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## CHAPTER 30: GOVERNING BODY

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***Cross-reference:***

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***Statutory reference:***

- General powers of municipality, see SDCL Chapter 9-12*
- Public comment at meetings, see SDCL § 1-25-1*

*GENERAL*

**§ 30.001 FORMS OF GOVERNMENT.**

Each municipality shall be governed by a board of trustees, a mayor, and common council, or by a board of commissioners. A city manager may serve with any of the forms of government.  
(SDCL § 9-2-3)

**§ 30.002 CLASSES OF MUNICIPALITIES; CHANGE OF CLASSIFICATION.**

(A) There are three classes of municipal corporations:

- (1) First Class, with a population of 5,000 or over;
- (2) Second Class, with a population between 500 and 5,000;
- (3) Third Class, with a population of less than 500.

(SDCL § 9-2-1)

(B) The municipality may change its classification if the territory of the municipality has changed substantially since the last preceding census. The governing body by resolution may authorize and direct its auditor or clerk to determine the population by filing in his or her office a certificate showing the whole number of persons who voted at the last preceding annual municipal election, which number multiplied by three shall constitute the population for the purpose of classification until the next federal census shall have been completed.

(SDCL § 9-2-2)

**§ 30.003 VACANCIES.**

(A) *General.* If a vacancy exists on a municipal governing body, the remaining members shall appoint a replacement to serve until the next annual municipal election, or the vacancy may be filled by special election for the remainder of the unexpired term as provided in division (D)

(B) *Aldermanic form.* In the aldermanic form of municipal government, the appointment must be a person from the same ward of the first or second class municipality.

(C) If electing a person to fill the remainder of the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the publication required by SDCL § 9-13-6.

(SDCL § 9-13-14.1)

(D) *Special elections to fill vacancy on governing board, office of mayor; procedures.*

(1) The governing body of any municipality may, by ordinance, require that any vacancy on the governing body or in the office of the mayor is to be filled by a special election called for that purpose to be conducted as provided in SDCL § 9-13-14 and this division.

(2) No special election may be held less than 90 days before the annual municipal election. The finance officer of the municipality shall publish a notice in the official newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by the special election, the date of the election, and the time and place where nominating petitions may be filed for office.

(3) The notice shall be published once each week for two consecutive weeks beginning at least 60 days before the special election. Nominating petitions for the vacancy shall be prepared and filed as provided in SDCL § 9-13-7, may not be circulated more than 60 days before the date of the special election, and shall be filed at least 30 days before the date of the special election. The number of signers required for a nominating petition shall be calculated as provided in SDCL § 9-13-9. If a nominating petition is filed before the second Tuesday in January, the prior year's calculation of registered voters shall be used. A notice of the special election shall be published as provided in SDCL §§ 9-13-13 and 9-13-14. (SDCL § 9-13-14.2)

(E) *Elected official to hold office until vacancy filled.* If for any reason a municipality fails to elect any person to succeed an elected official whose term has expired or an elected official fails to file a nominating petition or qualify, the office is deemed vacant. The elected official whose term has expired shall continue to act in an official capacity until the vacancy is filled by election or appointment pursuant to divisions (C) or (D).

(SDCL § 9-13-14.3)

***Cross-reference:***

*Temporary vacancy of mayor in aldermanic form, see § 30.036*

**§ 30.004 CONFLICT OF INTEREST.**

(A) No municipal official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:

(1) The official has a direct pecuniary interest in the matter before the governing body; or

(2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

(B) If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.  
(SDCL § 6-1-17)

**§ 30.005 MAXIMUM PAYMENT OR INDEMNITY, EXCESS.**

(A) In no event may the total amount of payment or indemnity for any one officer or employee exceed the sum of \$25,000. However, this municipality may establish a different maximum amount of payment or indemnity by a resolution approved by its governing body.

(B) Indemnity in excess of \$25,000 or the maximum amount of the payment or indemnity approved by a resolution adopted by this municipality's governing body, whichever is greater, may be presented as a claim to the State Legislature.  
(SDCL § 3-19-2)

***ORGANIZATION; TRUSTEE FORM***

**§ 30.015 COMPOSITION AND QUALIFICATION.**

The Board of Trustees of a third class municipality shall consist of not less than three nor more than five members elected at large. Each shall be a legal voter of the municipality. The number of trustees of a municipality may be increased to five or reduced to three in the manner prescribed by SDCL Chapter 9-11.

**§ 30.016 QUALIFYING FOR OFFICE; OATH OF OFFICE.**

The members of the Board of Trustees shall qualify for office within ten days after notice of their election by filing an oath or affirmation as may be required by law.

**§ 30.017 TERM OF OFFICE.**

(A) The members of the Board of Trustees shall hold office for three years and until their successors are elected and qualified. A vacancy on the board shall be filled as provided in SDCL § 9-13-14.1 or 9-13-14.2.

(B) Whenever any third class municipality is organized, the trustees shall be elected for terms of one, two, and three years respectively at the first annual election. At subsequent elections each trustee shall be elected for a term of three years.  
(SDCL § 9-7-3)

**§ 30.018 PRESIDENT.**

At the first regular meeting after their election the members of the Board of Trustees shall elect one of their number as president to serve for one year and until his or her successor is elected and qualified. (SDCL § 9-7-5)

**§ 30.019 MEETINGS.**

(A) The board shall hold regular meetings at such times as may be provided by ordinance.

(B) Special meetings of the board may be held at any time upon call of the president or clerk by oral or written notice to the members present within the municipality. (SDCL § 9-7-6)

(C) If a quorum of trustees for a municipality of the third class meets solely for purposes of implementing previously publicly-adopted policy, carrying out ministerial functions of the municipality, or undertaking a factual investigation of conditions related to public safety, the meeting is not subject to the provisions of SDCL Chapter 1-25.

***Statutory reference:***

*Recording of public meeting, see SDCL § 1-25-11*

*Similar provisions, see SDCL §§ 1-25-1 et seq.*

**§ 30.020 QUORUM; MAJORITY REQUIRED FOR ACTION.**

A majority of the members of the board shall constitute a quorum, but no act of the board shall be effective unless assented to by a majority of the members. (SDCL § 9-7-7)

***ORGANIZATION; ALDERMANIC FORM*****§ 30.035 MAYOR; QUALIFICATIONS, TERM, POWERS.**

(A) *Executive.* The chief executive officer of a municipality under the aldermanic form shall be a mayor. (SDCL § 9-8-1)



(B) *Qualifications.* No person is eligible to be nominated, elected, or appointed as a mayor unless such person is a citizen of the United States, a voter of and resident of the municipality, and, if an alderman, a voter of and resident of the ward for which the person is to hold office.  
(SDCL § 9-8-1.1)

(C) *Term.* The mayor shall hold office for a term of not less than two nor more than five years as determined by ordinance. A person may hold office for more than one term.  
(SDCL § 9-8-1)

(D) *Powers.*

(1) The mayor shall preside at all meetings of the council but shall have no vote except in case of a tie.

(2) He or she shall perform such other duties as may be prescribed by the laws and ordinances, and take care that such laws and ordinances are faithfully executed.

(3) He or she shall annually and or as may be necessary, give the council information relative to the affairs of the municipality, and shall recommend for council's consideration such measures as he or she may deem expedient.

(4) He or she shall have the power to sign or veto any ordinance or resolution passed by the common council, and the power to veto any part or item of an ordinance or resolution appropriating money. Pursuant to SDCL § 9-19-10, the veto, with written objections must be filed with the finance officer within ten days after final passage.  
(SDCL § 9-8-3)

**§ 30.036 VACANCY IN OFFICE OF MAYOR; TEMPORARY ABSENCE OR DISABILITY.**

If there is a vacancy from any cause in the office of the mayor, the vacancy shall be filled by appointment by a majority vote of the members-elect of the aldermen, as soon as practicable after the vacancy occurs, to serve until the office is filled by election for the unexpired term at the next annual municipal election or by special election as provided in SDCL § 9-13-14.2. Until the vacancy is filled or during the time of temporary absence or disability of the mayor, the powers and duties of mayor shall be executed by the president of the council as provided in § 30.038.  
(SDCL § 9-8-2)

***Cross-reference:***

*Special elections, see § 30.003*

**§ 30.037 COMMON COUNCIL; MEMBERSHIP; TERMS OF OFFICE.**

(A) *Membership.* The common council shall consist of the mayor elected at large and two aldermen elected from and by the voters of each ward of the municipality.

(B) *Term.* The term of office shall be for two years, unless a municipality adopts an ordinance establishing the term of office to be three, four, or five years. The mayor and aldermen shall hold office until successors are elected and qualified. At the first election of aldermen, the council shall stagger the initial terms of the alderman in each ward to provide that the two aldermen are not up for reelection in the same year. A person may hold office for more than one term. A vacancy on the common council shall be filled as provided in SDCL §§ 9-13-14.1 or 9-13-14.2 (SDCL § 9-8-4)

(C) *Eligibility.* No person is eligible to be nominated, elected, or appointed as a mayor or as an alderman unless such person is a citizen of the United States, a voter of and resident of the municipality, and, if an alderman, a voter of and resident of the ward for which such person is to hold office.

**§ 30.038 PRESIDENT AND VICE PRESIDENT; ELECTION; POWERS.**

(A) At the first regular meeting after the annual election in each year and after the qualification of the newly elected aldermen, the council shall elect from among its own members a president and vice president, who shall hold their respective offices for the municipal year.

(B) The president of the council in the absence of the mayor shall be the presiding officer of the council, and during the absence of the mayor from the first or second class municipality or his or her temporary disability shall be acting mayor and possess all the powers of the mayor. In the absence or disability of the mayor and president of the council the vice president shall perform the duties of the mayor and president of the council.

(C) However, the president of the council or vice president of the council acting as the mayor shall only vote as an alderman. No alderman acting as mayor may vote as the mayor to break a tie vote. (SDCL § 9-8-7)

**§ 30.039 POWER OF COUNCIL TO JUDGE MEMBERS AND GOVERN PROCEEDINGS; BRIBERY.**

(A) The council shall be the judge of the election and qualification of its own members. It shall determine its own rules of procedure, punish its members for disorderly conduct, and, with the concurrence of two-thirds of the aldermen elected thereto, may expel a member.

(B) Any alderman who shall have been convicted of bribery shall thereby vacate his or her office. (SDCL § 9-8-5)

**§ 30.040 MEETINGS; QUORUM; JOURNAL OF MEETINGS.**

(A) *Meetings.* The council shall hold its regular meetings on the first Monday of each month. It may prescribe by ordinance the manner in which special meetings may be called and may so change the day of its regular monthly meetings.

(B) *Quorum.* When a seat on a council is vacant due to removal, resignation, death, or by operation of law, the quorum consists of the majority of the remaining aldermen who are qualified to serve as aldermen by election or appointment pursuant to SDCL Chapter 9-13. The council may compel the attendance of absentees under such penalties as may be prescribed by ordinance.

(C) *Journal of meetings.* The meetings of the council are open to the public and it shall keep a journal of its proceedings.  
(SDCL § 9-8-8)

**§ 30.041 VOTES REQUIRED.**

(A) A roll call vote shall be taken upon the passage of all ordinances and upon any proposal to expend or appropriate money, and in all other cases at the request of any member. All votes shall be entered in the minutes of its proceedings.

(B) The majority vote of the aldermen shall be necessary to pass an ordinance or proposal which expends or appropriates money, and the mayor may not break a tie on an ordinance or proposal to expend or appropriate money. The mayor may break a tie on all other ordinances or proposals.

(C) A two-thirds vote of the aldermen is required to sell any city property.  
(SDCL § 9-8-10)

**§ 30.042 RECONSIDERATION OR RESCISSION.**

A vote of the council may be reconsidered or rescinded at a regular or special meeting if a quorum is present and a majority vote to reconsider or rescind the action.  
(SDCL § 9-8-11)

***ORGANIZATION; COMMISSIONER FORM*****§ 30.055 COMPOSITION.**

Under the commission form, where a city manager is not employed, the board of commissioners shall consist of the mayor and two or four commissioners elected at large.

(SDCL § 9-9-1)

**§ 30.056 QUALIFICATIONS AND TERMS OF OFFICE.**

(A) *Qualifications.* A person may be nominated, elected, or appointed as a mayor or as a commissioner if the person is a citizen of the United States and voter and resident of the municipality.

(SDCL § 9-9-2)

(B) *Terms of office.*

(1) The term of office of the mayor and commissioners shall be not less than two or more than five years as determined by ordinance, except that at the first election after the adoption of the commission form of government the mayor's term shall be for five years and the commissioners shall be elected for staggered terms.

(2) If the number of commissioners is four, one shall be elected for one year, one for two years, one for three years, and one for four years.

(3) If the number of commissioners is two, one shall be elected for two years and one for four years.

(4) At the annual election preceding the expiration of the term of office of the mayor or any commissioner, a successor shall be elected for a term not to exceed five years as determined by ordinance.

(SDCL § 9-9-3)

**§ 30.057 MAYOR AS PRESIDENT OF BOARD.**

The mayor shall be president of the board and shall have a vote upon all questions but shall not have the right of veto.

(SDCL § 9-9-7)

**§ 30.058 RESIGNATIONS AND VACANCIES.**

(A) If the mayor or a commissioner resigns, the resignation shall be submitted in writing to the board.

(B) If the mayor or a commissioner moves his or her permanent residence outside the corporate limits of the municipality, the office is immediately vacated.

(C) If there is a vacancy in the office of mayor, the vacancy shall be filled by appointment pursuant to SDCL § 9-9-8 until the position is filled by election at the next annual municipal election or by special election as provided in SDCL § 9-13-14.2. A vacancy on the board shall be filled as provided in SDCL §§ 9-13-14.1 or 9-13-14.2.

(SDCL § 9-9-6)

***Cross-reference:***

*Special elections, see § 30.003*

**§ 30.059 PROCEDURE TO FILL VACANCIES.**

In case of a vacancy in the office of mayor, the board of commissioners shall appoint by a majority vote of all the members thereof one of its number as acting mayor, who shall be invested with all the powers and shall perform all the duties of the mayor, until the election of a mayor.

**§ 30.060 ACTING MAYOR DURING VACANCY IN OFFICE.**

(A) If the mayor is unable to perform the duties of office by reason of absence or sickness, the board shall appoint by a majority vote one of its members to act as mayor. The appointed commissioner's official designation shall be acting president of the board of commissioners. The acting president is invested with all the powers and shall perform all the duties of the mayor during the mayor's absence or sickness. The acting president has only one vote as a commissioner and is not entitled to vote as acting president.

(B) If the office of mayor is vacated, the board of commissioners shall appoint by a majority vote one of its commissioners as acting mayor. The acting mayor is invested with all the powers and shall perform all the duties of the mayor, until the election of a mayor.

(C) The acting mayor has only one vote as a commissioner and is not entitled to vote as acting mayor.  
(SDCL § 9-9-8)

**§ 30.061 MEETINGS.**

(A) The board shall meet at least once each week, or as otherwise determined by ordinance, in regular meeting at a time and place as fixed by the board, to consider, take under advisement, and act on the business as may come before the board.

(SDCL § 9-9-11)

(B) A special meeting may be called by the mayor or by any two commissioners at any time to only consider the matter mentioned in the call for the meeting. A notice of a special meeting shall be given pursuant to SDCL § 1-25-1.1 and shall be provided to each commissioner.

(SDCL § 9-9-12)

(C) Each meeting of the board is open to the public and the board shall keep a journal of its proceedings.

(SDCL § 9-9-13)

### **§ 30.062 QUORUM; VOTING.**

(A) *Quorum.*

(1) A majority of the board constitutes a quorum to do business. If a seat on the board is vacant due to removal, resignation, death, or by operation of law, the quorum consists of the majority of the remaining commissioners who are qualified to serve by election or appointment pursuant to SDCL Chapter 9-13. The board may compel the attendance of any absentee under penalties as prescribed by ordinance.

(2) No action of the board is effective unless upon a vote of a majority of the board.

(SDCL § 9-9-14)

(B) *Recording of votes; entry in journal.*

(1) The yeas and nays shall be taken upon the passage of each ordinance and for any proposal to expend or appropriate money and in any other case at the request of any commissioner.

(2) Each vote shall be entered on the journal of the board's proceedings.

(SDCL § 9-9-16)

(C) *Majority vote required.* The concurrence of a majority of all the members of the board of commissioners shall be necessary to the passage of any such ordinance or proposal.

(D) *Sale of real property.* A two-thirds vote of the board is required to sell any municipal real property.  
(SDCL § 9-9-16)

**§ 30.063 RULES OF PROCEDURE; ATTENDANCE REQUIREMENTS.**

(A) The board shall determine the board's rules of procedure, and may punish the board's members for disorderly conduct.

(B) The board may, by resolution, establish requirements for attendance at regular meetings and provide for the expulsion of a member in violation of the attendance requirements.  
(SDCL § 9-9-14.1)

**§ 30.064 GENERAL OVERSIGHT.**

The board controls all departments of the municipality and may make and enforce rules and regulations for the organization, management, and operation of the departments of the municipality and any agency that may be created for the administration of the board's affairs.  
(SDCL § 9-9-9)

**§ 30.065 FIVE-COMMISSIONER CITY.**

(A) *Mayor's responsibility.*

(1) The mayor may exercise all the powers and perform all the duties provided by the laws of this state or the ordinances of the municipality not in conflict with the laws of the state.

(2) The mayor is the chief executive officer of the municipality, presides at all meetings of the board, and has general supervision over all departments and officers.

(3) In the absence or inability of a commissioner, the mayor shall temporarily take charge of the department of that commissioner.

(4) The mayor shall enforce all the laws of the municipality and require that the conditions of the grant of any franchise or privilege are faithfully complied with and performed.

(5) The mayor shall grant all licenses or permits, except as are required by ordinance to be granted by the board or by some other department or officer.

(6) The mayor shall supervise each public building of the municipality and each city park except in any municipality that has a park board, and the lighting of the streets, alleys, and public buildings of the municipality.

(7) The mayor shall annually and from time to time give the board information relative to the affairs of the municipality and shall recommend for the board's consideration any measure the mayor deems expedient.

(SDCL § 9-9-20)

(B) *Commissioner's responsibility.* In a municipality governed by a board of five commissioners, the commissioners shall designate by a majority vote one commissioner to be the commissioner of public safety, one commissioner to be the commissioner of public works, one commissioner to be the commissioner of utilities, and one commissioner to be the commissioner of finance and revenue.

(SDCL § 9-9-18)

(C) *Mayor's and commissioner's powers and duties.* In any municipality governed by a board consisting of five commissioners, the mayor and the commissioners have the powers and duties described in SDCL §§ 9-9-20 to 9-9-24, inclusive, as set forth in division (A), above and division (D) below. In addition, each commissioner shall supervise any other department assigned or apportioned by resolution of the governing board, adopted by a majority vote at the first meeting of the board in the month following the election year. Each commissioner is in charge of the apparatus, personnel, and personal property used by departments under that commissioner's supervision.

(SDCL § 9-9-19)

(D) *Specific powers and duties.*

(1) *Commissioner of public safety.* The commissioner of public safety shall supervise the police and fire departments and the departments' officers and employees. The commissioner of public safety is also in charge of animal control within the municipality, including animal impoundments and shelter.

(SDCL § 9-9-21)

(2) *Commissioner of public works.* The commissioner of public works shall supervise the streets, alleys, public grounds, and municipal improvements, and all public property, except as otherwise specially provided. The commissioner shall maintain the property in a clean and sanitary condition and enforce all contracts, rules, and regulations necessary.

(SDCL § 9-9-22)

(3) *Utilities commissioner.* The commissioner of utilities shall supervise the construction, maintenance, and operation of the waterworks, sewerage, and any other utility departments of the municipality. The commissioner of utilities shall enforce all regulations with respect to that department and its revenue.

(SDCL § 9-9-23)



(4) *Commissioner of finance and revenue.* The commissioner of finance and revenue shall enforce all laws for the assessment and collection of taxes of every kind and collection of all revenues belonging to the municipality from whatever source derived. The finance and revenue commissioner shall examine into and keep the board informed on the finances of the municipality and its assets and property. (SDCL § 9-9-24)

**§ 30.066 THREE-COMMISSIONER CITY.**

The mayor and commissioners shall have the following responsibilities:

(A) *Mayor's responsibilities.* The mayor shall exercise all the powers and perform all the duties provided by the laws of this state or the ordinances of the municipality not in conflict with state law. The mayor shall be the chief executive officer of the municipality, shall preside at all meetings of the board, and has general supervision over all departments and officers. In the absence or inability of a commissioner, the mayor shall temporarily take charge of the department of the commissioner. The mayor shall see that all the laws of the municipality are enforced and that the conditions of the grant of any franchise or privilege are faithfully complied with and performed. The mayor shall grant all licenses or permits, except as required by ordinance to be granted by the board or by some other department or officer. (SDCL § 9-9-26)

(B) *Commissioner's responsibilities.* All matters not designated to the mayor shall be assigned or apportioned as equally as may be between the commissioners by resolution of the board adopted by a majority vote at the first meeting of the board in the month following the election each year. (SDCL § 9-9-27)

***Statutory reference:***

*Three-Commissioner municipality, division of responsibilities, see SDCL § 9-9-25*

***ORGANIZATION; CITY-MANAGER FORM***

**§ 30.080 GOVERNING BODIES; ELECTIONS AND TERMS OF OFFICE.**

(A) *Aldermanic form.* The mayor and aldermen shall be elected in the form prescribed by SDCL §§ 9-8-1 *et seq.* (SDCL § 9-10-4)

(B) *Commission form.*

(1) There shall be nine commissioners elected for a three-year, staggered term of office pursuant to SDCL § 9-10-5.

(2) At the first regular meeting in May of each year, the commissioners must elect one of their members to serve as mayor for a term of one year pursuant to SDCL § 9-10-6.

### **§ 30.081 POWERS OF MAYOR.**

The duties and powers of the mayor shall be as follows:

(A) He or she shall sit as presiding officer over local council or commission.

(B) He or she shall be the recognized head of the municipality for the service of civil process and for military and ceremonial purposes.

(C) He or she may take command of the police of the municipality, appoint special police, and govern the municipality by proclamation during times of public danger or emergency, and during such times he or she shall have such powers and authority to call for assistance, as are given to the mayor by SDCL § 9-29-17.

(D) He or she shall have such further authority and perform such further duties prescribed by ordinance or resolution not inconsistent with the provisions of this chapter, but in no case shall he or she have the right of veto.  
(SDCL § 9-10-7)

### **§ 30.082 POWERS OF CITY MANAGER.**

(A) The manager shall have the following powers:

(1) Power to enforce laws and ordinances.

(2) Power to supervise the administration of affairs for the municipality.

(3) Power to make recommendations to the governing body concerning the affairs of the municipality.

(4) Power to keep the governing body advised of the financial condition and future needs of the municipality.

(5) Power to prepare and submit an annual budget to the governing body no later than August 1 of each year.

(6) Power to ensure that all terms and conditions imposed in favor of the municipality or its inhabitants in any contract or franchise to which the municipality is a party are kept and performed.

(7) Power to be present and take part in discussions at all meetings of the governing body and its committees except when the governing body may be considering the manager's removal.

(8) Power to sign warrants for the payment of money, which shall be countersigned by the auditor. No warrant shall be issued until the claim that been approved by the governing body, except as may be provided by ordinance or resolution.

(9) Power to prepare and introduce ordinances and resolutions to take part in the discussions on all matters before the governing body; however, the manager shall have no vote.

(10) Powers as may be prescribed by ordinance or resolution.

(B) No contract of the manager for the payment of money in excess of \$200, except for current necessities, shall be binding upon the municipality unless the payment shall be approved by the governing body.

(SDCL § 9-10-15)

**§ 30.083 APPOINTMENTS.**

(A) The governing body may appoint the auditor, attorney, library board or trustees and the treasurer.

(B) The auditor and treasurer shall appoint their deputies and employees.

(C) All other officers and employees are appointed by the manager and may be removed by him or her.

(SDCL § 9-10-9)

**§ 30.084 BOND REQUIRED.**

The manager and every officer of the municipality, whether appointed by the manager or the governing body, shall furnish a bond to the municipality in such form and in such amount as may be required by the governing body. Such bond shall be approved by the governing body and be filed with the auditor.

(SDCL § 9-10-14)

**§ 30.085 REMOVAL OF CITY MANAGER.**

(A) The manager shall be appointed for an indefinite term but may be removed by majority vote of the members of the governing body. At least 30 days before such removal may become effective, the manager shall be furnished with a formal statement in the form of a resolution passed by a majority vote of such governing body stating the intention of such governing body to remove him or her, and the reasons therefor. He or she may reply in writing to such resolution. If so requested by the manager, the governing body shall fix a time for a public hearing upon the question of his or her removal, and the final resolution removing him or her shall not be adopted until such public hearing has been held.

(B) Upon passage of a resolution stating the governing body's intention to remove the manager, such governing body may suspend him or her from duty, but his or her pay shall continue until his or her removal shall become effective as herein provided. The action of the governing body in removing the manager shall be final.

(SDCL § 9-10-11)

**§ 30.086 REGULAR AND SPECIAL MEETINGS.**

The governing body of any first or second class municipality employing a manager shall hold its regular meetings on the first Monday of each month at such hour as may be fixed by it. It may prescribe by ordinance the manner in which special meetings may be called and may also so change the date of its regular monthly meetings and so provide for regular meetings oftener than once a month.

(SDCL § 9-10-8)

**§ 30.087 QUALIFICATIONS AND APPOINTMENT OF CITY MANAGER; RESIDENCE; RESTRICTION ON APPOINTMENT OF FORMER MEMBER OF GOVERNING BODY.**

(A) The manager shall be chosen by the governing body on the basis of his or her executive and administrative qualifications with special reference to his or her actual experience in, or his or her knowledge of accepted practices in respect to the duties of his or her office. At the time of his or her appointment he or she need not be a resident of the city or state, but during his or her tenure of office he or she shall reside within the city.

(B) No person elected to membership on the governing body shall be eligible for appointment as manager until one year has elapsed following the expiration of the term for which he or she was elected.

(SDCL § 9-10-10)

**§ 30.088 ABSENCE, DISABILITY, OR SUSPENSION OF CITY MANAGER.**

In case of the absence or disability of the manager or in case of his or her suspension as provided in SDCL § 9-10-11, the governing body may designate a qualified administrative officer of the first or second class municipality to perform the duties of the manager during such absence, disability, or suspension. (SDCL § 9-10-12)

**§ 30.089 RESPONSIBILITY OF CITY MANAGER; POWER TO APPOINT AND REMOVE OFFICERS AND EMPLOYEES.**

The manager shall be responsible to the governing body for the proper administration of all affairs of the first or second class municipality placed in his or her charge. To that end, except as otherwise provided by law, he or she shall have power to appoint and remove all officers and employees in the administrative service of the municipality and may authorize the head of any department or office responsible to him or her to appoint and remove subordinates in the department or office. Appointments made by or under the authority of the manager shall be made without definite term on the basis of executive and administrative ability and of the training and experience of such appointees in the work which they are to perform. (SDCL § 9-10-13)

**§ 30.090 INCONSISTENT STATUTES INAPPLICABLE.**

Provisions of the statutes governing first or second class municipalities inconsistent with this chapter shall be inapplicable to municipalities employing a City Manager. (SDCL § 9-10-18)

***ORDINANCES AND RESOLUTIONS***

**§ 30.105 STYLE OF ORDINANCES; SUBJECT.**

(A) Ordinances must be in the following style:

(1) An Ordinance \_\_\_\_\_ (Insert Title);

(2) Be it ordained by (city or town) of \_\_\_\_\_ (insert name of the municipality). The substance of the ordinance follows.  
(SDCL § 9-19-6)

(B) Ordinances can only embrace one subject which must be expressed in its title.  
(SDCL § 9-19-5)

### § 30.106 READINGS, PASSAGE AND PUBLICATION.

(A) All ordinances shall be read twice by title with at least five days between each reading. The ordinances, if passed, shall be signed by the mayor or acting mayor or president of the board of trustees, and filed with the finance officer and published once.  
(SDCL § 9-19-7)

(B) (1) After being signed and filed, the ordinances must be published at least once in the official newspaper. The only exception to this is that an ordinance incorporating or adopting comprehensive regulations or a code promulgated, approved, and published by a recognized and established national organization prescribing building, electrical, plumbing, safety, fire, health, or milk regulations need not be published in newspaper but upon adoption of such an ordinance the auditor or clerk shall publish a notice of the fact of adoption once a week for two successive weeks in the official newspaper, and 20 days after the completed publication of such notice, unless the referendum shall have been invoked, such ordinance shall become effective.  
(SDCL § 9-19-7)

(2) If any amendment presented and approved by the governing body at the second reading of an ordinance substantially alters the substance of the ordinance from the first reading, the proposed ordinance as amended may not be considered for final adoption until at least five days after a duly noticed public meeting of the governing body pursuant to SDCL Chapter 1-25.  
(SDCL § 9-19-7.1)

(3) The vote on the second reading of all ordinances must be recorded and published.  
(SDCL § 9-19-9)

(C) Amendments to a planning or zoning ordinance may be published without republishing the full ordinance in the section or subsection of the ordinance containing the change is published in its entirety.  
(SDCL § 11-4-8)

(D) Resolutions differ from ordinances in that any resolution may be passed after only one reading. The resolution must be recorded at length either separately or in the minutes of the meeting. The votes for and against the resolution must also be published.  
(SDCL § 9-19-8)

**§ 30.107 EFFECTIVE DATE OF ORDINANCES AND RESOLUTIONS.**

Unless an ordinance or resolution is drawn to take effect immediately upon passage, all ordinances and resolutions become effective on the twentieth day after passage and publication, unless suspended by operation of a referendum.

(SDCL § 9-19-13)

**§ 30.108 COMPILATION OF ORDINANCES.**

(A) Municipalities can compile the ordinances of the municipality in book form provided that while compiling the ordinances they are not revised or amended. The finance officer shall furnish a free copy of the newly compiled book to the circuit clerk of court and the county law library of each county in which the municipality is situated.

(SDCL § 9-19-15)

(B) Every municipality also has the power to revise their ordinances once every five years.

(SDCL § 9-19-16)

(C) (1) Upon the adoption of an ordinance which revises the ordinances of the municipality by the governing body, the auditor or clerk shall publish a notice of the adoption of the revised ordinances once in the official newspaper. Twenty days after the completed publication of the notice, unless the referendum is invoked, the ordinance shall become effective without publication in a newspaper.

(2) The governing body may publish the revised ordinances in book form. The auditor or clerk shall furnish a free copy of the book or the revised ordinances to the circuit clerk of court and the county law library of each county in which the municipality is situated.

(SDCL § 9-19-17)

(D) If a municipality posts the ordinance book or any part of the book on the municipality's official website, the municipality shall ensure the most current version of the ordinance book or any part of the book is posted.

(SDCL § 9-19-14.1)

**§ 30.109 CONTINUATION IN FORCE OF ORDINANCES AFTER CHANGE IN FORM OF GOVERNMENT.**

Any ordinance or resolution of this municipality shall continue in force and effect the same as though no change of government has occurred.

(SDCL § 9-11-10)

**§ 30.110 VETOED ORDINANCE.**

If the mayor vetoes any ordinance, resolution, or other item pursuant to SDCL § 9-19-10 the finance officer shall present the ordinance, resolution, or other item with the mayor's written objection at the

next meeting of the council and it may be reconsidered. If the ordinance or resolution is passed by a two-thirds vote of the aldermen, it shall be published and become effective notwithstanding the mayor's disapproval.

(SDCL § 9-19-11)

***Cross-reference:***

*Passage of appropriation ordinance, see § 34.03*



## CHAPTER 31: OFFICIALS AND EMPLOYEES

### Section

#### *Municipal Officers*

- 31.01 Appointment
- 31.02 Warrant or certificate of appointment
- 31.03 Appointed financial official
- 31.04 Municipal treasurer
- 31.05 Municipal attorney
- 31.06 Municipal engineer
- 31.07 Additional duties
- 31.08 Compatible and incompatible offices
- 31.09 Salaries and fringe benefits
- 31.10 Qualification and discharge of duties of office by appointive and elective officers

#### *Removal from Office; Vacancies*

- 31.15 Grounds for removal
- 31.16 Vacancies in office
- 31.17 Vacancies due to temporary resignation; temporary replacement and term
- 31.18 Officer's discharge of duties when elected to fill a vacancy
- 31.19 Temporary resignation for members of National Guard or reserves; notice; temporary replacement; length of term

#### *Employees*

- 31.35 Criminal background check

***Cross-reference:***

*Governing body and vacancies, see Ch. 30*

***Statutory reference:***

*Municipal proceedings and municipal records, see Chapter 9-18*

*MUNICIPAL OFFICERS***§ 31.01 APPOINTMENT.**

(A) Such officers as needed and provided for by ordinance shall be appointed.

(B) All appointive officers of a municipality governed by a mayor and common council shall be appointed by the mayor with the approval of the council, and in other municipalities they shall be appointed by a majority vote of the members elected to the governing body, except as provided in the city manager law and subject to the provisions of the civil service applying to employees, police officers, and firefighters. The officers shall be appointed annually or at intervals determined by the governing body.  
(SDCL § 9-14-3)

**§ 31.02 WARRANT OR CERTIFICATE OF APPOINTMENT.**

(A) All appointed officers, except the auditor and marshal, shall be commissioned by warrant, under the corporate seal, signed by the mayor and auditor. The marshal shall be commissioned by warrant, under the corporate seal, signed by the president of the board of trustees and the clerk.

(B) The mayor shall issue a certificate of appointment under the seal of the municipality to the auditor.  
(SDCL § 9-14-4)

**§ 31.03 APPOINTED FINANCIAL OFFICIAL.**

The appointed financial official shall have the following duties:

(A) Supervising the accounting system for all departments and offices of the municipality in accordance with the recommendations of the Department of Legislative Audit except that for those municipalities administered under the city manager form of government, the supervision is by the city manager.  
(SDCL § 9-14-19)

(B) (1) Keeping an office at a place directed by the governing body.

(2) Keeping the corporate seal, all papers and records of the municipality, and a record of the proceedings of the governing body, whose meetings the finance officer shall attend.

(3) Drawing and countersigning all warrants on the treasury in pursuance of orders or resolutions of the governing body and keep a full and accurate account of all such warrants in books provided for that purpose.

(4) Making or cause to be made estimates of the expenses of any work to be done by the municipality and countersign all contracts made on its behalf and certificates of work authorized by any committee of the governing body or by any municipal officer. However, the finance officer may destroy any record which the records destruction board, acting pursuant to SDCL § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.  
(SDCL § 9-14-17)

(C) (1) Keeping regular books of account in which shall be entered all indebtedness of the municipality, and which shall at all times show the financial condition of the municipality, the amount of bonds, warrants, certificates, or other evidences of indebtedness issued by the governing body, and the amounts of all bonds, warrants, certificates, or other evidences of indebtedness which have been redeemed and the amount of each outstanding.

(2) Countersigning all bonds, warrants, or other evidences of indebtedness of the municipality and keep accurate accounts of each, stating to whom and for what purpose issued and the amount of the bond, warrant, or other evidence of indebtedness of the municipality. The finance officer shall keep an account with all receiving and disbursing officers of the municipality, showing the amount received from the different sources of revenue and the amount which was disbursed under the direction of the governing body. However, the finance officer may destroy any record which the records destruction board, acting pursuant to SDCL § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.  
(SDCL § 9-14-18)

(D) Keeping a list of all certificates issued for work or any other purpose. Before the levy by the governing body of any special tax, the finance officer shall, unless that duty is performed by the engineer, report to the governing body a schedule of all lots that are subject to the proposed special tax or assessment and the amount of the special tax or assessment. The schedule shall be verified by the finance officer's affidavit.  
(SDCL § 9-14-20)

**§ 31.04 MUNICIPAL TREASURER.**

(A) The municipal treasurer shall receive all money belonging to the municipality and shall keep accurate records of the money.  
(SDCL § 9-22-2)

(B) The municipal treasurer shall perform all other duties as set out in SDCL §§ 9-22-1 *et seq.*

**§ 31.05 MUNICIPAL ATTORNEY.**

When required by the governing body or any officer of the municipality, the municipal attorney shall furnish an opinion upon any matter relating to the affairs of the municipality or the official duties of such officer; conduct the prosecution of all actions or proceedings arising out of the violation of any

ordinance; and perform such other professional services incident to his or her office as may be required by ordinance or directed by the governing body.

(SDCL § 9-14-22)

### **§ 31.06 MUNICIPAL ENGINEER.**

(A) If a municipality chooses to employ or retain a person to serve as a municipal engineer, the municipal engineer shall be a licensed professional engineer under SDCL Chapter 36-18A. If the municipal engineer is not also licensed as a land surveyor under SDCL Chapter 36-18A, the municipal engineer shall delegate any duties that are defined in SDCL Chapter 36-18A as the practice of land surveying to a licensed land surveyor.

(B) The governing body shall by ordinance or agreement prescribe the duties and fix the compensation of the municipal engineer.

(C) All surveys, profiles, plans, or estimates made by the municipal engineer for the municipality are the property of the municipality and shall be carefully preserved in the municipality's office or the office of the municipal engineer and are open to public inspection.

(SDCL § 9-14-24)

### **§ 31.07 ADDITIONAL DUTIES.**

The governing body is authorized to prescribe by ordinance additional duties not inconsistent with the laws of the state to any municipal officer.

(SDCL § 9-14-27)

### **§ 31.08 COMPATIBLE AND INCOMPATIBLE OFFICES.**

(A) *Compatible offices.*

(1) No mayor, alderman, commissioner, or trustee is disqualified from holding such office in any municipality as a result of holding any liquor license or being the spouse of a person holding any liquor license.

(SDCL § 9-14-16)

(2) (a) The provisions of divisions (A)(1) and (B) do not prohibit any mayor, alderman, commissioner, or trustee from serving in any other volunteer, unsalaried municipal position or providing any service for a municipality if the compensation for such service does not exceed \$5,000 per calendar year.

(b) The provisions of divisions (A) (1) and (B) do not prohibit any mayor, alderman, commissioner, or trustee from receiving compensation in excess of \$5,000 per calendar year for service to a municipal ambulance service in municipalities of the second or third class.

(SDCL § 9-14-16.1)

(B) *Incompatible offices.*

(1) No mayor, alderman, commissioner, or trustee shall hold any other office under the municipality while an incumbent of any such office.

(2) No auditor or clerk may hold the office of treasurer in the municipality while an incumbent of such office.

(SDCL § 9-14-16)

***Cross-reference:***

*Regulation and licensing of liquor operations, see Ch. 113*

**§ 31.09 SALARIES AND FRINGE BENEFITS.**

(A) The governing body shall fix and determine by ordinance or resolution the amount of salaries and compensation of all municipal officers and the times at which the same shall be paid.

(SDCL § 9-14-28)

(B) (1) The municipality may appropriate funds to pay the necessary expenses of its officers or employees in conducting such business or attending such meetings within or without the state as the governing body shall determine necessary to carry out its authorized municipal activities.

(SDCL § 9-12-3)

(2) The municipality is authorized to provide the following:

(a) Appropriation of funds to compensate the members of municipal boards and commissions;

(SDCL § 9-12-3.1)

(b) 1. By self insurance, or by purchase from private companies, group life, health and accident insurance, or any one or more of such insurance risks, for their respective employees and officers and the immediate families of such employees and officers, as the terms **EMPLOYEE** and **OFFICER** are defined in SDCL § 9-14-31. Such accident insurance applies only if benefits under the worker's compensation law are not applicable.

(SDCL § 9-14-30)

2. The policy or policies for the insurance provided in division (B)(2)(a), above, may be administered by the municipality through its respective governing bodies, acting individually or jointly through some joint agency created by such governmental subdivisions for carrying out the purposes of SDCL §§ 9-14-30 to 9-14-35, inclusive, or the municipality may contract with any private firm to administer the policies.

(SDCL § 9-14-34)

(c) Inclusion in the municipal insurance program of retired employees and officers and their spouses, provided the officer or employee served for at least 15 years and participated in municipal insurance program at least five years immediately preceding retirement;  
(SDCL § 9-14-35)

(d) Appropriation of necessary funds for the cost of all or any portion of the insurance provided by SDCL § 9-14-30 and the deduction from salaries or wages, the employee's or officer's share of the cost of such an insurance program.  
(SDCL § 9-14-33)

### **§ 31.10 QUALIFICATION AND DISCHARGE OF DUTIES OF OFFICE BY APPOINTIVE AND ELECTED OFFICERS.**

Each appointive municipal officer shall begin discharging the duties of the office as soon as the officer has qualified by filing an oath or affirmation of office in the usual form provided by law. The officer shall file the form within ten days after the first meeting of the month following the appointment. The officer shall hold office until the appointment and qualification of a successor.  
(SDCL § 9-14-5)

### ***REMOVAL FROM OFFICE; VACANCIES***

#### **§ 31.15 GROUNDS FOR REMOVAL.**

Any officer may be charged, tried and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality.  
(SDCL § 3-17-6)

#### **§ 31.16 VACANCIES IN OFFICE.**

The removal of any municipal officer from the ward or municipality for which the officer was elected or appointed, or the officer's failure, within ten days after the first meeting of the month following the election or appointment, to qualify and begin the duties of office, causes a vacancy in the office.  
(SDCL § 9-14-10)

**§ 31.17 VACANCIES DUE TO TEMPORARY RESIGNATION; TEMPORARY REPLACEMENT AND TERM.**

(A) If any member of a governing body or any other elected officer of a municipality, who is incapacitated by an illness or an accident which causes the member or officer to be unable to attend meetings of the governing body or fulfill the duties of the office, the member may elect to temporarily resign from the governing body or office.

(B) Notice of temporary resignation may be given in the same manner as giving notice of resignation from the governing body or office. If the member or officer is unable to give notice, the member's or officer's spouse or guardian or any person who has durable power of attorney for the member or officer may give notice of resignation.

(C) A temporary replacement may be made in accordance with the provisions of statute applying to the governing body or office. The temporary member or officer shall serve until the member or officer is able to fulfill the requirements of office or until the expiration of the member's or officer's term, whichever comes first.

(SDCL § 3-4-9)

**§ 31.18 OFFICER'S DISCHARGE OF DUTIES WHEN ELECTED TO FILL A VACANCY.**

Each elective municipal officer, if elected to fill a vacancy, shall begin discharging the duties of the office as soon as the officer has qualified by filing an oath or affirmation of office in the usual form provided by law. The officer shall file the form within ten days after the first meeting of the month following the election. Except as otherwise provided, each officer, if elected for a full term, shall begin discharging the duties of the office on the first meeting of the month next succeeding the election or as soon thereafter as the officer has qualified.

(SDCL § 9-14-5)

**§ 31.19 TEMPORARY RESIGNATION FOR MEMBERS OF NATIONAL GUARD OR RESERVES; NOTICE; TEMPORARY REPLACEMENT; LENGTH OF TERM.**

If any member of a governing body of the municipality, who is also a member of the South Dakota National Guard or another reserve component of the armed forces of the United States, is called into active duty which causes the member to be unable to attend meetings of the governing body, the member may elect to temporarily resign from the governing body. Notice of temporary resignation may be given in the same manner as giving notice of resignation from such governing body. A temporary replacement may be made in accordance with the provisions of statute applying to the governing body. The temporary member shall serve until the member returns from active duty or until the expiration of the member's term, whichever occurs first.

(SDCL § 3-4-8)

*EMPLOYEES***§ 31.35 CRIMINAL BACKGROUND CHECK.**

Each person over 18 years of age seeking employment with a municipality shall submit, subject to the discretion of the municipality, to a state and federal criminal background investigation by means of fingerprint checks by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation. The completed fingerprint cards will be forwarded to the Division of Criminal Investigation before the prospective new employee enters into service. Upon completion of the state and federal criminal background check, the Division of Criminal Investigation shall forward to the municipality all information obtained as a result of the check. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application.

(SDCL § 9-14-42)



## CHAPTER 32: ELECTIONS

### Section

- 32.01 Ballots
- 32.02 Required notices
- 32.03 Special elections
- 32.04 Local campaign finance ordinances
- 32.05 Nominating petition
- 32.06 Election returns and notice of election to candidates

#### ***Cross-reference:***

*Local provisions, see Title XVII*

#### ***Statutory reference:***

*For campaign finance requirements, see SDCL Chapter 12-27*

### **§ 32.01 BALLOTS.**

(A) *Preparation of ballots.* The finance officer shall prepare and furnish, at the expense of the municipality, all official ballots. The quantity of ballots shall be at least 10% more than the number of voters at the comparable election. The ballots shall be white in color, of good quality of print paper, printed in black ink, and in the English language only.

(B) *Availability of ballots.* The ballots for municipal elections shall be available for absentee voting no later than 15 days prior to election day. If the ballots are for a secondary election, the ballots shall be available no later than seven days prior to the secondary election day. Absentee voting shall be conducted pursuant to SDCL Chapter 12-19.

(C) *Form of ballots.* The names of the candidates for each office to be voted for in the precinct shall be arranged without any other designation than that of the office for which they are candidates. If more than one member of the governing body is to be elected, the ballot shall contain instructions as to how many candidates for the governing body are to be voted for. The finance officer shall determine, by lot, each candidate's position on the ballot. Each candidate may be present or represented when the position on the ballot is being determined. No candidate's name may be printed upon the official ballot unless the candidate has been nominated as provided in this SDCL Chapter 9-13.

(SDCL § 9-13-21)

**§ 32.02 REQUIRED NOTICES.**

Municipal officials shall make the following legal publications in the official newspaper in conjunction with municipal elections:

(A) The finance officer of the municipality shall publish a notice identifying which vacancies will occur by termination of the terms of office of elective officers, stating the time and place where nominating petitions may be filed. These notices are to be published once each week for two consecutive weeks between January 15 and January 30.

(SDCL § 9-13-6)

(B) Two notices of the availability of registration officials, stating when registration will be terminated and the effect of a failure to register. The notice must be published at least once each week for two consecutive weeks. The last publication to be not less than ten nor more than 15 days before the deadline for registration.

(SDCL § 12-4-5.2)

(C) (1) A notice of each municipal election shall be published once each week for two successive weeks, the first publication may not be less than ten days prior to the election. A facsimile of the official ballot shall be published in the calendar week prior to each election. The notice and ballot shall be published in the official newspaper or newspapers of the municipality as designated in SDCL § 9-12-6.

(2) If no newspaper is published in the municipality, the notice shall also be posted in three of the most public places in the municipality.

(SDCL § 9-13-13)

(D) If there is to be a secondary election, a notice of election shall be published once during the week before any secondary election, which shall include a list of all persons appearing on the ballot for the election.

**§ 32.03 SPECIAL ELECTIONS.**

(A) Every special election authorized by law, except as provided in SDCL §§ 6-8B-4 and 9-13-14.2, shall be held upon the same notice, at the same polling places, be conducted, returned, and canvassed, and the result declared as provided herein for the annual municipal election.

(B) The notice of such special election shall state any question or questions to be voted upon.

(SDCL § 9-13-14)

***Cross-reference:***

*Special elections, see § 30.003*

**§ 32.04 LOCAL CAMPAIGN FINANCE ORDINANCES.**

Any municipality may adopt an ordinance to meet the provisions of SDCL Chapter 12-27 with or without any amendments applicable to municipal elections. Candidates are required to file campaign contributions and expenditure reports.

(SDCL§ 12-1-2.1)

***Statutory reference:***

*For candidate's financial interest statements, see SDCL § 12-25-30*

**§ 32.05 NOMINATING PETITION.**

(A) No candidate for elective municipal office may be nominated unless a nominating petition is filed with the finance officer no later than 5:00 p.m. on the last Friday in February preceding the day of election. The petition shall be considered filed if it is mailed by registered mail by 5:00 p.m. on the last Friday in February before the election.

(B) The petition shall contain the name, residence address and mailing address of the candidate and the office for which the candidate is nominated and shall be on the form prescribed by the state Board of Elections. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class.

(C) The finance officer may only accept nominating petitions that are on the prescribed form and were circulated pursuant to the provisions in SDCL Chapters 9-13 and 12-6. If the nominating petition meets the statutory requirements, the filing of the petition constitutes nomination.

(SDCL § 9-13-7)

**§ 32.06 ELECTION RETURNS AND NOTICE OF ELECTION TO CANDIDATES.**

(A) The election returns shall be reported as soon as possible to the finance officer, and within seven days of the election, the governing body shall canvass the election returns, declare the result, and enter the result on its journal.

(SDCL § 9-13-24)

(B) The finance officer, within two days after the result of the election is declared, shall notify each person elected to office of the person's election. If a person does not qualify by filing an oath or affirmation of office in the usual form provided by law within ten days after the first meeting of the month next succeeding the election, the office becomes vacant.

(SDCL § 9-13-28)

***Cross-reference:***

*Qualifications and discharge of duties, see § 31.18*



## CHAPTER 33: POLICE

Section

33.01 Police powers

### § 33.01 POLICE POWERS.

(A) The mayor having a common council, each member of a board of city commissioners, and each town marshal shall possess, within the jurisdiction of the municipality, all the powers conferred by law upon sheriffs to suppress disorder and keep the peace pursuant to SDCL § 9-29-16.

(B) All police officers of this municipality possess the powers of constables and are permitted to do the following:

(1) Execute and serve warrants;

(2) Pursue and arrest any person fleeing from justice in any part of the state; and

(3) Arrest and detain any person guilty of any breach of the peace or any violation of the laws of the state or ordinance of the municipality.

***Statutory reference:***

*Similar provision, see SDCL § 9-29-19*



## CHAPTER 34: FINANCE

### Section

#### *Budget*

- 34.01 Preparation of budget
- 34.02 Budget ordinance
- 34.03 Passage of appropriation ordinance
- 34.04 Certification of levies
- 34.05 Supplemental and emergency appropriations
- 34.06 Disbursement of funds

#### *Taxation*

- 34.20 Annual levy
- 34.21 Municipal tax
- 34.22 Special bed, board, booze and ticket sales tax

#### *Bids and Contracts*

- 34.30 Contracts authorized
- 34.31 Interest in contracts
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- 34.33 Contracts, methods of awarding
- 34.34 Sealed bids
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- 34.36 Unique supplies or services; sole source procurement; negotiations
- 34.37 Emergency procurement
- 34.38 Purchases of supplies and services under \$25,000
- 34.39 Cancellation of invitation for bids or request for proposals and rejection of bids or proposals
- 34.40 Public improvement contracts involving \$50,000; supplies and services contracts involving \$25,000 or more; advertisement for bids or proposals
- 34.41 Time for entering into contract
- 34.42 Recovery from defaulting bidder or offeror
- 34.43 Exempt procurements
- 34.44 Public sale or auction; performance bond; competitive quotations; records to be retained
- 34.45 Purchases from state contract list or below state contract price
- 34.46 Fuel purchased by local government units

*Funds and Monies Received*

- 34.55 Business improvement districts, usage of funds
- 34.56 Internal service fund for equipment purchases
- 34.57 Payments to municipality from revenues of cooperative providing electric service within municipality
- 34.58 Bad checks

*Bonds and Notes*

- 34.70 Municipal bonds and notes

**Statutory reference:**

*Centralized public bid exchange, see SDCL § 5-18A-13*

*Fiscal powers of municipalities, see SDCL § 9-12-2*

*Purchasing agency contracts, see SDCL § 5-18A-1 and Chapters 5-18A, 5-18B, 5-18C and 5-18D*

**BUDGET****§ 34.01 PREPARATION OF BUDGET.**

(A) The finance officer shall report to the governing body, on or before September 1, an estimate of expenses for the ensuing year and revenue to be raised for the current year. This estimate may contain a line item for contingencies, provided it does not exceed 5% of the total budget.

(SDCL § 9-22-23)

(B) The annual report shall be prepared with an annual report from the boards and commissions in the municipality.

**Statutory reference:**

*Budget of park boards, see SDCL §§ 9-38-42 and 9-38-44*

**§ 34.02 BUDGET ORDINANCE.**

No later than the first regular meeting of the governing body in September, or within ten days thereafter, an annual appropriation ordinance for the ensuing year must be introduced in which it shall appropriate the sums of money necessary to meet all lawful expenses and liabilities of the municipality. The ordinance shall specify the function and subfunction as prescribed by the Department of Legislative Audit for which the appropriations are made and the amount appropriated for each function and subfunction, which amount shall be appropriated from the proper fund.

(SDCL § 9-21-2)



**§ 34.03 PASSAGE OF APPROPRIATION ORDINANCE.**

(A) The appropriation ordinance shall be passed by a majority of the aldermen. The mayor cannot break a tie.

(SDCL § 9-7-7)

(B) The mayor under the aldermanic form of government can veto all or any part of an appropriation ordinance.

(SDCL §§ 9-8-3 and 9-19-10)

(C) Upon passage, the appropriation ordinance shall be published in the same manner as all other ordinances.

***Cross-reference:***

*Special elections, see § 32.03*

**§ 34.04 CERTIFICATION OF LEVIES.**

Pursuant to SDCL § 10-12-7, all tax levies must be certified to the county auditor by the taxing district on or before October 1 of each year.

**§ 34.05 SUPPLEMENTAL AND EMERGENCY APPROPRIATIONS.**

(A) *Supplemental appropriation.* If no provision in the appropriation is made for the municipality to conduct the indispensable functions of government, the governing body may approve and adopt a supplement appropriation ordinance, provided that it sets out in detail the reason and amount for each appropriation. The procedures to adopt the supplemental appropriation are the same as for the annual appropriation ordinance.

(SDCL § 9-21-7)

(B) *Emergency appropriation.* If an event occurs that could not have been reasonably anticipated at the time the annual appropriation was created and adopted, the governing body may order the mayor or president to borrow, in the name of the municipality and with the attest of the finance officer, a amount sufficient to provide for the necessary expense incurred by the emergency event.

(SDCL § 9-21-15)

**§ 34.06 DISBURSEMENT OF FUNDS; PREPAYMENT.**

For payment of any services or property is allowed, the following must occur:

(A) An itemized invoice accompanied by a voucher verified by the appropriate municipal official that the services, other than those provided by municipal employees, or materials have been received shall be submitted;

(B) (1) The invoice and voucher required by this section shall be filed in the office of the municipal finance officer.

(2) However, the governing body of any municipality may authorize the prepayment of claims against the municipality for services before they have been provided if the municipality has adopted an ordinance in advance that specifies the maximum amount allowable for any such prepayment and if a service contract exists.

(SDCL § 9-23-1)

(C) No claim against any municipality shall be audited or allowed unless it be fully itemized and a memorandum of the same entered upon the minutes of the meetings of the governing body.

(SDCL § 9-23-2)

## *TAXATION*

### **§ 34.20 ANNUAL LEVY.**

Pursuant to SDCL § 9-21-19, the municipality shall include the annual tax levy in the annual appropriation.

***Cross-reference:***

*Sewer system and tax levy, see Ch. 51*

*Special elections, see § 32.03*

*Water supply system and tax levy/special assessments, see Ch. 50*

### **§ 34.21 MUNICIPAL TAX.**

(A) *Purpose.* The purpose of this section is to provide additional needed revenue for this municipality of by imposing a municipal retail sales and use tax pursuant to the powers granted to this municipality by the State of South Dakota, by SDCL Chapter 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

(B) *Enactment of tax.*

(1) There is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 1% on the gross receipts of all persons engaged in business within the jurisdiction of this municipality who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL Chapter 10-45 and acts amendatory thereto.

(2) Tax will not be applied to items that may be specifically exempt under state law. Items exempted from municipal tax include: farm machinery and irrigation equipment, parts or repairs for farm machinery, agricultural animal health products and medicine, passenger transportation service, collection and disposal of solid waste, veterinarian and animal specialty services, and air transportation.

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

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

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

(F) *Penalty.*

(1) Any person failing or refusing to make reports or payments prescribed by this section and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.  
Penalty, see § 10.99

### **§ 34.22 SPECIAL BED, BOARD, BOOZE AND TICKET SALES TAX.**

(A) *Purpose.* The purpose of this section is to provide additional needed revenue for this municipality by imposing a municipal gross receipts tax pursuant to the powers granted to this municipality by the State of South Dakota, by SDCL Chapter 10-52A, and acts amendatory thereto.

(B) *Enactment of tax.*

(1) There is hereby imposed a municipal gross receipts tax of 1% upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than 28 consecutive days, the sale of alcoholic beverages as defined in SDCL §§ 35-1-1 *et seq.*, establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic and cultural events.

(2) The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of this municipality of who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL Chapter 10-45 and acts amendatory thereto.

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

(D) *Interpretation.* It is declared to be the intention of this section and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL Chapter 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

(E) *Use of revenue.* Any revenues received under this section may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic center, auditoriums or athletic facility buildings, including the maintenance, staffing and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions and activities.

(F) *Penalty.*

(1) Any person failing or refusing to make reports or payments prescribed by this section and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment.

(2) In addition, all such collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.

Penalty, see § 10.99

## ***BIDS AND CONTRACTS***

### **§ 34.30 CONTRACTS AUTHORIZED.**

(A) No contract of a municipality is valid unless the contract has be authorized by a vote of the governing body at a duly assembled meeting thereof.

(B) Each written contract shall be executed in the name of the municipality by the mayor or president of the board of trustees, be countersigned by the auditor or clerk, and have the corporate seal attached. However the governing body of a municipality may, by ordinance or resolution, delegate to

any employee of the municipality the authority to enter in to a contract on behalf of the municipality and to execute the contract and any other instrument necessary or convenient for the performance of the contract subject to the limitations delegated by the governing body.  
(SDCL § 9-1-5)

### § 34.31 INTEREST IN CONTRACTS.

No elected or appointed official or his or her agent shall be interested in any contract entered into by the municipality pursuant to SDCL § 6-1-1.

### § 34.32 PERFORMANCE BONDS.

(A) Whenever any contract for the construction of a public improvement is entered into, the contractor shall furnish surety in an amount not less than the contract price. The contractor shall also guarantee that he or she will promptly pay all persons supplying him or her with labor.

(B) The performance bond may be waived when the bid submitted does not exceed \$25,000.

(C) The contractor shall also pay all taxes which may arise under SDCL Chapter 10-46, 10-46A, and 10-46B. For the purposes of this section and § 5-21-4 the term, **SURETY**, means a bond or undertaking executed by a surety company authorized to do business in the State of South Dakota.

**Statutory reference:**

*Similar provisions. See SDCL §§ 5-21-1, 5-21-1.1, 5-21-3*

### § 34.33 CONTRACTS, METHODS OF AWARDING.

Unless otherwise authorized by law, each contract for supplies, services, and construction shall be awarded by one of the following methods:

(A) Competitive sealed bids as provided in SDCL § 5-18A-5;

(B) Competitive sealed proposals as provided in SDCL §§ 5-18A-6 and 5-18A-7;

(C) Small purchases as provided in SDCL § 5-18A-11;

(D) Sole source procurement as provided in SDCL § 5-18A-8; or

(E) Emergency procurement as provided in SDCL § 5-18A-9.

(SDCL § 5-18A-3)

**§ 34.34 SEALED BIDS.**

(A) *Required.* Contracts shall be awarded by the use of competitive sealed bids except as otherwise provided in SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D.  
(SDCL § 5-18A-4)

(B) *Procedures.* The following procedures apply to the use of competitive sealed bids:

(1) Public notice of the invitation for bids shall be given pursuant to SDCL § 5-18A-14;

(2) The invitation for bids shall include a purchase description, and all contractual terms and conditions applicable to the procurement. The invitation for bids for supplies shall include the length of time, not to exceed 45 days, between the bid opening and the award of the bid;

(3) A bid may be submitted either manually or electronically in a manner authorized by the purchasing agency;

(4) Each bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified, together with the name of each bidder shall be recorded. Except as otherwise provided by law, the record and each bid shall be open to public inspection;

(5) Each bid shall be unconditionally accepted without alteration or correction, except as authorized in this section. Each bid shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids;

(6) Any bid may be withdrawn by letter or by electronic communications or in person before the time specified in the advertisement for bid. The purchasing agency may allow modification of bids by mail, facsimile, or electronic notice received at the place designated in the invitation to bid not later than the time set for the opening of bids. A modification may not reveal the bid price but shall provide the addition or subtraction or the modification so that the final prices or terms will not be known to the purchasing agency until the sealed bid is opened. A modification may not be withdrawn after the time set for the opening of bids. Each modification shall be confirmed in writing by the successful bidder before award of the contract. No bid made may be changed or altered by telephone. After bid opening, no withdrawal of a bid or change in bid prices or other provisions of bids prejudicial to the interest of the purchasing agency or fair competition is permitted. The purchasing agency may waive technical irregularities in the bid or proposal of the low bidder or offeror which irregularities do not alter the price, quality, or quantity of the services, or items of tangible personal property bid or offered. Any

decision to permit the correction or withdrawal of a bid, or to cancel an award or a contract based on a bid mistake, shall be supported by a written determination made by the purchasing agency, and included in the bid file;

(7) The contract for services or public improvement shall be awarded within 30 days and the contract for supplies shall be awarded within 45 days of the bid opening of the bid opening by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The purchasing agency may reject any and all bids and readvertise for bids if none of the bids are satisfactory, or if the purchasing agency believes an agreement has been entered into by the bidders to prevent competition. If the low bidder is not responsible or the bid is not made in accordance with the requirements of SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D or the low bid is withdrawn as authorized by this section, the bid of the next lowest responsible and responsive bidder may be accepted;

(8) If it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

(9) If, after advertising for bids, no firm bids are received, the purchasing agency may negotiate a contract for the purchase of the supplies, services, or public improvement projects at the most advantageous price, if the specifications of the original bid are met;

(10) If two or more competitive sealed bids submitted are identical in price and product quality, the bids are the low bid, and no resident bidder preference is applicable, the purchasing agency may:

(a) Award the bid by lottery to one of the identical low bidders; or

(b) Reject all the bids and resolicit bids for the required supplies, services, or public improvement.

(SDCL § 5-18A-5)

### **§ 34.35 SEALED PROPOSALS.**

(A) *Competitive sealed proposals; when permitted.* A contract may be entered into by competitive sealed proposals if the purchasing agency determines in writing that the use of competitive sealed bids is either not practicable or not advantageous.

(SDCL § 5-18A-6)

(B) *Procedures.* The procedures for issuing a contract through competitive sealed proposals are as follows:

(1) The proposals shall be solicited through a request for proposals. The request for proposals shall state the relative importance of price and other factors, if any;

(2) Public notice of the request for proposals shall be given pursuant to SDCL § 5-18A-14;

(3) A proposal may be submitted either manually or electronically in a manner authorized by the purchasing agency;

(4) Each proposal shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared documenting the name and address of each offeror and identifying each offeror awarded a contract. The register shall be open for public inspection after contract award;

(5) As provided in the request for proposals, a discussion may be conducted with any responsible offeror who submitted a proposal determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Each offeror shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of a proposal. A revision may be permitted after a submission and prior to an award for the purpose of obtaining the best and final offer. In conducting any discussion, there may be no disclosure of any information derived from any proposal submitted by a competing offeror;

(6) An award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the purchasing agency taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to each offeror. The purchasing agency may reject any and all proposals and readvertise for proposals if none of the proposals are satisfactory, or if the purchasing agency believes any agreement has been entered into by the offerors to prevent competition; and

(7) This section does not apply to state professional service contracts issued pursuant to SDCL §§ 5-18A-37, 5-18D-17 to 5-18D-24, inclusive.  
(SDCL § 5-18A-7)

### **§ 34.36 UNIQUE SUPPLIES OR SERVICES; SOLE SOURCE PROCUREMENT; NEGOTIATIONS.**

(A) *Unique supplies and services.* A contract may be awarded for supplies or services without competition if the purchasing agency determines in writing that the supplies or services are of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the supplies or services.



(B) *Sole source.* The determination that the contractor selected is justifiably the sole source shall be based on either the uniqueness of the supplies or services or the sole availability at the location required.

(C) *Negotiations.* In such cases, the purchasing agency shall conduct negotiations, including price, delivery, and quantity to obtain the most advantageous price and shall include the written verification of the sole source in the contract file. This section does not apply to construction services or construction equipment.

(SDCL § 5-18A-8)

(D) *Records of sole source procurement contracts.* The purchasing agency shall maintain a record listing each contract made under sole source procurement and emergency procurement for a minimum of five years. The record shall contain:

(1) Each contractor's name;

(2) The amount and type of each contract; and

(3) A listing of the supplies, services, and public improvements procured under each contract.

(SDCL § 5-18A-10)

### **§ 34.37 EMERGENCY PROCUREMENT.**

(A) *Allowed.* A purchasing agency may make or authorize others to make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions of SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D in a timely manner is not an emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(SDCL § 5-18A-9)

(B) *Records of sole emergency procurement contracts.* The purchasing agency shall maintain a record listing each contract made under sole source procurement and emergency procurement for a minimum of five years. The record shall contain:

(1) Each contractor's name;

(2) The amount and type of each contract; and

(3) A listing of the supplies, services, and public improvements procured under each contract.

(SDCL § 5-18A-10)

**§ 34.38 PURCHASES OF SUPPLIES AND SERVICES UNDER \$25,000.**

Unless otherwise specified by statute, purchases of supplies and services under \$25,000 shall be made as follows:

(A) Purchases under \$25,000 may be made in accordance with procedures established by the purchasing agency.

(B) No purchases may be artificially divided to constitute a small purchase under this section.  
(SDCL § 5-18A-11)

**§ 34.39 CANCELLATION OF INVITATION FOR BIDS OR REQUEST FOR PROPOSALS AND REJECTION OF BIDS OR PROPOSALS.**

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, if the purchasing agency determines it is in the best interests of the agency. The reasons for the cancellation or rejection shall be made part of the contract file.

(SDCL § 5-18A-12)

**§ 34.40 PUBLIC IMPROVEMENT CONTRACTS INVOLVING \$50,000; SUPPLIES AND SERVICES CONTRACTS INVOLVING \$25,000 OR MORE; ADVERTISEMENT FOR BIDS OR PROPOSALS.**

If the purchasing agency intends to enter into a contract for any public improvement that involves the expenditure of \$50,000 or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of \$25,000 or more, the purchasing agency shall advertise for bids or proposals. The advertisement shall appear as a legal notice in the appointed legal newspaper. The advertisement shall be printed at least twice, with the first publication at least ten days before opening of bids or the deadline for the submission of proposals. The first publication shall be in each official newspaper of the purchasing agency, and the second publication may be in any legal newspaper of the state chosen by the purchasing agency. If the purchasing agency has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the jurisdiction of the purchasing agency to be selected by the purchasing agency. The advertisement shall state the time and place where the bids will be opened or the deadline for the submission of proposals. In each notice, the purchasing agency shall reserve the right to reject any or all bids or proposals.

(SDCL § 5-18A-14)

**§ 34.41 TIME FOR ENTERING INTO CONTRACT.**

After receiving notice of a contract award, the successful bidder or offeror shall enter into a contract with the purchasing agency within the time specified in the invitation for bids or request for proposals. If any bidder or offeror fails to enter into a contract within the time specified, the contract may be awarded to the next lowest responsive and responsible bidder or offeror for the same kind of work and material, unless all bids or proposals are rejected. The defaulting bidder or offeror shall be responsible for the difference in price.

(SDCL § 5-18A-15)

**§ 34.42 RECOVERY FROM DEFAULTING BIDDER OR OFFEROR.**

If any successful bidder or offeror fails to fulfill the conditions of an awarded contract, the purchasing agency may proceed to recover from the defaulting party whatever damages may have been sustained as a result of the default. The purchasing agency shall have all remedies provided in the contract and provided by law.

(SDCL § 5-18A-16)

**§ 34.43 EXEMPT PROCUREMENTS.**

The provisions of SDCL Chapters 5-18A, 5-18B, 5-18C, and 5-18D do not apply to:

(A) Any highway construction contract entered into by the Department of Transportation;

(B) Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;

(C) Any purchase of supplies or services, other than professional services, by purchasing agencies from any active contract that has been awarded by any government entity by competitive sealed bids or competitive sealed proposals or from any contract that was competitively solicited and awarded within the previous 12 months;

(D) Any equipment repair contract;

(E) Any procurement of electric power, water, or natural gas; chemical and biological products; laboratory apparatus and appliances; published books, maps, periodicals and technical pamphlets; works of art for museum and public display; medical supplies; communications technologies, computer hardware and software, peripheral equipment, and related connectivity; tableware or perishable foods;

(F) Any property or liability insurance or performance bonds, except that the actual procurement of any insurance or performance bonds by any department of the state government, state institution, and state agency shall be made under the supervision of the Bureau of Administration;

(G) Any purchase of surplus property from another purchasing agency;

(H) Any animals purchased;

(I) Any authority authorized by SDCL Chapters 1-16A, 1-16B, 1-16E, 1-16G, 1-16H, 1-16J, 5-12, or 11-11;

(J) Any purchase of supplies for any utility owned or operated by a municipality if the purchase does not exceed the limits established in SDCL § 5-18A-14;

(K) For political subdivisions, any contract for asbestos removal in emergency response actions and any contract for services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, or auction services; or

(L) For political subdivisions, any purchase of equipment involving the expenditure of less than \$50,000.

(SDCL § 5-18A-22)

#### **§ 34.44 PUBLIC SALE OR AUCTION; PERFORMANCE BOND; COMPETITIVE QUOTATIONS; RECORDS TO BE RETAINED.**

(A) *Exempted.* The governing board of a unit of this municipality shall be exempted from the provisions of SDCL Chapters 5-18C, 5-18A, 5-18B, and 5-18D if it is able to purchase supplies at a substantial savings at a public sale or auction.

(B) *Performance bond waived.* Any performance bond required by SDCL § 5-21-1 may be waived on items purchased for less than \$10,000 at a public sale or auction.

(C) *Competitive quotes.* The governing board shall contact and attempt to obtain competitive quotations from at least three suppliers of identical or similar supplies. The board may authorize an agent to attend a sale or auction and expend an amount not in excess of 80% of the average of the quotations received.

(D) *Records retained.* A record of the names of the suppliers, the quotations received, and the procurement procedures used in purchasing shall be documented, noted in the minutes, and retained on file by the governing board.

(SDCL § 5-18C-3)

**§ 34.45 PURCHASES FROM STATE CONTRACT LIST OR BELOW STATE CONTRACT PRICE.**

Notwithstanding the provisions of SDCL Chapters 5-18C, 5-18A, 5-18B, or 5-18D, any purchasing agency of a local governmental unit may purchase, without advertising for bids, from a willing vendor, any supplies contained in the state contract list established pursuant to SDCL § 5-18D-6, or from any willing vendor at a price at or below that shown in the state contract. The governing body of the purchasing agency shall note in its minutes what supplies were purchased from the state contract and shall further note the identity and address of the vendor and the price paid. If an item is purchased at a price lower than that found on the state contract, the purchasing agency shall note that fact in its minutes and show the identity and address of the vendor and the price paid.

(SDCL § 5-18C-8)

**§ 34.46 FUEL PURCHASED BY LOCAL GOVERNMENT UNITS.**

The bid requirements of SDCL Chapter 5-18C, 5-18A, 5-18B, and 5-18D do not apply to the purchase of fuel by units of local government. The governing board of a unit of local government may, instead of advertising for bids, negotiate a contract for the purchase of fuel at the most advantageous price. The governing board shall contact and attempt to obtain competitive quotations from at least three suppliers. A record of the names of the suppliers, the quotations received and the procurement procedures used in purchasing shall be documented, noted in the minutes, and retained on file by the governing body. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor.

(SDCL § 5-18C-6)

***FUNDS AND MONIES RECEIVED*****§ 34.55 BUSINESS IMPROVEMENT DISTRICTS, USAGE OF FUNDS.**

Any money generated pursuant to SDCL § 9-55-2 may be used for any one or more of the following purposes:

(A) The acquisition, construction, maintenance, and operation of public off-street parking facilities for the benefit of the district area;

(B) Improvement of any public place or facility in the district area, including landscaping and plantings;

(C) Construction or installation of convention or event centers, pedestrian shopping malls or plazas, sidewalks, including moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses or any useful or necessary public improvement;

(D) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the district area;

(E) Creation and implementation of a plan for improving the general architectural design of public areas in the district area;

(F) The development of any activities and promotion of the district area;

(G) Maintenance, repair, and reconstruction of any improvements or facilities authorized by SDCL Chapter 9-55;

(H) Any other project or undertaking for the betterment of the facilities in the district area, whether the project is capital or noncapital in nature;

(I) Enforcement of parking regulations within the district area; and

(J) Employing or contracting for personnel, including administrators for any improvement or promotional program under this chapter, and providing for any service necessary or proper to carry out the purposes of SDCL Chapter 9-55.

(SDCL § 9-55-3)

#### **§ 34.56 INTERNAL SERVICE FUND FOR EQUIPMENT PURCHASES.**

The governing body of a municipality may by resolution create an internal service fund to provide for the acquisition of equipment. Moneys may be budgeted and transferred to the fund from any source which may lawfully be used for such purpose, including equipment usage charges on any municipal department or agency. For purposes of this section, the term, *EQUIPMENT*, includes machinery, motor vehicles, and any other equipment or personal property.

(SDCL § 9-21-32)

#### **§ 34.57 PAYMENTS TO MUNICIPALITY FROM REVENUES OF COOPERATIVE PROVIDING ELECTRIC SERVICE WITHIN MUNICIPALITY.**

A rural electric cooperative serving less than a majority of customers in a municipality which does not have a municipally owned system, may, at the option of the municipality, pay in addition to other

taxes provided by law, an amount to be agreed upon, not to exceed 2% of the total gross revenue collected by the rural electric cooperative for that year, by the electric supplier and the governing body of the municipality. If the parties have not agreed on the amount on or before May first following the calendar year from which the amount is to be paid, the amount to be paid shall be 2% of the total gross revenue collected by the rural electric cooperative from the sale of power distributed to structures and electric service outlets situated within the municipality. The tax imposed by a municipality pursuant to this section may be passed on to the purchaser. Any revenue received by the rural electric cooperative from the tax imposed by a municipality pursuant to this section that is separately stated on the invoice, bill of sale, or similar document is not considered gross receipts as defined in SDCL Chapters 10-45, 10-46, or 10-52. (SDCL § 49-34A-45)

#### **§ 34.58 BAD CHECKS GIVEN TO CITY OR ITS AGENTS.**

(A) It shall be unlawful for any person to make and deliver for draw and deliver or utter or give to the city, or to any officer, employee, agent, agency, board, bureau or commission thereof, in payment of any license, fee, fine, penalty, assessment, tax, debt, obligation or other exaction, payment, or amount of money which the municipality or such officer, employee, agent, agency, board, bureau or commission is lawfully authorized to receive or collect, any check or draft upon any bank or banking association with knowledge that the maker or drawer thereof does not have an account in or with such bank or banking association subject to such check or draft. The fact that payment of such check or draft, when presented in the usual course of business, shall be refused by such bank or banking association for lack of sufficient funds to the credit of the drawer or maker with which to pay the same, or because such drawer or maker has no account subject to such check or draft, shall be prima facie evidence that the same was made and delivered or drawn and delivered or uttered or given with the knowledge hereinabove mentioned.

(B) The bad check fee to be set by resolution may be assessed against returned checks as allowed by state law.

Penalty, see § 10.99

### ***BONDS AND NOTES***

#### **§ 34.70 MUNICIPAL BONDS AND NOTES.**

A municipality may borrow money from any source willing to lend the money by issuing a promissory note subject to the limitations set in SDCL §§ 9-25-13 to 9-25-16, inclusive. Notes issued pursuant to this section are payable solely from the sources provided in SDCL § 9-25-13 and do not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory provisions or limitations, any provisions in the notes set forth or set forth in the resolution authorizing

the notes to the contrary notwithstanding. The notes shall recite the authority under which the notes are issued and shall state that the notes are issued in conformity with the provisions, restrictions, and limitations of SDCL §§ 9-25-13 to 9-25-16, inclusive, and that the notes and the interest thereon are payable from the sources provided. The notes shall be authorized, issued, and sold in accordance with SDCL Chapter 6-8B. No election is required and the notes may not be issued for a term in excess of five years. However, a note issued for any loan authorized by the United States Department of Agriculture may be issued for a term of not more than ten years and an unsecured promissory note under the municipal debt limit may be issued for a term of not more than 20 years.

(SDCL § 9-25-12)



## CHAPTER 35: MUNICIPAL PROPERTY

### Section

- 35.01 Surplus property
- 35.02 Transfer of property to other units of government

### § 35.01 SURPLUS PROPERTY.

The governing board of a municipality may sell, trade, destroy, or otherwise dispose of any land, structures, equipment, or other property which the governing board has, by appropriate motion, determined is no longer necessary, useful, or suitable for the purpose for which it was acquired. No motion is required to sell, trade, destroy, or otherwise dispose of consumable supplies, printed text, zoo animals or subscriptions.

(SDCL § 6-13-1)

***Cross-reference:***

*Aldermen; sale of city property, see § 30.041*

*Commissioner form of government; sale of city property, see § 30.064*

***Statutory reference:***

*Surplus property, see Chapter 6-13*

### § 35.02 TRANSFER OF PROPERTY TO OTHER UNITS OF GOVERNMENT.

(A) Notwithstanding any other provision of law to the contrary, but, in compliance with the provisions of the Constitution of the State of South Dakota, this municipality, authorized by law to levy taxes, may lease or sell or give and convey any personal property, real property, or money of such entity or perform any work or render any services, to the state or any public corporation thereof, to be used by such grantee for an authorized public purpose.

(B) The lease or sale or gift and conveyance, or the performance of such work, to be authorized, shall be made or done on the terms and in the manner provided by resolutions of the governing body. However, no money may be transferred from any sinking or interest fund unless sufficient money is left therein to pay all interest which may accrue on and the principal of all outstanding bonds.

(SDCL § 6-5-5)

