

TITLE THREE

LICENSES AND PERMITS

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CHAPTER 3.01 PURPOSE

- 3.01.00** The purpose of this title is to protect the general health, welfare and sanitation of Hill City and its people and to prevent the spread of disease and infection.

Authority: SDCL 9-32-1

CHAPTER 3.02 POSTING OF PERMIT REQUIRED – PENALTY

- 3.02.00** It shall be unlawful for any person to operate an establishment where food is prepared for sale, whether consumed there or not such as restaurant, who does not hold an unrevoked permit for the operation of the establishment from the state health department or an authorized agent. Any person who does not publicly display the unrevoked permit for the current year may be fined not to exceed \$200.00 or 30 days in jail or both said fine and jail.

Authority: SDCL 39-2

CHAPTER 3.03
ANIMAL CONTROL ORDINANCE

3.03.01 **ANIMAL CONTROL OFFICER:** is that person educated in the care and seizure, custody and confinement of animals as appointed by the City of Hill City and supervised by the authorized law enforcement officer.

ANIMAL CONTROL OFFICER OR ANY OFFICER OF THE LAW WITHOUT PERMISSION FROM THE PROPERTY OWNER:

- A) May enter upon the private premises to apprehend a stray animal, a vicious animal, a wild creature or an animal suspected of being infected with rabies.
- B) May enter upon private premises to investigate complaints of irresponsibility or inhumane animal care.
- C) May enter upon private premises to seize, impound, or dispose of any vicious animal of any kind when necessary for the protection of any person or animal.

3.03.02 **RESPONSIBLE ANIMAL CARE**

It shall be unlawful for any owner or harbinger of a domestic animal not to provide for his or her animal:

- A) Sufficient quantity of good and wholesome food and water.
- B) Proper protection from the weather.
- C) Veterinary care when needed to prevent suffering.
- D) Humane treatment.
- E) Prompt removal and sanitary disposal of all excrement deposited by his or her animal anywhere in the City of Hill City.

3.03.03 **AREA REQUIREMENTS**

It shall be unlawful for any person to keep, permit or have custody of wild or domesticated sheep, horses, cattle, goats, swine, fowl, ducks, geese, turkeys, hares and rabbits, or any other wild animal and pheasants anywhere within the city limits of the City of Hill City.

3.03.04 **VICIOUS DOG OR CAT**

It shall be unlawful for a person to keep or otherwise maintain within the city any dog or cat that is known to be vicious or dangerous or which has evidenced a disposition to attack human beings without provocation.

3.03.05 **PUBLIC NUISANCE**

It shall be unlawful for any person to keep or harbor a dog or cat which habitually barks, howls, or yelps to the great discomfort of the neighborhood. Such dogs and cats are hereby declared to be a public nuisance. Whenever any person shall complain to the law enforcement or animal control officer that a dog or cat habitually barks, howls, or yelps, the law enforcement or

animal control officer shall notify the owner of said dog or cat that a complaint has been received and that the persons should take whatever steps necessary to alleviate the howling, yelping or crying. If the warning given to the person alleged to be keeping such a dog or cat is ineffective then a verified complaint of at least one citizen may be presented to the law enforcement or animal control officer alleging that a dog or cat which habitually barks, howls or yelps, or cries or howls is being kept by a person within the City limits. The law enforcement or animal control officer shall inform the owner of such dog or cat that said petition has been received and shall cite the owner of the dog or cat for such violation.

3.03.06 ANIMAL NUISANCE

It shall be unlawful for any person owning or possessing any dog or cat to permit the same to run at large. "Running at large" shall be defined to be the presence of a dog or cat at any place except upon the premises of the owner.

A dog or cat shall not be considered running at large if it is on a leash or under the control of a person physically able to control it, or controlled by a fenced in yard.

3.03.07 UNKNOWN OWNERSHIP

When the owner or harbinger of a stray animal cannot be ascertained, the animal shall be impounded for no less than three days (72 hours) in such a place as the city may direct. If unclaimed after this time period, the place of impoundment may euthanize the animal if they feel the animal is unsuitable for a pet. Or if the owner claims the animal, the owner is responsible for any fees that the place of impoundment requires.

3.03.08 KNOWN OWNERSHIP

Whenever an officer of the law or the animal control officer shall find a dog or cat "running at large," he or she shall, if possible pick up the animal and identify ownership of the animal by identification mark, such a collar or license tag, or by having seen the animal and owner previously, and shall then attempt to contact the owner of the animal to inform them that their animal is in the custody of the animal control officer and they may claim their animal for a fee.

If for any reason the known owner of the animal in custody cannot be contacted, (reason being on vacation, or out of town overnight), the animal will then be impounded in such place as the city may direct, for no less than three days (72 hours) or ten days if suspected of rabies. Owner may then reclaim such and is responsible for any fee required by the place of impoundment. If animal is not reclaimed within the three day period or after ten days, whichever time may apply, the place of impoundment may use its judgment as to put the animal up for adoption or have the animal euthanized.

3.03.09 ANIMAL REGISTRY

The animal control officer shall maintain a registry of all animals picked up, reclaimed, impounded, adopted, or euthanized.

3.03.10 DISCLAIMED ANIMALS

If for any reason, the owner or harbinger of an animal chooses to disclaim ownership of same or voluntarily deliver the animal to be disclaimed to the animal control officer, executes formal acknowledgment of such an act, and pays the consignment fee if any, the animal control officer shall process the consignment of said animal to a recognized humane society or a licensed animal shelter.

3.03.11 BITE PROCEDURE

Regardless of animal age or license status, the owner or harbinger of an animal inflicting a bite shall report the incident to the animal control officer immediately and the animal inflicting the bite shall then be impounded within 24 hours with a licensed veterinarian or licensed animal shelter for a period of ten (10) days. If the animal does not have rabies, the owner or harbinger may reclaim the animal and pay any fee required for services rendered.

“BITE” means to be seized with the teeth or jaws so that a person or animal has been wounded or pierced and saliva of the biting animal has contacted the resulting break or abrasion of the skin.

3.03.12 RABIES PROCEDURE

It shall be unlawful for the owner or harbinger of any animal to refuse or fail to promptly surrender any animal suspected of being infected with rabies. Any animal suspected of being infected with rabies may be seized by the animal control officer and impounded with a licensed veterinarian or licensed animal shelter for observation, examination and testing as necessary for positive diagnosis. Upon declaration by a licensed humane society or licensed veterinarian that the animal is infected with rabies, the animal control officer shall cause the immediate destruction of the animal. Disposition of the animal's body shall be controlled by the animal control officer. Owner or harbinger of said animal is responsible for all fees incurred by the place of impoundment.

3.03.13 ANIMALS IN ESTRUS

Female animals in estrus shall be confined in such a manner that the animal cannot come in contact with a male animal except expressly for breeding purposes. Depending on circumstances in each case, failure to do so may result in an inhumane treatment citation fee of twenty-five dollars (\$25.00) each offence, payable to the Animal Control Officer if cited by said officer or the City of Hill City if cited by the City official assigned to said enforcement.

3.03.14 LICENCE REQUIRED

It shall be unlawful for any person to own or harbor any dog or cat in the City of Hill City without obtaining a Hill City animal license.

3.03.15 FEES FOR ALL VIOLATIONS OF ANIMAL ORDINANCE

First Offense	Twenty-five dollars (\$25.00).
Second Offense	Fifty dollars (\$50.00).
Third Offense	One hundred dollars (\$100.00).
Fourth Offense	Two hundred dollars (\$200.00) and ordered to remove such animal permanently from the City within 24 hours of such order. The owner of the animal will be responsible for all costs of the removal.

Amended July 30, 2002

Fees are to be paid to the Animal Control Officer if cited by that officer or the City Finance Officer if cited by any other City official or law enforcement unless he or she is not available (weekends, holidays, outside of regular business hours), the owner of the animal in violation or custody may pay the animal control officer any fee which applies. If the animal picked up is suspected of having rabies, the animal control officer will immediately impound the animal in such a place as the city may direct, and then notify the owner as soon as possible.

3.03.16 APPLICATION FOR LICENSE

Written application for a license shall be made annually by the owner of the animal on a form provided by the city or the Animal Control Officer. The owner shall be identified by name, address, and telephone number, and the dog or cat's sex, age, breed, color and call name and rabies inoculation certificate number, date and administering licensed veterinarian given.

3.03.17 FEE FOR LICENSE

Unaltered/Altered dog or cat \$5.00. The license for any dog or cat shall expire on the 30th day of April following the date of its issuance.

3.03.18 KENNEL LICENSE

Anyone who owns or harbors three (3) or more dogs over 10 weeks old will be required to purchase a Kennel License for \$50.00. A certificate of compliance will be issued upon inspection of the kennel.

3.03.19 INTERFERENCE WITH ENFORCEMENT OF CHAPTER

No person shall interfere with, hinder, molest, or oppose or resist any law enforcement officer or the animal control officer in the performance of any

duty under this chapter, or seek to release any animal in the custody of the animal control officer, except as provided in this chapter.

Amended April 18, 2003

CHAPTER 3.04 SPECIAL EVENTS

3.04.01 CIRCUSES, STREET PERFORMANCES, ETC.

The owner, manager, or any person in possession of any circus, menagerie, tent show, shooting gallery, traveling theater, exhibition or entertainments of like nature or description shall pay to the city, before conducting such business, exhibition or parade as the case may be, a license to be fixed by the city council at the first meeting of the council in May of each year, whenever the same may be necessary, provided, however, that this provision shall not apply to persons owning or conducting a regular established theater or motion picture show business in the city or any concert or public entertainment given by amateurs for charity uses or for public benefit.

3.04.02 MUSICAL INSTRUMENTS IN PUBLIC PLACES

No person having under his control any public place or store shall play, or allow to be played or operated any musical instrument, radio or mechanical musical devise in such store or place in such manner as to disturb and annoy the public and said music shall comply with the city's Sound Ordinance, HC Ord. 10.3.1

CHAPTER 3.05 OUTDOOR DANCES, CONCERTS, AND SIMILAR ENTERTAINMENT

3.05.01 DEFINITIONS

For purposes of this section, the following words, terms, and phrases shall have the meaning ascribed to them herein, unless the context clearly indicates otherwise:

“Outdoor” shall mean not totally enclosed within a building or other structure; and “enclosed” shall mean totally surrounded by walls, roof or other enclosure so as to prevent the escape of the noise or sound of whatever is going on within. Open windows, doors or the like that allow the noise or sound to escape and potentially disturb the peace of anyone else shall cause the activity within to constitute an outdoor activity.

“Outdoor dance, concert or similar entertainment” shall mean any such event

or happening whether on private or public property, whether the same is a private or exclusive event or happening or open to the public, and whether the same is free of charge or subject to charge, admission or cover fee or similar cost or reimbursement, whether direct or indirect, whatsoever. "Outdoor dance, concert or similar entertainment" shall be liberally construed, and the city council shall be the final interpreter as to whether any event of happening shall fit within the definition of "outdoor dance, concert or similar entertainment."

3.05.02 LICENSE REQUIRED

No person, corporation, organization or other entity shall manage, hold, conduct or otherwise maintain any outdoor dance, concert or similar entertainment within the city limits of the city without first obtaining a license therefore, as provided herein.

3.05.03 APPLICATION

Any applicant for the license described in Section 2 above shall file an application with the city Finance Officer at least thirty (30) days prior to the proposed event, and the application shall contain the following information.

1. Applicant's name, and street and mailing address.
2. If applicant is a corporation, names and street and mailing addresses of all officers and directors.
3. If applicant is a partnership, names and street and mailing addresses of all partners.
4. If applicant is a noncorporate organization or other joint venture, names and street and mailing addresses of all officers, if any, all directors, if any, and if there are no officers nor directors, names and street and mailing addresses of at least three (3) primary or responsible persons of the organization or venture, all of whom must sign the application.
5. Location or place of the event, including street addresses if any, and the parameters or boundaries, with specificity, including exits.
6. Dates of the event.
7. Proposed times and hours of operation.
8. Type of entertainment (dance, concert, or other) with specificity, including name of band or other entertainment.
9. Approximate or projected number of people who may attend the event.
10. If alcoholic beverages are to be served, sold, consumed or otherwise provided and by what alcoholic beverage license same shall be served, sold, or consumed.
11. If alcoholic beverages are to be present, whether "underage" persons will be allowed to attend.
12. If alcoholic beverages are present and "underage" persons are

allowed, applicant's specific plan to provide proper barriers or separation as required by statutory law.

13. The number of security persons and their type, kind or level of training, experience or expertise.
14. The number, kind and locations of restroom facilities and trash receptacles.
15. The plan for parking and traffic flow, including parking locations and regulation, with specificity.
16. The plan for cleanup following the event, including the number of persons involved, the means and method of disposal of trash and refuse, the location of dumping and the proposed deadline that cleanup will be completed.
17. Any other information that may be required by the city council or Finance Officer, or if applicable, the city park board.

3.05.04 SUPPLEMENTAL ITEMS; LICENSE FEE

The license applicant, in addition to the application, shall submit at the same time a certificate or other proof of liability insurance in the amounts and coverages that the city council may require; and shall also submit at the same time a security, damage, cleanup, and reimbursement deposit in the form of a bond in favor of the city, or a cashier's check or money order made payable to the city, or cash, in the amount required by the city council. The applicant may also be required to submit additional documents or items in support of or in verification of the application. Finally, the applicant shall, at the same time, submit an application/license fee of one hundred dollars (\$100.00); however, within one week the total gate fees, if any, shall be provided to the Finance Officer, and the fee shall be 20% of the gate if that exceeds the sum of one hundred dollars (\$100.00).

3.05.05 APPLICATION PROCEDURES

Following submission of the application and all other required items and documents and application/license fee, the applicant shall meet with the city council to answer any questions, provide any additional or supplemental information, to receive suggestions or to otherwise work out any details to the satisfaction of the applicant. Following one or more council meetings, the application shall then be considered by the city council who shall hear the recommendation of the Finance Officer and may hear from the applicant. The city council may approve the application, approve the application with amendments, or reject the application. Approval, if any, of the application as is, or as amended, shall constitute the license sought for.

3.05.06 WAIVER OF REQUIREMENTS

The city council shall have the right to waive any requirement otherwise contained in the application, including the insurance, deposit or license fee, or an appropriate amount or percentage thereof, if in its judgment the minimal size of the event or the type of the event or the charitable or civic nature of the event or organization holding or promoting the same warrant any such waiver.

3.05.07 VIOLATION OF APPLICATION/LICENSE

It shall be unlawful for any applicant or any person acting on behalf of any applicant to violate any provision of his or its application or requirement of the license issued pursuant thereto and the penalty for same shall be a Class II misdemeanor punishable by a fine of \$200 and/or 30 days in jail.

3.05.08 ACTIVITY FACILITIES

The applicant shall provide appropriate and safe facilities for the activity or event, including such lighting, restroom facilities, trash receptacles and exits as may be warranted by the estimated crowd size or as otherwise required by the appropriate city authorities.

3.05.09 OFFICIAL SUPERVISION

The city council and the law enforcement agency for the city (on this date the Pennington County Sheriff's Office) shall have the supervision of all outdoor dances, concerts or similar entertainment. As such, they, along with the city council, shall have authority to make revisions and changes in the application and in the manner of carrying out the applied-for activity.

3.05.10 ADDITIONAL LAW ENFORCEMENT

The city's law enforcement agency may deem it necessary to provide or contract for additional law enforcement for the city or for the area around the event site, at or about the times of the event. It shall be the responsibility of the applicant to pay for such additional enforcement, without question; and the amount therefore may be projected and included in the deposit amount to be submitted with the application, or the city may require an additional deposit to be made to cover such additional law enforcement cost prior to the dates of the proposed event.

3.05.11 TRAFFIC AND PARKING

The applicant shall ensure that all public rights-of-way, streets, alleys, sidewalks and other regularly traveled grounds, including private driveways and driveway approaches are kept open and not blocked, even temporarily, unless prior specific permission has been granted by the appropriate city authorities. In addition, the applicant shall ensure that no event parking is allowed on and along any such public right-of-way nor in any public park or

otherwise on any public property without prior specific permission from city authorities. The applicant shall, if required by the city, post appropriate signs to prohibit the blocking of traffic and/or to prohibit unauthorized or unlawful parking, and any other appropriate signs required by the city.

3.05.12 CLEANUP & DAMAGE

The applicant shall be responsible for all cleanup and trash removal on the event site and in the surrounding area. In addition, applicant shall be responsible for damage to any city property, including but not limited to tables, chairs, benches, trees, shrubbery, flowers, etc. on the event site and in the surrounding area.

3.05.13 DISORDERLY CONDUCT & DISTURBANCES

The applicant and applicant's representatives shall cooperate fully with the security people and law enforcement officers in matters of crowd control, and especially in the event of potential disturbances or disorderly conduct or similar activity.

3.05.14 ALCOHOLIC BEVERAGE REGULATIONS

Applicant shall obey all alcoholic beverage laws and if alcoholic beverages are served, sold or otherwise provided or present, and if "underage" persons are invited or present, applicant shall specifically follow and obey all laws with regard to the separation of "underage persons from those "of age."

3.05.15 DAYS AND HOURS OF OPERATION

Applicant shall operate the events only on the days and during the hours approved by the appropriate city authorities. Unless otherwise specifically approved by the city, no outdoor dances, concerts, or similar entertainment events at which alcoholic beverages will be sold, served, consumed, provided or otherwise present shall not be held on the following days nor during or after the following hours:

- A. Christmas Day
- B. If on Christmas Eve, not after midnight,
- C. Memorial Day, except if the event is held the day or evening before Memorial Day, the event shall not run beyond 1:00 am of Memorial Day.
- D. Sundays, except if the event is held on a Saturday or Saturday evening, the event shall not run beyond 1:00 am of the Sunday following the Saturday event.
- E. If on a Monday, Tuesday, Wednesday or Thursday, the event shall not run beyond 1:00 am of the following morning.
- F. If on a Friday, the event shall not run beyond 1:00 am of the following morning.

G. If on a Saturday, the event shall not run beyond 1:00 am of the following morning.

Outdoor dances, concerts or similar entertainments are generally discouraged on all nights except Friday and Saturday, if the event shall run past 11:00 pm, and then in compliance with the Hill City Sound Ordinance, HC Ord. 10.3.1.

3.05.16 VIOLATION

It shall be unlawful for any applicant or any person acting on behalf of any applicant, or for any other person to violate any provision of any of these ordinance sections that deal with outdoor dances, concerts, or similar entertainment, and the penalty for said violation shall be a Class II misdemeanor, punishable by a fine not to exceed \$200.00 and/or 30 days in jail.

Amended February 18, 2003

**CHAPTER 3.06
BUILDING PERMITS**

3.06.01 GENERAL

For purposes of establishing rules and regulations for the construction, addition, alteration, removal, demolition, equipment, use, occupancy, location and maintenance of building and structures including permits and penalties, the code shall be the certain building code which is known as the International Building Code (IBC), 2006 edition as updated and published by the International Code Council, save and except such portions as are hereinafter elected, modified, or amended of which not less than one (1) copy has been and is filed in the office of the City Building Official of the City of Hill City and the same is hereby adopted and incorporated as fully as if set out at length herein, and from the date of which this ordinance shall take effect, the provisions thereof shall be controlling in the construction of all buildings and other structures within the corporate limits of the City of Hill City.

The permit must be obtained from the City Building Official and must be completed within one (1) year of the issuance of the building permit or a new permit is required.

Any application for a building permit that is for the construction or alteration of a bridge shall indicate how the bridge is secured on one end in case of a flood.

Amended April 3, 2001; November 14, 2005; March 26, 2007

3.06.02 FEES FOR BUILDING PERMITS

There is hereby adopted a formula for purposes of establishing fees for the construction, addition, alteration, removal, demolition, use, occupancy, location and maintenance of buildings and structures including permits and penalties, under that certain building code which is known as the International Building Code 2006 (IBC Section 108, Fees).

The formula as adopted by the City of Hill City is:

Table 1-1, Building Permit Fees: For the First \$500.00 there is no fee; Basic fee is \$ 50.00 for \$501.00 plus \$6.50 for each \$1,000.00 of value or portion thereof up to \$100,000.00 and \$7.00 for each \$1,000.00 of value from \$100,001.00 and greater.

Building permit fees shall be on the estimated value of the completed building or the value of the work being completed in partial construction or remodels. The value shall be determined at the time of application for the building permit by a representative of Community Planning by using the square footage of the space of the building and using a cost amount of seventy-two dollars (\$72) per square foot for all levels above ground and a cost amount of thirty-two dollars (\$32) for basements and garages, whether it shall be attached to the home or a separate structure.

A refund of the amount of difference between the cost paid at the time of application of the permit using the estimated valuation and the assessed value by the County Board of Equalization after completion of the building, shall be granted if applied for by the applicant. The formula for determining the building permit fee shall be reviewed yearly by the Planning and Zoning Commission, preferably at the first meeting of the Commission in February.

There shall be a twenty-five dollar (\$25) fee to move a mobile home in or out of the City and a moving permit must be obtained from the City Building Official in the same manner as the application for a building permit herein.

3.06.03 INSPECTION

There shall be an Inspection Section of the Community Planning Department for the City of Hill City to conduct building inspections and also conduct fire prevention inspections in conjunction with building inspections, using the International Fire Code 2006. Inspections shall be enforced under IBC 2006, Section 109 and Title 9 of the Hill City Ordinances.

Amended February 18, 2003 ; March 26, 2007

3.06.04 APPLICATION

An application for building permit shall be issued by the Building Official on forms provided by that office and it shall be referred to the Community Planning Department for approval. If said application is further submitted to the Planning and Zoning Commission, said application shall be submitted

before 12:00 noon on the Wednesday before the Planning and Zoning Commission meetings which are generally the first and third Monday of each month.

If the Community Planning Department or the Planning and Zoning Commission denies the application for building permit, the permit shall be referred to the city council for consideration at the next city council meeting.

Amended June 26, 2001, January 8, 2002; March 26, 2007

CHAPTER 3.07 EXCAVATION PERMIT

3.07.01 EXCAVATION PERMIT REQUIRED

No person, firm or corporation shall move, remove, store, add, place, or excavate rock, sand, dirt, gravel, clay or other like material (hereinafter excavation or excavate) within private property, public right of ways and/or publicly held easements unless such person, firm or corporation shall first have obtained an excavation permit authorizing the same and complied with all of the terms of this code.

3.07.02 PRIVATE PROPERTY EXCEPTIONS

The provisions of this chapter shall not apply to:

- (1) Excavation for the purpose of a foundation, cellar or basement of some immediately pending superstructure to be erected, built or placed thereon contemporaneously with, or immediately following such excavation, removal or storage; provided a building permit has been issued; for the building to be constructed in connection with the excavation;
- (2) Excavation consistent with a Final Plat and grading plan which has been approved by the City and for which a Development Agreement has been executed and financial sureties provided;
- (3) Excavation within the contiguous boundaries of premises, provided that the amount of material moved, added, and/or removed is less than 100 cubic yards within a twelve-month period.
- (4) Repair of landscaping due to settlement.
- (5) Emergency situations requiring the immediate need to preserve life and/or property or to restore basic utilities such as water, sewer, electrical, and/or telecommunications.

3.07.03

APPLICATION REQUIREMENTS

Original Permit - The Planning & Zoning Commission or their designee shall issue excavation permits. The original permit shall expire ninety (90) days from the date of issuance and may be renewed by the City without public hearing for an additional ninety (90) day period.

Information Required - All applicants for excavation permits shall provide the following information:

- (1) A correct legal description of the property.
- (2) The name, address and telephone number of the applicant, authorized agent, and owner.
- (3) The purpose of the excavation.
- (4) The estimated length of time excavation operations will be ongoing.
- (5) The highways, streets or other public ways within the City, upon and along which the material removed shall be transported and the maximum number of truckloads per day, which will be transported along, said routes, and the proposed method of street cleaning.
- (6) Estimated quantity & type of earthly deposits to be moved, added to or removed from the premises.
- (7) A map or site plan of the proposed excavation.

Fees - With each application, the applicant shall submit the current excavation permit fee adopted in the Schedule of Charges, Fees & Fines.

Insurance - Each application for work being conducted within the City of Hill City, utilizing public infrastructure, public right of way or public easement the applicant shall be responsible for any damage and the following insurance requirements shall be met:

- (1) The permittee shall provide proof of public liability insurance assuring against bodily injury and property damage and indemnifying and holding the City harmless for any such causes of action and costs and expenses, including attorneys fees, incurred therein. Said insurance shall be in the following amounts for general liability, personal injury and property damage:

- (a) Injury or death of one person \$1,000,000.00
- (b) Injury or death to more than one person in a single occurrence \$1,000,000.00

- (c) Property damage \$ 300,000.00

- (2) The permittee shall provide the City a Certificate of Liability listing the City as an additional insured.

3.07.04

MINIMUM REQUIREMENTS

In cases in which the following minimum requirements cannot be met, no permit shall be issued. For all permits issued, the following are minimum requirements for the operation of excavation under this chapter and are deemed to be a condition of the permit:

- (1) South Dakota One Call shall be contacted and excavation information submitted prior to the occurrence of any excavation.
- (2) The slopes or any edge contiguous to the excavation shall not be less than a three (3) feet horizontal to one (1) foot vertical slope, or as otherwise approved by the operation plan.
- (3) All trees, stumps and debris must be disposed of within thirty (30) days by removal or burning, if allowed; or within ten (10) days after notification by the City, whichever is less.
- (4) Any storm or surface water cast into the excavation shall be the responsibility of the permittee. No drainage of such water shall be made by the permittee in such a way as to cause erosion or damage to any adjoining properties.
- (5) The operator shall maintain and operate all equipment in such a manner as to minimize air pollution. Any emission which can cause any damage to health, animals or vegetation or other forms of property, or which can cause any excessive soiling at any point, or any emission of any solid or liquid particles in concentration exceeding the South Dakota Pollution Control Agency Air Quality Regulations, are hereby prohibited.
- (6) Upon termination of the operation of any excavation, the excavation site shall be regraded or modified according to the plan submitted with the application.
- (7) Materials or equipment associated to the excavation shall only be placed upon and/or along highways, streets or other public ways

according to the plan submitted with the application.

- (8) No noise resulting from the excavation shall exceed the noise regulations of the State of South Dakota or the City's noise ordinance, whichever is more restrictive.
- (9) If one (1) or more acres of material will be disturbed, applicable permits in compliance with the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11 shall be obtained.
- (10) The slope of banks of the excavation shall be kept in such a condition so as not to be dangerous because of overhangs, slidings or cave-ins. Upon notice by the City to the permittee, the permittee shall correct any such dangerous condition immediately. In all events, all excavating shall comply with OSHA and other applicable state and federal standards.
- (11) All laws/rules regulating excavation set forth by the South Dakota Department of Environment & Natural Resources shall be observed.
- (12) Land alteration shall in no way adversely affect adjacent private or public properties, and may not obstruct the free flow of water in a natural waterway or public street drain, storm sewer, gutter or ditch.
- (13) Blasting shall be conducted by a certified technician according to the plan submitted with the application.
- (14) The hours of operation of any excavation shall be limited to 7:00 A.M. to 7:00 P.M. daily.
- (15) It shall be the financial responsibility of the permittee for any damage sustained to private or public utilities (electrical, telephone, water, sewer, etc.) while conducting the excavation.
- (16) Permittee shall properly fence any excavation site, or portion of any excavation site, which may be a hazard or create a danger to the public.
- (17) Upon completion of the operation, the applicant shall properly drain and level any excavation and restore the contour of the site to a condition as indicated on the plan submitted.
- (18) The permittee shall submit to the City, a detailed map of the highways, streets, roads and other public ways within the City upon

and along which the material removed shall be transported. The permittee shall be responsible for any damage to said roads caused by its operations.

- (19) The permittee shall submit in writing, the estimated quantity of material to be move, added and/or removed, the anticipated route over which trucks will travel, the beginning and completion of time for operation. It is understood that while the information may not be able to be submitted with certainty, the permittee must make his best estimate of said removal operation. If the quantity of material to be removed is for any reason likely to significantly exceed the original estimated amount, the permittee shall notify the City of such change in estimated quantity as soon as such information is available to it.

3.07.06 INSPECTIONS

The City may elect to inspect each excavation site at times determined appropriate by it. By applying for a permit under this chapter, the permittee has agreed to permit and cooperate in such inspections. The permittee and/or owners of the premises shall be given written notice of a violation of this permit and shall remedy such violations within the time specified by written notice from the City. Any violation not remedied within ten (10) of days of notification shall result in the automatic revocation of the excavation permit.

3.07.07 REVOCATION

Excavation permits may be revoked upon violation of any conditions of said permit or ordinance. Said revocation shall be effective immediately upon written notice of the same by the City to the permittee. Permittee shall have the right of appeal to the City Council upon filing a notice of appeal within ten (10) days of the revocation.

3.07.08 VIOLATION

Violation of this Ordinance and the permits issued hereunder is a Class II misdemeanor. Every day of violation is a separate violation. In addition to any criminal penalties, the City reserves to itself the right to seek appropriate injunctive or other equitable relief in the case of violation.

3.07.09 EFFECT

This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

**CHAPTER 3.08
PEDDLERS & SOLICITORS**

3.08.01 DEFINITIONS

Peddler(s) - A person engaged in the selling of a personal property by going about from place to place or house to house to sell the same and who carries with him such property for delivery at time of sale is a peddler.

Solicitor(s) - A person engaged in going about from place to place or house to house soliciting orders for, or offering to sell personal property for future delivery is a solicitor.

**3.08.02 GOING UPON PRIVATE RESIDENCE PROPERTY BY SOLICITORS
AND PEDDLERS WITHOUT INVITATION DECLARED TO BE A
NUISANCE; EXCEPTION**

The practice of going in and upon private residence property by solicitors or peddlers who have not previously been requested or invited so to do by the owner or occupant thereof for the purpose of soliciting orders for the sale of personal property or offering to sell personal property for future delivery or for the purpose of selling or disposing of personal property thereon, is declared to be a nuisance and is prohibited, and no person licensed as a solicitor or peddler hereunder shall thereby be deemed authorized to go upon any private residence property except with the prior request, invitation, or consent of the owner or occupant thereof.

This section shall not apply to the distribution of sale of religious, political, economic or educational tracts, pamphlets, papers or periodicals where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to the distribution or sale of personal property where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to the peddling or soliciting of orders for any agricultural product or article raised or manufactured by such peddler or solicitor in this State, except that no person shall go upon any private residence property for any such purposes where the owner or occupant thereof has requested such person not to come thereon for any of such purposes or has placed on said premises in a conspicuous position near the entrance thereof a sign indicating that the occupants of said premises do not desire distributors, solicitors, or peddlers of any such personal property, articles or publications, or to have any person come on said premises for any of such purposes.

3.08.03 EXCEPTIONS TO LICENSING AND BONDING PROVISIONS

The provisions of this Ordinance with reference to the bonding and licensing of peddlers and solicitors shall not apply to traveling salesmen doing business exclusively with retailers, merchants, manufacturers, jobbers or with

public officials, nor to the peddling or soliciting of orders for any agricultural products or manufactured goods raised or manufactured in this State by the person selling or soliciting the sale of the same, nor to any solicitor who does not demand or accept payment or any deposit in advance, nor to any solicitor whose terms do not require payment of any money or deposit on delivery without the privilege of examination, nor to the distribution or sale of newspaper, nor to distribution or sale of personal property where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to the distribution or sale of religious, political, economic or educational tracts, pamphlets or periodicals where the proceeds are to be used exclusively for religious, charitable or benevolent purposes.

3.08.04 LICENSE FEE REQUIRED

No person shall deal as a peddler or solicitor as defined by this Ordinance without having procured license as herein required and no two or more persons shall deal under the same license as partners, agents or otherwise. No such license shall be issued to any person unless such person shall have resided in this state for a period of at least six months immediately preceding the issuance of such license. The license fee for a solicitor or peddler shall be \$10.00 a day.

3.08.05 APPLICATION FOR LICENSE

The application for license shall state that name of the applicant, permanent address of applicant, length of residence in the State, whether he transacts business for himself or someone else and if someone else the name and address of person, firm or corporation he represents, the nature and character of the property to be sold, whether he sells and delivers the property directly to the purchaser or whether he solicits or takes orders for it by carrying samples or catalogs, the manner in which he intends to use in traveling, copies of the contracts and agreements he intends to make with the customers and how he intends to operate within the City.

3.08.06 BOND REQUIRED FROM SOLICITORS AND PEDDLERS

Every solicitor or peddler, before receiving a license shall file in the office of the Finance Officer a bond in the penal sum of \$500.00 for the faithful performance and obligation of such solicitor or peddler arising in connection with his business as such, and for the payment of all claims for damages for which he may become liable through fraud, deceit or otherwise in the course of his business as such solicitor or peddler.

3.08.07 DISTRIBUTION OR SALE OF OFFENSIVE PULICATIONS OR ARTICLES PROHIBITED

No person shall distribute or sell or attempt to distribute or offer to sell any publication, pamphlet, paper, periodical, written, typed, or printed matter, or

article or thing which may reasonably tend to incite riot or other public disorder or which advocated disloyalty to or the overthrow of the government of the United States or of this State by means of any artifice, scheme or violence or which urges any unlawful conduct or encourages or tends to encourage or which is done under such circumstances or in a manner as to cause or tend to cause a breach of the public peace or good order of the community, or which is offensive to public morals or decency or which contains blasphemous, offensive, libelous or scurrilous language.

CHAPTER 3.09 LICENSING AND REGULATION OF TRANSIENT MERCHANTS

3.09.01 PEDDLING FROM VEHICLES ON STREETS

No person shall sell or offer for sale any goods or merchandise from a cart, wagon, automobile, truck or other vehicle in the streets or thoroughfares of the City. This Section does not apply to the sale or delivery of farm or garden products by the growers of their family, nor does it apply to the drayage or the delivery of goods sold in the regular course of an established business. Nothing in this paragraph shall prohibit the City from entering into a contract for the sale of ice cream and sundries for immediate consumption on the terms and conditions agreed to by the City Council.

3.09.02 PEDDLING IN PARKS

It shall be unlawful for any peddler or other person, excepting a person occupying a portion of the park under a valid concession agreement, to sell or offer to sell, to any person within any municipal park of the City, any goods, wares, merchandise, books, pictures, novelties, souvenirs or trinkets or any other article of commerce and trade, including goods of his own production or manufacture.

3.09.03 LICENSING OF TRANSIENT MERCHANTS

A. Definitions

For the purpose of this Section, a "transient merchant" is any person, firm or corporation, partnership or association, or agent thereof, transacting a temporary business where goods other than alcoholic beverages are exposed for wholesale or retail sale at any place in this City (under no circumstances may alcoholic beverages be sold under a transient license). A "temporary business" is one established for temporary operation only. A business operated more than three (3) months in one place by the same person shall be deemed a "permanent business," but one discontinued within three (3) months thereafter shall prima facie be presumed a temporary business, and its operator a transient merchant.

B. Transient Merchant's License Required.

No person shall engage in any business as a transient merchant without a transient merchant's license for each structure, stand, tent, car, vehicle, booth or place used by such merchant.

C. Application.

To obtain a license, a transient merchant shall file in the City Finance Office a verification application stating his or her name and residence; description and identification of the place in which he or she proposes to do business; description of the goods he or she intends to handle; the date he or she acquired such goods; the name and address of the last person from whom he or she acquired them; and the place from whence they were last moved; and proof of valid and current South Dakota sales tax license.

D. Fee and Duration of License.

The Transient Merchant's License fee shall be Six Hundred Dollars (\$600.00) for each 12-day period. The City Finance Officer shall note on the license the time period for which it is effective and the location of the toilet facilities associated with said license. The Transient Merchant's License fee for less than a 12-day period shall be One Hundred fifty (\$150.00) per day.

E. Toilet Facilities.

It shall be the responsibility of any landowner or business who allows transient merchants on his/her property (that is to say, one or more contiguous lots) to provide for toilet facilities, and said owner or business shall provide a porta potty for each two transient merchant enterprises located on said property (of one or more contiguous lots). That is to say, for each two transient merchant licenses, there shall be provided one porta potty on the same premises as the transient merchant is located. If there is only one transient license holder located on said property, then said owner or business shall provide for toilet facilities within his/her own business or structure, and if there is none, then a porta potty shall be provided.

Amended September 23, 2003, February 28, 2005

F. Issuance.

On filing the application and payment of the fee prescribed in this Section, he City Finance Officer shall issue a license to the applicant to do business at the place described in the application, and for the time which the license fee has been paid in advance.

G. Sanitation.

Transient Merchants shall keep the grounds their stands are located on clean and the area must be returned to its original condition when vacating the location. Failure to keep the area clean can be cause for revocation of the Transient Merchant's License. Merchants should check with the City's Public

Works Department for the location of dumpsters to be used for disposal of trash.

H. Location.

Transient Merchant booths may be located on any piece of private property, but sidewalks must have a minimum of 5 feet width of unobstructed space for the clear flow of pedestrian traffic. Individual property owners have the right to negotiate terms for the rental of their property and also retain the right to refuse having any Transient Merchants set up on their property. A Transient Merchant operating inside the building of an established or permanent business is not required to have a Transient Merchant's License.

I. Exemptions from Section

This Section shall not apply to the following types of sales and activities:

1. The buying and selling of goods by cooperative associations purchased in car lot for personal use of its members.
2. To sales where the proceeds are to be used exclusively for religious, charitable or benevolent purposes; or for special promotions being sponsored by the Hill City Area Chamber or Commerce, such as the Heart of the Hills Arts and Crafts Festival and Kris Kringle Day.
3. To sales to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufactures. A sale will be deemed to have been made for future delivery if the product or services are to be delivered at least 7 days subsequent to the date of the sale.
4. To sales of fruits, vegetables or farm or garden products.
5. Articles manufactured or produced by the person selling or offering the same for sale. Provided, however, if a person is selling items which the person manufacturers or produces and items which the person does not manufacture or produce, then the person shall be required to purchase the Transient Merchant's License required under the provisions of this Ordinance.

For the purpose of this Section, and article shall be deemed to be manufactured or produced by the person selling or offering the same for sale if the value of a person's labor in the manufacture or production constitutes more than 50% of the retail selling price of the product. In order for a person to be exempt from the provisions of this Ordinance, they must sell exclusively articles manufactured or produced by the person selling or offering the same for sale.

CHAPTER 3.10 PAWNBROKERS

3.10.01 DEFINITIONS

A "pawnbroker" shall mean any person, firm or corporation who:

- 1) Engages in the business of lending money on the deposit or pledge of personal property, other than chooses in action, securities or evidence of indebtedness; or
- 2) Purchases personal property with an expressed or implied agreement or understanding to sell it back at a stipulated price.

Any pawnbroker may effect the purchase of secondhand personal property for resale purposes under the terms of this chapter by acquiring any pawn ticket of his own issue by transfer.

3.10.02 LICENSE REQUIRED; FEE; REVOCATION

- 1) It shall be unlawful for any person, firm or corporation to engage in the business of a pawnbroker without first obtaining a license from the City Finance Office. The application for such license shall contain the name and address of the applicant; trade name, if any under which the license is to be exercised; if a partnership, the name and address of each partner; if a corporation, the name and addresses of the officers and shareholders; place of business or location where the license is to be exercised. Any person applying for a pawnbroker's license must, before their application will be considered, come to the Hill City Law Enforcement and furnish adequate identification. No license under this title shall be issued to any person who shall have been convicted of a felony; no license under this title shall be issued to any corporation, one or more officers or directors of which have been convicted of a felony. The annual license fee for a pawnbroker shall be \$25.00, payable in advance.
- 2) A license issued to a licensee under this section who shall violated the provisions of this section shall be revoked by the common council of the City of Hill City after ten (10) days written notice and a public hearing.

3.10.03 BOND

Each pawnbroker doing business in the city shall furnish a good and sufficient bond, with a surety to be approved by the city council, in the sum of One Thousand Dollars (\$1,000.00), conditioned for the faithful observance of

this chapter and conditioned of the safekeeping or return of all articles held in pledge of such pawnbroker.

3.10.04 SEPARATE LICENSE FOR EACH PLACE OF BUSINESS

Any person, firm or corporation conducting several or separate places of business shall pay the license fee and procure a license for each place. The above-mentioned proprietor's license shall be sufficient for all clerks, agents and employees engaged at the place named in the license.

3.10.05 RECORDS REQUIRED

Every pawnbroker shall keep books or records of pawn tickets in a manner satisfactory to the chief of police, where he shall accurately and intelligently enter, in ink, in the English language, at the time of purchasing or receiving any personal property, and after requiring and observing identification from the person seeking to pawn the property, record the following information:

- 1) The name of the person from whom the property is purchased or received, his place of residence and his date of birth.
- 2) A detailed and accurate description of each article.
- 3) The date of transaction.
- 4) The amount necessary for redemption.
- 5) The date when the article is to be redeemed.
- 6) Any mortgage or bill or sale taken, or receipt of pawn ticket given.
- 7) The article's serial number and model number, if any.
- 8) Every pawnbroker shall also record the date of disposition or redemption from pawn of said article or any part or portion thereof. Said disposition report shall be located in the same book and at the same place where the receiving records of said article are located.
- 9) Any person who fails to keep such records or fails to make the required entries therein, or shall intentionally or knowingly make any false or unintelligible entry, or any entry which he has reason to believe is untrue, or who shall fail to make the inquiries necessary to enable him to make such entries or any of them, or who shall fail to produce his records when requested by an officer having authority to examine it, or who shall destroy or willfully permit such records to be destroyed or lost, shall be guilty of a misdemeanor.

3.10.06 INSPECTION OF RECORDS OR LICENSE AND PLEDGED PROPERTY

- 1) The book or records required hereunder shall be open to the inspection of any qualified city, state, county or federal law enforcement officer at any time and upon the demand of such

officer. The pawnbroker shall produce and show any article pledged in connection with any loan.

- 2) The license required for pawnbrokers shall at all times be on display in a conspicuous place and available for inspection by any qualified city, state, county or federal law enforcement officer at any time.

3.10.07 PAWN TICKETS

At the time of receiving a pledge and upon the subsequent renewal of any loan, the pawnbroker shall deliver to the pledgor or his agent a pawn ticket, which pawn ticket shall be correspondingly serially numbered, and shall contain the following information: the name and address of the pawnbroker; a generic description of the pledge with such particular details of description noted whenever possible, in order to distinguish the article or articles; the date of the transaction; the amount, duration and terms of the loan. The pawnbroker may insert on the pawn ticket any other terms, conditions and information that are not inconsistent with the provisions of this chapter.

3.10.08 REPORTS TO LAW ENFORCEMENT

It shall be the duty of every person, firm or corporation licensed as aforesaid to make out and deliver to any law enforcement officer or his designee upon request, a legible and correct copy from the books required hereof, or all personal property and other valuable things received on deposit, and all secondhand articles purchased setting forth the hour when received and the description of the person by whom they were left in pledge or sold.

Any law enforcement officer shall have the power and authority to require such reports to be made in a manner and form subject to his approval.

3.10.09 PURCHASE TO BE HELD THIRTY DAYS; EXCEPTIONS

Any person licensed as a pawnbroker, who shall purchase any new or secondhand goods of any individual not engaged in trade, shall keep the same for inspection for thirty (30) days before the same are sold, except on written release from any law enforcement officer.

3.10.10 PAWNED ARTICLES TO BE HELD FORTY DAYS

Every article of any kind or description which is taken in pawn by a pawnbroker shall be held by the pawnbroker for a period of forty (40) days, during which time the same shall not be shown, either for sale or for inspection to any person, other than a duly qualified city, state or federal law enforcement officer.

3.10.11 EFFECT ON HOLD ORDER

Any authorized law enforcement officer may, by written order, order a pawnbroker to hold any article or articles deposited with or in custody of such pawnbroker for purposes of further investigation by City Law Enforcement. A hold order shall remain in effect for a period of forty (40) days commencing the day on which the hold order is delivered to the pawnbroker. A hold order shall supersede the two previous sections and no sale or other disposition may be made of said article or articles while such hold order remains outstanding, unless released by officers issuing the hold order.

3.10.12 ACCEPTING ARTICLES FROM OTHER THAN LAWFUL OWNER

A pawnbroker who accepts in pledge any article as security for a loan from a pledgor who is not the owner thereof, obtains no property in the article, either by reason of maturation of the loan or by transference of the pawn ticket to the pawnbroker by the pledgor or holder thereof. Ignorance of the fact that the pledged article was lost or stolen shall not be construed to affect the question of title, and if the pawnbroker shall sell such article to a third person, he shall remain liable to the original owner.

3.10.13 UNLAWFUL TRANSACTIONS

It shall be unlawful for any pawnbroker to accept any articles in pawn or purchase any secondhand personal property by acquiring a pawn ticket by transference from any person under eighteen (18) years of age.

3.10.14 CONCEALING ARTICLES TO PREVENT IDENTIFICATION

No pawnbroker shall conceal, secret or destroy for the purpose of concealing, any article purchased or received by him for the purpose of preventing identification thereof by law enforcement officers.

3.10.14 SUSPENSION OF LICENSE

Any license issued under the provisions of this chapter may be suspended for a prescribed period, not to exceed sixty (60) days, in the event of a failure on the part of the licensee to comply with the provisions of this chapter or upon the recommendation of the city finance officer.

3.10.15 EXAMINATION OF PREMISES BY LAW ENFORCEMENT OFFICER

No pawnbroker or any other person shall refuse, resist or attempt to prevent any law enforcement officer with or without warrant, from examining the licensed premises occupied by the pawnbroker for the purpose of discovering stolen property.

**CHAPTER 3.11
BURIAL IN CEMETERY**

3.11.01 VAULT REQUIREMENT

No person four (4) years of age and over shall be buried in the cemetery, unless the casket is enclosed in either a concrete, steel, fiber glass, or equally hard material container and said container shall have a minimum of forty (40) inches of soil covering.

3.11.02 DEEDS

Deeds for burial within the cemetery of Hill City shall be issued by the finance office, and records of same shall be kept in said office, and they may be inspected in the same manner as any other city record.

**CHAPTER 3.12
FLOOD DAMAGE PREVENTION**

3.12.01 STATUARY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

A. STATUTORY AUTHORIZATION

The Legislature of the State of South Dakota has in (statutes) SDCL 9-36 and 7-18-14 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Common Council of the City of Hill City, South Dakota does ordain as follows:

The City of Hill City elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid act, provides that areas of the town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. The National Flood Insurance Program was broadened and modified with the passage of the Flood Disaster Protection Act of 1973 and other legislative measures. It was further modified by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Program is administered by the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security.

B. FINDINGS OF FACT

- 1) The flood hazard areas of the City of Hill City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- 2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.

C. STATEMENT OF PURPOSE

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

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas; and
7. Insure that potential buyers are notified that property is in a flood area.

D. METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

4. Control filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

3.12.02 DEFINITIONS

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

Area of future-conditions flood hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent (1%) or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood-related erosion hazard is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area; in preparation for publication of the FIRM, Zone E may be further refined.

Area of special flood hazard is the land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

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

Base Flood Elevation (BFE) is the water surface elevation of the one percent (1%) annual chance flood. The height in relation to mean sea level

expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building--see structure.

Conditional Letter of Map Revision means FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations, or the Special Flood Hazard Area. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Erosion means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

Existing construction means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing structures--see existing construction.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

Flood elevation determination means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

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

Flood Insurance Study or Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood plain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of "flooding").

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway--see regulatory floodway.

Floodway encroachment lines mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - By an approved state program as determined by the Secretary of the Interior or

- Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Amendment means an official amendment, by letter, to an effective map. A LOMA establishes a property's location in relation to the Special Flood Hazard Area and are usually issued because a property has been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation.

Letter of Map Revision means FEMA's modification to an effective Flood Insurance Rate Map, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations, or the Special Flood Hazard Area.

Letter of Map Revision Based on Fill means FEMA's modification of the Special Flood Hazard Area shown on the Flood Insurance Rate Map based on the placement of fill outside the existing regulatory floodway.

Conditional Letter of Map Revision means FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations, or the Special Flood Hazard Area. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

Levee means a man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Sec. 60.3.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Special flood hazard area: see “area of special flood hazard”.

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes, means:

1. A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
2. A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

3. A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
2. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Variance means a grant of relief by a community from the terms of a flood plain management regulation.

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

3.12.03

GENERAL PROVISIONS

A. LANDS TO WHICH THIS ORDINANCE APPLIES

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Hill City, South Dakota.

B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Pennington County, South Dakota and Incorporated Areas" dated June 3, 2013, with accompanying Flood Insurance Rate Maps, dated June 3, 2013 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

C. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be required to ensure conformance with the provisions of this ordinance.

D. COMPLIANCE

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

E. ABROGATION AND GREATER RESTRICTIONS

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

F. INTERPRETATION

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

1. considered as minimum requirements;
2. liberally construed in favor of the governing body; and
3. deemed neither to limit nor repeal any other powers granted under State statutes.

G. WARNING AND DISCLAIMER OR LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes.

This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

H. SEVERABILITY

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.

3.12.04 ADMINISTRATION

A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Mayor shall appoint and the Common Council confirm a Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

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

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
2. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
3. Review, approve or deny all applications for development permits required by adoption of this ordinance.
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
6. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, prior to any alteration or relocation of a

- watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
7. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
 8. When base flood elevation data has not been provided in accordance, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of this ordinance.
 9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
 10. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community **first** applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

C. PERMIT PROCEDURES

Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard.

Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
3. A certificate from a registered professional engineer or architect that the nonresidential flood proofed structure shall meet the flood proofing criteria of Article V, Section B;

4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
5. Maintain a record of all such information.

Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

- The danger to life and property due to flooding or erosion damage;
- The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- The danger that materials may be swept onto other lands to the injury of others;
- The compatibility of the proposed use with existing and anticipated development;
- The safety of access to the property in times of flood for ordinary and emergency vehicles;
- The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- The necessity to the facility of a waterfront location, where applicable;
- The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- The relationship of the proposed use to the comprehensive plan for that area.

D. VARIANCE PROCEDURES

The appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this ordinance:

- Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency and the State Office of Emergency Management upon issuing a variance.
- Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C of this Article have been fully considered. As the lot size

increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.
- Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- Prerequisites for granting variances:
 - Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - Variances shall only be issued upon:
 - 1) showing a good and sufficient cause;
 - 2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - 3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- c) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - the variance procedure criteria outlined are met, and
 - the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

A CLOMR is required only for those projects that will:

1. BFE/no floodway (demonstrate <1.0 ft increase)

A project on a stream or river that has been studied through detailed hydrologic and hydraulic analyses and for which Base

Flood Elevations (BFEs) have been specified, but a floodway has not been designated. If the developer/property owner/community proposes to allow development that would result in more than a 1.0 foot increase in the BFE, a CLOMR must first be obtained.

44 CFR 60.3 (c)(10): Result in an increase in the base flood water-surface elevation (WSEL) of greater than 1.00 foot for streams with BFEs specified but no regulatory floodway designated.

2. BFE/floodway (no-rise)

The second situation requiring a CLOMR is for a project on a stream or river for which detailed analyses have been conducted and BFEs and a floodway have been designated. If the community proposes to allow development totally or partially within the floodway that would result in any (greater than 0.0 foot) increase in the BFE, a CLOMR must be obtained.

44 CFR 60.3 (d)(3): Result in any base flood WSEL increase from proposed construction within a regulatory floodway.

3.12.05 PROVISIONS FOR FLOOD HAZARD REDUCTION

A. GENERAL STANDARDS

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

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

B. SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided the following provisions are required:

1. **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standards of this ordinance are satisfied.
2. **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be maintained by the Floodplain Administrator.
3. **Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

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

4. Manufactured Homes -

- Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- In A-1-30, AH, and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at or above the Base Flood Elevation; OR the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

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

- a) be on the site for fewer than 180 consecutive days,
- b) be fully licensed and ready for highway use, or

c) meet the permit requirements of Article IV, Section C, and the elevation and anchoring requirements for "manufactured homes" of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

C. STANDARDS FOR SUBDIVISION PROPOSALS

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
3. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser.
4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

D. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)

Located within the areas of special flood hazard established in 3.12.03, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
2. All new construction and substantial improvements of **non-residential** structures;
 - a) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth

number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;

b) together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in 3.12.04, Section C (1)a., are satisfied.
4. Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

E. FLOODWAYS

Floodways located within areas of special flood hazard established in Article III, are extremely hazardous areas due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- Designate a regulatory floodway which will not increase the Base Flood level more than 1 foot.
- Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- All new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V in this ordinance.
- Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community **first** applies for a conditional FIRM and floodway revision through FEMA.

F. PENALTIES FOR NONCOMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance

and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a class two misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than 30 days in county jail, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Hill City from taking such other lawful action as is necessary to prevent or remedy any violation.

CHAPTER 3.13
HILL CITY COMMUNITY ANTENNA TELEVISION (“CATV”) ORDINANCE

THE CITY OF HILL CITY, BY AUTHORITY OF SDCL 9-35 *et.seq.*, SHALL MAINTAIN EXCLUSIVE JURISDICTION BY THIS ORDINANCE TO REGULATE, PROHIBIT, AND CONSENT TO THE CONSTRUCTION, INSTALLATION, OPERATION, AND MAINTENANCE OF CATV SYSTEMS WITHIN CORPORATE LIMITS OF HILL CITY. CITY MAY GRANT TO ANY PERSON OFFERING A CATV SYSTEM (“PROVIDER”) THE NONEXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, AROUND, ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE CITY OF HILL CITY, SOUTH DAKOTA, AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, POLES, LINES, CABLES, WIRES AND OTHER APPARATUS OR DEVICE FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION, BY CABLE OR OTHER MODE, OF TELEVISION AND NON-TELEVISION SIGNALS (SUCH NON-TELEVISION SIGNALS TO INCLUDE BUT NOT BE LIMITED TO FM RADIO PROGRAMMING, HIGH-SPEED INTERNET, AND TELEPHONY) TO ENABLE SALE BY PROVIDER OF ITS CATV SERVICE TO INHABITANTS OF SAID CITY AND OTHER VARIOUS PURPOSES, FOR A PERIOD NOT TO EXCEED TWENTY (20) YEARS REGULATING THE SAME AND PROVIDING FOR COMPENSATION TO THE CITY AND PRESCRIBING PENALTIES FOR VIOLATION. THE PURPOSE OF THIS ORDINANCE IS OTHERWISE TO DETAIL THE BASIC REQUIREMENTS FOR A FRANCHISE AND THE TERMS AND CONDITIONS FOR ANY OTHER CONTRACTUAL ARRANGEMENT THEREAFTER DEEMED APPROPRIATE AND CONSISTENT WITH STATE AND FEDERAL LAW.

3.13.01 DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and

not merely directory.

1. "CATV" OR "CATV System" or "System" means "Community antenna television system," which is further defined as a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or non-television, radio or other signals directly or indirectly off-the-air and transmit them to subscribers for a fee.
2. "Basic Cable Service" means the service tier which includes but is not limited to the retransmission of local broadcast, satellite or other signals.
3. "Cable operator," any person who provides cable service over a cable system;
4. "Cable service," the transmission to subscribers of video programming or other programming service and the subscriber interaction, if any, which is required for the selection or use of such video programming or other programming, communication or internet service;
5. "Cable system," a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service to multiple subscribers within a community. The term does not include a facility that serves subscribers without using the public right-of-way; a facility of a telecommunications company that provides telecommunications service as defined and regulated by SDCL chapter 49-31, except to the extent that the facility is used to transmit video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
6. "Cable Television Reception Service" means the delivery by the Franchisee to television receivers (or any other suitable type of electronic terminal or receiver of the electronic signals and other communications services carried over the Cable System.
7. "City" is the City of Hill City, South Dakota.
8. "Council" is the City Council of Hill City, South Dakota.
9. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components or devices which deliver to subscribing members of the public various communications services including but not limited to television, internet, radio and telephone.
10. "FCC" shall mean Federal Communications Commission.
11. "Franchise," an authorization, established by ordinance, issued by a franchising authority, which authorizes the

- construction and operation of a cable system;
12. "Franchisee," any person granted a Franchise pursuant to the authority of this ordinance and otherwise in accordance with state or federal laws for the construction, maintenance and operation of a cable system;
 13. "Franchising authority," a municipality;
 14. "Other programming service," information that a cable operator makes available to all subscribers generally;
 15. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
 16. "Public, educational, or governmental access facilities," channel capacity designated for public, educational, and governmental use and the facilities and equipment for the use of such channel capacity;
 17. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance or under a subsequent Franchise grant.
 18. "Video programming," programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

3.13.02 GRANT OF NON-EXCLUSIVE AUTHORITY

1. The grant of any Franchise by the City to any Franchisee shall be for the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City of Hill City, South Dakota, and subsequent additions thereto, towers, poles, lines, cables, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation in the City of a cable system, for the purpose of transmission and distribution of signals, including but not limited to audio, visual, electronic, electric impulse, and digital in order to furnish television and radio programs and various other communications services to the public by what is commonly called a Community Antenna Television System, for a period not to exceed twenty (20) years.
2. The right to use and occupy said streets, alleys, public ways and places for any purpose stated herein or which may be set forth in any contractual arrangement hereafter shall not be exclusive.

3.13.03 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Franchisee shall, during the term hereof, except in those areas which have been preempted by the Cable Communications Policy Act of 1984, or acts amendatory thereto, or which are regulated by the FCC, be subject to all lawful exercise of the regulating and police powers of the City.

3.13.04 TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial limits of the City and to any additional areas as may be specifically set forth in any contractual arrangement with Franchisee.

3.13.05 LIABILITY AND INDEMNIFICATION

Any Franchisee shall, at all times, keep in effect insurance coverages for Workmen's Compensation, Property Damage Liability, General Commercial Liability and such other insurances as are deemed by the City to be reasonable and appropriate under the specific terms of a Franchise agreement and authorization.

Any Franchisee shall be required to indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workman's Compensation law which may arise out of the erection, maintenance, presence, use or removal of said attachments or poles within the City, or by any act of Franchisee, its agents or employees. Franchisee shall carry insurance in amounts sufficient to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage, which amounts shall be established by the Franchise Agreement terms.

3.13.06 TECHNICAL STANDARDS

Franchise authorizations shall be governed by technical standards established by the FCC.

3.13.07 OPERATION AND MAINTENANCE OF SYSTEM

1. A Franchisee shall be required to render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
2. All service requests and complaints shall be responded to within 24 hours of receipt.

3.13.08 SERVICE TO SCHOOLS AND CITY

The Franchisee shall provide to the City and to all public and parochial school buildings within the City, one connection to each City and school building, for education purposes and at no cost to the City or the public or parochial school system, upon request. Each such connection shall be made such that all services available through Franchisee's Cable System will be delivered to all sets or receiving device connected within each building.

The Franchisee shall allocate one television channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Franchisee for full-time use of the channel, Franchisee shall have the right to use that portion of the channel capacity that is not being used by the City. Franchisee shall have a reasonable period of time after notification to vacate its use of the channel. Franchisee shall assist the City in obtaining the necessary license and frequency clearance to enable the City to use said channel.

3.13.09 EMERGENCY USE OF FACILITIES

In the case of any emergency or disaster created by an act of God, the Franchisee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster if the City owns equipment which can override Franchisee's system.

3.13.10 SAFETY REQUIREMENTS

The Franchisee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

3.13.11 LIMITATIONS OF RIGHTS GRANTED

Any grant of a Franchise may contain provisions limiting certain rights of Franchisee under certain circumstances as may be established from time to time in more specific terms in a contractual arrangement with Franchisee.

3.13.12 OWNERSHIP AND REMOVAL OF FACILITIES

All cable and passive equipment for cable television reception or internet service or any other service provided under the Cable System that is installed by Franchisee at a subscriber's location and not purchased or owned by subscriber shall remain the property of Franchisee and Franchisee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Franchisee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

3.13.13 TRANSFER OF FRANCHISE

The Franchisee shall not assign any Franchise granted to another person without prior approval of the City Council.

3.13.14 PAYMENT TO THE CITY

During the term of the rights granted hereunder, and so long as the Franchisee operates said System, the Franchisee shall pay compensation to the City in an amount to be established and set forth from time to time in the Franchise documents but which amount shall be determined to be a percentage of annual total gross receipts of the Cable System.

In addition to the amount payable by the Franchisee to the City, Franchisee shall also pay an annual fee in an amount to be established by the City Council at the time of the granting of the Franchise, payable in advance for rent for the location of its equipment or structures and this amount shall be the only amount otherwise payable for all of its rights under the Franchise for the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of any other occupational tax.

Notwithstanding the annual gross receipts fee or in lieu of tax payable hereunder, if the Franchisee is legally obligated to collect or pay any sales tax or other taxes, the Franchisee shall have the right to charge the subscribers an additional amount equal to such tax.

3.13.15 RATES

1. Franchisee shall at all times maintain on file with the City Finance Officer a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including installation charges. Before making any changes in the rates and charges to subscribers for basic CATV service, Franchisee shall file in writing with the City Finance Officer a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change for information only. Said rates shall be determined according to the FCC Rules and Regulations regarding rates.
2. This provision does not limit the right of Franchisee to pass along to the subscribers state and local sales tax, programming cost increase or any specific copyright fees.
3. This section is not applicable to rates for premium or pay service.
4. The monthly rate set forth in subsection 1 above shall be payable in advance.
5. The Franchisee shall not discriminate in rates between customers of the same category except to the extent permitted

by the Cable Communications Policy Act of 1984 and FCC regulations and any acts amendatory thereto.

3.13.16 MISCELLANEOUS

1. Franchisee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, must be approved by all appropriate governing or regulatory bodies.

3.13.17 MODIFICATION OF FCC RULES

Any modification or amendment of the rules of the FCC shall, to the extent applicable, be considered part of this Ordinance as of the effective date of such amendment, and shall be incorporated herein by specific amendments within one (1) year from the effective date of the amendment or at the time of the FCC's amendment or at the time of renewal of this Ordinance, whichever occurs first.

3.13.18 UNAUTHORIZED CABLE USE

It shall be unlawful for any person or person's to obtain any cable television reception service, internet service or any other service from Franchisee, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of Franchisee, unless the same is done with the prior written permission of the Franchisee. A violation of this section is a Class 2 misdemeanor.

3.13.19 SEVERABILITY

If any Section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is superseded or preempted by FCC regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.