in the event of any controversy, the governing body reserves its right of final decision.

7-1-3 Department operated by a Superintendent.

The City shall employ a Superintendent of Waterworks, who shall be under the direct supervision of the Waterworks Commissioner, and who shall receive such salary, payable semi-monthly, as may be agreed upon. The salary, when agreed upon shall be authorized by motion and the same shall then continue at that rate until a new motion is made changing the same.

7-1-4 Water Works Superintendent; Consolidation of Positions.

The office of the Superintendent of the Water Works system is hereby created and shall be filled annually by appointment by the Mayor, subject to approval of said appointment by the City Council. Provided further, that the Superintendent of Streets and the Superintendent of Water Works may be held by the same person. The incumbent of said office of Superintendent of the Water Works system shall hold office during the pleasure of the City Council and until his successor is appointed and qualified.

7-1-5 Duties of Water Works Superintendent.

It is the duty of the Superintendent to:

1. Carry out the provisions of all city ordinances and resolutions concerning the municipal water system.
2. Supervise the operation and maintenance of the water system.
3. Account to the City Council for any expenditures made in the discharge of his office; and
4. Perform any other duties as may be assigned by the City Council or Mayor.

7-1-6 Implied contract between City, user, and property owner.

The rules, regulations and water rates in this Chapter provided or as elsewhere set out in this code or future ordinances and resolutions of the governing body shall be considered a part of the contract of every person applying for water service from the City water system, and every owner of property for which such application is made, and every such person by taking

water, or by virtue of their ownership of the land for which application is made, shall be considered to express his assent to be bound thereby, and when any said ordinances or such others as the city shall hereafter adopt, are violated, the water shall be cut off from the building or place for such violation, although two or more parties receive water through the same pipe, and shall not be let on again except by order of the City Council and upon the payment of twenty-five dollars, and such other terms as the City Council may demand, and in case of such violation the City Council shall have the right to declare any payments made for water tax by the person committing such violation to be forfeited and the same shall thereupon be forfeited to said city.

The Mayor, Commissioner or Superintendent of Waterworks shall in case of public necessity or where it is necessary to make repairs to the waterworks system, have authority to shut off the water for the entire City or such part thereof as may be necessary.

All water charges shall be a charge against the owner, lessee and occupant of the premises, and if such charge shall not be paid, the City shall then have the right to disconnect the water service to the premises and to collect the delinquent charges.

(Amended April 7, 2003; Ordinance No. 348)

7-1-7 Application for water.

Every person desiring water from the city shall make application therefore to the City Finance Officer upon blanks furnished by the city. Not more than one house or place of business shall be supplied from tap except by special permission from the City Council the granting of which permission must be shown in the minutes of the city's proceedings. Provided, however, that the city shall not be required to furnish water to property on a street where no water main is located, unless an application is submitted by four or more persons whose property is located within 300 feet of an existing main. In the event that four or more persons submit an application to the city for water, and all of said persons live on the same street or own property thereon and are within said 300 feet distance from an existing water main, and deposit with the city at the time of the application the connection fee hereinafter provided, the city shall within a reasonable time thereafter construct a water main on said street.

7-1-8 Regulations Governing Consumers.

Rule 1. Every person desiring a supply of water from the city must make application therefore to the City Finance Officer upon blanks to be furnished by the City. Not more than one house shall be supplied from one tap except by special permission by the City Council.

Rule 2. Water shall not be turned into any house or private service pipe at any time except upon the order of the City Council or Superintendent, nor until the applicants shall have paid the rent due for the current term; this rule shall not be construed to prevent the superintendent admitting water to test the pipes and for that purpose only.

Rule 3. No consumer shall make, or employ any plumber or other person, to make any tap or connection with a pipe upon the premises for alteration, extensions or attachments, without permission from the City Council or superintendent.

Rule 4. All persons using water shall keep the hydrants, taps, hose, toilets, urinals, baths or other fixtures allotted to their use closed except when obtaining water for use, and shall be responsible for any damages or injury that may result to others receiving their water supply from same pipe. All water closets must be self closing.

Rule 5. The stop cock and appurtenances must be sufficiently strong to bear the pressure and ram of water in the mains. All persons taking water shall keep their own services pipes, stop cock and apparatus in good repair, and protect them from the frost at their own risk and expense and shall prevent all unnecessary waste of water; and it is expressly stipulated by said City Council that no claim shall be made against the city or its officers by reason of breaking of any service pipe or service cock, or if from any cause the supply of water shall fail, or from damages arising from shutting off water to repair mains, making extensions or connections, or for any other purpose that may be deemed necessary and the right is hereby reserved to cut off the supply of water at any time, any permit granted or regulation to the contrary notwithstanding.

Rule 6. Service pipe intended to supply two or more distinct premises or tenements, and where only one stop is used, the person or persons controlling the same must pay the water rent of all persons who are thus supplied, as separate bills will not be made.

Rule 7. Every person taking water supplied through the water system of this city shall permit the superintendent at all hours of the day between seven o'clock a.m. and six o'clock p.m. to enter their premises, or buildings to examine the fixtures.

Rule 8. Yard fountains shall not be used more than six hours per day, and only between April first and November first except by special permission of the City Council or superintendent. The service pipe or fountain out of doors must be provided with stop cocks under the control of the City Council. The right is reserved to suspend the use of fountains and hose for sprinkling streets, yards and gardens, whenever, in the opinion of the City Council, the public exigencies may require.

Rule 9. No persons except the superintendent or persons having special permits by the City Council, or persons in their service and approved by them, shall be permitted under any circumstances to tap the distributing pipes, or insert stop cocks or ferrules therein, and the kind and size of the connections with the mains shall be that specified in the permit or order.

Rule 10. Pipes must be tapped on or near the top and not closer than six inches to the hub, and no connection shall be made with the street mains for less than the current cost of performing the work including the cost of all materials and/or labor.

Rule 11. Applicants for water will be charged from the center of the street for all service pipes, irrespective of the location of the mains.

Rule 12. During all alarms of fire, and while the fire pressure is on the mains, the use of yard hydrants, sprinklers or street sprinklers, or elevators are positively prohibited, unless for the extinction of fire.

Rule 13. No water pipes laid under ground shall be covered and trenches be filled by any plumber until after personal notice to the superintendent and a reasonable time for inspection by him or his designee is given. The city may require a twenty-four-hour notice to put on a tap in the mains.

Rule 14. No persons shall willfully or carelessly break, injure, mar, deface, interfere with or disturb any building, machinery, ladder, wrench, for hydrants, apparatus, fixtures, attachments or appurtenances of the water trough or stop cock, meters, water or service pipe, public, street or fire hydrants, or any part hereof; nor shall any person deposit anything in any stop cock box or commit any act tending to obstruct or impair the intended use of any of the above mentioned property, except in cases herein or otherwise regulated by this chapter.

Rule 15. All hydrants erected in the city for the purpose of extinguishing fires are hereby declared to be public hydrants, and no person or persons (other than members of the fire department, and then only for the use and purpose of said fire department, or persons especially authorized by said City Council) shall open any of said hydrants, or attempt to draw water from the same, or at any time uncover or remove any protection from any of said hydrants.

Rule 16. No person authorized to open hydrants shall delegate his authority to act, or let out to or suffer any person to take the wrenches furnished him or suffer the same to be taken from any house or said city except for purposes specially connected with the fire department or as they accompany hose charts upon occasion of fire.

7-1-9 Meters to be either radio read or self-read, accessible and deposit required.

A deposit fee of One Hundred Fifty (\$150.00) dollars shall be made to the City Finance Officer upon all requests for the use of City water and said deposit shall be refunded upon termination of the use of City Water and upon full payment of the water account. Water bills not paid by the 10th of the month shall be subject to a \$5.00 penalty. It shall be the duty of the Water user to see that the water meter is kept conveniently accessible at all times for the purpose of maintenance, repair and inspection at all reasonable and ordinary hours. In case where meters are not accessible for maintenance, repair and inspection, the water shall be cut off from the building or place of such violation and shall not be turned on again except by order of the City Council and upon payment of twenty-five (\$25.00) dollars and such other terms as the City Council may demand. A water service that has been disconnected for non-payment of water rent will be reconnected upon payment in full of the delinquent amount and a required re-connect fee as set forth in WMC 7-1-24. **(Amended, Ordinance #2015-07, Meters to be either radio read or self-read, accessible and deposit required. Effective Date: September 1st, 2015)**

The Water Superintendent shall read all water users' meters at least once a month and water billings will then be sent by the City Finance Officer to all water users at least monthly.

Any water users who do not yet have radio read meters installed on their property shall continue to use the water meter books for each meter or meters under the water user's control that have been provided to the water users by the City, and that said water meter book or books shall contain an original and duplicate page for each meter reading.

7-1-10 When meter is defective.

In case any meter fails to register, from any cause, the amount charged for water during such period shall be estimated by the Superintendent and City Finance Officer based upon prior usage of water for a like period of time, and the Superintendent and City Finance Officer shall attach a notice to the user's next billing stating that the meter was found to be defective. In the event the water user becomes aware that the water meter is defective they shall immediately contact the City Finance office. Failure to notify the City Finance Officer of a known defective meter, or to continue receiving water metered through a known defective meter shall constitute a violation punishable by not more than Two Hundred Dollars (\$200.00) fine which shall not include damages or restitution.

7-1-11 Materials and inspection.

All corporation stop-cocks, inverted keys, stop and water cocks, lease goose necks, and all service lines and stop boxes shall be of the kind and pattern described by the Superintendent of Waterworks ; all service pipes shall be laid as much below the surface of the ground as the main pipes in the street, and in all cases, to be protected, so as to prevent rupture from freezing. Before any ditch leading from the main to the lot line is filled, it shall be the duty of the applicant or property owner to notify the Superintendent of Waterworks that the installation has been completed, and it shall then be the duty of the said Superintendent to inspect such installation, and if he finds the installation to be satisfactory, he shall direct that the ditch be filled, but if he finds such installation to be unfit, he shall require that the improper condition be forthwith remedied.

7-1-12 Consumers to take water at own risk.

All parties using water from the waterworks system for any purpose shall do so at their own risk, and the city or its employees shall in no case be liable or responsible for damages growing out of the overflow or stoppage of water, or any insufficient supply of the same, or other cause.

7-1-13 City owns materials to lot line.

All service pipes, connections and boxes leading from the mains to the lot line shall be, become and remain the property of this city, even though the applicant or property owner has paid for and installed the line from the main to the lot line.

7-1-14 Acts declared unlawful.

It shall be unlawful for any person to perform or commit any of the acts enumerated in this section, and the commission of anyone of such acts shall be deemed a violation and shall be punishable as provided in this code, to-wit:

- (1) To turn on the supply of water to the service pipe from which the same has been turned off by the Superintendent of Waterworks or an employee of such department without first having obtained a written permit from the Superintendent of Waterworks;
- (2) To use water for lawn purposes during fires in the city;
- (3) To climb on the water tower or on ladders thereon without proper authority;
- (4) To open any hydrant or attempt to draw water from the same or at any time uncover or remove any protection from any hydrant without having been authorized so to do by the Mayor or Superintendent of Waterworks;
- (5) To intentionally ring any false fire alarm, or in any way to molest or tamper with the alarm system;
- (6) To drive over any fire hose with a motor vehicle when the same may be on the streets for fire or other purposes; and,
- (7) To take from the hose house or usual place where the fire apparatus is kept, any hose, hydrant, wrench, fire ladder, engine, cart, or any article or utensil used in connection with the waterworks system or fire department, without lawful authority.
- (8) To open or close any main gate valves in the water distribution system.

7-1-15 Missing meters to be installed.

All persons who shall have connections with the waterworks system and shall not have a water meter shall provide themselves with a water meter, and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable by not more than \$200.00 with this fine not to include damages or restitution.

7-1-16 Trenches to remain open until inspected.

For the purpose of conserving the water supply of this city, no water pipes laid under the ground shall be covered and trenches filled by any person until after personal notice to the Superintendent of Waterworks and a reasonable time for inspection be given to him, provided, however, that if the said Superintendent or any employee of his department fails to make such inspection within 4 hours after such notice, it shall be presumed that his consent has been so given within the meaning of this section. This section is intended to include ditches containing water pipes on private property.

7-1-17 General Regulations of Water System.

The rules, regulations and water rates hereinafter named shall be considered a part of the contract with every person, company or corporation who is supplied with water through the water system of the city and every such person, company or corporation by taking water shall be considered to express his or their assent to be bound hereby. Whenever any of them, or such others as the City Council may hereinafter adopt are violated, the water shall be cut off from the building or place of such violation, although two or more parties may receive water through the same pipe, and shall not be turned on again except by order of the City Council or superintendent and upon the payment of expenses and other terms as the City Council shall demand; and in such case of such violation the City Council shall have the right to declare any payments made for water tax by the person committing such violation to be forfeited and the same thereupon shall be forfeited.

7-1-18 Mandatory Use of Water Meters.

The City shall provide meters to all persons using city water delivered in one inch (1”) or smaller lines. All water users receiving water in lines larger than one inch (1”) in diameter shall purchase said meter from the City and said meter shall be the type and size specified by the Superintendent, and the Superintendent shall install same and after installation the meter shall become the property of the City and shall be maintained by the City.

7-1-19 Installation of Water Meters.

All meters shall be installed and connected under the direction of the Superintendent and in conformity with the rules and regulations of the water works department.

7-1-20 Unlawfully Turning on Water.

No person shall turn on the supply of water to a service pipe from which the supply has been turned off by the city on account of the nonpayment of a water bill or for any other reason, without first having obtained a permit to do so from the Superintendent or City Finance Officer. Anyone violating this provision shall be guilty of a violation and upon conviction thereof shall pay a fine in the amount of Two Hundred Dollars (\$200.00) which does not include reimbursement or restitution.

7-1-21 Water Rates.

The charges per month for the use of water from the City Water System are as follows:

All water users shall pay the following water service minimum charge per month:

- Five-eighths inch (5/8”) through one inch (1”) meter = \$13.14 per month;
- One and one-half inch (1½”) meter = \$20.61 per month;
- Two inch (2”) meter = \$30.91 per month;
- Two inch (2”) compound meter = \$36.06 per month;
- Three inch (3”) meter = \$41.21 per month;
- Three inch (3”) compound meter = \$46.36 per month; and
- Four inch (4”) meter = \$51.52 per month.

That in addition to the above monthly minimum charge all water users shall pay the sum of Three Dollars and Fifty-Nine Cents (\$3.59) per thousand gallons of water used during each water billing cycle. This shall include all bulk water sales by the City of Wagner to any persons or entities.

That all apartment buildings, multi-family structures and trailer courts shall pay the monthly minimum for each separate living unit located in said apartment building, multi-family structures or trailer court. The monthly minimum shall be \$13.14 per month per living unit in said apartment building and multi-family structures; and the monthly minimum shall be \$13.14 per month for trailers that are actually connected to a trailer hookup, rather than the minimum for the line size stated in items A through G above. The monthly minimum charge to apartment buildings and multi-family structures shall be based on living units available,

regardless of whether occupied or not. The monthly minimum charge to trailer courts will be based upon the number of trailers connected to trailer hookups in the trailer court.

The term apartment buildings shall include any residential or commercial building that receives rent for a separate living unit located therein.

It shall be the responsibility of the owner of said apartment building, multi-family structures or trailer court to pay the required minimums for each separate living unit or trailer hookup, plus the water usage charge of \$3.59 per thousand gallons of water used upon said premises during each billing cycle.

In those situations where both residential and commercial activities are taking place on the same water hookup that then, and in that event the owner or user of said property shall be required to pay two (2) water minimums based on water meter size. (One for the residential use and one for the commercial use) And further, where more than one commercial enterprise is operating off of the same water meter, but have separate facilities, the owner or user of said property shall be required to pay two (2) water minimums based on the water meter size.

That commencing January 1, 2008, all water minimums and the general water rate shall automatically increase one percent (1%), and shall increase one percent (1%) every January 1st thereafter.

Water rate changes shall be done by resolution from time to time as needed, as determined by the City Council.

The above water minimums and rate, shall apply to all households, apartments, businesses, mobile homes, and public and private institutions. Different rates for different entities may be established at the discretion of the City Council, and these rates may be changed from time to time as deemed necessary by the City Council.

The rates will be available from the City Finance Officer upon request.

(Amended Ordinance No. 2007-05 replacing with Ordinance No. 2010-04: for rates were effective 1-1-08)

7-1-22 That water connection fees for new construction shall be as follows:

- A. Five-eighths inch (5/8") through one inch (1") meter = \$300.00;
- B. One and one-half inch (1½") meter = \$400.00;
- C. Two inch (2") meter = \$500.00;
- D. Two inch (2") compound meter = \$500.00;
- E. Three inch (3") meter = \$600.00;
- F. Three inch (3") compound meter = \$600.00; and
- G. Four inch (4") meter = \$700.00.

The above water connection fees shall be paid by the property owner, and in addition, the property owner shall be responsible for any street or curb and gutter repair incurred by connecting the property owner to City water service.

7-1-23 Payment of Water Bills.

The minimum rate and water charge, plus sewer charge is to be paid by the tenth day of each month at the City Finance Office. A five dollar (\$5.00) penalty shall be due if the water bill with appropriate sewer charge is not paid by the tenth day of each month. Outstanding water and sewer bills not paid by the twentieth day of the month in which it is due, is deemed to be delinquent and the water service becomes subject to being disconnected.

7-1-24 Resumption of Service Charge.

Whenever water is turned off for nonpayment of a water bill, the outstanding water bill must be paid and there will be a resumption of service charge of \$25.00, payable before water service is turned back on, and if, within a one (1) year time period from the first water shut off for nonpayment of a water bill there are subsequent water shutoffs for nonpayment of a water bill, the outstanding water bill must be paid and there shall be a resumption of service charge of \$100.00 to turn the water service back on.

After one (1) year of timely payment of water bills, the resumption of service charge for water service following nonpayment shall reset to \$25.00 for the first resumption of service charge, and \$100.00 thereafter. **(Amended, Ordinance #2015-06, Resumption of Service Charge. Effective Date: September 1st, 2015)**

7-1-25 Penalty for violation.

Any person who shall violate any of the provisions of this chapter, or any plumber or other person who shall do or perform any act or thing prohibited by the preceding sections of this chapter or otherwise than in accordance with this chapter's provisions, shall be guilty of a violation, where there is no other penalty prescribed shall be deemed guilty of a violation, and upon conviction therefore, shall be subject to a fine of Two Hundred Dollars (\$200.00), exclusive of reimbursement and/or restitution.

(7-1-1 through 7-1-24 Amended February 1, 2007)

CHAPTER 7-2 MUNICIPAL SEWER SYSTEM

SECTION

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7-2-1 Definitions

Sec. 1 “Biochemical Oxygen Demand (BOD)”

Shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter.

Sec. 2 “Building Drain”

Shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of a building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

Sec. 3 “Building Sewer”

Shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.

Sec. 4 **“Combined Sewer”**

Shall mean a sewer intended to receive both waste water and storm or surface water.

Sec. 5 **“Easement”**

Shall mean an acquired legal right for the specific use of land owned by others.

Sec. 6 **“Floatable Oil”**

Is oil, fat, or grease in a physical state such that it will separate by gravity from waste water by treatment in an approved pretreatment facility. A waste water shall be considered free of floatable fat if it is properly pre-treated and the water waste does not interfere with the collection system.

Sec. 7 **“Garbage”**

Shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

Sec. 8 **“Industrial Wastes”**

Shall mean the waste water from industrial processes, trade, or business as distinct from domestic or sanitary wastes.

Sec. 9 **“Natural Outlet”**

Shall mean outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or ground water.

Sec. 10 **“May”**

Is permissive (see “shall”. Sec. 18).

Sec. 11 **“Person”**

Shall mean any individual, firm, company, association, society, corporation or group.

Sec. 12 **“pH”**

Shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of the hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of 10^{-7} .

Sec. 13 **“Properly Shredded Garbage”**

Shall mean the wastes from the preparation, cooking, and dispensing of food

that has been shredded to such degree that all particles will be carried freely under the flow conditions prevailing in public sewers, with no particle greater than ½ inch (1.27 centimeters) in any dimension.

Sec. 14 **“Public Sewer”**

Shall mean a common sewer controlled by a governmental agency or public utility.

Sec. 15 **“Sanitary Sewer”**

Shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

Sec. 16 **“Sewage”**

Is the spent water of a community. The preferred term is “waste water,” Sec. 24.

Sec. 17 **“Sewer”**

Shall mean a pipe or conduit that carries waste water or drainage water

Sec. 18 **“Shall”**

Is mandatory (See “May,” Sec. 10).

Sec. 19 **“Slug”**

Shall mean any discharge of water or waste water which is in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration for flows during normal operation and shall adversely affect the collection system and/or performance of waste water treatment works.

Sec. 20 **“Storm Drain”** (sometimes termed “Stormed Sewer”) shall mean a drain or sewer for conveying water, ground water, subsurface water, or unpolluted water from any source.

Sec. 21 **“Superintendent”**

Shall mean the superintendent, operator of or Council member whose area of responsibility has been assigned to oversee waste water facilities and/or waste water treatment works, and of water pollution control of the City of Wagner, or his authorized deputy, agent, or representative.

Sec. 22 **“Suspended Solids”**

Shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in “Standard methods for the Examination

of Water and Waste Water” and referred to as non-filterable residue.

Sec. 23 **“Unpolluted Water”**

Is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and waste water treatment facilities provided.

Sec. 24 **“Waste Water”**

Shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with any ground water, surface water, and storm water that may be present.

Sec. 25 **“Waste water facilities”**

Shall mean the structures, equipment, and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

Sec. 26 **“Waste Water treatment works”**

Shall mean an arrangement of devices and structures for treating waste water, industrial wastes, and sludge. Sometimes used as synonymous with “waste treatment plant” or “waste water treatment plant” or “water pollution control plant.”

Sec. 27 **“Watercourse”**

Shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

Sec. 28 **“Hearing board”**

Shall mean that board appointed according to provision of Article VIII.

7-2-2 Proper Disposal of Wastes.

It shall be unlawful for any person to place, deposit, or permit to be deposited in any Unsanitary manner on public or private property within the City of Wagner, or in any area under the jurisdiction of said City of Wagner, any human or animal excrement, garbage, or other objectionable waste.

7-2-3 Discharge of Untreated Waste.

It shall be unlawful to discharge to any natural outlet within the City of Wagner, or in any area under the jurisdiction of said City of Wagner, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance, and any applicable state or federal statute or regulation.

7-2-4 Alternative Methods Prohibited.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy vault, septic tank, cesspool, or other facility intended or used for the disposal of waste water.

7-2-5 Toilet Connections with Sewer System.

The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City of Wagner and butting on any street, alley, or right-of-way in which there is not located or may in the future be located a public sanitary or combined sewer of the City of Wagner, is hereby required at the owner(s) expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within 60 days after date of official notice to do so, provided that said public sewer is within 400 feet of the property line.

7-2-6 Use of Private Sewers; Unavailability of Public Sewer.

Where a public sanitary or combined sewer is not available under the provisions of Article II, Section 4, the building sewer shall be connected to a private waste water disposal system complying with the provisions of this article.

7-2-7 Private Sewer Permit.

Before commencement of construction of a private waste water disposal system the owner(s) shall first obtain a written permit signed by the City of Wagner Superintendent. The application for such permit shall be made on a form furnished by the City of Wagner, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Superintendent. A permit and inspection fee of one hundred dollars (\$100.00) shall be paid to the City of Wagner at the time the application is filed.

7-2-8 Permit; When Effective.

A permit for a private waste water disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. The Superintendent shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the Superintendent.

7-2-9 Specifications for Private Sewage.

The type, capacity, location, and layout of a private waste water disposal system shall comply with all recommendations of the Department of Public Health of the State of South Dakota. No permit shall be issued for any private waste water disposal system employing subsurface soil absorption facilities where the area of the lot is less than 40,000 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

7-2-10 Future Availability of Public Sewer.

At such time as a public sewer becomes available to a property served by a private waste water disposal system, as provided in section 7-2-9 of this Code, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools, and similar private waste water disposal facilities shall be cleaned of sludge and filled with suitable material.

7-2-11 Operation of Private Sewer.

The owner(s) shall operate and maintain the private waste water disposal facilities in a sanitary manner at all times, at no expense to the City of Wagner.

7-2-12 Additional Requirements.

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer(s).

7-2-13 Sanitary Sewer; Connection with.

No authorized person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer of appurtenance thereof without first obtaining a written permit from the Superintendent.

7-2-14 Connection Permits; Classes of.

There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner(s) of his agent shall make application on a special form furnished by the City of Wagner. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of one hundred fifty dollars (\$150.00) for residential or a commercial building sewer permit and one hundred fifty dollars (\$150.00) for an industrial building sewer permit shall be paid to the City of Wagner at the time of application is filed.

7-2-15 Costs of Connection.

All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the City of Wagner from any loss or damage that may directly be occasioned by the installation of the building sewer.

7-2-16 Separate Sewers.

7-2-17 Preexisting Building Sewers.

Old building sewers may be used in connection with new buildings only when they found, on examination and test by the Superintendent, to meet all requirements of this ordinance.

7-2-18 Construction Materials.

The size, slope, alignment, materials of construction of all sanitary sewers including, building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing, and back filling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city and the State of South Dakota. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

7-2-19 Elevation of Sewers.

Whenever possible, the building sewer shall be brought at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

7-2-20 Sewers; Groundwater and.

No person(s) shall make connection of roof down spouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the Superintendent and the South Dakota State Department of Health for purposes of disposal of polluted surface drainage.

7-2-21 Compliance with State Plumbing Code.

The connection of a building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City of Wagner, and the State of South Dakota, or the procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9. All such connections shall be made gas tight and watertight and verified with proper testing. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

7-2-22 Testing of Connections.

The applicant for the building sewer shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Superintendent or his representative.

7-2-23 Safety of Excavation Sites.

All excavation for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City of Wagner.

7-2-24 Drainage into Public Sewers.

No person(s) shall discharge or cause to be discharged any unpolluted waters such as storm water, groundwater, roof runoff, subsurface drainage, or cooling water to any sewer, except storm water runoff from limited areas, which storm water may be polluted at times, may be discharged to the sanitary sewer by permission of the Superintendent, and the South Dakota Department of Health.

7-2-25 Storm Water In Sewers.

Storm water other than that exempted under 7-2-24 of this Code, and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent and the South Dakota State Department of Health. Unpolluted industrial cooling water or process waters may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer, or natural outlet.

7-2-26 Prohibited Discharges in Sewers.

No person(s) shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:

- Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, constitute a hazard to humans, or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.

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

- Solid or viscous substances in quantities or of such size capable of causing obstruction of the flow in sewers, or other interference with the proper operation of the waste water facilities such as , but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, underground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- Any material prohibited from being discharged under state or federal law.

7-2-27 Limitation on Discharge into Sewers.

The following described substances, materials, waters or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewers, the sludge of any municipal system, the waste water treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property, or constitute a nuisance.

The Superintendent may set limitations lower than the limitations established in the regulations below if, in his opinion, such more serve limitations are necessary to meet the above objectives. In forming this opinion as to the acceptability, the Superintendent will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the waste water treatment process employed, the capacity of the waste water treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or waste waters discharged into the sanitary sewer which shall not be violated without approval of the Superintendent are as follows:

- (a) Waste water having a temperate higher than 150 degrees Fahrenheit (65 degrees Celsius).
- (b) Waste water containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils, or product of mineral oil origin.
- (c) Waste water from industrial plants containing floatable oils, fat or grease.
- (d) Any garbage that has not been properly shredded as defined by 7-2-1 (13) of this Code. Garbage grinders may be connected to sanitary sewers from homes, Hotels, institutions, restaurants, hospitals, catering establishments, or similar Places where garbage originates from the preparation of food in kitchens for the Purpose of consumption on the premises or when served by caterers.
- (e) Any waters or waste containing iron, chromium, copper, zinc, or similar objectionable or toxic substances to such degree that any such material received in composite waste water at the waste water treatment works exceeds the limits established by the Superintendent for such materials.
- (f) Any waters or wastes containing odor-producing substances exceeding limits, which may be established by the Superintendent.
- (g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or Federal regulations.
- (h) Quantities of flow, concentrations, or both which constitute a “slug” as defined herein.
- (i) Waters or wastes containing substances which are not amenable to treatment or reduction by the waste water treatment processes employed, or are amenable to treatment only to such degree that the waste water treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

- (j) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

7-2-28 Harmful Discharges into Sewer System.

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substance or possess the characteristics enumerated in 7-2-27 of this Code, and which in the judgment of the Superintendent, may have a deleterious effect upon the waste water facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:

- Reject the wastes.
- Require pretreatment to an acceptable condition for discharge to the public sewers.
- Require control over the quantities and rates of discharge, and/or
- Require payment to cover the added cost of handling the treating and the wastes not covered by existing taxes or sewer charges under the provisions of 7-2-14 of this Code. If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plans and equipment shall be subject to the review and approval of the Superintendent and the South Dakota Department of Health.

7-2-29 Grease, Oil, Sand Interceptors; Use of;

Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling or liquid wastes containing floatable grease in excessive amounts as specified in 7-2-27 (c), or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors, the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates and means of disposal, which are subject to review by the Superintendent. Any removal and hauling of the collected materials not performed by owner(s) personnel must be performed by correctly licensed waste disposal firms.

7-2-30 Pre Treatment Facilities.

Where pretreatment or flow-equalization facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner(s) at his expense.

7-2-31 Industrial Wastes.

When required by the Superintendent, the owner(s) of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurements of wastes. Such structures, when required, shall be accessible and safely located, and shall be constructed in accordance with

plans approved by the Superintendent. The structure shall be installed by the owner(s) at his (their) expense, and shall be maintained by him so as to be safe and accessible at all times.

7-2-32 Compilation of Certain Data.

The Superintendent may require a user of sewer services to provide information needed to determine compliance with this ordinance. These requirements may include:

- (a) Waste water's discharge peak rate and volume over a specified time period.
- (b) Chemical analyses of waste waters.
- (c) Information on raw materials, processes, and products affecting waste water volume and quality.
- (d) Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control.
- (e) A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
- (f) Details of waste water pretreatment facilities.
- (g) Details of systems to prevent and control losses of materials through spills to the municipal sewer.

7-2-33 Testing of Wastes.

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Waste Water," published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the Superintendent.

7-2-34 Special Agreements.

No statement contained in this chapter shall be construed as preventing any special agreement between the City of Wagner and any industrial concern whereby an industrial waste unusual strength or character may be accepted by the City of Wagner for treatment.

7-2-35 Malicious Damage to Sewer System.

No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the waste water facilities. Any person(s) violating this provision shall be subject to immediate arrest under the charge of malicious damage to property.

7-2-36 Malicious Damage to Sewer System; Liability For.

Any person(s) found guilty shall be liable for all costs and expenses to repair the damage.

7-2-37 Hearing Board.

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

7-2-38 Members of Hearing Board.

The members of the board shall be (1) Registered Professional Engineer, (2) practicing sanitary engineer, (3) representative of industry or manufacturing enterprise, (4) on attorney, and (5) one member selected at large for his interest in accomplishing the objectives of this ordinance. The composition of the Board may be changed to three members or some other combination by the City Council as it may deem necessary.

7-2-39 Penalties.

Any person(s) found to be violating any provision of this Chapter except sections 7-2-35 and 7-2-36 shall be served by the City of Wagner with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

7-2-40 Penalties; Each Violation Separate Offense.

Any person(s) who shall continue any violation beyond the time limit provided for in section 7-2-39 or any acts amendatory thereto, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in the amount not exceeding two-hundred dollars (\$200.00) for each violation. Each day in which any such violation shall be deemed a separate offense. Any person violating any of the provisions of this ordinance shall become liable to the City of Wagner for any expense, loss, or damage occasioned the City of Wagner by reason of such violation.

**CHAPTER 7-3
SEWER USER CHARGES**

SECTION

- 7-3-1 Definitions
- 7-3-2 Annual Cost of Operation and Maintenance
- 7-3-3 Items to be Included in Calculation of Costs
- 7-3-4 Review of Costs
- 7-3-5 Major Users of Sewer System
- 7-3-6 Allocation of Costs
- 7-3-7 User's Waste Water Contribution Percentage
- 7-3-8 Calculation by City
- 7-3-9 Determining a Surcharge System for Users with Excess BOD and SS

- 7-3-10 User's Waste Water Service Charge and Payment
- 7-3-11 User Waste Water Rates and Charges
- 7-3-12 Discontinuance of Service
- 7-3-13 Hearing Board
- 7-3-14 Review of Each User's Waste Water Service Charge
- 7-3-15 Notification
- 7-3-16 Wastes Prohibited From Being Discharged to the Wastewater Treatment System
- 7-3-17 Prohibition of Clear Water Connections
- 7-3-18 Proper Design and Construction of New Sewer Connections
- 7-3-19 Validity
- 7-3-20 Wastewater Facilities Replacement Fund
- 7-3-21 Procedure for Rate Increase
- 7-3-22 User Wastewater Rates and Charges Applicable to Apartments, Multi-family Structures and Trailer Courts

7-3-1 Definitions.

The terminology as used in this chapter shall be defined in the same manner as that used in Chapter 7-2 of this Code.

7-3-2 Annual Cost of Operation and Maintenance.

The City of Wagner shall determine the total annual costs of operation and maintenance of the waste water collection and treatment facility which are necessary to maintain the capacity and performance during the service life of the complete facility.

7-3-3 Items to be Included in Calculation of Costs.

The total annual cost of operation and maintenance shall include but limited to labor, repairs, equipment replacement, maintenance, power, sampling, laboratory tests, reasonable contingency fund, billing, and debt retirement.

7-3-4 Review of Costs.

The City shall review the total annual cost of operation and maintenance as well as each user's of class of user's proportionate share of the annual cost not less than once every two years and will revise the system as necessary to assure equity of the user rates and surcharges, and that there is sufficient funds to adequately operate and maintain the complete facility.

7-3-5 Major Users of Sewer System.

If a significant user, such as an industry, is added to or dropped from or alters his waste water discharge, the City shall review the total annual costs and his percentage of contribution to them and revise the rates accordingly.

7-3-6 Allocation of Costs.

The costs shall be distributed to all of the waste water system in proportion to each user's contribution to the total loading of the treatment facility. Factors such as strength (BOD) and (SS), volume, and delivery flow rate characteristics shall be

considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance cost to each class of user.

7-3-7 User's Waste Water Contribution Percentage.

The City of Wagner shall determine each user's or class of user's average daily volume of waste water. The user's volume of waste water shall then be divided by the total volume of waste water to determine each user's volume contribution percentage. This excludes infiltration and inflow.

7-3-8 Calculation by City.

The City of Wagner shall determine each user's or class of user's average daily poundage of (BOD). The user's average (BOD) shall be divided by the total (BOD) of the system to determine each user's (BOD) contribution percentage.

The City of Wagner shall determine each user's or class of user's average daily poundage of (SS). The user's average (SS) shall be divided by the total (SS) of the system to determine each user's (SS) contribution percentage.

Each user's or class of user's volume contribution percentage, (BOD) contribution percentage, and (SS) contribution percentage shall be multiplied by the annual operation and maintenance costs for the complete waste water facility's total volume flow, (BOD), and (SS) respectively.

7-3-9 Determining a Surcharge System for Users with Excess BOD and SS.

The City of Wagner will determine the average (BOD) and (SS) for the average residential user. The town shall assess a surcharge rate for all non-residential users discharging waste water with (BOD) and (SS) strengths greater than the average residential user. Such users or class of users will be assessed a surcharge sufficient to cover the costs of treating such users above normal strength. Normal strength wastes are considered to be 200 p.p.m. (BOD) and 250 p.p.m. (SS). The surcharge rate structure for such above normal strength waster water discharges is on file with the City Finance Officer, and is set out below:

**SURCHARGE RATE SCHEDULE FOR
ABOVE NORMAL STRENGTH WASTES**

The City of Wagner, or its Engineer, has determined that the average total suspended solids (TSS) and 5-day biochemical oxygen demand (BOD) daily loading for the average residential user are 200 ppm BOD and 220 ppm TSS. The City of Wagner, or its Engineer, has assessed a surcharge rate for all non-residential users discharging waste with BOD and TSS strengths greater than the average residential user. The surcharge will be sufficient to cover the costs of treating such users' above normal strength wastes, and are computed as follows:

$$\text{BOD} = (0.13542) (25/200) = 0.017 \text{ cents}/25 \text{ mg}/1/1000 \text{ gal}$$

$$\text{TSS} = (0.09028) (25/200) = 0.01 \text{ cents}/25 \text{ mg}/1/1000 \text{ gal}$$

$$\$3.25/ 7200 \text{ gal} \times 1,000 = 0.45139 \text{ cents per } 1000 \text{ gal}$$

$$Q = (0.5) (0.45139) = 0.22569 \text{ cents}$$

$$\text{BOD} = (0.3) (0.45139) = 0.13542 \text{ cents}$$

$$\text{TSS} = (0.2) (0.45139) = 0.09028 \text{ cents}$$

7-3-10 User's Waste Water Service Charge and Payment.

Each user's or class of user's waste water treatment cost contributions as determined pursuant to Chapter 7 of this Code, shall be added together to determine such users' annual waste water service charge. Residential users may be considered to be one class of user and an equitable service charge may be determined for each other class of user based upon an estimate of the total waste water contribution by this class for user. The City may classify industrial, commercial, and other non-residential establishments as a residential user, provided that the waste water treatment from these establishments are equivalent to the (SS) and (BOD). Each user's waste water treatment cost contribution will be assessed in accordance with the rate schedule on file with the City Finance Officer, and as set out in 7-3-11 *infra*.

7-3-11 User Wastewater Rates and Charges.

RATE SCHEDULE

Residential users are considered to be one class of user and are assessed a charge of \$22.00 per month. Non-residential users with flows no greater than the average residential user's flow of 7200 gallons per month and with BOD and TSS no greater than the average residential user's strength of 200 ppm BOD and 220 ppm TSS will pay the same charge of \$22.00 per month as the average residential user.

Non-residential users with volumes greater than the average residential user will pay an additional charge of \$.45 per 1000 gallons per month for all flows greater than the average residential user's flow of 7200 gallons per month.

Any non-residential user with BOD and TSS greater than the average residential user's strength of 200 ppm BOD and 220 ppm TSS will pay a surcharge in accordance with the rates shown.

The residential charge of \$22.00 per month is based upon the following calculation:

SEWER USE CHARGE SYSTEM FOR THE CITY OF WAGNER

A. Operation and Maintenance Costs-Annual

Labor	36,000.00
Operation	12,000.00
Administration	3,000.00
Utilities (Fuel and Power)	18,000.00
Automotive Fuel	1,500.00
Maintenance/Monitoring.....	35,000.00
General Supplies	28,360.00
Land Lease	2,850.00
Personnel Training	1,000.00
OASI Insurance	3,060.00
Retirement	2,400.00
Group Insurance	6,000.00
Unemployment Compensation Insurance	200.00
Miscellaneous Insurance	1,600.00
Professional Services/Fees	20,000.00
Reserve for Equipment & Replacement	40,900.00
Lift Station -\$20,000.00/yr x 10 yrs =	200,000.00
Capitol Outlay Fund - \$20,000/yr x 10yrs =	200,000.00
Emergency Sewer Line Repair =	4,000.00
Replacement Maintenance Vehicle (1/4) (500 x 10 yrs) =	<u>5,000.00</u>
.....	409,000.00
Total O&M Costs	214,936.00
Contingencies	2,600.00
Estimated Total O & M Costs + Contingencies	217,536.00

B. Current Average Flow/Residence

203.2 gallons per capita per day x
1675 residents= ≥ gallons per day (340,360)

C. Rate Schedule

Annual O & M and Contingencies217,536.00

Total Annual Costs 217,536.00

Monthly User Charge (Based on 824 Residential hookups and Non-Residential sewer minimums)

\$217,536.00 divided by 824 hookups = \$264.00/yr/hookup

\$264.00 divided by 12 mos. = \$22.00/mo./residential hookup (rounded to the nearest .05 cents).

(Amended August 5, 2002; Ordinance No. 346)
(Amended May 2, 2005; Ordinance No. 2005-02)
(Amended October 4th, 2010; Ordinance No. 2010-05)

7-3-12 Discontinuance of Service.

The City shall add a penalty of five dollars (\$5.00) per month if the payment is not received by the City within ten days of the payment's due date. Sewer service may be discontinued with proper notice after the sewer bill has become delinquent for a period of twenty (20) days from billing date. Upon such delinquency City Water Service may be terminated until such delinquency has been paid in full. A twenty-five dollar (\$25.00) connection fee will be charged to restore service. In addition, the City may require a deposit from any delinquent water or sewer user to guarantee future payments of water and sewer bills.

7-3-13 Hearing Board.

The City Council shall act as a hearing board as needed for arbitration of differences between the Municipal Finance Officer and sewer users on matters concerning interpretation and execution of provisions of this ordinance by the Superintendent.

7-3-14 Review of Each Users' Wastewater Service Charge.

The City shall review the total annual cost of operation and maintenance as well as each user's Wastewater Contribution Percentage not less often than every two years and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are obtained to adequately operate and maintain the wastewater treatment works. The City shall apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly. If a significant user, such as an industry, has completed in-plant modifications which would change that user's Wastewater Contribution Percentage, the user can present, at a regularly scheduled meeting of the governing body, such factual information and the City shall then determine if the user's Wastewater Contribution Percentage is to be changed. The City shall notify the user of its findings as soon as possible.

7-3-15 Notification.

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

7-3-16 Wastes Prohibited from being discharged to the Wastewater Treatment System.

The discharge of any water containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly, or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, created a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works is hereby prohibited. Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the City of Wagner treatment works shall pay for such increased costs.

(7-2-26 and 7-2-27 *supra* contain additional requirements covering the use of the City's public sewers.)

7-3-17 Prohibition of Clear Water Connections.

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turned is connected directly or indirectly to a public sanitary sewer.

7-3-18 Proper Design and Construction of New Sewer Connections.

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

(7-2-13 to 7-2-23 *supra* contain additional requirements covering the proper design and construction of the City's sanitary sewers, building sewers, and connections.)

7-3-19 Validity.

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

7-3-20 Wastewater Facilities Replacement Fund.

A reserve fund called the Wastewater Facilities Replacement Fund is hereby established within the wastewater utility fund for the purpose of providing sufficient funds to be expended for obtaining and installing equipment, accessories and appurtenances during the useful life (20 years) of the wastewater treatment facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed. The Fund Schedule is as set out below:

WASTEWATER FACILITIES REPLACEMENT FUND SCHEDULE

The reserve fund called the Wastewater Facilities Replacement Fund established within the wastewater utility fund as an interest-bearing account shall be funded by a deposit of \$800.00 per year obtained from the wastewater utility fund at the end of each fiscal year.

7-3-21 Procedures for Rate Increase.

Should it be deemed necessary, the rates may be increased pursuant to SDCL 9-48-26.

7-3-22 User Wastewater Rates and Changes Applicable to Apartments, Multi-Family Structures and Trailer Courts.

That all apartment buildings, multi-family structures and trailer courts shall pay the monthly sewer minimum charge as may from time to time be in place by the City of Wagner, for each separate living unit located in said apartment building, multi-family structure or trailer court. The monthly minimum shall be \$22.00 per month per living unit in said apartment building and multi-family structures; and the monthly minimum shall be \$22.00 per month for trailers that are actually connected to a trailer hookup. The monthly minimum charge to apartment buildings and multi-family structures shall be based on living units available, regardless of whether occupied or not. The monthly minimum charge to trailer courts will be based upon the number of trailers connected to trailer hookups in the trailer court.

Apartment building shall include any residential or commercial building or structure that receives rent for a separate living unit located therein.

It shall be the responsibility of the owner of said apartment building, multi-family structure or trailer court to pay the required sewer minimums for each separate living unit or trailer hookup.

Commencing January 1, 2008, all sewer minimums within the City of Wagner shall automatically increase one percent (1%), and shall increase one percent (1%) on each January first thereafter.

SECTION TWO: The sewer connection fees shall be as follows:

Five-eighths inch (5/8") through one-inch (1") meter = \$150.00

One and one-half inch (1 1/2") meter = \$200.00

Two inch (2") meter = \$250.00

Two inch (2") compound meter = \$250.00

Three inch (3") meter = \$300.00

Three inch (3") compound meter = \$300.00

Four inch (4") meter = \$350.00

In addition all street and curb and gutter repairs will be at the cost of the property owner.

(7-3-22 amended October 4th, 2010, Ordinance No. 2010-05)

**CHAPTER 7A
MUNICIPAL ELECTRIC**

Ordinance No. 2007-06 Created the Wagner Municipal Electric Utility. This chapter will be updated as needed.

CHAPTER 8 MUNICIPAL LIBRARY

SECTION

- 8-1-1 Library Board of Trustees
- 8-1-2 Appointment of Board Members
- 8-1-3 Board Vacancies
- 8-1-4 Duties of Board
- 8-1-5 Report to State Library Board
- 8-1-6 Report to City Council

8-1-1 Library Board of Trustees.

There is hereby established a Library Board of Trustees to govern the operation of the public library.

8-1-2 Appointment of Board Members.

The mayor, with the approval of the City Council, shall appoint five (5) residents of this City to serve on the Board, for a term of three (3) years, and or until their successors are qualified.

8-1-3 Board Vacancies.

In case of any vacancy occurring on said board, or death, removal, resignation or otherwise, the Mayor shall appoint some person or persons to fill such vacancies for the unexpired term, or terms only.

8-1-4 Duties of Board.

Such Board of Public Library Trustees shall meet annually and organize by electing from among their members a President and Secretary. They shall have the power to make and adopt such bylaws, rules, and regulations relating to the duties of the officers, and employment of librarian and other employees, the management of the building, library and reading rooms as are not consistent with this ordinance and the laws of the State of South Dakota. Such rules and regulations shall be on file at the library and available for public inspection during the regular business hours of the library.

8-1-5 Report to State Library Board.

It shall be the duty of the Public Library Trustees of the City of Wagner, to on or before the first day of August in each year make a report to the State Library Board, upon blanks to be provided by such board for such purpose, which report shall be for the fiscal year ending June 30th, next preceding such report.

8-1-6 Report to City Council.

Said Public Library Trustees shall make the City Council a full, complete and detailed report in writing of their activities. Such report shall include an itemized statement of all monies received and all disbursements by them made on or before the first day of August of each year for the approval, information, and guidance of the City Council.

**CHAPTER 8-2
CITY PARK AND SWIMMING POOL**

SECTION:

- 8-2-1 Littering at City Pool
- 8-2-2 Glass Objects at City Pool
- 8-2-3 Glass Objects at City Pool; Exceptions
- 8-2-4 Boundaries of City Park and Recreation Area
- 8-2-5 Hours of Use

8-2-1 Littering at City Pool.

It shall be unlawful for any person to deposit or propel any glass or breakable object, refuse, garbage, or other waste material in the Wagner City Swimming Pool situated within the boundaries of the Wagner City Swimming Pool on the corner of North and Main Street in the City of Wagner, South Dakota. This section is to serve as a supplement to Chapter 2-7 *supra*.

8-2-2 Glass Objects at City Pool.

It shall be unlawful for any person to possess any glass container, glass bottle, or glass receptacle of any kind whatsoever within the Wagner City Park and Recreation Areas situated within the City Limits of the City of Wagner, South Dakota.

8-2-3 Glass Objects of City Pool; Exceptions.

Section 8-2-2 shall not include plates, water glasses, coffee cups, and similar utensils commonly used at meals that are used within the boundaries of the city of Wagner City Park and Recreation Area.

8-2-4 Boundaries of City Park and Recreation Area.

The Wagner City Park and Recreation Area includes, but not limited to, those areas designated as such and maintained by the city for benefit of the public.

8-2-5 Hours of Use.

It shall be unlawful for any person to occupy, use or be present in, any City of Wagner park, ball field, or recreation area between sunset and sunrise of the following day, and all said City of Wagner parks, ball fields and recreation areas are hereby closed to the public or any person, for any use whatsoever, during the hours set forth herein.

(Amended February 5, 2007)

There shall be excepted from Section One, any City park, ball field, or recreation area where there is a school or City sponsored or approved event, in which case the area upon which said event is scheduled shall be closed one (1) hour after the said event is concluded; and further, during the Labor Day week-end each year, commencing at Friday prior to Labor Day, 6 o'clock p.m. to Labor Day night at 11:00 o'clock p.m., said facilities shall remain open to participants in the annual Wagner Labor Day

Celebration, as determined by the Wagner Labor Day Committee and approved by the City Council.

That any person who shall violate this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not exceeding Two Hundred Dollars (\$200.00).

8-2-6 Placement or Location of any Permanent Private Property within any of the Parks, Ball Fields or any other Real Property Owned by and Operated by the City of Wagner.

It shall be unlawful for any person or entity to place or permanently locate any private property within any of the parks, ball fields or any other real property owned by and or operated by the City of Wagner (hereinafter “City of Wagner Real Property”) without the advance written approval of the Wagner City Council.

Any person or entity wishing to place any permanent private property upon City of Wagner real property shall make application to the City of Wagner Zoning Administrator, pay the required application fee, to be set from time to time by the City of Wagner, present to the Zoning Administrator a copy of the plans and specifications of the private property placement, and a specific exclamation of the nature of the private property placement, i.e. memorial, gift, bequest, etc.

The Zoning Administrator and applicant will present the project to the Wagner City Council. If approved, the Zoning Administrator will issue a certificate of approval for the project which will be evidence of approval by the City of Wagner for the placement of private property upon City of Wagner Real Property. Private property, for purposes of this ordinance, shall include, but not be limited to, flag poles, park benches, trees and shrubs, side walks, walking or biking trails, memorials to individuals or groups, stones, plaques, artwork, play ground equipment, planters etc.

That any person or entity who shall violate any section of this ordinance shall be deemed guilty of a violation and upon conviction thereof, shall be subject to a fine not exceeding \$200.00. per violation. That each day any permanent private property is present, without advance written approval of the City of Wagner, shall constitute a separate violation, subject to a separate fine each day. Said violation shall continue until the necessary approval for the private property placement is obtained, or until the private property placement is removed and the City of Wagner Real Property is returned to the same condition as it was in prior to the private property placement.

(Ordinance added September 21st, 2011, Ordinance No. 2011-02)

CHAPTER 8-3 WAGNER LAKE

SECTION:

- 8-3-1 Park Hours
- 8-3-2 Swimming Restrictions
- 8-3-3 Watercraft Restrictions
- 8-3-4 Destruction of Property
- 8-3-5 Causing Intentional Damage
- 8-3-6 Penalties

8-3-1 Park Hours

It shall be unlawful for any person to occupy, use or be present in, the Wagner Lake recreation area between sunset and sunrise of the following day, and that said Wagner Lake recreation area is hereby closed for any use whatsoever during the hours set forth herein.

“In the event that the Wagner Lake recreation area is being used for any school or city sponsored or approved event, then, and in that event, the Wagner Lake recreation area shall remain open for use by the attendees at the said school or city sponsored or approved event, for a period of one hour after the said event is concluded; and further, that during the Labor Day weekend each year, commencing the Friday prior to Labor Day at 6:00 o’clock P.M. to Labor Day night at 11:00 o’clock P.M., said facility shall remain open to participants in annual Wagner Labor Day celebration events, as determined by the Wagner Labor Day Committee and approved by the Wagner City Council.”

8-3-2. Swimming Restrictions

It shall be unlawful for any person to swim in the Wagner Lake recreation area.

8-3-3. Watercraft Restrictions

It shall be unlawful to operate any motorized watercraft of any type or kind whatsoever upon Wagner Lake.

8-3-4. Destruction of Property

It shall be unlawful to remove rocks, or throw same into Wagner Lake from any of the rip rapped shore lines or the Wagner Centennial Garden area of the Wagner Lake recreation area; and further it shall be unlawful to throw any refuse or garbage of any kind into Wagner Lake.

8-3-5. Causing Intentional Damage

No person shall vandalize or intentionally damage any property within the Wagner Lake recreation area, or aid or abet any other person in doing same.

8-3-6. Penalty

That any person who shall violate any of the terms and conditions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine not exceeding the sum of Two Hundred Dollars (\$200), plus restitution to the City of Wagner for any vandalism or intentional damage to property, or the aiding and abetting of anyone committing same in the Wagner Lake recreation area.

(8-3-1 thru 8-3-6 Amended February 5, 2007)

CHAPTER 9 CABLE TELEVISION FRANCHISES

SECTION:

- 9-1-1 Granting of Franchises
 - 9-1-2 Complaint Procedure for Cable Television Subscribers
 - 9-1-3 Removal of Facilities Upon Request
 - 9-1-4 Unauthorized Cable Tapping; Penalty
 - 9-1-5 Purpose and Construction of this Chapter
- APPENDIX – Copy of Franchise Ordinance

9-1-1 Granting of Franchises.

Pursuant to State and Federal Law, the City of Wagner, South Dakota, has granted non-exclusive franchises to one Cable television company, to-wit:

9-1-2 Complaint Procedure for Cable Television Subscribers.

A. All complaints regarding the quality of service, equipment, and malfunctions, disputes concerning installation or subscription rates or violations of this Franchise shall be directed to the Cable Television Company concerned at the Company's office.

B. In the event that the Company concerned fails to satisfy a complaint, than the complaint shall be forwarded by the person making the complaint to the Finance Officer of the City of Wagner.

C. Upon receipt of the complaint, the city shall immediately serve notice of such violation upon the Company with directions to correct such violation within ninety (90) days or show cause why such violation should be corrected at a public hearing held in conjunction with the next regularly scheduled meeting of the City Council.

9-1-3 Removal of Facilities Upon Request.

Upon termination of cable television service to any subscriber, the Company which provided such service shall promptly remove all it facilities and equipment from the premises of such subscriber upon his request.

9-1-4 Unauthorized Cable Tapping; Penalty.

It shall be unlawful for any person or persons to obtain any cable television service from any cable television company, or any private person by installing, rearranging,

or tampering with any facilities or equipment of said cable television company unless the same is done with the knowledge of and with the permission of the cable television company. Any person found guilty of a violation of any of the permissions of this section shall be deemed guilty of a misdemeanor.

9-1-5 Purpose and Construction of this Chapter.

The purpose of this chapter is to codify the provisions of those franchises which are of applicability to the general public. Nothing set forth in this Chapter shall be construed as altering, in any way, the terms of the individual franchises granted individual Grantees, as embodied in Ordinances of the City of Wagner. In the event of a conflict between this Chapter and the cable television franchises as granted by the City of Wagner, the Franchises, as embodied in the aforementioned ordinances shall prevail.

**CHAPTER 10-1
ZONING**

Refer to the Wagner Adopted Zoning Ordinance.

ORDINANCE NO. 2009-06

“AN ORDINANCE ESTABLISHING A COMPREHENSIVE DEVELOPMENT PLAN FOR THE CITY OF WAGNER, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 11-6 SDCL, AND FOR THE REPEAL OF ALL DOCUMENTS IN CONFLICT THEREWITH.”

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAGNER, SOUTH DAKOTA:

SECTION 1: Purpose: The purpose of this ordinance is to adopt a comprehensive plan for the City of Wagner, replacing the existing comprehensive plan adopted in 1999. The purpose of the local comprehensive plan is to direct the coordinated, efficient, and orderly development of the local government and its environs that will, based on an analysis of present and future needs, best promote the public health, safety, morals, and general welfare.

SECTION 2: The comprehensive plan for Wagner shall:

- (a) encourage a pattern of compact and contiguous growth;
- (b) establish acceptable level of service and/or performance measures for community facilities and ensure the adequate and timely provision of those facilities in order to support existing and planned development;

- (c) direct growth to where infrastructure capacity is available or committed to be available in the future and provide an adequate supply of buildable land;
- (d) promote the availability of housing with a range of types and affordability to accommodate persons and households of all types and income levels and in locations that are convenient to employment and quality public and private facilities, and encourage the development of housing that will meet the housing needs identified in any state and/or regional housing plan prepared;
- (e) promote the adequate provision of employment opportunities and the economic health of the region and the local government
- (f) promote the development of new employment in areas that are convenient to existing housing and public transportation facilities and;
- (g) protect prime agricultural lands from encroachment.

SECTION 3: That this ordinance is necessary, as it provides the legal basis cited in SDCL- 11-4-3 for land use regulations and other implementation measures to achieve the health safety and general welfare of the community.

Dated at Wagner, South Dakota, this 7th day of December 2009.

APPROVED:

Sharon J. Haar, Mayor

ATTEST:

Rebecca A. Brunsing
City Finance Officer

The motion for the adoption of the foregoing ordinance was made by Wiltz seconded by Cuka. Upon roll call vote being taken, those voting AYE: Cuka, Bartunek, Thornton, Fredrich, Wiltz and Johannsen. Those voting NAY: None. Absent: None. Those abstaining: None. Thereupon the Mayor declared Ordinance No. 2009-06 duly passed and adopted, affixed her signature thereto in approval thereof and directed the same to be published in the official newspaper.

FIRST READING: November 4th, 2009

SECOND READING: December 7th, 2009

PUBLISHED: December 16th, 2009 and December 23rd, 2009

EFFECTIVE DATE: January 12th, 2010

CHAPTER 11 GENERAL CODE PROVISIONS

SECTION:

- 11-1-1 Penalties for Violation of this Code
- 11-1-2 Repealer
- 11-1-3 Certain Ordinances Expressly Retained
- 11-1-4 Severability
- 11-1-5 Citation of Ordinance

11-1-1 Penalties for Violation of this Code.

Any person or persons, firm or corporation violating any of the provisions of this ordinance or failing to comply with any of the provisions thereof, where no penalty is prescribed in the section or chapter containing such provisions, shall, upon conviction, be punished by a fine not exceeding two hundred dollars (\$200.00).

11-1-2 Repealer.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

11-1-3 Certain Ordinances Expressly Retained.

Nothing in this chapter contained shall be held to repeal any act, ordinance, or resolution of a special nature; any franchise or permit; and bond or ordinance, resolution or act or any ordinance providing for the levy of taxes to retire any outstanding bonds or other obligation of the city; any ordinance levying any special assessment or assessments, but all such ordinances, franchises, acts and resolutions are hereby expressly retained in full force, virtue and effect to all intents and purposes the same as though such acts, ordinances, franchises and resolutions had been fully set out and re-enacted in this ordinance.

11-1-4 Severability.

Should any sentence, clause, paragraph, section, chapter, or title be adjudged unconstitutional by a court of competent jurisdiction, the remainder thereof shall remain in full force and effect.

11-1-5 Citation of Ordinance.

This Ordinance No. _____ in revision of the Municipal code of the City of Wagner may be cited as the 2002 Municipal Code. Unless the context clearly requires otherwise, when the word "code" is used in this ordinance in revision, it shall mean the 2002 Municipal Code.

CHAPTER 11-2 DEFINITIONS

SECTION:

11-2-1 Definitions

11-2-2 Construction of Other Terms Not Defined Herein

11-2-1 Definitions.

As used in this Code, the following words or phases shall be construed as follows:

“City” or “Municipality”—That political subdivision of the state of South Dakota known as the City of Wagner, a municipal corporation.

“Code” – The 2001 Municipal Code of the City of Wagner.

“Council” or “Governing Body” -- The City Council of the City of Wagner.

“May” – A permissive term allowing the actor discretion as to whether or not he will undertake to either perform or refrain from doing an act.

“Ordinance” – This 2002 Municipal Code, Ordinance No. _____ in revision of the Ordinances of the City of Wagner.

“Person” -- Any natural person or persons, non-profit or for-profit business, venture, firm, corporation, or any other legal entity.

“Police” – Any law enforcement official required by law to enforce state statues and local ordinances.

“SDCL” – The South Dakota Codified Laws (SDCL).

“State” – The state of South Dakota.

“Commissioner” – Alderman in charge of a department.

11-2-2 Construction of Other Terms not Defined herein.

All other terms not specifically defined in 11-2-1 or elsewhere in this Code shall have their common and ordinary meanings, unless the context clearly requires otherwise.

