

Wagner Zoning Ordinance

ADOPTED
September 7, 2000

Prepared By:
Planning & Development
District III

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Zoning Ordinance

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CITY OFFICIALS

City of Wagner Council Members:

Kenneth Dvorak (Mayor)
Ronald Fredrich
Marvin Dean Schryvers
Larry Jurgensen
John Greger
Gaylord Olson
James Payer

City of Wagner Planning Commission:

Beth Schroeder
Owen Wipf
Patricia WhiteHorse
James Von Eschen
Retta Blaha

City of Wagner Finance Officer:

Janis Nedved

*ADOPTION PROCEDURES
AND
REQUIRED DOCUMENTATION*

REQUIRED ACTION

DATE

City Council Minutes Acknowledging Receipt of
Planning Commission's Proposed Zoning Ordinance

City Council Minutes of Changes to
Planning Commission's Proposed Zoning Ordinance

Copy of City Council Public Hearing Notice

Affidavit of Publication

Public Hearing Minutes First Reading of Ordinance

Second Reading of Ordinance Resolution of Adoption

Ordinance Summary Prepared by Planning Commission,
States Attorney Review

Copy of Summary and Notice of Adoption Affidavit of Publication

Register of Deeds Ordinance Recorded

COPY OF PUBLIC HEARING NOTICE

PUBLIC HEARING AFFIDAVIT OF PUBLICATION

PUBLIC HEARING MINUTES WITH FIRST READING

SECOND READING WITH RESOLUTION OF ADOPTION

***ORDINANCE SUMMARY
AND
NOTICE OF ADOPTION
CITY OF WAGNER
ZONING ORDINANCE***

ADOPTION NOTICE AFFIDAVIT OF PUBLICATION

**City of Wagner
Zoning Ordinance
District Lot Requirements Overview**

District	Lot Area	Minimum Lot Width	Minimum Front Yard Depth	Minimum Rear Yard Depth	Minimum Side Yard Width
Agricultural (AG)	1 Acre	200 Feet	40 Feet	50 Feet	50 Feet
Residential (R-1)	7,500 sq. ft.	75 Feet	20 Feet	20 Feet	6 Feet *
Two-Family Residential (R-2)	7,500 sq. ft.	75 Feet	20 Feet	20 Feet	6 Feet *
Multi-Family Residential (R-3)	7,500 sq. ft. + 1,500 sq. ft. For each unit in excess of the first 2	75 Feet	20 Feet	20 Feet	6 Feet *
Manufactured Home Park (MHP)	5,000 sq. ft.	N/A	10 Feet	20 Feet Rear to rear	20 Feet Side to Side
Commercial (C)	No more than 90% of the total area	N/A	N/A	N/A	N/A
Highway Commercial (HC)	10,000	100 Feet	20 Feet	20 Feet	10 Feet
Industrial (I)	25,000 sq. ft.	125 Feet	20 Feet	20 Feet	10 Feet
Public / Semi-Public (P)	No more than 75% of the total area	N/A	N/A	N/A	N/A

* Up to 20 Feet on corner lots at the Board's discretion.

* Refer to the ordinance text for more detailed information.

CHAPTER 1

DEFINITIONS

Definitions

For the purpose of this ordinance, certain terms are defined as follows:

Words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number; the word “shall” is mandatory and not directory. The word “persons” includes an individual all partnerships, associations, and bodies political and corporate. The word “lot” includes the word “plot” or “parcel” or “tract”. The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended”, “arranged”, or “designed to be used or occupied”.

Abut – Having a common boarder with, or being separated from such a common border by a right-of-way, alley, or easement.

Accessory building – A subordinate building, the use of which is purely incidental to the main building, is less than 75% of the area of the largest floor of the principal building, and is unattached from the principal building at least ten (10) feet.

Actual Construction – Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially commenced, preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Addition – Any construction which increases the size of a building such as a porch, attached garage or carport, or a new room.

Agriculture – The tilling of the soil, raising of crops, horticulture and gardening, including keeping or raising of large domesticated animals, similar animals or fowl, and household pets, but not including any animal feeding operations, agricultural products processing facilities, or similar uses.

Agriculture Products Processing Facility – A business activity customarily designed to process raw agricultural products into value added products. Agricultural processing facilities include, but are not limited to, feed mills, ethanol plants, soy bean processing, packing plants and rendering facilities.

Alley – A way which affords only a secondary means of access to abutting property.

Animal Feeding Operation – An animal feeding operation that stables, confines, and feeds or maintains One thousand (1,000) animal units in either an open or housed lot for a total of forty-five (45) days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more facilities under common ownership are a single animal operation if they adjoin each other, are within one mile, or if they use a common area or system for the disposal of manure.

Apartment – A portion of a multiple dwelling used as a separate housing unit and having cooking facilities and a private bath.

Applicant – For purposes of this Ordinance a person shall be deemed to be an applicant if they are the owner of the proposed facility; an officer or director of the owner thereof; or an owner of any interest, direct or indirect, in any company, except a publicly traded company, which is the owner of the proposed development.

Arcade – A place of business where an individual, association, partnership or corporation maintains four or more amusement devices for public use.

Assisted Living Facility – An assisted living arrangement offers assistance with activities of daily living, including bathing, dressing, personal hygiene, three meals a day, supervision of self-administration of medication, laundry service, housekeeping, twenty-four (24) hour staffing and activities. Transportation to and from doctor's appointments and personal errands, counseling services, and companion services are optional.

Automobile Wrecking Yard – Any premises on which two (2) or more self-propelled vehicles not in running order or operating condition are stored in the open.

Bar – A building or part thereof where, in consideration of payment therefore, liquor, beer, wine or any combination thereof are served for consumption on the premises, with or without food.

Basement – A portion of a building with the floor located below the main grade level. For the purpose of this ordinance, any such basement with more than four (4) feet above ground level shall be counted as a story. No dwelling unit shall be situated in a basement having less than four (4) feet above ground level.

Billboard - See Sign, Off-Site.

Board of Adjustment - The Wagner City Council shall serve as the Board of Adjustment.

Boarding, Lodging or Rooming House – A building other than a hotel, where lodging and meals for six (6) or more persons are served for compensation.

Building Area – The portions of a lot remaining after required yards have been provided.

Building – Any structure for the shelter, support or enclosure of persons, animals, chattels or property of any kind, and when separated by common, shared walls without openings, each portion of such building so separated shall be deemed a separate building.

Building Setback Lines – A line parallel or approximately parallel to the lot lines at a specified distance therefrom, marking the minimum distance from the lot line that the building may be erected.

Building, Alterations of - Any change or rearrangement of the supporting members (such as bearing walls, beams, columns, or girders) of a building, an addition to a building, or movement of a building from one location to another.

Building, Height of – The vertical distance from the average elevation of the finished grade at the building line to the highest point of a flat roof, or the deck line of a mansard roof, or the average height of the highest gable or gambrel, hop or pitch roof.

Building, Principal - A building in which is conducted the main use of the lot on which said building is located.

Building Line, Front – A line parallel to the street, intersecting the foremost point of the building, excluding uncovered steps.

Bus Depot – A building or premises where commercial motor vehicles pick up and discharge fare-paying passengers. Accessory uses may include ticket offices, luggage checking facilities and similar uses.

Camper – See Travel Trailer.

Campground – An area of land, managed as a unit, providing short term accommodation for tents, tent trailers, travel trailers, recreational vehicles and campers.

Car Wash – An establishment having facilities for washing motor vehicles by production line methods which may include a conveyor system or similar mechanical devices. This definition may also include a self-service operation.

Casino – A room or rooms in which legal gaming is conducted.

Cellar – A portion of a building between two floor levels which is partly or wholly underground and which has more than on-half of its height, from finished floor to finished ceiling or to the underside of the floor joints of the story next above, as the case may be, below the average finished grade level adjacent the exterior walls of the building.

Cemetery – Land that is set apart or used as a place for the interment of the dead or in which human bodied have been buried. “Cemetery” may include a structure for the purpose of the cremation of human remains and may include facilities for storing ashes of the human remains that have been cremated or the interment of the dead in sealed crypts or compartments.

Church – A building wherein persons regularly assemble for religious worship, and which is maintained and controlled by a religious body organized to sustain public worship.

Clinic – A building or a part of a building used solely for the purpose of consultation, diagnosis and treatment of patients by one or more legally qualified physicians, dentists, optometrists, podiatrists, chiropractors, or drugless practitioners, together with their qualified assistants, and without limiting the generality of the foregoing, the building may include administrative offices, waiting rooms, treatment rooms, laboratories, pharmacies and dispensaries directly associated with the clinic, but shall not include accommodation for in-patient care or operating rooms for major surgery.

Club – A building owned, leased, or hired by a non-profit association of persons the use of which is generally restricted to due-paying members and their guests. Such club may periodically be rented, or leased, to non-members fro gathering such as weddings, anniversaries, and dances, but no portion of the building shall continuously be used for business purposes.

College – An educational institution authorized by the state to award baccalaureate or higher degrees.

Company - For the purpose of this ordinance the term “company” includes, but is not limited to, any corporation, partnership, limited liability company, limited liability partnership, limited partnership, business trust and any other business entity.

Comprehensive Plan – Any legally adopted part or element of the City of Wagner Comprehensive Plan.

Conditional Plan – A conditional use is a use that would not be appropriate, generally or without restriction, throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning district as conditional uses, if specific provision for such conditional use is made in this ordinance.

Congregate Care Facility – housing units which provide a semi-dependent living environment which offers residential accommodations, central dining facilities (where at least one (1) meal a day is provided seven (7) days a week), related facilities, and supporting staff and services to persons of at least sixty-two (62) years of age or with disabilities.

Contiguous – Next to, abutting, or touching and having boundary, or portion thereof, which is adjoining.

Contractor - The person who contracts with an individual or Developer to construct a building on a parcel of land prepared by a Developer.

Convenience Store – A retail store in which articles for sale are restricted to a limited range of primarily food items such as milk, bread, soft drinks, malt beverages, including beer and wine coolers (on-sale and off-sale), package liquor, including wine and liquor (off-sale), ice cream, canned and bottled goods, snacks and candy, meat, and to complement such items may include the limited sale of magazines, books and records, house wares, toiletries, stationary, tobacco products and motor fuel.

Covenant – An agreement, convention, or promise of two or more parties, by deed in writing, signed and delivered, by which either of the parties pledge himself to the other that something is either done, or shall be done, or shall not be done. The term is currently used primarily with respect to promises in conveyance or other instruments relating to real estate.

Court - Any open space, unobstructed from ground to sky, other than a yard, that is on the same lot with and bounded on two or more sides by the walls of a building.

Day Care – The providing of care and supervision of a child or children/adults as a supplement to regular parental/home care, without transfer of legal custody or placement for adoption, with or without compensation, on a regular basis for a part of a day.

Day Care Center – A facility for the care and supervision of twenty-one (21) or more children on a regular basis for part of a day as a supplement to regular parental care.

Day Care Family – The provision of regular care and supervision of no more than twelve (12) children including the provider’s own children who are under the age of six (6) years for part of a twenty-four (24) hour period as a supplement to regular parental care.

Day Care, Group Family Home – The provision of regular care and supervision of thirteen (13) to twenty (20) children either in the provider’s home or in a facility outside the provider’s home for part of a twenty-four (24) hour period as a supplement to regular parental care.

Deck – A structure abutting a dwelling with no roof or walls except for visual partitions and railings which is constructed on piers or a foundation above-grade for use as an outdoor living area.

Developer – The owner of the property being platted or re-platted or the person designated by the owner as being responsible for the development of the property. The terms “sub-divider” and “developer” are synonymous and used interchangeably, and shall include any person, partnership, firm, association, corporation and/or any officer, agent, employee and trustee thereof who does or participates in the doing of any act toward the subdivision of land within the intent, scope and purview of this Ordinance. The developer shall also be defined as the builder or contractor if they are responsible for the construction of buildings and/or structures or permanent improvements.

Dormitory – A building or part of a building operated by an institution and containing a room or rooms forming one or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

Due Diligence – Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.

Dwelling- A building or portion thereof, occupied exclusively as the residence of one (1) or more persons with each family having individual sleeping, cooking, and toilet facilities.

Dwelling Unit – Any room or group of rooms located within a dwelling and forming a single habitable unit, with facilities, which are used, intended to be used for living, sleeping, cooking and eating.

Dwelling, Efficiency Unit – A dwelling unit having only one (1) room exclusive of bathroom, compartments, kitchen, laundry, pantry, foyer, communicating corridor, closets, or any dining alcove. An efficiency unit shall be permitted in a multi-family dwelling.

Dwelling, Multiple Family – A residential building designed for, or occupied by, two (2) or more families living independently of each other with separate sleeping, cooking, and toilet facilities. The number of families in residence shall not exceed the number of dwelling units provided.

Dwelling, Single Family – A detached residential dwelling unit other than a manufactured or modular home, designed for and occupied by one (1) family.

Dwelling, Two Family – A building having accommodations for and occupied exclusively by two (2) families. The number of families in residence shall not exceed the number of dwelling units provided.

Easement – Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of their property. For the purpose of this Ordinance the term shall primarily be used to describe utility access.

Employee(s) – In regard to off-street parking requirements, all who work in the enterprise, including owners.

Exhibition Areas - A building, group of buildings, or a place where art, objects, articles, or livestock or agricultural projects are placed on display and/or sold for the public.

Farmstead – An area of twenty (20) acres or more on which is located at least one (1) dwelling unit and on which farm products of a value of one thousand (1,000) dollars or more are normally produced each year.

Family – Any number of individuals living together as a single housekeeping unit, in which not more than five (5) individuals are unrelated by blood, marriage or adoption. This definition shall not include foster families as regulated by the State.

Farm, Hobby – An activity carried out in rural residential areas, which includes the planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards.

The raising and feeding of livestock and poultry shall be considered as part of a hobby farm if the area, in which the livestock or poultry is kept, is one (1) acre or more in area for every one (3) animal units, and if such livestock does not exceed three (3) animal units.

Fence – An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

Financial Institutions - The premises of a bank, trust, finance, mortgage, or investment company.

Flammable or Combustible Liquids, or Hazardous Material - Flammable material is any material that will readily ignite from common sources of heat, or that will ignite at a temperature of 600 F or less. Flammable liquid is any liquid having a flash point below 100 F and having vapor pressure not exceeding forty (40) pounds per square inch (absolute) at 100 F. Combustible liquid is any liquid having a flash point at or above 100 F. Hazardous material includes any flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hyperbolic materials, pyrophoric materials, and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

Flood or Flooding – A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of wetlands, lakes, streams, tributaries, or other water bodies; and/or
2. The unusual and rapid accumulation of runoff or surface waters from any source.

Flood Hazard Boundary Map (FHBM) – The official map issued by the Federal Insurance Administration where the areas of special flood hazard has been designated Zone A.

Floodway – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without an accumulative increase in the water surface.

Gaming Device or Gaming Equipment - Any mechanical contrivance or machine used in connection with gaming or any game.

Gaming or Gambling - The dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game.

Gaming or Gambling Establishment - Any premises wherein or whereon gaming is done.

Garage - A subordinate building or portion of a building, including a carport, the use of which is purely incidental to the principal use and is designed for the sheltering of private motor vehicles, recreational equipment, and household equipment incidental to the residential occupancy. A garage shall not be larger than seventy-five (75) percent of the area of the largest floor of the principal building. Said structure shall not include such vehicles for remuneration or commercial use.

Garage, Public – A building or portion thereof used for the housing or care of motor vehicles for the general public or where such vehicles are equipped or repaired for remuneration or kept for hire or sale. This may include premises commonly known as “gasoline stations” or “service stations”.

Gasoline Station – Any area of land, including structures thereon, that is used for the sale of gasoline or other motor vehicle fuel, and oil or other lubrication substances; and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning such vehicles.

Golf Course – A public or private area operated for the purpose of playing golf, and includes a par golf course, clubhouse and recreational facilities, accessory driving ranges and miniature golf courses, and similar uses.

Grain Elevator – Grain storage facilities, which are the principal and primary use of the lot. Said facilities are generally equipped with devices for housing and discharging significant quantities of grain. This definition does not include normal farm product storage and warehousing facilities such as grain bins and where such storage is an accessory use to the parcel.

Greenhouse, Commercial – A building or place for the growing of flowers, plants, shrubs, trees and similar vegetation which are not necessarily transplanted outdoors on the same lot containing such greenhouse, but are sold directly from such lot at wholesale or retail.

Group Home – A congregate residential facility, other than a supervised apartment, for individuals with developmental disabilities which is certified by the department according to South Dakota Administrative Rules Section 46:11:02 to provide residential services, training in skills needed for independent living, recreational activities, and basic supervision for individuals with developmental disabilities. The term “Group Home” shall be synonymous with Adjustment Trainer Center, pursuant to Section 46:11:02.

Home Occupation - A business activity customarily carried on in the home by a member of the occupant’s family:

1. That does not occupy more than twenty-five (25) percent of the dwelling;
2. Without structural alterations in the building or any of its rooms;
3. Without the installation or outside storage of any machinery, equipment or material other than that customary to normal household operations;

4. Without the employment of persons not residing in the home; and
5. Which does not cause the generation of traffic in excess of that experienced on an average street of similar design, noise, electrical interference, fumes, odors, etc.

Horticulture – The science or art of cultivating fruits, vegetables, flowers, and plants.

Hospital – An institution devoted primarily to the operation of facilities of the diagnosis, treatment and cure of disease, illness, injury, or other abnormal physical conditions with provisions of keeping patients overnight.

Hotel – An establishment of transient guests having sleeping rooms without individual cooking facilities for more than six (6) persons for compensation and may or may not provide meals.

Interchange – A grade-separated intersection with one (1) or more direction connections for vehicular travel between the intersecting streets or highways.

Junkyard – A place where non-recyclable wastes, having no economic value, or waste which is recyclable, but has no chance of being recycled is deposited. See also Salvage Yard.

Kennel – Any place where two (2) or more dogs, cats, or other domesticated animals of breeding age are housed, groomed, bred, boarded, trained, harbored, kept or sold for commercial purposes.

Loading Area – A completely off-street space or berth on the same lot for the loading and unloading of freight carriers, having adequate ingress and egress to a public street or alley.

Locker – A meat processing plant and any other facility where meat, poultry or eggs are cooked, cured, smoked or otherwise processed or packed, provided that all activities are carried out indoors. This term shall not include a delicatessen, stockyard, slaughterhouse, tannery, a poultry killing establishment, an animal food factory or an animal by-products plant.

Lot – A tract, plot or portion of subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for building development.

Lot, Corner – A lot situated at the intersection of two (2) streets, the interior angle of such intersection not exceeding one hundred thirty-five (135) degrees.

Lot, Double Frontage – A lot having frontage on two (2) non-intersecting streets, as distinguished from a corner lot.

Lot, Interior – A lot, other than a corner lot, with only one (1) frontage on a street.

Lot, Through – A lot, other than a corner lot, with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots.

Lot Coverage – The percent of the area of a lot occupied by buildings, or structures, including accessory building or structures.

Lot Depth – Depth of a lot shall be considered to be the average distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

Lot Frontage – The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under Yards as defined herein.

Lot Line – Any boundary line of a lot.

Lot Line, Exterior – The side lot line, which abuts the street on a corner lot.

Lot Line, Front – The front lot line is customarily defined by the street right-of-way.

Lot Line, Rear – The lot line or point of intersection of the side lot lines farthest from and opposite the front lot line.

Lot Line, Side – A lot line other than a front or rear lot line.

Lot Measurements – Depth of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines on front and the rearmost points or the side lot lines in the rear. Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard, provided however, that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than 80 percent of the required lot width except in the case of lots on the turning circle of cul-de-sac, where the 80 percent requirement shall not apply.

Lot of Record – A lot which is part of subdivision or otherwise legally approved and recorded in the office of County Register of Deeds.

Lot Width – The distance between side lot lines measured at right angles.

Major Street Plan – The Transportation Plan in the adopted City of Wagner Comprehensive Plan.

Manufactured Home – A movable or portable dwelling which is eight (8) feet or more in width and thirty-two (32) feet or more in length, constructed on a chassis, and which is designed to be towed, designed for year-round occupancy, primarily to be used without a permanent foundation, but which may sit on a permanent foundation, and designed to be connected to utilities. It may consist of one or more units, separately transportable, but designed to be joined together into one integral unit. Manufactured homes are built according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Manufactured homes are not mobile homes.

The following shall not be included in this definition:

1. Travel trailers, pickup coaches, motor homes, camping trailers, or other recreational vehicles; and
2. Manufactured modular housing which is designed to be set on a permanent foundation, and which uses standard sheathing, roofing, siding, and electrical, plumbing, and heating systems.

Manufactured Home Park – Any premises where two (2) or more manufactured homes are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public, parking space for two (2) or more manufactured homes for living or sleeping purposes, and which include and buildings, structures, vehicles or enclosures used or intended wholly or in part, for manufactured homes.

Manufacturing – The use of land, buildings or structures for the purpose of manufacturing, assembly, making, preparing, inspecting, finishing, treating, altering, repairing, warehousing or storage or adapting for sale of any goods, substance, articles, thing or service.

Massage Establishment – Any premises or part thereof where massages are given, offered or solicited in pursuance of a trade or calling, business or occupation provided that the service is rendered by a person duly trained, licensed and registered under the appropriate statute.

Mobile Home – A transportable, factory-built home, designed to be used as a year-round residential dwelling and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976.

Modular Home – A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence; transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning, and electrical systems contained within the structure.

Motel – A building or group of buildings containing rooms which are offered for compensation for the temporary accommodation of transients.

Museum – A building or buildings used, or to be used, for the preservation of a collection of paintings and/or other works of art, and/or of objects of natural history, and/or of mechanical, scientific and/or philosophical inventions, instruments, models and/or designs and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and/or other offices and premises used or to be used in connection therewith.

Nonconforming Lot – A lot of record existing on the date of passage of this ordinance which does not have the minimum width or contain the minimum area for the zone in which it is located.

Nonconforming Structure – A lawful structure which exists on the date of passage of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yard setbacks, or other characteristics of the structure.

Nonconforming Use – A lawful use of land, which exists in the date of passage of this ordinance that, would not be lawful in the district in which it is situated under the terms of this ordinance.

Noxious – When used with reference to any use or activity in respect of any land, building or structure or a use or activity which, from its nature or from the manner of carrying on same, creates or is liable to create, by reason or destructive gas or fumes, dust, objectionable odor, noise or vibration or unsightly storage of goods, wares, merchandise, salvage, machinery parts, junk, waste or other material, a condition which may be hazardous or injurious as regards to health or safety or which prejudices the character of the surrounding are or interferes with or may interfere with the normal enjoyment of any use of activity in respect of any land, building or structure.

Nuisance – Any condition existing that is or may become injurious or dangerous to health or that prevents or hinders or may prevent or hinder in any manner the suppression of a disease.

Nursing Home, Rest Home, Convalescent Home – A place which undertakes through its ownership or management to provide maintenance, personal, or nursing care for three (3) or more persons who by reason of illness, physical deformity, or old age are unable to care for themselves.

Obstruction – Any structure or vegetation that substantially blocks the vision of people.

Office – A building or part thereof, designed, intended or used for the practice of a profession, the carrying on of a business, the conduct of public administration, or, where not conducted on the site thereof, the administration of an industry, but shall not include a retail commercial use, any industrial use, clinic, financial institution or place of amusement or place of assembly.

Open Sales Area – Any open land or area used or occupied for the purpose of displaying for sale new or secondhand merchandise, including but not limited to, passenger cars or trucks, farm machinery, construction machinery, motor scooters or motorcycles, boats, trailers, aircraft, and monuments. No repair work is done in such area except for incidental repair of times to be displayed and sold on the premises.

Outdoor Storage Area – Any open land or area used for the purpose of storage of any product or part of a product, either before, during, or after manufacture, servicing or repair and not displayed for retail sale. This does not include open sales areas.

Owner – The record owners of the fee or a vendee in possession, including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided.

Park – An area consisting largely of open space, which may include a recreational area, playground or similar use but shall not include manufactured home park, a campground or trailer park.

Parking Space – An off-street space available for parking of a motor vehicle and which is held to be an area for dimension of which are ten (10) by twenty (20) feet or which covers two hundred (200) square feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto.

Pawnshop – An establishment where money is loaned on the security of personal property pledged in the keeping of the pawnbroker.

Performance Standards – Criterion established for the purpose of:

1. Assigning proposed land uses to proper districts; and
2. Controlling noise, odor, glare, smoke, toxic matter, vibration, and fire/explosive hazards generated by, or inherent in, uses of land or buildings.

Permitted Use – A use by right, which is specifically authorized in a particular zoning district.

Person – Any individual or group of individuals, or any corporation, general or limited partnership, joint venture, unincorporated association, or governmental or quasi-governmental entity.

Places of Assembly – Places where people gather or congregate for amusement, worship, learning, etc.

Planning Commission – The Planning Commission of the City of Wagner. The term Planning Commission shall be synonymous with Planning and Zoning Commission and Commission, but shall not include Board of Adjustment or Zoning Board.

Plaza - A public square or similar open area.

Principal Use – The main use of land or structures as distinguished from a secondary or accessory use.

Public – Promotion of a public cause or service, including utilities having a franchise from the City of Wagner, but excluding other for-profit organizations.

Public Building - Any building which is owned, leased, primarily used and/or primarily occupied by a school district or municipal county, state or federal government, or any subdivision or agency of the school district, municipal, county, state or federal government.

Public Traded Company – For purpose of this Ordinance a “public traded company” means a company, the shares or other interests in which are regularly traded on the New York Stock Exchange, the American Stock Exchange, NASDAQ or similar recognized security market.

Quarry – A place where consolidated rock has been or is being removed by means of an open excavation to supply material for construction, industrial or manufacturing purposed, but does not include a wayside quarry or open pit metal mine.

Recreational Equipment – The term recreational equipment shall include boats and boat trailers, jet skis, snowmobiles, travel trailers, pick-up campers or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers, and the like, and case or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

Recycling Center – A building in which used material is separated and processed prior to shipment to others who will use those materials to manufacture new products.

Rent-All Shop – A building or part of a building where residential and commercial equipment is kept for rental to the general public and includes such things as lawn and garden tools, floor cleaning equipment, masonry tools, painting and decorating equipment, moving tools, plumbing tools and power tools.

Repair Shop, Auto Body – A general industrial establishment for the repair of damage to a motor vehicle Caused by collision, accident, corrosion or age, and, without limiting the generality of the foregoing, includes the reconstruction of motor vehicles, the painting or repainting of motor vehicles and the rebuilding or conversion of automotive engines or engine parts, but does not include a motor vehicle repair shop, an impounding yard, an automobile service station or a gas station.

Repair Shop, Motor Vehicle – A service commercial or general industrial establishment for the repair or replacement of parts in a motor vehicle and without limiting the generality of the foregoing, shocks, transmissions, gears, brakes, clutch assemblies, steering assemblies, radiators, heating or cooling systems, ignition systems, mechanical or electrical parts or systems, the installation of undercoating, engine tuning, lubrication and engine conversion or replacement, but does not include an auto body repair shop, an impounding yard, an automobile service station or a gas station.

Residential Care Facility - A family home, group care facility, or similar facility for twenty-four (24) hour non-medical care of persons in need of personal services, supervision or assistance for sustaining the activities of daily living or for the protection of the individual.

Restaurant – A business establishment consisting of a kitchen and dining room, whose primary purpose is to prepare and serve food to be eaten by customers seated in the dining room.

Restaurant, Drive-In – A business establishment consisting of a kitchen, with or without a dining room, where food is prepared and packaged to eat either off the premises or within automobiles parked on the premises.

Rest Home – See Nursing Home.

Restricted Use Site – All facilities and appurtenances connected with such facilities, which are used for the disposal of; trees and wood waste, construction and demolition debris, furniture, mattresses, and similar wastes, white goods storage, scrap tire storage, wood ash, yard waste composting, and other inert wastes.

Retail Store – A building where goods, wares, merchandise, substances, articles or items are offered or kept for sale at retail, including storage of limited quantities of such goods, wares, merchandise, substances, articles or items sufficient only to service such store.

Retaining Wall – A structure constructed to hold back or support an earthen bank.

Right-of-Way – An area of land that is legally described in a registered deed for the provision of public access within which there is usually a street.

Right-of-Way Line – A dividing line between a lot, tract, or parcel of land and public right-of-way.

Roadside Stand – A structure having a ground area of not more than three hundred (300) square feet, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed and to be used solely for the sale of farm products produced on the premises, bail, and other approved products.

Salvage Yard – The use of more than three hundred (300) square feet of open storage on any lot, portion of lot, or tract of land for sale, storage, keeping, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

Satellite Dish/Receiver – A device incorporating a reflective surface that is solid, open mesh, or bar configured and is the shape of a shallow dish or cone designed and used for the reception of television signals related back to earth from a terrestrially and/or orbital based communications satellite.

School, Boarding - A school under the sponsorship of a private agency, corporation, or religious entity, having a curriculum generally equivalent to public elementary or secondary schools, accredited by the State of South Dakota and provides room and board for its students; but excluding private trade or commercial schools. “Day Care Centers” as herein defined, shall not be considered schools as applicable to this definition.

School, Denominational or Private – A school under the sponsorship of a private agency, corporation, or religious entity, having a curriculum generally equivalent to public elementary or secondary schools and accredited by the State of South Dakota; but excluding private trade or commercial schools. “Day Care Centers” as herein defined, shall not be considered schools as applicable to this definition.

School, Public – A school under the sponsorship of a public agency providing elementary or secondary curriculum, and accredited by the State of South Dakota; but excluding private trade or commercial schools.

School, Trade or Commercial – An establishment other than an accredited or licensed public, private or denominational school, or college offering training or instruction in art, occupation, or trade.

Screening – A continuous fence, wall, compact evergreen hedge or combination thereof, supplemented with landscape planting, that would effectively screen the property which it encloses, and is broken only by access drives and walks.

Secondhand Shop – The use of land, or building or structure or part thereof where used goods, wares, merchandise, substances or articles are offered or kept for sale but shall not include a pawnshop.

Self-Storage Warehouse – A building containing separate, individual self-storage units divided from the floor to the ceiling by a wall with an independent entrance from the exterior of the building, designed to be rented or leased on a short-term basis to the general public for private storage of personal goods, materials and equipment.

Services – Establishments, primarily engaged in providing services for individuals, business and government establishments and other organizations, including hotels and other lodging places, establishments providing personal business, repair and amusement services, health, legal, engineering and other professional services, educational institutions, membership organizations and other miscellaneous services.

Setback – The minimum horizontal distance from a lot line, to a wall of the building, exclusive of permitted projections. The setback shall be measured at right angles to such lot lines.

Sight Triangle – The triangle space formed by the street lines of a corner lot and a line drawn from a point on one street line to a point in the other street line, each such point being thirty (30) feet from the point of intersection of the street lines (measured along the street lines). Where the two (2) street lines do not intersect at a point, the point of intersection of the street lines shall be deemed to be the intersection of the projection of the street lines or the intersection of the tangents to the street lines. In the case of arterial

highways intersecting with other arterial highways or railways, the distances establishing the sight triangle shall be increased to fifty (50) feet.

Sign – For the purposes of this ordinance, the term “sign” shall apply to any structure or item specifically defined and shall be addressed by the Zoning Administrator on a case by case basis. The term shall not include interior signs not normally visible from the exterior of the premises.

Sign, Banner – A temporary sign, which has a maximum area of twelve (12) square feet, composed of lightweight material either enclosed or not in a rigid frame, secured or mounted so as to allow movement of the sign caused by movement of the atmosphere (i.e., pennants, twirling signs, balloon, or other gas-filled figures, ribbons, or other similar moving devices) and intended to be displayed for a limited period of time.

Sign, Bulletin Board - An exterior sign, which has a maximum area of thirty-five (35) square feet, used by public, charitable, and religious institutions for the purpose of informing the public about activities of their organization.

Sign, Directional Off-Site – An exterior sign that is generally informational, that has a purpose secondary to the use of the primary use on a property that is not adjacent to the property on which the directional off site sign exists. Said sign shall include only those signs placed by a political subdivision and shall include those signs standardized by the South Dakota Department of Transportation.

Sign, Directional On-Site – An exterior sign, which has a maximum area of four (4) square feet in all districts except for Public/Semi-Public District which has a maximum area of ten (10) square feet, that is generally informational, that has a purpose secondary to the use of the property on which it is located, such as “no parking,” “entrance,” and “loading only”. Said sign shall conform to standards adopted or approved by the regulating public agency.

Sign, Easement and Utility – An exterior sign, which has a maximum area of five (5) square feet, used to identify the location of easements, property lines, utilities, hazards, or otherwise providing notice of restrictions on public access.

Sign, Flag – Any fabric or bunting containing distinctive colors, patterns, or symbols, which has a maximum area of twenty (20) square feet and is used as a symbol of government, political subdivision, or other entity.

Sign, Ground and Monument – An exterior sign permanently attached to the ground to identify churches, schools, institutional, and public uses. Said sign may also identify a specific neighborhood by displaying the name of the tract. Ground and monument signs:

1. Are generally constructed of concrete or other masonry material;
2. Shall not exceed twenty (20) feet in height above the mean centerline street or grade;
3. Shall meet a minimum of one-half (1/2) of the yard requirements for the district in which it is located; and
4. Shall not exceed one hundred (100) square feet on one (1) side nor two hundred (200) square feet on all sided of any one (1) premise.

Sign, Mounted Wall – A sign, which has a maximum area of one hundred (100) square feet, that is attached to or erected against a wall of a building and shall project no more than twelve (12) inches from the wall of the building. Said sign is intended to be read from directly in front of the face of the building.

Sign, Name and Plate Address – A sign, which has a maximum area of two (2) square feet, that is affixed to the side of a building informing the public as to the residents, occupation, and/or street address of the building.

Sign, Off-site – A sign, which has a maximum area of two hundred (200) square feet, other than an exterior or interior on-site sign. Off-site signs are more conventionally known as billboards regardless of size.

Sign, Exterior on-site – An exterior sign, which has a maximum area of two hundred (200) square feet, relating in subject to the premises upon which it is located, or to products, accommodations, services, or activities on the premises. Exterior on-site signs do not include signs erected by outdoor advertising industry in the conduct of the outdoor advertising business, such as billboards, which are off-site signs.

Sign, Portable – Any sign, which has a maximum area of twenty (20) square feet, not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A or T-frames; menu and sandwich board signs. Signs attached to or painted on vehicles parked and visible from the public right-of-way shall not be included in this definition and shall be prohibited unless said vehicle is used in normal day-to-day operations of the business. Said sign is intended to be displayed for a limited period of time.

Sign, Projecting – Any sign, which has a maximum area of one hundred (100) square feet, that is affixed to a building or wall in such a manner that its face is perpendicular to the face of the building and the sign extends more than twelve (12) inches beyond the surface of such building or wall.

Sign, Real Estate – An exterior sign for the purpose of advertising the sale, rental, lease of real property. Said sign is located on the premises for sale, rental, or lease and shall be of a temporary nature and shall have a maximum area of four (4) square feet except in the Commercial, Highway Commercial, or Industrial Districts where the maximum area shall be thirty-two (32) square feet.

Sign, Roof – Any sign, which has maximum area of three (300) square feet, that is erected upon, against, or directly above a roof or on top of the parapet of a building.

Street - A right-of-way established by a recorded plat to provide the primary means of access to abutting property.

Street, Arterial – A public street or highway intended to be used primarily for fast or heavy through traffic. For the purpose of this ordinance, arterial streets shall be defined as the following:

1. 3rd Street, from Front Street to Main Street;
2. Front Street;
3. High Avenue, from 4th to Highway 46 and from 4th to Main Street;

4. Highway 50/46;
5. Main Street; and
6. Railroad Street, from Front Street to Main Street.

Street Line – The right-of-way line of a street.

Structure – Anything constructed or erected, the use of, which requires location on the ground or that it be attached to something having a location on the ground but not including utility lines and their normal accessory equipment excluding sidewalks, and driveways that conform to zoning regulations.

Structural Alterations – Any change in the supporting members of a structure such as bearing walls, columns, beams or girders, foundations and poles.

Swimming Pool – A water filled enclosure, permanently constructed or portable, having a depth of more than twenty-four (24) inches below the level of the surrounding land, or an above ground pool, having a depth of more than thirty (30) inches, designed used and maintained for swimming and bathing.

Tank Farm – A facility having two or more storage containers for the transfer of inorganic liquids or gases and from which no retail sale of fuel to the public is or may be conducted.

Thrift Shop – A shop operated by a charitable organization, which sells, donated used merchandise only. All such merchandise shall be displayed and/or stored in an enclosed building.

Tower – A structure situated on a nonresidential site that is intended for transmitting or receiving television, radio, or telephone communications, excluding those used exclusively for governmental dispatch communications.

Travel Trailer – An object designed for accommodation intended and used exclusively for travel, recreation and a vacation and which is capable of being drawn or propelled by a motor vehicle or is self-propelled and includes tent trailers or similar transportable accommodation, but does not include a manufactured home.

Truck or Equipment Terminal – A building, structure or place where five (5) or more commercially licensed trucks or trailers are rented, leased, kept for hire, or stored or parked for compensation, or from which trucks or transports, stored or parked on the property, are dispatched for hire as common carriers, and which may include warehouse space.

Use – Use shall mean the purpose for which a lot or a building or structure, or any portion thereof, is designed, arranged, intended, occupied or maintained, and “used” shall have a corresponding meaning.

Utility Facilities – Any above-ground structure or facilities, other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities, owned by a governmental entity, a nonprofit organization, a corporation, or any entity defined as a public utility for any purpose and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil, or electronic signals.

Variance - A relaxation of the terms of this ordinance by the Board of Appeals where the literal enforcement of this ordinance would deny to the property enjoyed as a right by other property owners within the same zoning district. Variances shall be limited to height, bulk, and yard requirements.

Veterinary Clinic – A building or part of a building used for the care, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention. Such clinics may or may not provide long-term lodging for ill or unwanted animals, or lodging for healthy animals on a fee basis. No outside runs, pens or facilities shall be permitted.

Veterinary Services – A building or part of a building used for the care, diagnosis, and treatment of sick,, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention. Such services may or not provide long-term lodging for ill or unwanted animals, or lodging for healthy animals on a fee basis.

Video Rental Shop – The use of land, building or structure for the purpose of renting video cassette recorders and/or video disc players and/or the rental of video tapes and/or discs.

Vision Clearance – An unoccupied triangular space at the intersection of highways or streets with other highways or streets or at the intersection of highways or streets with railroads. See Traffic Visibility Triangle.

Warehouse – A building or part of a building used for the storage and distribution of goods, wares, merchandise, substances or articles and may include facilities for a wholesale or retail commercial outlet, but shall not include facilities for a truck or transport terminal or yard.

Wholesale – The sale of commodities to retailers or jobbers and shall include the sale of commodities for the purpose of carrying on any trade or business even if the said trade of business is the consumer or end user of the commodity.

Yard – An open space on the same lot with a structure, unoccupied and unobstructed from the ground upward, except for vegetation as permitted, and except for permitted accessory buildings in rear yards.

Yard, Front – A yard extending across the full width f a lot between the front lot line and the nearest main wall of any building or structure on the lot.

Yard, Rear – An open, unoccupied space extending across the rear of a lot from one side lot line to the other side lot line.

Yard, Side – A yard or open space on each side of the main building extending from the side lot line to the side wall of the building, exclusive of permitted projections and from the front yard to the rear yard, when an accessory building is constructed as part of the main building, the side yard requirements shall be the same for the accessory building as required for the main building.

Zone – An area within which, in accordance with the provisions of this ordinance, certain uses of lands, buildings and structures are permitted and certain others are prohibited, where yards and other open spaces are required, where lot areas, building height limits and other requirements are established, all of the foregoing being identical for the zone and district in which they apply.

Zoning Administrator – An official of the City of Wagner appointed by the Mayor and confirmed by the City Council, charged with the responsibility of administrating the ordinance.

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CHAPTER 2

TITLE, PURPOSE AND JURISDICTION

Section 201 Title

These regulations comprise the official City of Wagner Zoning Ordinance.

Section 203 Purpose

This ordinance is based upon the Comprehensive Plan for the City of Wagner as adopted by the City Council on November 1, 1999, in conformance with Chapters 11-4 and 11-6 of the South Dakota Codified Laws. These regulations are designed to carry out the goals and objectives of the plan, with primary attention to promoting the public health, safety, and general welfare; secure safety from fire, natural disaster, and other dangers; and to encourage a distribution of population and use of land to promote and protect the economical and adequate provision of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements.

Section 205 Jurisdiction

The provisions of this Zoning Ordinance shall apply within the incorporated areas of the City of Wagner, as established on the map entitled “The Official Zoning Map of the City of Wagner, Charles-Mix County, South Dakota.”

Section 207 Provisions of this Zoning Ordinance Declared to be Minimum Requirements

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

Whenever the provisions require a greater width or size of yards, courts, or other spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards that are required, in the provisions of any other ordinance, the provisions of this Ordinance shall govern.

Wherever the provisions of any other ordinance require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the provisions of this Ordinance, the provisions of such ordinance shall govern.

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CHAPTER 3

OFFICIAL ZONING MAP AND BOUNTARY INTERPRETATION

Section 301 General

The City is hereby divided into zones, or districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Mayor of the City, attested by the Finance Officer, and bearing the seal of the city under the following words:

This is to certify that this is the Official Zoning Map referred to in Section 301 of the Wagner Zoning Ordinance #282. enacted by the City of Wagner, Charles-Mix County, South Dakota.

Adopted this ____ day of _____, 20__.

Section 303 Zoning Map Changes

If, in accordance with the provisions of this Ordinance, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the City Council, with an entry on the Official Zoning Map as follows:

On this ____ day of _____, 20__, by official action of the City Council, the following change(s) were made to the Official Zoning Map: (*brief description of nature of change*).

Such entry shall be signed by the Mayor and attested by the Finance Officer. No amendment to this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said Map.

No changes, of any nature, shall be made in the Official Zoning Map, or matter shown thereon, except in conformity with the procedures set forth in this Ordinance. Any unauthorized change, or whatever kind, by any person or person(s), shall be considered a violation of this Ordinance and punishable as provided under this Ordinance.

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

Section 305 Zoning Map Replacement

If the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may, by resolution, adopt a new Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the affect of amending the original Official Zoning Map or any subsequent amendment thereof.

The new Official Zoning Map shall be identified by the signature of the Mayor attested by the Finance Officer and bearing the seal of the City under the following words:

This is to certify that this Official Zoning Map as adopted this _____ day of _____, 20__ supersedes and replaces the Official Zoning Map adopted (*date of adoption of zoning may being replaced as part of Ordinance # _____*) of the City of Wagner, Charles-Mix County, South Dakota.

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

Section 307 Rules for Interpretation of District Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated, as approximately following the centerlines of streets, highways, or alleys, shall be construed to follow such centerlines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line, shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
6. Boundaries indicated as parallel to or extension of features indicated in Subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
7. Where physical or cultural features existing on the ground are at variance with those Shown on the Official Zoning Map, or in other circumstances not covered by Subsections 1 through 4 above, the Board of Adjustment shall interpret the district boundaries; and
8. Where a district boundary line divides a lot which was in single ownership at the time of passage of this ordinance, the Board of Adjustment may permit, as a special exception, the extension of the regulations for either portion of the line not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

CHAPTER 4

APPLICATION OF DISTRICT REGULATIONS

Section 401 General

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

Section 403 Zoning Affects Every Building and Use

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered, except in conformity with all regulations herein specified for the district in which it is, or is to be, located.

Section 405 Performance Standards

No building or other structure shall, without approval and adherence to Section 403 and applicable district requirements, hereafter be erected or altered:

1. To exceed the height or bulk;
2. Except in conformity with area and parking restrictions of the appropriate district;
3. To accommodate or house a greater number of families;
4. So that there is more than one (1) principal building on one (1) buildable lot;
5. To occupy a greater percentage of lot area; and
6. To have narrower or smaller rear yards, front yards, side yards, or other open spaces, than herein required, or in any other manner contrary to the provisions of this Ordinance.

Section 407 Open Space, Off-Street Parking, and Loading Space

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

Section 409 Yard and Lot Reduction Prohibited

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

Section 411 Territory Annexed to City

All territory, which may hereafter be annexed to the city, shall be zoned agriculture until said property is rezoned pursuant to Chapters 17, 18, and 21.

Section 413 Unclassified or Unspecified Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

CHAPTER 5

ESTABLISHMENT OF DISTRICTS

Section 501 Districts Created

For the purpose of zoning, there are hereby created the following districts by which the jurisdictional area defined in Chapter Two shall be divided:

AG	Agriculture
R-1	Residential
R-2	Two-Family Residential
R-3	Multi-Family Residential
MHP	Manufactured Home Park
C	Commercial
HC	Highway Commercial
I	Industrial
P	Public/Semi-Public
PUD	Planned Unit Development

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CHAPTER 6

AGRICULTURE DISTRICT (AG)

Section 601 Intent

The intent of the Agriculture District (AG) is to protect agricultural lands and the natural character of the rural area from incompatible land uses; preserve land best suited to agricultural uses and land in which the natural environment should be continued; and to limit, or minimize the impact of residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery. All land annexed into the city shall be classified as an Agricultural District (AG) until need to change the zoning is demonstrated to the Zoning Commission and an application for change of zone is filed in accordance with Chapter 21 of this ordinance.

Section 603 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Agriculture District (AG):

1. Agriculture;
2. Horticulture;
3. Dwellings, single-family;
4. Dwellings, two-family;
5. Modular homes;
6. Manufactured homes, pursuant to Section 1625;
7. Riding stables; and
8. Utility facilities.

Section 605 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in the Agriculture District (AG):

1. Roadside stands;
2. Home occupations;
3. Day cares, family;
4. Signs, directional on-site;
5. Signs, directional off-site;

6. Signs; real estate;
7. Signs, bulletin board;
8. Signs, banner;
9. Signs, name and address plate;
10. Signs, easement and utility;
11. Signs; flag; and
12. Accessory structures and uses customarily incidental thereto.

Section 607 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Agriculture District (AG):

1. Municipal or commercial sewage treatment facilities, or lagoons for the proper disposal of gray water or sewage;
2. Airports;
3. Churches;
4. Cemeteries;
5. Grain elevators;
6. Parks;
7. Swimming Pools;
8. Signs, exterior on-site
9. Signs, mounted wall
10. Signs, off-site
11. Signs, projecting;
12. Signs; portable;
13. Signs, ground and monument;

14. Restricted use sites; and

15. Towers.

Section 609 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 611 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 609 shall be prohibited.

Section 613 Minimum Lot Requirements

1. The minimum lot area shall be one (1) acre; and
2. The minimum lot width shall be two hundred (200) feet.

Section 615 Minimum Yard Requirements

All yards must meet the following criteria (from the right-of-way), which shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. There shall be a front yard of not less than a depth of forty (40) feet;
2. There shall be a rear yard of not less than a depth of fifty (50) feet;
3. Each side yard shall not be less than a dept of fifty (50) feet;
4. Garages shall not be built closer than fifteen (15) feet to a rear lot line; and
5. In areas where no alley exists, or is planned, rear yards shall have a minimum of ten (10) feet dedicated for utility and fire access and shall maintain the area free of obstructions, including but not limited to trees, fences, and other obstructions.

Section 617 Maximum Height

The height of all buildings and structures shall not exceed thirty-five (35) feet.

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CHAPTER 7

RESIDENTIAL DISTRICT (R-1)

Section 701 Intent

The intent of the Residential District (R-1) is to provide for a moderate density of single-family residential dwellings within the existing ranges of municipal services, or where municipal services can be obtained or developed economically.

Section 703 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Residential District (R-1):

1. Dwellings, single-family;
2. Modular homes; (Section 1625) (Section 2009)
3. Churches;
4. Schools, public;
5. Schools, denominational and private;
6. Parks;
7. Public buildings;
8. Utility facilities; and
9. Nursing, convalescent, and retirement homes.

Section 705 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in the Residential District (R-1):

1. Home occupations;
2. Day cares, family;
3. Garages;
4. Signs, directional on-site;
5. Signs, directional, off-site;
6. Signs, real estate;
7. Signs, banner;

8. Signs, name and address plate;
9. Signs, easement and utility; and
10. Signs, flag.

Section 707 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in a Residential District (R-1):

1. Manufactured homes, pursuant to Section 1625.
2. Offices;
3. Funeral homes;
4. Day cares, group family home;
5. Day care centers;
6. Swimming pools;
7. Signs, bulletin board;
8. Signs, portable;
9. Signs, ground and monument; and
10. Towers.

Section 709 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, Accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 711 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 709 shall be prohibited.

Section 713 Minimum Lot Requirements

1. The minimum lot area shall be seven thousand five hundred (7,500) square feet per single-family dwelling;
2. The minimum lot width shall be seventy five (75) feet; and
3. The minimum lot depth shall be one hundred (100) feet.

Section 715 Minimum Yard Requirements

All yards must meet the following criteria (from the lot line), which shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. There shall be a front yard of not less than a depth of twenty (20) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. Each side yard shall not be less than six (6) feet, up to twenty (20) feet on corner lots at the Board's discretion.
4. Garages shall not be built within two (2) feet to a rear lot line and no closer than twenty (20) feet to any street line; and
5. In areas where no alley exists, or is planned, rear yards shall have a minimum of ten (10) feet dedicated for utility and fire access and shall maintain the area free of obstructions, including, but not limited to trees, fences, and other obstructions.

Section 717 Maximum Height

The height of all buildings and structures shall not exceed thirty-five (35) feet.

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CHAPTER 8

TWO-FAMILY RESIDENTIAL DISTRICT (R-2)

Section 801 Intent

The intent of the Two-Family Residential District (R-2) is to provide for a moderate to high density of single and two-family residential dwellings within the existing ranges of municipal services, or where municipal services can be obtained or developed economically.

Section 803 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Two-Family Residential District (R-2):

1. Dwellings, single-family;
2. Dwellings, two-family;
3. Modular homes;
4. Manufactured homes, pursuant of Section 1625;
5. Churches;
6. Schools, public;
7. Schools, private and denominational;
8. Parks;
9. Public buildings; and
10. Utility facilities.

Section 805 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in the Two-Family Residential District (R-2):

1. Home occupations;
2. Day cares, family;
3. Garages;
4. Signs, directional on-site;
5. Signs, directional off-site;

6. Signs, real estate;
7. Signs, banner;
8. Signs, name and address plate;
9. Signs, easement and utility; and
10. Signs, flag.

Section 807 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in a Two-Family Residential District (R-2):

1. Offices;
2. Funeral homes;
3. Day cares, group family homes;
4. Day care centers;
5. Assisted living facilities;
6. Nursing, convalescent, and retirement homes;
7. Congregate care facilities;
8. Group homes;
9. Swimming pools;
10. Signs, bulletin board;
11. Signs, portable;
12. Signs, ground and monument; and
13. Towers.

Section 809 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to used specifically listed.

Section 811 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal; accessory, or conditional uses or approved as such within the provisions of Section 809 shall be prohibited.

Section 813 Minimum Lot Requirements

1. The minimum lot area shall be seventy-five hundred (7,500) square feet per single and two-family dwellings;
2. The minimum lot width shall be seventy-five (75) feet; and
3. The minimum lot depth shall be one hundred (100) feet.

Section 815 Minimum Yard Requirements

All yards must meet the following criteria (from the lot line), which shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. There shall be a front yard of not less than a depth of twenty (20) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. Each side yard shall not be less than six (6) feet, up to twenty (20) feet on corner lots at the Board's discretion;
4. Garages shall not be built within two (2) feet to a rear lot line and no closer than twenty (20) feet to any street line; and
5. In areas where no alley exists, or is planned, rear yards shall have a minimum of ten (10) feet dedicated for utility and fire access and shall maintain the area free of obstructions, including but not limited to trees, fences, and other obstructions.

Section 817 Maximum Height

The height of all buildings and structures shall not exceed thirty-five (35) feet.

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CHAPTER 9

MULTI-FAMILY RESIDENTIAL DISTRICT (R-3)

Section 901 Intent

The intent of the Multi-family District (R-3) is to provide for a high density of residential dwellings, including multiple family units, within the existing ranges of municipal services, or where municipal services can be obtained or developed economically.

Section 903 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Multi-family Residential Districts (R-3):

1. Dwellings, single-family;
2. Dwellings, two-family;
3. Dwellings, multi family;
4. Modular homes;
5. Manufactured homes, pursuant to Section 1625;
6. Churches;
7. Schools, public;
8. Schools, private and denominational;
9. Parks;
10. Public buildings;
11. Nursing, convalescent, and retirement homes;
12. Assisted living facilities;
13. Congregate care facilities;
14. Group homes; and
15. Utility facilities.

Section 905 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in Multi-family Residential Districts (R-3):

1. Garages;
2. Day cares, family;
3. Signs, directional on-site;
4. Signs, directional off-site;
5. Signs, real estate;
6. Signs, banner;
7. Signs, name and address plate;
8. Signs, easement and utility; and
9. Signs, flag.

Section 907 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in Multi-family Residential District (R-3):

1. Churches;
2. Funeral homes;
3. Day cares, group family home;
4. Day care centers;
5. Schools, denominational or private;
6. Schools, public;
7. Schools, boarding;
8. Parks;
9. Clinics;
10. Hospitals;
11. Swimming pools;

12. Signs, bulletin board;
13. Sign's portable;
14. Signs, ground and monument; and
15. Towers.

Section 909 Classifications of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written applications, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts in the basis of similarity to uses specifically listed.

Section 911 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such with the provisions of Section 909 shall be prohibited.

Section 913 Minimum Lot Requirements

1. The minimum lot area per single and two-family dwelling units shall not be less than seven thousand five hundred (7,500) square feet;
2. The minimum lot area shall not be less than one thousand five hundred (1,500) square feet for each dwelling unit thereafter;
3. The minimum lot width shall be seventy-five (75) feet; and
4. The minimum lot depth shall be one hundred (100) feet.

Section 915 Minimum Yard Requirements

All yards must meet the following criteria (from lot line), which shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. There shall be a front yard of not less than a depth of twenty (20) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. Each side yard shall not be less than six (6) feet, up to twenty (20) feet on corner lots at the Board's discretion;

4. Garages shall not be built within two (2) feet to a rear lot line and no closer than twenty (20) feet to any street line; and
5. In areas where no alley exists, or is planned, rear yards shall have a minimum of ten (10) feet dedicated for utility and fire access and shall maintain the area free of obstructions, including but not limited to trees, fences, and other obstructions.

Section 917 Maximum Height

The height of all buildings and structures shall not exceed forty-five (45) feet.

CHAPTER 10

MANUFACTURED HOME PARK DISTRICT (MHP)

Section 1001 Intent

The intent of the Manufactured Home Park District (MHP) is to preserve and enhance property values in the city by providing designated, distinctive areas of not less than two (2) acres having a minimum of three hundred (300) feet in width, in which manufactured homes may be situated for residential dwelling. It is the intent that this district be a desirable, prominent area providing adequate open space and essentially the same considerations given to citizens of other residential districts.

Section 1003 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Manufactured Home Park Districts (MHP):

1. Manufactured homes, pursuant to Section 1625;
2. Parks;
3. Utility facilities; and
4. Storm shelters.

Section 1005 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in Manufactured Home Park Districts (MHP):

1. Garages;
2. Home occupations;
3. Day cares, family;
4. Signs, directional on-site;
5. Signs, directional off-site;
6. Signs, real estate;
7. Signs, banner;
8. Signs, name and address plate;
9. Signs, easement and utility;

10. Signs, flags; and

11. Utility sheds.

Section 1007 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Manufactured Home Park District (MHP):

1. Signs, bulletin board;
2. Signs, portable;
3. Signs, ground and monument;
4. Signs, mounted wall;
5. Day cares, group family home;
6. Day care centers;
7. Towers; and
8. Offices, management.

Section 1009 Minimum Lot Requirements

1. The minimum lot area for individual manufactured homes shall be five thousand (5,000) square feet;
2. The density of any manufactured home park shall not exceed eight (8) units per gross acres; and
3. The net density of any particular acre shall not exceed ten (10) units per net (gross reduced by required yards, streets, etc.) acre.

Section 1011 Minimum Yard Requirements

1. The minimum distance required for the separation of a manufactured home from any other manufactured home shall be twenty (20) feet from side to side;
2. Manufactured homes shall be parked a minimum of ten (10) feet from the front lot line at the foremost part of the manufactured home;
3. The minimum distance required from rear to rear shall be twenty (20) feet;

4. The minimum distance required from front setback from a private drive shall be twenty (20) feet; and
5. Accessory buildings shall not encroach on minimum yard requirements.

Section 1013 Manufactured Home Park Application Requirements

1. The applicant follows the rezoning process pursuant to Chapter 17, 18, and 21.
2. A request for a change in zoning districts to a Manufactured Home Park District shall set forth the location and legal description of the proposed manufactured home park property;
3. Application procedure: Each application for a manufactured home park shall be accompanied by a detailed site development plan incorporating the regulations established herein. The plan shall be drawn to scale and indicate the following:
 - A. Location and topography of the proposed manufactured home park, including adjacent property owners and proximity to federal, state highways, and to country, township or city roads;
 - B. Property lines and square footage of the proposed park;
 - C. Location and dimensions of all easements and right-of-ways;
 - D. Proposed lot layout, including parking and recreational areas;
 - E. General street and pedestrian walkway plan;
 - F. General utility, water, and sewer plan with proximity and proposed connection to municipal utilities;
 - G. Site drainage plan and development impact on culverts, etc.; and
 - H. Applicant must notify all adjacent landowners within one hundred fifty (150) feet of the proposed property by certified mail at least ten (10) days prior to the placement of the home.
4. Certification of compliance with all ordinances and regulations regarding manufactured home park licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations shall be a prior requirement for granting said Manufactured Home Park District.

Section 1015 Manufactured Home Regulations within a Manufactured Home Park

1. Manufactured home developments are permitted in districts zoned as Manufactured Home Park Districts. Provided the following standards are met:
 - A. The proposed property shall be located to avoid the need for excessive traffic movement from the park to pass through an existing single-family residential area or area suitable for future single-family residential development; and
 - B. The property shall not be within an area used or planned for industrial development, nor will the occupants of the proposed park be in any way adversely affected by nearby existing or planned industrial uses.

2. Access and Street Requirements:
 - A. All manufactured home spaces must be served from internal private streets within the manufactured home park and there shall be no direct access from a manufactured home space to a public street or alley;
 - B. Internal private streets must be graveled at a minimum and kept in good repair to prevent excessive potholes or pooling of water;
 - C. A minimum of two (2) off-street parking spaces shall be provided for each manufactured home lot; guest parking of one (1) parking spot per five (5) manufactured home spaces shall be interspersed through out the manufactured home park;
 - D. No internal private street access to public streets shall be located closer than one hundred (100) feet to any public street intersection;
 - E. All streets shall be lighted in accordance to the standards of the City;
 - F. Stop signs shall be placed at all public street intersections and Yield signs placed appropriately on internal private streets;
 - G. Entrance to manufactured home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such adjacent public roads; and
 - H. Streets should be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street with ten (10) feet minimum moving lanes for collector streets, nine (9) feet minimum moving lanes for minor streets, and seven (7) feet minimum lanes for parallel parking.

3. Other Requirements:

- A. Manufactured homes may be of single or multiple sections;
- B. Provided with skirting material, which is not highly combustible and installed around the perimeter of the home from the bottom of the manufactured home to the ground;
- C. The running gear and hitch shall be removed;
- D. All electric service will be underground;
- E. Each manufactured home lot shall be connected to the City of Wagner water system and sewage treatment and disposal system;
- F. Each manufactured home park shall provide screened areas or enclosed containers accessible for refuse collection of an adequate size for the number of units served, and shall provide for the disposal of such refuse on a regularly scheduled basis;
- G. Anchored to the ground to resist tipping and lateral movement in the manner contemplated by the manufactured design;
- H. No less than ten (10) percent of the gross site area shall be devoted and maintained as recreational facilities for occupant needs;
- I. No manufactured home shall occupy more than twenty-five (25) percent of the area of the lot on which it is situated;
- J. A landscaped buffer area of twenty (20) feet in width shall be provided and maintained around the perimeter of the park, except where walks and drives penetrate the buffer;
- K. Additional development requirements may be prescribed as conditions for approval when determined to be necessary to ensure protection of the neighboring property's character, compatibility with land uses, and health and safety of manufactured home park occupants; and
- L. The manufactured home shall meet or exceed the federal HUD Manufactured Home Construction and Safety Standards.

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CHAPTER 11

COMMERCIAL DISTRICT (C)

Section 1101 Intent

The intent of the Commercial District (C) is to provide a commercial area for those establishments serving the general shopping needs of the trade area, and in particular, those establishments customarily oriented to the pedestrian shopper. The grouping of uses is intended to strengthen the central business area as the center of trade, service, governmental and cultural activities, and to provide neighborhood commercial convenience areas.

Section 1103 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Commercial Districts (C):

1. Retail sales;
2. Financial institutions;
3. Service establishments;
4. Churches;
5. Clubs;
6. Restaurants;
7. Bars;
8. Public buildings;
9. On-site signs;
10. Repair shops, auto body;
11. Repair shops, motor vehicle;
12. Car washes;
13. Libraries and museums;
14. Historic and monument sites;
15. Theaters and auditoriums;
16. Arcades;
17. Health clubs;

18. Day care centers;
19. Offices;
20. Garages, public;
21. Gasoline stations;
22. Bowling alleys;
23. Parks;
24. Parking spaces;
25. Veterinary clinics;
26. Clinics;
27. Convenience stores; and
28. Utility facilities.

Section 1105 Permitted Accessory Uses and Structures

The following accessory uses and structures shall be permitted in the Commercial District (C):

1. Signs, exterior on-site;
2. Signs, directional on-site;
3. Signs, directional off-site;
4. Signs, real estate;
5. Signs, bulletin board;
6. Signs, banner;
7. Signs, name and address plate;
8. Signs, mounted wall;
9. Signs, projecting;
10. Signs, roof;

11. Signs, easement and utility; and
12. Signs, flag.

Section 1107 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Commercial District (C):

1. Funeral homes;
2. College;
3. Day cares, group family home;
4. Signs, off-site;
5. Signs, portable;
6. Signs, ground and monument; and
7. Towers.

Section 1109 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 1111 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 1109 shall be prohibited.

Section 1113 Minimum Lot Requirements

None specified except as listed in Section 1609.

Section 1115 Minimum Yard Requirements

None required except where a Commercial District (C) abuts any Residential or Agricultural District, a twenty-five (25) foot yard shall be provided between a permitted commercial structure and the district boundary.

Section 1117 Maximum Lot Coverage

Lot coverage for all buildings shall not exceed ninety (90) percent of the total lot area.

Section 1119 Maximum Height

The maximum height of structures shall be forty-five (45) feet.

CHAPTER 12

HIGHWAY COMMERCIAL DISTRICT (HC)

Section 1201 Intent

The intent of the Highway Commercial District (HC) is to provide large lot, commercial areas for those establishments which can function most satisfactorily in an area directly related to a major vehicular circulation route due to the nature of the merchandise handled and the display space required, particularly items requiring expansive display area such as motor vehicles, trailers, and farm implements; the method of transport required of the purchaser of the merchandise handled, particularly goods customarily traded in bulk such as lumber or feed requiring access for the customer to the sales area; primary dependence upon vehicular, as opposed to pedestrian, access such as drive-in facilities and all types of automotive and farm implement services; or the clientele toward which the establishments are primarily oriented, particularly travelers on the highway.

Section 1203 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in Highway Commercial Districts (HC):

1. Retail sales;
2. Wholesale sales;
3. Open sales areas;
4. Funeral homes;
5. Grain elevators;
6. Warehouses;
7. Self-storage warehouses;
8. Repair shops, auto body;
9. Repair shops, auto body;
10. Car washes;
11. Public buildings;
12. Construction services and storage;
13. Greenhouses;
14. Service establishments;
15. Restaurants;

16. Bars;
17. Gasoline stations;
18. Convenience stores;
19. Arcades;
20. Health clubs;
21. Parks;
22. Theaters and auditoriums;
23. Stadiums and athletic arenas;
24. Fairgrounds;
25. Exhibition areas;
26. Amusement parks;
27. Golf courses;
28. Bowling alleys;
29. Utility facilities;
30. Offices;
31. Garages, public;
32. Restaurants, drive-in;
33. Parks;
34. Parking spaces;
35. Motels;
36. Hotels;
37. Lumber yards;
38. Veterinary clinics;

39. Clinics; and
40. Hospitals.

Section 1205 Permitted Accessory Uses and Structures

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

1. Signs, exterior on-site;
2. Signs, directional on-site;
3. Signs, directional off-site;
4. Signs, real estate;
5. Signs, bulletin board;
6. Signs, banner;
7. Signs, name and address plate;
8. Signs, mounted wall;
9. Signs, projecting;
10. Signs, roof;
11. Signs, easement and utility;
12. Signs, flag;
13. Warehouse in conjunction with permitted principal uses; and
14. Outdoor storage areas, pursuant to Section 1603.

Section 1207 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustments may permit as conditional uses in the Highway Commercial District (HC):

1. Manufacturing;
2. Colleges;
3. Funeral homes;
4. Lockers;

5. Agricultural chemical sales and applications;
6. Veterinary services;
7. Casinos or gaming establishments;
8. Concrete plants;
9. Signs, off-site;
10. Signs, portable;
11. Signs, ground and monument; and
12. Towers.

Section 1209 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more district on the basis of similarity to uses specifically listed.

Section 1211 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 1209 shall be prohibited.

Section 1213 Minimum Lot Requirements

1. Minimum lot area shall be ten thousand (10,000) square feet; and
2. Minimum lot width of one hundred (100) feet.

Section 1215 Minimum Yard and Lot Requirements

1. There shall be a front yard of not less than a depth of twenty (20) feet;
2. There shall be a rear yard of not less than a depth of twenty (20) feet;
3. Each side yard shall be no less than ten (10) feet; and
4. Minimum lot width of one hundred (100) feet.

Section 1217 Maximum Lot Coverage

The maximum lot coverage for all buildings shall not be more than fifty (50) percent of the total area.

Section 1219 Maximum Height

The height of all buildings and structures shall not exceed thirty0five (35) feet.

Section 1221 Service of Access Roads

Service or access roads may be required at the discretion of the Board of Adjustment. Property required to create service or access roads will be provided by the property owner or developer. Service or access roads will be developed to normal city street standards. Service or access roads that will carry truck traffic will be developed to carry such traffic without pavement or sub-base breakup. The Board of Adjustment will approve development plans for service or access roads.

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CHAPTER 13
INDUSTRIAL DISTRICT (I)

Section 1301 Intent

The intent of the Industrial District (I) is to provide for future development of new industrial and certain commercial activities in areas where municipal utilities are readily available and in areas where ingress and egress can be provided in a safe and convenient manner. The activities located in this district should be engaged in either manufacturing or wholesale trade. It is further intended that the activities proposing to locate in any of the areas designated Industrial shall satisfy the Planning Commission and the City Council that the activities conducted in the aforementioned areas shall conform to the pollution control standards in existence for the State of South Dakota. No use shall be permitted that does not conform to these minimum pollution control standards.

Section 1303 Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Industrial Districts (I):

1. Retail sales;
2. Restaurants;
3. Convenience stores;
4. Construction services and storage;
5. Truck or equipment terminals;
6. Gasoline stations;
7. Garages, public
8. Self storage warehouses;
9. Utility facilities;
10. Wholesale sales;
11. Agricultural chemical sales and applications;
12. Livestock or auction sale barns;
13. Repair shops, motor vehicles;
14. Repair shops, auto body;
15. Lockers;

16. Grain elevators;
17. Tank farms;
18. Warehouses;
19. Parking spaces;
20. Food processing facilities;
21. Recycling facilities; and
22. Manufacturing.

Section 1305 Permitted Accessory Uses and Structures

1. Signs, exterior, on-site;
2. Signs, directional on-site;
3. Signs, directional off-site;
4. Signs, real estate;
5. Signs, bulletin board;
6. Signs, banner;
7. Signs, name and address plate;
8. Signs, mounted wall;
9. Signs, projecting;
10. Signs, roof;
11. Signs, easement and utility;
12. Signs; flag; and;
13. Outdoor storage areas, pursuant to Section 1603.

Section 1307 Conditional Uses

After the provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Industrial Districts (I):

1. Signs, off-site;
2. Signs, portable;
3. Signs, ground and monument; and
4. Towers.

Section 1309 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use not specifically listed as a permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 1311 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 1309 shall be prohibited.

Section 1313 Performance Standards for an Industrial District shall be as follows:

1. Occupation Noise – Any use established shall be so operated that no noise resulting from the use is perceptible beyond the boundaries of that plat line of the site on which such use is located. This standard shall apply to incidental traffic, parking, loading, construction, or maintenance operation;
2. Smoke and Particulate Matter – Any use established, enlarged, or remodeled after the effective date of the Ordinance shall be so operated as to control the emission of smoke or particulate matter to the degree that it is not detrimental to or shall endanger the public health, safety, comfort, or general welfare of the public;
3. Toxic or Noxious Matter – Any use established shall be so operated as not to discharge across the boundaries of the lot or through percolation into the subsoil beyond the boundaries of the lot, wherein such is located, toxic or noxious matter;
4. Odors – Any use established, enlarged, or remodeled shall be so operated as to prevent the emission of odorous matter of such quantity as to be readily detectable at any point beyond the lot line of the site on which such use is located;

5. Vibration – Any use creating periodic earthshaking vibrations, such as may be created from a drop forge, shall be prohibited if such vibrations are perceptible beyond the lot line of the site on which the use is located. The standard shall not apply to vibrations created the process of construction;
6. Glare or Heat - Any use requiring an operation producing an intense heat or direct light transmission shall be performed with the necessary shielding to prevent such heat or direct light from being detectable at the lot line of the site on which the use is located;
7. Explosives – Any use requiring the storage, utilization, or manufacturing of products which could decompose by detonation shall be located not less than five hundred (500) feet from an (R-1) or (R-2) District line;
8. Screening – Any use in the (I) district abutting on an (R-1) or (R-2) district shall effectively screen any open storage from eye level vision by providing and maintaining a wall, fence, or thirty (30) foot-side planting strip to screen and reduce the noise, dust, and vision between two (2) uses. Such wall or fence shall be six (6) feet in height and at least fifty (50) percent closed; and
9. Waste Material – Waste material resulting from or used in industrial or commercial manufacturing, fabricating, servicing, processing, or trimming shall not be washed into the public storm sewer system nor the sanitary sewer system, but shall be disposed of in a manner approved by the City Council. The Board of Adjustment may establish appropriate regulations and standards therefore.

Section 1315 Minimum Lot Requirements

1. The minimum lot area shall be twenty-five thousand (25,000) square feet; and
2. The minimum lot width shall be one hundred twenty-five (125) feet.

Section 1317 Minimum Yard Requirements

1. There shall be a front yard of not less than a depth of twenty (20) feet;
2. There shall be a rear year of not less than a depth of twenty (20) feet; and
3. Each side yard shall not be less than ten (10) feet as measured from the outermost edge of structures.

Section 1319 Maximum Lot Coverage

The maximum lot coverage for all buildings shall not be more than fifty (50) percent of the total lot area.

Section 1321 Service or Access Roads

Service or access roads may be required at the discretion of the Board of Adjustment. Property required to create service or access roads will be provided by the property owner or developer. Service or access roads will be developed to normal street standards. Service or access roads that will carry truck traffic shall be designed to handle such traffic without pavement or sub-base breakup. The Board of Adjustment shall approve development plans for service or access roads.

Section 1323 Maximum Height

The height of all buildings and structures shall not exceed thirty-five (35) feet.

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CHAPTER 14

PUBLIC/SEMI-PUBLIC DISTRICT (P)

Section 1401 Intent

The intent of the Public/Semi-Public District (P) is to provide for public institutional uses such as hospitals, colleges, educational facilities, public buildings, and parks, to encourage their location and activity with other compatible uses of land and to preserve for future expansion of these areas. It is intended that the Public/Semi-Public District (P) be situated in such a way that will have a minimal impact on any residential areas adjacent to it.

Section 1403 Principal Permitted Uses and Structures

1. Public buildings;
2. Parks;
3. Golf courses;
4. Hospitals;
5. Colleges;
6. Schools, public;
7. Schools, trade or commercial;
8. Schools, boarding;
9. Churches;
10. Towers;
11. Day care centers;
12. Day cares, group family home; and
13. Museums.

Section 1405 Permitted Accessory Uses and Structures

1. Signs, directional on-site;
2. Signs, directional off-site;
3. Signs, banner;
4. Signs, real estate;

5. Signs, bulletin board;
6. Signs, name and address plate;
7. Signs, easement and utility; and
8. Signs, flag.

Section 1407 Conditional Uses

After provisions relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Public/Semi-Public District (P):

1. Offices;
2. Signs, exterior on-site;
3. Signs, mounted wall;
4. Signs, portable;
5. Signs, ground and monument; and
6. Restricted use sites.

Section 1409 Classification of Unlisted Uses

In order to insure that the zoning ordinance will permit all similar uses in each district, the Board of Adjustment, upon its initiative or upon written application, shall determine whether a use not specifically listed as permitted, accessory, or conditional use in a District shall be deemed a permitted, accessory, or conditional use in one or more districts on the basis of similarity to uses specifically listed.

Section 1411 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 1409 shall be prohibited.

Section 1413 Minimum Lot Requirements

The governmental owner shall make an effort to conform to the applicable zoning regulations, which pertain to the abutting properties.

Section 1415 Minimum Yard Requirements

The governmental owner shall comply with the prevailing setbacks of the abutting properties and neighborhood.

Section 1417 Maximum Lot Coverage

The maximum lot coverage for all buildings shall not be more than seventy-five (75) percent of the total area.

Section 1419 Maximum Height

The height of all buildings and structures shall not exceed forty-five (45) feet.

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CHAPTER 15

PLANNED UNIT DEVELOPMENT SITRICT (PUD)

Section 1501 Intent

The provisions of this article are to be applied in instances where tracts of land of considerable size are developed, redeveloped or renewed as integrated and harmonious units, and where the overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in this ordinance. A planned development, to be eligible under this Article, must be:

1. In accordance with the comprehensive plans of the City, including all plans for redevelopment and renewal;
2. Composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the City;
3. So designed in its space allocation, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the development and upon the City; and
4. A minimum of five (5) acres in land area.

Section 1503 Application Procedure

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit to the Planning Commission a plan for the proposed planned development unit. The plan shall indicate:
 - A. The location and extent of the proposed planned development unit, including its relationship to surrounding properties;
 - B. The exact nature and extent of improvements to be developed or erected upon the tract, including contoured site plans, building plans and elevations, and plans for landscaping and paved areas, transportation patterns, and public utilities such as water and sewer service; and
 - C. Such other information as may be required by the Planning Commission to determine if the proposed planned development unit is consistent with the intent of the district.
2. The Planning Commission shall, within sixty (60) days of receiving the plan for the proposed development unit, consider such plan at a minimum of one regular Planning Commission meeting. Upon consideration, the Planning Commission shall inform the applicant in writing

of it approval or denial of the plan. In the event of denial, the Planning Commission shall inform the applicant of the reason(s) for denial including and recommended modifications in the plan, which cause the Planning Commission to reconsider.

3. Upon approval of the plan by the Planning Commission, it shall forward its written recommendations to the City Council along with a copy of the approved plan, that the tract be designated a Planned Unit Development District (PUD) by amendment of the Official Zoning Map.
4. Upon receiving the Planning Commission's written recommendation, the City Council shall consider the amendment of the Official Zoning Map as provided elsewhere in this Article.
5. Following the amendment of the Official Zoning Map by the City Council, the City Zoning Administrator may, upon proper application, issue a building permit for construction of the planned development unit in accordance with the approved plan.

Section 1505 Subsequent Performance

Following issuance of a building permit for the planned development unit by the Zoning Administrator, the applicant shall begin construction within a period of six (6) months. Failure to do so shall invalidate the building permit. Construction shall follow precisely the plan approved by the Planning Commission to which modifications may be granted only by the Planning Commission upon the filing of an amended plan. Failure to follow the approved plan on the part of the applicant or his/her agent shall be considered a violation of this ordinance punishable as herein prescribed.

CHAPTER 16

SUPPLEMENTARY DISTRICT REGULATIONS

Section 1601 Visibility Requirements

On a corner lot in all Districts, nothing shall be erected, placed or allowed to grow in such a manner as materially to impede vision between a height of thirty (30) inches and ten (10) feet above the centerline grades of the intersecting streets in the area formed by a radius of twenty (20) feet from the intersection of street curbs or street edges.

Section 1603 Fences, Walls, and Hedges

Notwithstanding other provisions of this ordinance, walls, hedges, or other vegetation may be permitted in any required yard, or along the edge of any yard, provided that no wall, hedge, or other vegetation shall be permitted to materially impede vision across such yard between the height of thirty (30) inches to ten (10) feet.

Fences in the front yard:

1. Shall be approved by the Zoning Administrator prior to construction;
2. Shall not exceed four (4) feet in height; and
3. Shall be constructed of a material that does not impede motorist's vision.

Fences, walls, and hedges built or planted in side and rear yards;

1. Within the Agriculture, Residential, and Manufactured Home Park Districts, shall not exceed six (6) feet in height; and
2. Within the Commercial, Industrial, and Public/Semi-Public Districts, shall not exceed eight (8) feet in height.

Fences constructed on property abutting arterial streets, as defined herein, shall be set back ten (10) feet from the property line.

Fences shall be constructed of appropriate material including chain link, wood, vinyl, or wire and shall be neat and presentable. Fences shall be constructed with the most visibly pleasing side facing the right-of-way or adjacent property.

Outdoor storage areas, as defined herein, shall be enclosed by an opaque fence or planted screen with a minimum height of six (6) feet. Said fence or screening shall not exceed eight (8) feet in height as measured from the prevailing grade.

Fences constructed for the purpose of screening garbage bins or dumpsters shall not exceed six (6) feet in height and shall be constructed of an opaque material or chain link with slats. Said fence shall comply with applicable yard requirements.

This section shall not apply to those entities where safety and controlled access regulations require fencing exceeding these standards.

Section 1605 Erection of More Than One Principal Structure on a Lot

In any district, more than one (1) structure housing a permitted or permissible principal use may be erected on a single lot, provided, that yard and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot. The Commercial, Highway Commercial, and Industrial Districts shall be exempt from these requirements except that yard requirements shall apply to the other perimeter or lot lines.

Section 1607 Exceptions to Height Regulations

The height limitations contained in this Ordinance shall not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, domes, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy; provided, Federal Aviation Administration (FAA) and Federal Communication Commission (FCC) regulations are met.

Section 1609 Unique Lot Requirements

1. Through lots – In the case of through lots, the front yards on either side of the block will match the prevailing yard patterns on each side of the block that the lot faces on. The administrative official may waive the requirement for the normal front yard and substitute a special yard requirement, which shall not exceed the average of the yards, provided on adjacent lots.
2. Corner lots – In the case of corner lots which do not have reserved frontage, a front yard of the required depth shall be provided in accordance with the prevailing pattern and a second front yard of the depth required generally from front yards in the district shall be provided on the other frontage or prevailing frontage on that street.
3. Reserved frontage lots – In the case of reserved frontage corner lots, a front yard of required depth shall be provided on either frontage, and a second front yard, of the depth required generally from front yards in the district, shall be provided on the other frontage.

Section 1611 Structures to Have Access

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

Section 1613 Parking, Storage, or Use of Major Recreational Equipment

For the purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases of boxes used for transporting recreational equipment shall be parked or stored on any lot in a residential district except in a car port or enclosed building or behind the nearest portion of a building to a street, provided however that such equipment

may be parked anywhere on residential premises for not to exceed twenty-four (24) hours during loading and unloading. No such equipment shall be used for living, sleeping, or housekeeping purposed when parked or stored on a residential lot, or any location not approved for such use.

Section 1615 Parking and Storage of Certain Vehicles

No motorized vehicles or trailers of any kind or type without current license plates or inoperable shall be parked or stored on any residentially zoned lot other than in completely enclosed buildings.

Section 1617 Sign Regulations

1. Signs shall conform to state law when along all state and federal primary highway system;
2. All signs shall be maintained in a neat and presentable condition and in the event they shall become illegible or their use shall cease, they shall be removed promptly and the area occupied restored to a condition free of refuse and debris within fifteen (15) days or be subject to a penalty as set forth on Chapter 22 of this ordinance;
3. Signs bearing only property numbers, mailbox numbers, names of occupants of premises, or other identification of premises not having commercial connotations shall not exceed two (2) square feet in area;
4. Flags and insignia of any government are allowed except when displayed in connection with commercial promotion;
5. Legal notices which are expected to be posted in a conspicuous place;
6. Real estate signs shall be removed upon the rental/lease or sale closing of the dwelling unit or units;
7. Projecting signs attached to a building shall not project above the height of the building, shall not extend more than six (6) feet from the face of the building, and shall not extend closer than one (1) foot from the current right-of-way line;
8. Mounted wall signs placed against the exterior walls of buildings shall not extend more than twelve (12) inches beyond the surface of the building's wall and shall not exceed twenty (20) feet in height above the mean centerline street grade nor shall such sign break the plane of the roofline;
9. Projecting signs fastened to or suspended from structures:
 - A. Shall not extend more than six (6) feet into any required yard;
 - B. Shall not extend more than six (6) feet into any public right-of-way;
 - C. Shall not be less than ten (10) feet from all side lot lines;

- D. Shall not exceed a height of twenty (20) feet above the mean centerline street grade;
 - E. Shall be a minimum of eight (8) feet above the mean centerline street grade; and
 - F. Shall be a minimum of fifteen (15) feet above the mean centerline of a driveway or alley.
10. Roof signs shall not exceed ten (10) feet in height above the roof; shall meet all the yard and height requirements for the district in which it is located; and shall not exceed three hundred (300) square feet on all sides for any one premises;
 11. The City of Wagner reserves the right to expand right-of-ways. In such a case, the removal, modification, or replacement of a sign that intrudes upon the right-of-way clear zone as defined in Section 1617(7) shall be the responsibility of the affected business; and
 12. Where necessary, the city reserves the right to combine sign terminology with regard to regulations and enforcement. More restrictive requirements shall supercede the inferior language.

Section 1619 Sign as Obstruction or Deception

Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window or fire escape. No sign shall be placed so as to obstruct or interfere with traffic visibility.

Section 1621 Nonconforming Signs

Signs lawfully existing at the time of the adoption or amendment of this Ordinance may be continued although the use, size, or location does not conform to the provisions of this Ordinance. However, it shall be deemed a nonconforming use or structure.

Section 1623 Temporary Manufactured Homes

No manufactured home shall be parked and occupied in any unauthorized district for more than forty-eight (48) hours except upon a special permit by the Zoning Administrator. Such permit shall not be renewable within the same calendar year. Provided, however, a permit may be issued for parking and occupying a manufactured home on land owned by the occupant or occupants, during the construction of a house thereon for a period not exceeding one hundred eighty (180) days. However, if material progress with house construction is not made within forty-five (45) days from the issuance of a permit, or if construction work ceases for a consecutive period of forty-five (45) days, said permit shall become void.

Section 1625 Manufactured Home Performance Standards

Manufactured homes sites within a Residential District shall comply with the following conditions:

1. The pitch of the main roof shall not be less than four (4) inches of rise for each twelve (12) inches of horizontal run;
2. The roof shall be shingled with conventional roofing products;
3. The exterior walls shall be encased with conventional house siding (flat or corrugated sheet metal is prohibited);
4. A wood or masonry foundation shall form a complete enclosure under the exterior walls;
5. The minimum width of the main body of the manufactured home as assembled on the site shall not be less than twenty (20) feet, as measured across the narrowest portion;
6. The manufactured home shall have the long axis of the home parallel to the street;
7. Running gear and hitch shall be removed;
8. Anchored to the ground to resist tipping and lateral movement in the manner contemplated by the manufactured design;
9. The manufactured home shall meet or exceed the federal HUD Manufactured Home Construction and Safety Standards;
10. Prior to placement of home on the foundation, the foundation must be inspected and approved by the City Zoning Administrator or their designee;
and
11. The City of Wagner shall notify all landowners within three hundred (300) feet by certified mail at least ten (10) days prior to placement of the home.

Section 1627 Kennels

Prior to development the owner shall notify by certified mail all landowners of occupied dwellings, modular homes, or manufactured homes within two thousand six hundred forty (2,640) feet of the proposed kennel.

Section 1629 Floodway

The purpose of this section is to protect open spaces and natural drainage courses in their capacity to carry runoff water and to limit uses of land in areas subject to flooding and prevent the destruction or pollution of valuable and irreplaceable natural resources and prevent encroachment of uses which would reduce the future potential of these resources.

Section 1631 Off-Street Parking

1. Dwellings; one (1) space per dwelling unit;
2. Churches and places of worship: one (1) space for each six (6) seats in principal assembly area;
3. Public and private schools; one (1) space for each classroom plus one (1) space for each six (6) seats in grandstand or stadium;
4. Public parks, playgrounds, or playfields: one (1) space for each six (6) seats in grandstand or stadium; eight (8) spaces per acre if a family picnic area; twenty (20) spaces per acre if a group picnic area; non required for playgrounds or playfields;
5. Community building owned and/or occupied by public agencies; one (1) space for each three hundred (300) square feet floor area;
6. Nursing, convalescent, and retirement homes: one (1) space for each four (4) beds; and
7. Offices, one parking space for each three hundred (300) feet of floor space and are in conformance with the yard requirements for dwellings.

CHAPTER 17

NONCONFORMANCE

Section 1701 Intent

Within the districts established by this Ordinance or amendments that may later be adopted, there exists (a) lots, (b) structures, (c) uses of land and structures, and (d) characteristics of use which are lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment.

It is the intent to permit these non-conformities to continue until they are removed. Further, non-conformities shall not be enlarged upon, expanded, extended, nor be used as grounds for adding other prohibited structures or uses elsewhere in the same district.

Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this revised Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction material in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Section 1703 Nonconforming Lots of Record

In any district in which single-family dwellings and modular homes are permitted, single-family dwellings, modular homes, and their customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendments of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. In residential districts where manufactured homes are a conditional use, a conditional use permit shall be obtained pursuant to Sections 1625, 1813, and 2009 prior to placement of the home.

Variance of other yard requirements shall be obtained in accordance with the provisions of this ordinance.

Section 1705 Nonconforming Uses of Land (or Land with Minor Structures Only)

Where at the time of passage of this revised Ordinance lawful use of land exists, which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding one thousand (1,000) dollars, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If any such nonconforming use of land ceases, for any reason, for a period of more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located; and
4. No additional structure, failing to conform to the requirements of this Ordinance, shall be erected in connection with such nonconforming use of land.

Section 1707 Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance, that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way, which increases its nonconformity, but any structure, or portion thereof, may be altered to decrease its nonconformity.
2. Should such nonconforming structure, or nonconforming portion of structure, be destroyed by any means, to an extent of more than seventy-five (75) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance; and
3. Should such structure be moved for any reason or distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 1709 Nonconforming Uses of Structures or of Structures and Premises in Combination

If the nonconforming use involving individual structures with a replacement cost of one thousand (1,000) dollars or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structure and premises may, as a conditional use, be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Ordinance;
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for a period of more than one (1) year (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 1711 Uses under Conditional Use Provisions are Conforming Uses

Any use, which is permitted as a conditional use in a district, under the terms of this Ordinance, shall be deemed a conforming use in such district without further action. A nonconforming use can never be allowed in a defined district without a change in the district definition or boundaries.

Permitted Principal Uses	Conditional Uses	Nonconforming
Allowed within defined district.	Allowed within defined district AFTER board grants permission.	Never allowed in defined district without change in district definitions or boundaries.

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CHAPTER 18

ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

Section 1801 City of Wagner Zoning Administrator

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the City Council shall administer and enforce this ordinance. They may be provided with the assistance of such other persons as the City Council may direct.

If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, they shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. They shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by the ordinance to insure compliance with or to prevent violation to its provisions. The Zoning Administrator shall report all actions to the City Council at the next general meeting.

Section 1803 Right of Entry

Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Zoning Administrator or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises an ordinance violation, the Zoning Administrator or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Zoning Administrator by this ordinance, provided that if such building or premises be occupied, they shall first present proper credentials and request entry; and if such building or premises be unoccupied, they shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Zoning Administrator or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Administrator or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Zoning Administrator or an authorized representative for the purpose of inspection and examination pursuant to this ordinance.

Section 1805 City of Wagner Planning Commission

The Mayor of the City of Wagner shall appoint a Planning Commission, the total membership of which shall be an uneven number. Said Commission members shall be confirmed by the Council. The term of each of the appointed members of the Planning Commission shall be for a set period of time. When the Planning Commission is first appointed the lengths of the terms should be varied so that no more than two (2) terms shall expire in the same year. Meetings shall be regularly scheduled and held at the call of the Chairperson and at such other times as the Planning Commission may determine. The Chairperson, or, in their absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public, except as provided by SDCL 1-25-5.

Upon notification of a request for a variance or conditional use or any part thereof the Planning Commission shall schedule a public hearing. Notice of the time and place of the hearing shall be given pursuant to Section 2009 (3-5). Any person may appear and request or protest the proposed change.

The Commission shall discuss the application and formulate a recommended action. The recommendation should be in the form of a motion clearly stating the Commission's recommend action. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

The Planning Commission shall keep a record of all proceedings, including minutes, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the City Finance Officer. The Planning Commission shall adopt from time to time, subject to the approval of the City Council, rules and regulations, as it may deem necessary for the conduct of its affairs and to carry the appropriate provisions of this ordinance into effect. The Commission shall be compensated for their service as determined by the City Council.

Section 1807 City of Wagner Board of Adjustment

The City of Wagner City Council shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all requests for variances, conditional uses and zoning appeals. The Board of Adjustment may, in specific cases to avoid unwarranted hardship which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, make upon an affirmative vote of two-thirds (2/3) of the full membership of the Board of Adjustment, conditional uses or grant variances to the terms of this ordinance, subject to appropriate conditions or safeguards being adopted by the City Council.

The Zoning Administrator shall act, as secretary to the Board of Adjustment when acting in zoning cases, but shall take no part in the deliberations. Meeting of the Board of Adjustment acting in zoning cases shall be held at the call of the Chairperson and at such other times, as the Board shall determine. Such Chairperson, or in their absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

All meetings of the Board of Adjustment shall be open to the public. Those meetings, designated as public hearings, shall allow for testimony from all interested parties. The Board, acting in zoning cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Finance Officer and shall be a public record. The Board of Adjustment, acting in zoning cases, shall adopt from time to time, subject to the approval of the City Council, such rules and regulations as it may deem necessary to carry the appropriate provisions of this ordinance into effect.

Section 1809 City of Wagner City Council

The City Council may amend, supplement, change, modify, or repeal any regulation, restriction, boundary, or enforcement provision established in the zoning ordinance or adjuncts thereto. The City Council shall forward a copy of the proposed changes to the Planning Commission for public review. Upon receipt of the comments from the Planning Commission the City Council shall publish a notice of public hearing pursuant to the applicable standards within Section 2009 (3-6). The City Council shall thereafter either adopt or reject such amendment, supplement, change, modification, or repeal. If adopted the City Council shall direct the Planning Commission to prepare a summary of the action. Upon completion of the summary the city attorney shall review the same and direct the City Finance Officer to have said summary published once in a legal newspaper of the municipality and take effect on the twentieth day after its publication.

Section 1811 Building Permits Required

Building permits are required in the following instances:

1. For any structure/building in which the building/structure is erected, partially erected, demolished, moved, added to, or structurally altered; or
2. For any structure or building, regardless of cost, if additional land or area is required for the improvements to be sited on.

No building or other structure shall be erected, moved in or out, demolished, added to, or structurally altered without a permit therefore issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance, unless they received a written order from the Board of Adjustment in the form of an administrative review, conditional use, or variance as provided by this Ordinance. Manufactured homes being moved in or out of city licensed manufactured home parks shall not be required to have a permit. This section does not apply to agriculturally related structures.

Section 1813 Applications for Building Permits, Conditional Uses and Variances

All applications for building permits, conditional uses and variances must be signed or approved in writing by the owner of record. In the event the owner of record has a binding purchase agreement contingent on the approval of the building permit, conditional use or variance the potential purchaser may submit and sign all documents required for application. All applications for building permits shall be accomplished by a site plan in duplicate.

The site development plan shall be drawn to scale and indicate the following:

1. Location and topography of the proposed structure(s), including adjacent property owners and proximity of federal, state highways, and to county, township or city roads;
2. A north arrow;
3. The actual dimensions and shape of the lot to be built upon;

4. The exact sizes and locations on the lot of buildings already existing, if any, and the location and dimensions of the proposed building or alteration;
5. Property lines and square footage of the proposed structure(s);
6. Location and dimensions of all easements and right-of-ways;
7. General street and pedestrian walkway plan;
8. General utility, water, and sewer plan with proximity and proposed connection to municipal utilities; and
9. Site drainage plan and development impact on culverts, etc.

The application shall include such other information as lawfully may be required by the administrative official, including:

1. Existing or proposed building or alteration;
2. Existing or proposed uses of the building and land;
3. The number of families;
4. Housekeeping units or rental units the building is designed to accommodate;
5. Conditions existing on the lot; and
6. Such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance.

Refer to document entitled Site Plan Requirements for a detailed example of a site plan.

The application shall include such other information as lawfully may be required by the Zoning Administrator. One (1) copy of the application shall be returned to the applicant by the Zoning Administrator after they shall have marked such copy either as approved or disapproved and attested to same by their signature on such copy.

If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The Zoning Administrator shall retain the original and one (1) copy of the application, similarly marked. The issuance of a building permit shall in no case be construed as waiving any provisions of this Ordinance.

Section 1815 Certifications of Zoning Compliance for New, Altered, or Nonconforming Uses

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance will have been issued therefore by the administrative official stating that the proposed use of the building or land conforms to the requirements of this ordinance.

Section 1817 Expiration of Building Permits, Conditional Uses and Variances

If the work described in any building permit, conditional use or variance has not begun within one hundred eighty (180) days or completed within two (2) years from the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained at no additional cost unless substantial changes have been made to the initial permit application.

Section 1819 Construction and Use to be as Provided in Applications and Permits

Building permits issued on the basis of applications approved by the Zoning Administrator authorized only the use, arrangement, and construction set forth in such approved application and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by this Ordinance.

Section 1821 Building and Zoning Permit Fees

All building and zoning permits shall be obtained by application of the owner or builder and shall give an estimate of the value of construction or repair and initial fees shall be based on such estimate; provided that if, at the completion of said construction or repair, the estimate cost as given in the application appears inadequate to the Zoning Administrator, they may request bills or receipts to substantiate such value and additional fees may be assessed accordingly. It is the owners and builder's responsibility to obtain a permit prior to construction on property owned or leased.

Section 1823 Schedule of Fees, Charges, and Expenses

The City of Wagner City Council shall establish a schedule of fees, charges, and expenses and a collection procedure for variances, conditional uses, amendments, appeals, building permits and other matters pertaining to this ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the City Council. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

Section 1825 Building Permit in Conspicuous Places

All building permits issued by the Zoning Administrator must be placed in a conspicuous location on the site for the duration of the construction or work described. Granting of Building Permits may be published in the city's official newspaper.

Section 1827 Bad Actor Legislation

The City of Wagner City Council may reject an application for any permit filed for a variance, conditional use or otherwise for the reasons and on the grounds set forth in SDCL 1-40-27, as revised and amended. Such rejection shall be based upon a specific finding by the Council, that the applicant has engaged in the activity identified in the aforesaid statute. The burden on the Council to make the specific finding provided for herein shall be by a preponderance of the evidence.

For purposes of this section a person shall be deemed an applicant if they are the owner of the proposed facility; an officer or director of the owner thereof; or an owner of any interest in any company except a publicly traded company, which is the owner of the purposed facility.

CHAPTER 19

PLANNING COMMISSION

Section 1901 Members, Terms, Meetings, and Rules

The Mayor of the City of Wagner shall appoint a Planning Commission, the total membership of which shall be an uneven number. Said Commission members shall be confirmed by the City Council. The term of each of the appointed members of the Planning Commission shall be for a set period of time. When the Planning Commission is first appointed the lengths of the terms should be varied so that no more than two (2) terms shall expire in the same year. Meetings shall be regularly scheduled and held at the call of the Chairperson and at such other times as the Planning Commission may determine. The Chairperson, or in their absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public, except as provided by SDCL 1-25-5.

The Planning Commission shall keep a record of all proceedings, including minutes, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the City Finance Officer. The Planning Commission shall adopt from time to time, subject to the approval of the City Council, rules and regulations, as it may deem necessary for the conduct of its affairs and to carry the appropriate provisions of this ordinance into effect. The Commission shall be compensated for their service as determined by the City Council.

Section 1903 Conditional Uses

The Planning Commission shall have the power to review, in accordance with the provisions of this ordinance, requests for conditional uses or for decisions upon other special questions upon which the Planning Commission is authorized by this ordinance to review; to decide such questions as are involved in determining whether conditional uses should be recommended for approval; and to recommend approval of conditional uses with such conditions and safeguards as are appropriate under this ordinance, or to recommend denial of conditional uses when not in harmony with the purpose and intent of this ordinance. The Commission shall not review a conditional use unless and until all documents required for application for said use have been satisfactorily completed and all required fees have been paid in full.

The Planning Commission shall review all conditional use applications at an official public hearing of the Commission. Notice of the time and place of the hearing shall be given pursuant to Section 2009 (3-5). The Commission shall discuss each application and recommend an action. The recommendation should be in the form of a motion clearly stating the Commission's recommended action. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

Section 1905 Variances

The Planning Commission shall have the power to review requests for variances from this ordinance in instances where strict enforcement would cause unnecessary hardship, and to recommend granting of such variances only in accordance with this ordinance. The Commission shall not review a variance unless and until all documents required for application for said request have been satisfactorily completed and all required fees have been paid in full.

The Planning Commission shall review all variance applications at an official meeting of the Commission. The Commission shall discuss each application and recommend an action. The recommendation should be in the form of a motion clearly stating the Commission's recommended action. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

Section 1907 Amendments and Rezoning

Upon notification of a proposed revision, modification, change or amendment to the zoning ordinance or any part thereof the Planning Commission shall schedule a public hearing. Notice of the time and place of the hearing shall be given pursuant to Section 2009 (3-5). Any person may appear and request or protest the proposed change.

The Planning Commission shall review all applications for amendments or rezones at an official public hearing of the Commission. The Commission shall discuss the application and formulate a recommended action. The recommendation should be in the form of a motion clearly stating the Commission's recommendation. The Commission shall forward its recommendation to the Board of Adjustment at least ten (10) days in advance of the Board of Adjustment meeting at which the application is being considered.

Section 1909 Planning Commission Hearings and Notice

Each session of the Planning Commission at which a hearing is held shall be a public meeting, except as provided by SDCL 1-25-5 with notice of hearing to be published pursuant to the applicable standards within Section 2009 (3-5).

CHAPTER 20

BOARD OF ADJUSTMENT

Section 2001 Members, Terms, Meetings, and Rules

The City of Wagner City Council shall serve as the Board of Adjustment. The Board of Adjustment is hereby designed to hear all requests for variances, conditional uses, and zoning appeals. The Zoning Administrator shall act, as secretary to the Board of Adjustment when acting in zoning cases, but shall take no part in the deliberations. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times, as the Board shall determine. Such Chairperson, or in their absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

All meetings of the Board of Adjustment shall be open to the public, except as provided by SDCL 1-25-2. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record. The Board of Adjustment shall adopt from time to time, such rules and regulations, as it may deem necessary to carry the appropriate provisions of this ordinance into effect.

Section 2003 Appeals to Board of Adjustment, Record of Appeals, Hearing, and Stays

Any decision rendered by the Zoning Administrator may be appealed to the Board of Adjustment. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer for whom the appeal is taken and on due cause shown.

Section 2005 Board of Adjustment Hearing and Notice

Each session of the Board of Adjustment at which a hearing is held shall be a public meeting, except as provided by SDCL 1-25-5 with notice of hearing to be published pursuant to the applicable standards within Section 2009 (3-5).

Section 2007 Board of Adjustment Appeals Process

The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation relating to the location or soundness of structures or to interpret any map. An appeal will not be heard until:

1. The applicant or any other person aggrieved by the decision of an administrative official or agency shall file a written appeal with the Zoning Administrator within five (5) working days of the decision;

2. The administrative official or agency from which the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken;
3. Notice of the hearing date shall be given at least ten (10) days in advance by publication in a legal newspaper of the municipality;
4. Written notice shall be sent to the applicant and all owners of real property lying within one hundred and fifty (150) feet of the property on which the appeal is pending, if a particular piece of property is in question. The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
5. The administrative official or agency shall present their decision to the Board of Adjustment for review; and
6. The Board of Adjustment shall uphold, overrule or amend the decision of the Zoning Administrator.

The Board of Adjustment has the powers of a Zoning Administrator on Appeals and Reversing Decision of the Zoning Administrator.

In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of two-thirds (2/3) of the full membership of the Board of Adjustment shall be necessary to reserve any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to the effect any variation in this ordinance.

Section 2009 Board of Adjustment Conditional Uses Process

The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this ordinance to pass; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this ordinance. A conditional use shall not be granted by the Board unless and until:

1. A written application, pursuant to Section 1813 for a conditional use is submitted, indicating the section of this ordinance under which the conditional use is sought and stating the grounds on which it is requested;
2. The Planning Commission has reviewed the application pursuant to Section 1903 of this Ordinance;

3. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of the municipality;
4. Written notice of the public hearing shall be sent to the applicant and all owners of real property lying within one hundred and fifty (150) feet of the property on which the conditional use is pending. The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
5. A notification sign shall be posted on the property upon which action is pending at least seven (7) days to the hearing date. Such signs shall be placed along all along the property's street frontage so as to be visible from the street. If a property does not have a street frontage, then such signs shall be placed upon the closest available right-of-way and upon the property. Said sign shall be not less than one hundred and eighty-seven (187) square inches in size. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearings;
6. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
7. The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the conditional use, grant with conditions, or deny the conditional use, and that the granting of the conditional use will not adversely affect the public interest; and
8. Before any conditional use is granted, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow control, and access in case of fire or catastrophe;
 - B. Off-street parking and loading areas where required; with particular attention to the items in (A) above and the economic, noise, glare, odor or other effects of the conditional use on adjoining properties and properties generally in the district;
 - C. Refuse and service areas, with particular reference to the items in (A) and (B) above;
 - D. Utilities with reference to locations, availability, and compatibility;
 - E. Screening and buffering with reference to type, dimensions, and character;

- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
- G. Required yards and other open spaces; and
- H. General compatibility with adjacent properties and other property in the district.

Section 2011 Board of Adjustment Variance Process

The Board of Adjustment shall have the power to hear requests for variances from this ordinance in instances where strict enforcement would cause unnecessary hardship, and to grant such variances only when the following provisions apply:

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the ordinance would produce hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes on convenience, profit, and caprice;
2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance;
3. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variances;
4. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until a written application, pursuant to Section 1813 for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; that literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district;
5. The Planning Commission has reviewed the application pursuant of Section 1905 of this ordinance;

6. Notice of public hearing shall be given, as in Section 2009 (3-5); the public hearing shall be held. Any party may appear in person or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this Section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
7. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 2203 of this ordinance; and
8. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

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CHAPTER 21

DUTIES OF THE ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT, AND COURTS ON MATTER OF APPEAL

Section 2101 Duties of Zoning Administrator, Board of Adjustment, and Courts on Matter of Appeal

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board of Adjustment shall be to the courts as provided by law.

Section 2103 Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

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CHAPTER 22

AMENDMENTS

Section 2201 Amendments and Rezoning

The provisions set forth in this Ordinance may, from time to time, be amended, supplemented, changed or repealed by action of the City Council or when such amendment, supplement, change, modification or repeal is requested through a petition by thirty (30) percent of the landowners in the districts requesting a change. An individual landowner may also petition the Board to change the zoning of all or any part of their property provided that such modification or repeal in each instance be proposed in an ordinance presented to the governing body for adoption in the same manner and upon the same notice as required for the adoption of the original ordinance.

Section 2203 Process

Prior to consideration of amending, supplementing, changing, modifying or repealing this ordinance by the governing body, notice of public hearings shall be provided as follows:

1. If the proposed changes affect a particular piece of property notification signs shall be posted on the property upon which action is pending at least seven (7) days prior to the hearing date. Such signs shall be placed along all along the property's street frontage so as to be visible from the street. If a property does not have a street frontage, then such signs shall be placed upon the closest available right-of-way and upon the property. Said signs shall be not less than one hundred and eighty-seven (187) square inches in size. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearings;
2. At least ten (10) days before the date of the Planning Commission hearing, the City shall have published in a legal newspaper of the City, a notice of the time, place, and subject matter of such hearing;
3. If the proposed changes affect a particular piece of property written notice of the public hearing shall be sent to the applicant and all owners of real property lying within one hundred and fifty (150) feet of the property on which the conditional use is pending. The notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date;
4. The Planning Commission shall hold the Public Hearing, review the proposed amendment(s) and make recommendations to the City Council;
5. The City shall provide public notification pursuant to Section 2203 (1-3) before the date of the City Council hearing;
6. The City Council shall hold the Public Hearing, review the proposed amendment(s) and by resolution or ordinance deny or pass the recommendations;

7. If the changes are adopted the Planning Commission shall prepare a copy of the changes;
8. Once the copy is prepared the City Attorney shall review the changes and forward the changes to the City Finance Officer for publishing;
9. The complete copy of changes must be published once in a legal newspaper of the City; and
10. The changes take effect twenty (20) days after publication.

CHAPTER 23

VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

Section 2301 Building permit Violations

Any person, firm, or corporation in violation of Section 1811 shall be assessed a late fee of twenty-five (25) dollars. The Zoning Administrator may also take enforcement measures as given in Section 1801. Payment of all fees shall be made in the Wagner Finance Office within ten (10) days after the person, firm, or corporation in violation of this Ordinance has been notified by registered letter. If payment of the fee is not received at the end of the ten (10) day period, the City Attorney shall have the power to prosecute said violation.

Section 2303 Violation of This Ordinance

It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of this Ordinance, except as otherwise specified in Section 2003. Violation thereof shall be a Class II misdemeanor and may be punishable by a fine of up to two hundred (200) dollars for each and every day that any violator fails to comply with the provisions of this Ordinance. All fines for violations shall be paid to the city and shall be credited to the general revenue fund.

Any architect, builder, contractor, agent, or other person, who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

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CHAPTER 24

LEGAL STATUS PROVISIONS

Section 2401 Separability

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

Section 2403 Purpose of Catch Heads

The catch heads herein in connection with the foregoing chapters are inserted simply for convenience to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court, or other tribunal in construing the terms and provisions of this Ordinance.

Section 2405 Repeal of Conflicting Ordinances

All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

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