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CHAPTER 50: WATER SUPPLY SYSTEMS

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GENERAL**§ 50.01 MUNICIPAL AUTHORITY.**

The municipality shall construct, establish, operate, and maintain a system of waterworks and facilities and may regulate the distribution and use of the supplied thereby. It shall have the authority to assess, levy, and collect taxes and special assessments for such purposes; and may appropriate funds and levy taxes to accumulate funds for such purposes, as provided by SDCL Title 9. The accumulated funds shall be placed in a separate fund which may not revert at the end of the fiscal year. The municipality shall establish a maximum amount allowed to be accumulated in the fund. The fund shall be established by a resolution adopted pursuant to SDCL Chapter 9-19. Every municipality may enter into agreements with the United States, with the state, and with any authorized agency, subdivision, or unit of government, federal or state, to carry out such purposes.

(SDCL § 9-47-1)

§ 50.02 REAL PROPERTY IN ADJOINING STATES.

The municipality shall have power to purchase, lease, own, and hold real property and easements therein in an adjoining state for waterworks purposes.

(SDCL § 9-47-2)

§ 50.03 EMERGENCY CONTRACT FOR REPAIR OR REPLACEMENT.

(A) Wherever, in the municipality, the emergency specified in SDCL § 9-21-15 is the complete failure of the water supply of such municipality, the governing body thereof is authorized to contract for the drilling of a new well or for such repairs, replacements, and new equipment as may be necessary, privately, without advertising for bids as required by the laws of this state relating to contracts of municipalities, and to pay therefor as provided in SDCL §§ 9-21-15 and 9-21-16 as to emergencies; provided, however, that no such contract shall be executed until the governing body has adopted a resolution of necessity therefor, by unanimous vote, which resolution shall become effective immediately upon its passage and publication.

(B) Any contract entered into as provided by this section shall be as binding, and have the same force and effect, as though the same were let in all particulars as provided by the laws of this state relating to contracts of municipalities.

(SDCL § 9-47-3)

Statutory reference:

Replacement or repair required by unanticipated event, see SDCL § 9-21-15

§ 50.04 CONTRACT FOR WATERWORKS SYSTEM; MAXIMUM TAX LEVY.

When the expense in connection with the waterworks system is to be raised by general taxation, no contract for construction, purchase, lease, or maintenance which shall stipulate for an annual payment greater than an annual levy of five mills on each dollar of the assessed valuation of the municipality shall be authorized until such contract shall first have been submitted to a vote of the voters of such municipality at a general or special election and ratified by a majority of those voting at such election.
(SDCL § 9-47-4)

§ 50.05 SPECIAL ASSESSMENTS GOVERNED BY PROVISIONS FOR SEWER ASSESSMENTS.

When the expense in connection with the waterworks system is raised by special assessments, such assessments shall be levied and collected in the manner provided in SDCL Chapter 9-43.
(SDCL § 9-47-5)

Cross-reference:

Sewer assessments, see § 51.65

§ 50.06 CONNECTION FROM WATER MAIN TO LOT LINE.

To provide for the laying of water connections from the municipality water mains to the lot line, the municipality shall assess the cost against the abutting property owner.
(SDCL § 9-47-6)

Statutory reference:

Manner for assessments, see SDCL Chapter 9-43

§ 50.07 CLASSIFICATION OF WATER PIPES AND MAINS.

Water pipes or mains are classified as:

***SERVICE PIPE* or *MAIN*.** One designed to supply water to the property abutting upon the particular street or way in which it is laid.

***SUPPLY PIPE* or *MAIN*.** Any pipe, ditch, flume, conduit, or other appliance designed to conduct a supply of water from its source to the municipality.

***TRUNK PIPE*.** One designed to supply water to the property abutting upon the street or way in which it is laid and to other pipes or mains in a defined district or portion of the municipality.
(SDCL § 9-47-8)

§ 50.08 DISTANCE BETWEEN WATER CONNECTIONS.

No more than one water connection shall be made for each platted lot or for each 44 feet of frontage of unplatted ground in the residence section, and for each 22 feet of frontage in the business section of the municipality, except when the abutting owner requests in writing the placing of water connections at a less number of feet.
(SDCL § 9-47-18)

PURCHASE OF PIPES AND MAINS

§ 50.25 ACQUISITION OF WATER MAINS IN NEWLY ANNEXED AREA.

The municipality shall have the power, within the discretion of the governing board of the municipality, to purchase, lease with purchase option, lease or otherwise acquire from the owners thereof, or condemn under provision of subdivision SDCL § 9-12-1(2), any water main or mains laid in, on or under any street or alley or otherwise located in any municipality, district or subdivision outside the corporate limits of the municipality and which subdivision or district shall have been, by annexation proceedings or otherwise, annexed to the municipality.
(SDCL § 9-47-17)

WATER SERVICE

§ 50.45 MUNICIPAL ARTESIAN WELLS AUTHORIZED.

The municipality, if it chooses, may establish and maintain a municipal artesian well.
(SDCL § 9-47-20)

§ 50.46 REQUEST FOR RURAL WATER SYSTEM WITHIN THREE MILES OF MUNICIPALITY.

If a rural water system is requested after July 1, 1989, to provide water service to any person who resides within three miles of a municipality owning and operating a water supply system, the rural water system shall promptly notify such municipality of such request in writing. Within 60 days from the receipt of such notice, the municipality may elect to provide water service to such person. If the municipality does not so elect, the rural water system may provide such service.
(SDCL § 9-47-22)

§ 50.47 MUNICIPALITY TO PROVIDE SERVICE AFTER PREVIOUSLY DECLINING.

If a rural water system provides service to a person whom a municipality has declined to serve, pursuant to § 50.46, and the municipality thereafter elects to provide water service to such person, the municipality shall first purchase the facilities of the rural water system which were required and used to provide service to such person. The purchase price shall be the present day reproduction cost, new, of the facilities being acquired, less depreciation computed on a 30-year straight-line basis, plus an amount equal to the cost on a nonbetterment basis of constructing any necessary facilities to reintegrate the system of the rural water system after detaching the portion to be sold; plus as compensation for service rights, an annual amount, payable each year for a period of five years, equal to the sum of 5% of the gross revenues received from the sale of water service to such person during the five-year period. Gross revenues received shall be determined by applying the rate in effect by the purchased rural water system at the time of purchase. (SDCL § 9-47-23)

§ 50.48 PROVIDING SERVICE TO PERSONS WITH RURAL WATER SYSTEM; PURCHASE OF FACILITIES.

If a municipality elects to provide water service to any person who is being served by a rural water system and who resides within the boundaries of a municipality or within three miles of the municipality as the boundaries exist on July 1, 1989, the municipality shall purchase the facilities of the rural water system which were required and used to provide service to such person. The purchase price shall be as set forth in § 50.47. (SDCL § 9-47-24)

§ 50.49 SERVICE TO PERSONS WITHIN EXTENDED AREAS.

If the three-mile area referred to in § 50.48 is extended as a result of annexation, consolidation, or incorporation after July 1, 1989, and the municipality elects to provide service to any person receiving service from a rural water system residing within the newly extended three-mile area, the municipality shall purchase the facilities of the rural water system which were required and used to provide service to such person. The purchase price shall be determined pursuant to § 50.47. The provisions of § 50.46 are applicable to all persons seeking water service in the newly extended area from and after the effective date of such extension. (SDCL § 9-47-25)

§ 50.50 ELECTION TO PROVIDE SERVICE TO THOSE OUTSIDE THREE-MILE AREA.

If a municipality elects to provide water service to any person being served by a rural water system and located more than three miles from the municipal boundaries, the municipality shall purchase the facilities of the rural water system which were required and used to provide service to such person. The purchase price shall be determined pursuant to § 50.47.

§ 50.51 CERTAIN MATTERS NEGOTIABLE FOR CONTRACT BETWEEN PARTIES.

The provisions of SDCL §§ 9-47-22 through 9-47-26, inclusive, do not prevent a municipality and a rural water system from contracting with each other relative to the transfer of customers, disposition, and sale of facilities and related matters on such terms and conditions as they may determine.

(SDCL § 9-47-27)

§ 50.52 CONNECTION OF PLUMBING FIXTURES TO PUBLIC WATER SYSTEM, PURCHASE/LEASE OF PREEXISTING PRIVATE WELLS.

(A) Each building in which plumbing fixtures are installed shall connect to a public water supply system if available. A public water system is available to a premise used for human occupancy if the property line of the premise is within 200 feet of the system.

(B) A municipality may purchase, lease with purchase option, lease, or otherwise acquire from the owners, any preexisting private wells located within the municipality. The provisions of this section do not apply to municipalities of the first class.

(C) Nothing in this section requires any municipality to provide any municipal service outside of its municipal boundaries.

(SDCL § 9-47-28)

WATER CONSERVATION

§ 50.65 WATER SHORTAGE DEFINED.

Whenever the municipality determines that an emergency exists, in that the water supply available to the entire municipality for essential functions is in jeopardy because of drought, flood, natural disaster, other act of God, or any other cause beyond the control of the municipality, the municipality may impose such restrictions on the use of water as it determines to be necessary to meet such emergency. In the event the municipality declares such an emergency and imposes restrictions on the use of water, all users of the municipality's water shall submit to those restrictions.

§ 50.66 REGULATION OF OUTDOOR WATER USE.

Whenever the municipality determines that an emergency exists as provided in § 50.65, outdoor water use within the municipality water system shall be regulated as follows:

(A) Residential lawn watering is prohibited between the hours of 10:00 p.m. and 6:00 a.m.

Water Supply Systems

(B) Residential lawn watering during permitted hours will be conducted with no more than two sprinklers or 50-foot soaker hoses and hose diameter shall not exceed five-eighths inch.

(C) No watering shall be conducted with an open hose.

(D) Residential users with underground sprinkling systems and commercial and public water systems shall be regulated by the municipal water department.

§ 50.67 AMENDMENT OF REGULATIONS BY RESOLUTION.

Upon adoption of a resolution by the governing body declaring an emergency water shortage, the governing body may, by resolution, amend and modify the restrictions set forth in § 50.66 and make such other regulations pertaining to the use of water within the municipality as is deemed in the public interest.

CHAPTER 51: SEWER SYSTEMS

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*GENERAL***§ 51.01 MUNICIPAL AUTHORITY.**

(A) The municipality may establish and construct main, trunk, sanitary, storm and service sewers, and septic or sewage treatment plants, drains, and manholes either within its corporate limits or within ten miles of its corporate limits; may appropriate funds and levy taxes to accumulate funds for such purposes; may establish sewer districts as provided by SDCL Title 9; may acquire any sewer, drain, or system of sewerage and drainage already established and constructed; and may acquire land within or without the municipality for a septic or sewage treatment plant or outlet to any main sewer, and may assess the cost thereof with cost of any necessary extension or connection of such main sewer to all the property within the sewer district benefitted as provided by this chapter.

(B) The proceeds of any taxes levied for the accumulation of funds under this section shall be placed in a separate fund which may not revert at the end of the fiscal year. The municipality shall establish a maximum amount to be accumulated in the fund. The fund shall be established by a resolution adopted pursuant to SDCL Chapter 9-19.

(SDCL § 9-48-2)

§ 51.02 CLASSIFICATION OF SEWERS.

Sewers are classified as follows:

COMBINED SANITARY AND STORM SEWER. A sewer which is not designated as either a storm sewer or sanitary sewer is designed for this use.

MAIN SEWER. One designed to carry the entire sewage or water of a municipality or sewerage district to the sewer outlet, septic, or disposal plant.

SANITARY SEWER. One designed solely to carry sewage and wastes from buildings or structures. The term ***SANITARY SEWER*** shall exclude drainage from roofs, sidewalks, roadways, streets, alleys, or other surface drainage.

SERVICE SEWER. One designed to carry sewage or water from the property abutting upon the street or way in which it is laid into a trunk or main sewer, or into the sewer outlet, septic, or disposal plant.

STORM SEWER. One designed solely to carry storm or surface waters.

TRUNK SEWER. One designed to carry the sewage or water from any particular district or portion of the municipality as well as the sewage or water from property abutting upon the street or way in which it is laid, and of sufficient capacity to carry the sewage or water from the service sewers in the district or portion of the municipality in which it is laid, to the main sewer outlet, septic, or disposal plant.
(SDCL § 9-48-1)

§ 51.03 REAL PROPERTY IN ADJOINING STATE.

The municipality shall have power to purchase, lease, own, and hold real property and easements therein in an adjoining state for sewerage purposes.
(SDCL § 9-48-3)

§ 51.04 SEWER PIPES ON PRIVATE PROPERTY; DISCHARGE.

The municipality may construct, maintain, or authorize the construction and maintenance of sewer pipes on private property or in or along any stream of water, or empty or discharge the sewage of the municipality into any stream of water within or without its limits, subject to the provisions of SDCL Chapter 34A-2, if such can be done without creating any foul or noxious odors in the air over or along such stream.
(SDCL § 9-48-4)

Statutory reference:

Environmental protection, see SDCL Chapter 34A-2

§ 51.05 ACQUISITION OF SEWER MAINS, NEWLY ANNEXED AREA.

The municipality shall have power, within the discretion of the governing board of the municipality, to purchase, lease with purchase option, lease or otherwise acquire from the owners thereof, or condemn under provision of SDCL § 9-12-1(2), any sewer main or mains laid in, on or under any street or alley or otherwise located in any municipality, district or subdivision outside the corporate limits of the municipality and which subdivision or district shall have been, by annexation proceedings or otherwise, annexed to the municipality.
(SDCL § 9-48-5)

§ 51.06 FINANCING; GENERAL OBLIGATION BONDS.

The municipality may issue its general obligation bonds pursuant to SDCL Chapter 9-26 for the purpose of financing the construction of sewers.
(SDCL § 9-48-6)

§ 51.07 CONNECTIONS FROM SEWERS TO LOT LINE.

The municipality shall have power to regulate and provide for the laying of sewer connections from the city trunk or service sewers, to the lot line. The municipality may assess the cost against the abutting property owner as provided by SDCL Chapter 9-43.

(SDCL § 9-48-7)

§ 51.08 DISPOSING PRIVATE OR INDUSTRIAL WASTE THROUGH MUNICIPAL SEWAGE PLANT.

A municipality, where a sewage treatment or septic plant is maintained, may enter into a contract to connect to the plant for the purpose of treating or disposing of private sewage or industrial waste originating within the municipality or within ten miles of the corporate limits of the municipality, if the plant has the capacity to handle the sewage or industrial waste.

(SDCL § 9-48-32)

CONNECTIONS**§ 51.20 MINIMUM DISTANCE BETWEEN SEWER CONNECTIONS.**

No more than one sewer connection shall be made for each platted lot, or for each 44 feet of frontage of unplatted ground, in the residence section, and for each 22 feet of frontage in the business section of the municipality, except when the abutting owner requests in writing the placing of sewer connections at a less number of feet.

(SDCL § 9-48-20)

§ 51.21 CONNECTION OF PLUMBING FIXTURES TO PUBLIC WATER SEWER SYSTEM.

(A) Each building in which plumbing fixtures are installed shall connect to a public water sewer system if available. A public sewer system is available to a premise used for human occupancy if the property line of the premise is within 200 feet of the system. A municipality may purchase, lease with purchase option, lease, or otherwise acquire from the owners, or condemn pursuant to SDCL § 9-12-1(2), any preexisting private sewers located within the municipality.

(B) The provisions of this section do not apply to municipalities of the first class. Nothing in this section requires any municipality to provide any municipal service outside of its municipal boundaries.

(SDCL § 9-48-53)

PURCHASE OF PRIVATE SEWERS**§ 51.35 MUNICIPAL PURCHASE OF PRIVATE SEWERS.**

Whenever there has been constructed by any person within any street or alley a private sewer or sewers which shall be wholly or partly within any district subsequently established as provided in this chapter, the municipality may purchase such sewer or sewers or any part thereof and assess such cost to the property fronting or abutting upon the sewer as provided in SDCL Chapter 9-43.

(SDCL § 9-48-16)

§ 51.36 PLANS, SPECIFICATIONS AND COST ESTIMATE FOR PURCHASE OF SEWER.

No purchase pursuant to § 51.35 shall be made until plans and specifications of the location, arrangement, form, and size, and material to be used in the construction of such sewer or sewers and an estimate of the cost of constructing the same at the time of making such estimate shall have been made and filed by the engineer or other competent person and a resolution providing for such purchase has become effective after notice and hearing thereon as provided in the case of a resolution to construct service sewers.

(SDCL § 9-48-17)

§ 51.37 PROPERTY OWNER'S PROTEST AGAINST PURCHASE OF PRIVATE SEWER.

If the owners of a majority of the real property fronting or abutting on a sewer described in § 51.35 prior to such resolution becoming effective shall file a written protest against such purchase, the governing body shall not have power to purchase the same.

(SDCL § 9-48-18)

SEWER CHARGES**§ 51.50 SEWER CHARGES OR RENTALS.**

Any municipality which has installed or plans to install sewer utilities for public use may by ordinance or resolution establish charges to be paid to the municipality for the use of the sewer utilities by every user whose premises are served by a connection to the sewer utilities directly or indirectly. A municipality may also submit to the voters of such municipality at any general election or any special election called for such purpose the question of whether or not the municipality shall be authorized to establish charges for the use of sewer utilities. If a majority of the voters voting upon such question shall vote in favor thereof then such municipality may by ordinance or resolution establish charges to be paid

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to the municipality for the use of the sewer utilities by every user whose premises are served by a connection to the sewer utilities directly or indirectly. For the purpose of this section the term **SEWER UTILITIES** means any main, trunk, and service sewers; sanitary and storm sewers; and septic or sewage treatment plants, drains and manholes.

(SDCL § 9-48-26)

§ 51.51 SEWER CHARGES.

Such charges shall be as nearly as may be in the judgment of the governing body equitable and in proportion to the services rendered and taking into consideration in the case of each such premises the quantity of sewage therein or thereby produced and its concentration, strength, or river pollution qualities in general, and, in the case of storm drainage, taking into consideration in the case of each premises the quantity of storm runoff and may use the square footage of impervious surfaces as a basis for charges or the total square footage weighted by the classification of existing land use or total square footage weighted by zoning designation or total square footage. Such charges may be collected at the same time, place, and in conjunction with the water rentals in any municipality owning and operating the municipal water supply system and distribution system.

(SDCL § 9-48-27)

§ 51.52 METERING WATER SUPPLY TO DETERMINE SEWER CHARGES.

The metering of private water supplies produced or operated on premises served by public sewer utilities may be required. If the use or consumption of water on any premises is taken into consideration in determining the charge to be made for the use of sewer utilities serving the premises, the municipality shall consider the amount or proportion of water used on the premises that does not reach or burden the sewer utilities.

(SDCL § 9-48-28)

§ 51.53 SEPARATE FUND FOR SEWER CHARGES AND RENTALS.

Any funds, fees, rentals, charges, or rates collected under the authority of §§ 51.50 through 51.52, inclusive, shall be remitted to the finance officer by the officer charged with their collection at least once each month and shall be kept in a separate fund to be known as the sewer rental fund. Such fund shall be used for the purpose of paying the cost of financing the operation, maintenance or construction of the sewer utilities. However, no part of such fund may be used to meet the cost of construction of lateral sewers serving local territory or the portion of the cost of sewer utilities which have been financed by special assessment against benefitted properties. Surplus funds may be transferred in the manner described in SDCL Chapter 9-21.

(SDCL § 9-48-29)

§ 51.54 SPECIAL CONTRACTS.

Nothing contained in §§ 51.50 through 51.53, inclusive, shall be construed to limit or restrict the power of municipalities to contract as granted by § 51.08, and any contract heretofore or hereafter entered into under such power shall be in lieu of any fees, rates, rentals, or charges established under §§ 51.50 through 51.53, inclusive.

(SDCL § 9-48-30)

§ 51.55 REVENUE BOND AUTHORITY.

Nothing contained in §§ 51.50 through 51.53, inclusive, shall be construed to limit or restrict the power of municipalities to establish, equip, maintain, operate, extend, or improve water and sewer systems or combined water and sewer systems in the manner provided in SDCL Chapter 9-40, and any statutes heretofore or hereafter enacted amendatory thereof and supplemental thereof, and to fix, impose, and collect rents and charges for the service of such utility systems, and to issue revenue bonds and make the same payable from the revenues provided by such rates and charges, and to provide lawful stipulations and covenants for the security of such bonds. The procedural requirements in SDCL Chapter 9-40 shall constitute the only conditions prerequisite to the carrying out of such undertakings, the issuance of such bonds and the fixing and collection of such rates and charges. The moneys derived from such rates and charges may be used and accounted for in accordance with the provisions of SDCL Chapter 9-40, and are not subject to the limitations of §§ 51.50 through 51.53, inclusive.

(SDCL § 9-48-31)

§ 51.56 SEWER UTILITY RATES AND CHARGES FOR RECOVERY OF CAPITAL COSTS.

(A) Notwithstanding any other provision in SDCL Chapter 9-48, this municipality which maintains, has installed, or plans to install sewer utilities for public use may establish, fair and equitable rates and charges for sewer utilities to be paid by the users of the sewer utilities and others connected thereto. The rates and charges may be established to recover past capital costs and pay for the capital costs of developing new capacity. For the purposes of this section, the term, capital costs, includes:

(1) Costs of construction or expansion of infrastructure that is necessary to serve a new development, including the design, surveying, engineering, environmental, and other professional fees that are directly related to the construction or expansion of the sewer utility;

(2) Land acquisition costs including the purchase of interest in land, any court award or settlement, appraisal, relocation service, negotiation service, title insurance, expert witness, attorney, and other professional fees that are directly related to the land acquisition;

(3) Debt service;

(4) Rate of return including a risk premium for any potential default; and

(5) Directly related expenses incurred in preparing or updating the comprehensive plan or zone improvement plan, including all administrative, consulting, attorney, and other professional fees.

(B) The rates and charges may be assessed separately or added to other rates established pursuant to this chapter.

(C) Two or more municipalities, sanitary districts, political subdivisions of this state, or any combination thereof, may enter into an agreement or contract with each other, or otherwise enter into an agreement as permitted by law, for the provision of sewer utilities.

(D) For the purposes of this section, the term, *SEWER UTILITY*, means any main, trunk, service sewer, sanitary and storm sewer, and septic or treatment facility, drain, pumping station, lift station, interceptor, force main, manhole, flow equalization structure, and any other equipment, material, and facility related thereto.

(SDCL § 9-48-32.1)

ASSESSMENTS

§ 51.65 ASSESSMENT OF PROPERTY FOR PROPORTIONATE SHARE OF SEWER PREVIOUSLY CONSTRUCTED.

(A) Whenever either a main sewer or trunk sewer or service sewer has been constructed for which the cost has not been apportioned against property which may be benefitted thereby as provided by this chapter, or SDCL Chapter 9-43, the municipality may require the owner of the property to pay its proportionate share of the cost of such construction, without interest, according to the benefits to accrue to such property before the property may be platted, replatted, or served by the facilities, as determined by the municipality.

(B) The municipality shall investigate and determine the amount to be paid. The amount shall be apportioned by the municipality among the persons, including the municipality, paying the appropriate cost.
(SDCL § 9-48-15)

CHAPTER 52: GARBAGE

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Statutory reference:

Municipal garbage disposal systems, see SDCL § 9-32-11

§ 52.01 DEFINITIONS.

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

ANIMAL WASTE. Any accumulation of manure or straw which has been used for the transportation, housing or penning of animals.

GARBAGE. All refuse or accumulation of animal and vegetable matter which attends the preparation, transportation, cooking, eating, sale, disposal or storage of meat, fish, vegetables, fruit and all other food or food products.

HAULING UNIT. The container in which garbage is transported. It may be permanently affixed to a chassis or may be temporarily attached, such as a roll-off unit.

LITTER. Garbage, rubbish, waste material or animal waste improperly disposed of by discarding, abandoning, allowing to accumulate, scattering or depositing the same outside an approved container.

RUBBISH. All combustible refuse matter, such as contaminated or nonrecyclable paper, sweepings, rags, contaminated cardboard, and similar materials.

TRASH. All waste paper, rags, refuse, leaves, cans, other containers and all accumulations of waste not defined as garbage.

YARD WASTE. Grass clippings, garden waste, and leaves.

§ 52.02 LICENSE FOR COLLECTION AND HAULING OF GARBAGE.

It shall be unlawful for anyone to engage in the business of collecting and hauling garbage or trash from any place within the municipality without first having obtained a license. All applications for licenses shall be in writing and shall give the name and address of the person or firm proposing to enter into the business, together with the number and type of vehicles to be used. The application may be given to the municipal finance officer, any member of the governing body or may be presented at any regular meeting in person. The municipality shall act on all license applications and, if any are refused, the reasons therefore shall be stated in writing. All licenses shall be annual and shall expire December 31, of each year. The annual fee for each vehicle engaged in this business shall be set by the municipality annually.

Penalty, see § 10.99

§ 52.03 REVOCATION OF LICENSE.

In addition to any penalties provided elsewhere in this code, the municipality may, upon a showing of sufficient cause, revoke any license granted for the collection of garbage. Conviction for violating any or the provisions of this chapter shall be sufficient cause.

§ 52.04 HEARING; REVOCATION; APPEAL.

(A) (1) If the municipality determines that facts exist for revocation of a license, the municipality shall notify the licensee in writing of the intent to revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the municipality. Within five working days of receipt of the notice, the licensee may provide to the municipal manager or person appointed by the municipality, in writing, a response that shall include a statement of reasons why the license should not be revoked. Within three days of the receipt of the licensee's written response, the municipal manager or person appointed by the municipality shall notify the licensee in writing of the hearing date on licensee's revocation proceeding.

(2) Within ten working days of the receipt of licensee's written response, the municipal manager or person appointed by the municipality shall conduct a hearing at which the licensee shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the municipal manager or person appointed by the municipality in the time stated or, if after the hearing, the municipal manager or person appointed by the municipality finds that grounds exist for revocation, the decision shall become final five days after the municipal manager

or person appointed by the municipality sends, by certified mail, written notice that the license has been revoked. The notice shall include a statement advising the licensee of the right to appeal the decision to a court of competent jurisdiction.

(3) If the municipal manager or person appointed by the municipality finds that no grounds exist for revocation of a license, then within five days after the hearing, the municipal manager or person appointed by the municipality shall withdraw the intent to revoke the license, and shall so notify the licensee in writing by certified mail of that action and shall contemporaneously issue the license.

(B) When a decision to revoke a license becomes final, the licensee whose license has been revoked, shall have the right to appeal the action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the municipality's enforcement of the revocation, the municipality shall immediately issue the licensee a provisional license. The provisional license shall allow the licensee to continue operation of the business and will expire upon the court's entry of a judgment on the licensee's action to appeal, challenge, restrain, or otherwise enjoin the municipality's enforcement.

§ 52.05 VEHICLES USED FOR COLLECTING.

(A) Collectors of garbage shall provide themselves with a suitable vehicle covered on the top so as to prevent the escape of odors and contents.

(B) The vehicles shall be thoroughly washed whenever necessary to prevent them from becoming dangerous or offensive to public health.

Penalty, see § 10.99

§ 52.06 LOADING OF VEHICLES.

Vehicles used for transporting garbage, rubbish, animal waste and waste materials shall be loaded so that no materials shall fall off or be blown off the vehicle while in transit. Loosely loaded vehicles with open boxes must be tarped.

Penalty, see § 10.99

§ 52.07 YARD WASTE COLLECTION.

Yard waste shall be collected by licensed commercial garbage haulers. Yard waste shall be deposited in a proper container, a Kraft-type paper bag designated for yard waste, or a 32-gallon rigid watertight container with a tightly fitted cover, and placed at a location, other than curbside, designated for collection by the licensed commercial garbage hauler contracted to remove the same. All yard waste and containers therefore shall be kept in an inconspicuous place except when placed for collection. Yard waste shall be collected or removed at a minimum of once a week.

Penalty, see § 10.99

§ 52.08 GARBAGE CONTAINERS.

The occupant of every dwelling house or apartment and of every place of business and building shall provide a suitable container in which the occupants shall deposit all garbage accumulating upon the premises, which garbage containers shall be kept in an unobtrusive manner except to facilitate scheduled pickup. Garbage cans shall be provided with tightly fitting covers. The vicinity of garbage cans shall be kept free from garbage.

Penalty, see § 10.99

§ 52.09 LITTERING PROHIBITED.

(A) *Generally.* It shall be unlawful for any person to throw, drop, cast or deposit upon any street, alley, sidewalk, lake, stream, river, pond, body of water or any yard or premises, public or private, any filth of any kind, or cans, paper, trash, paper containers, rubbish, bottles, or any form of litter or waste matter.

(B) *Duty of business owners, occupants.*

(1) *Generally.* The owner or occupant of any store or other place of business situated within the municipality shall exercise reasonable diligence at all times to keep his or her premises clean of wastepaper, wrapping paper, paper napkins, cartons, package containers, and other used or waste materials thrown or left on the premises, and to take reasonable measures to prevent the materials from drifting or blowing to adjoining premises.

(2) *Receptacles.* Garbage receptacles of sufficient size and number shall be kept accessible to all persons on the premises where the articles may be placed.

(3) *Signs.* Every business establishment shall place upon its premises in a conspicuous place, in close proximity to the receptacles referred to in division (B)(2) above, a sign which shall, in essence, convey to all persons a request that they use the receptacles for the separate disposal of garbage.

(C) *Duty of person.* It shall be unlawful for any person going upon the premises of another to in any manner dispose of wastepaper, wrapping paper, paper napkins, cartons, package containers, and other used or waste materials except in receptacles provided for the purposes.

(D) *Removal of litter by municipality.* If the occupant, person in charge or owner of any real property within 14 days fails to remove litter from real property after notice from the municipality to do so, the municipality may cause the litter to be removed and for the purpose may enter upon any real property. The cost of removal may be assessed against the real property.

(E) *Litter on sidewalk.* The owner or occupant of any lot or private ground abutting upon any public sidewalk shall not allow rubbish, debris or obstruction of any kind to be or remain on the sidewalk along the abutting property.

Penalty, see § 10.99

Statutory reference:

Arrest for violation of municipal litter ordinance; notice to appear; time; refusal to give written promise to appear, see SDCL § 34A-7-15

Littering prohibited, see SDCL §§ 34A-7-6 et seq.

Ordinances to regulate litter, see SDCL § 34A-7-14

Refuse in public places and streams, SDCL § 9-32-10

§ 52.10 BURNING GARBAGE.

No garbage or other matter that gives off an offensive odor during combustion shall be burned in the municipality.

Penalty, see § 10.99

§ 52.11 CUSTOMER INFORMATION.

All licensed garbage collectors/haulers shall at least annually provide customers with written information regarding volume of base-rate structure and garbage, and yard waste service.

Penalty, see § 10.99

CHAPTER 53: FIRE PROTECTION AND SAFETY

Section

Flammable and Combustible Liquids

- 53.01 Compliance with *International Fire Code*
- 53.02 Location requirements for aboveground tanks
- 53.03 Spill control
- 53.04 Protection against vehicular collision
- 53.05 Maintenance of area within any dike
- 53.06 Tank piping system in contact with soil; protection from corrosion
- 53.07 Delivery and dispensing operations to comply with *International Fire Code*; determining liquid level; equipment requirements
- 53.08 Application to facilities constructed after July 1, 2016
- 53.09 Limitations as to tank capacity

FLAMMABLE AND COMBUSTIBLE LIQUIDS

§ 53.01 COMPLIANCE WITH *INTERNATIONAL FIRE CODE*.

Except as otherwise provided in SDCL Chapter 34-38, aboveground storage tanks shall comply with the applicable provisions of Chapter 57 of the *International Fire Code*, 2015 edition.
(SDCL § 34-38-26)

§ 53.02 LOCATION REQUIREMENTS FOR ABOVEGROUND TANKS.

- (A) Any aboveground storage tank shall be located at least:
- (1) Fifty feet from the nearest important building on the same property;
 - (2) Fifty feet from any fuel dispenser;
 - (3) Fifty feet from the nearest side of any public way; and

(4) Fifty feet from any property line that is or may be built upon.

(B) However, distances may be reduced based on site limitations and conditions or quantity of liquid storage at the discretion of the local and division authority having jurisdiction.
(SDCL § 34-38-28)

§ 53.03 SPILL CONTROL.

Spill control shall be provided in accordance with Chapter 57 of the *International Fire Code*, 2015 edition.
(SDCL § 34-38-29)

§ 53.04 PROTECTION AGAINST VEHICULAR COLLISION.

Aboveground tanks shall be protected against vehicular collision by suitable barriers.
(SDCL § 34-38-31)

§ 53.05 MAINTENANCE OF AREA WITHIN ANY DIKE.

The area within any dike shall be kept free of vegetation, debris, and any other material that is not necessary to the operation of the tank and piping system.
(SDCL § 34-38-32)

§ 53.06 TANK PIPING SYSTEM IN CONTACT WITH SOIL; PROTECTION FROM CORROSION.

Any portion of a tank piping system that is in contact with the soil shall be protected from corrosion in accordance with Chapter 57 of the *International Fire Code*, 2015 edition.
(SDCL § 34-38-33)

§ 53.07 DELIVERY AND DISPENSING OPERATIONS TO COMPLY WITH INTERNATIONAL FIRE CODE; DETERMINING LIQUID LEVEL; EQUIPMENT REQUIREMENTS.

(A) Delivery operations shall comply with applicable requirements of Chapter 57 of the *International Fire Code*, 2015 edition. Dispensing operations shall comply with the provisions of Chapter 57 of the *International Fire Code*, 2015 edition.

(B) The delivery vehicle shall be separated from any aboveground tank by at least 25 feet.

(C) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Provisions shall be made either to automatically stop the delivery of fuel to the tank if the liquid level in the tank reaches 95% of capacity or to sound an audible alarm if the liquid level in the tank reaches 90% capacity.

(D) A check valve, gate valve with quick-connect coupling, or a dry-break valve shall be installed in the piping at the point where connection and disconnection is made for delivery from a vehicle to any aboveground tank. This device shall be protected against tampering and physical damage.

(E) If the delivery hose is connected directly to the tank, the fill line at the tank shall be equipped with a tight-fill device for connecting the hose to the tank.

(SDCL § 34-38-34)

§ 53.08 APPLICATION TO FACILITIES CONSTRUCTED AFTER JULY 1, 2016.

The provisions of SDCL Chapter 34-38 apply to facilities constructed after July 1, 2016. Existing installations shall be permitted only if, in the opinion of local and state authorities, the existing installation does not constitute a distinct hazard to life or property.

(SDCL § 34-38-38)

§ 53.09 LIMITATIONS AS TO TANK CAPACITY.

Tanks may not exceed an individual capacity of 12,000 gallons and may not exceed an aggregate capacity of 48,000 gallons. Any variance in excess of these amounts can only be granted by the division pursuant to SDCL Chapter 1-26.

(SDCL § 34-38-39)

