

City of Winner, South Dakota

Ordinances

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CHAPTER 1: DEFINITIONS

Terms that are not defined shall have their ordinary accepted meanings within the context with which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, ©1981, shall be construed as providing ordinary accepted meanings.

For purposes of this Ordinance, certain terms are defined as follows:

Words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number. Words used in the masculine gender include the feminine and the feminine the masculine. The word "shall" is mandatory and not directory. The word "may" is permissive. The word "persons" includes any person, firm, partnership, association, corporation, company, organization of any kind, or any other legally recognized entity

Abandoned Motor Vehicle - Any motor vehicle that is left unattended on any public street, alley, public place, or parking lot within the City for a longer period than forty-eight (48) hours without the owner or person in charge notifying the City police department and making arrangements for the parking of such motor vehicle. However, a motor vehicle is not abandoned when it is parked next to a home where the occupant or owner of said motor vehicle is living or visiting. The above definition of an abandoned motor vehicle is intended to apply to those motor vehicles that have been abandoned by the owner, person in charge, or occupant thereof.

Acrobatic Flying - Any intentional aircraft maneuver or stunt not necessary to air navigation or operation of aircraft in such manner as to endanger human life or safety by the performance of unusual or dangerous maneuvers.

Aircraft - Any aero plane, airplane, gasbag, flying machine, balloon, any contrivance now known, or hereafter invented, used, or designed for navigation or flight in the air.

Airport - The Winner Municipal Airport.

Airport Hazard - Any structure or tree or use of land which obstructs the air space required for the flight of aircraft in landing to taking off at the Airport or is otherwise hazardous to such landing or taking off of aircraft.

All Terrain Vehicles - Any engine driven vehicle of a type which utilizes at least two (2) wheels and is designed for the purpose of off highway traffic, but does not include duly licensed four-wheel drive vehicles or duly licensed motorcycles or motorbikes.

Appeal - A request for a review of the City Engineer's interpretation of any provision of this Ordinance or a request for a variance. "Area of shallow flooding" means a designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard - The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year.

Arterial Street - A street upon which through traffic is permitted.

Basic Cable Service - The service tier, which includes the retransmission of local broadcast signals.

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

Biochemical Oxygen Demand (BOD) - The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed in milligrams per liter.

Building - Any structure designed or intended for the support, enclosure, shelter, or protection of persons or property.

Building Code - The Uniform Building Code promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

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

Building Official - The City health officer, the fire chief, building inspector, or any other City official authorized by the City of Winner jurisdiction with the enforcement of this code.

Building Sewer - The extension from the building drain to the public sewer to other place of disposal, also called house connection.

Business Building - Any structure, public or private, that is adapted for occupancy for:

- A. Transaction of business;
- B. Rendering of professional services;
- C. Amusement;
- D. The display, sale, or storage of goods, wares, or merchandise; or
- E. The performance of work or labor, including but not limited in its application to:
 - 1. Hotels, rooming, and apartment houses
 - 2. Office buildings;
 - 3. Public buildings;
 - 4. Stores;
 - 5. Theaters;
 - 6. Markets;
 - 7. Restaurants;
 - 8. Grain elevators;
 - 9. Abattoirs;
 - 10. Warehouses;
 - 11. Work shops;
 - 12. Factories; and
 - 13. All out buildings, sheds, barns, and other structures and premises used for business purposes.

Business District - The territory contiguous to a street when fifty (50) percent or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business.

Cable Television Reception Service - The delivery by the Grantee to television receivers (or any other suitable type of electronic terminal or receiver) of the electronic signals and other communications services carried over the system.

Cable Television System or Cable System - A system utilizing certain electronic and other components that deliver various communications services to subscribing members of the public.

City - The City of Winner, Tripp County, South Dakota.

Combined Sewer - A sewer intended to receive both wastewater and storm or surface water.

Commercial Aeronautical Activity - The use of any aircraft for hire, aerial photography, rental of space for aircraft storage, for crop spraying or dusting, flight training activity, aircraft charter and taxi, air ambulance service, aircraft engine and accessory maintenance, including sale of parts for engines and airframes and sale of accessories, aircraft rental and sales, and aircraft storage, gasoline and lubricant sales.

Council - The City Council of Winner, Tripp County, South Dakota.

Cross Walk - That part of a street designated or set apart as a cross walk from one side of a street to the other for the use of pedestrians.

Curb - The extreme edge or lateral boundary of a roadway whether marked by curbing or not so marked.

Dangerous Building - Any building or structure deemed to be dangerous under the provisions of Section 13.4.09 of this Ordinance.

Development - 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 operation.

Driver - The rider, driver, or leader of a horse, and the driver or operator of a vehicle.

Easement - An acquired legal right for the specific use of land owned by others.

Existing Mobile Home Park or Mobile Home Subdivision - A parcel (or contiguous parcels) of land divided into two (2) or more mobile home lots for rent or sale for which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before June 21, 1988.

Expansion to Existing Mobile Home Park or Mobile Home Subdivision - The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

FCC - Federal Communications Commission.

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

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

- A. The overflow of inland or tidal waters; or

B. The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Hazard Boundary Map (FHBM) - An official map of a community, issued by the Federal Insurance Administration, where the boundaries of the areas of special flood hazards have been designated as Zone A.

Flood Insurance Rate Map (FIRM) - An official map of a community, on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study - The official report provided by the Federal Insurance Administration. The report contains flood profiles, as well as the Flood Hazard Boundary-Floodway Map and the water surface elevation of the base flood.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Garbage, Sanitation - All putrescible wastes, except sewage and body wastes, including vegetable wastes, animal offal and carcasses of dead animals, but excluding recognizable industrial by-products, and shall include all such substances from all public and private establishments and from all residences.

Garbage, Sewer - The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

Genital Parts - See Sexual.

Grantee - Mid-continent Cable Systems Company of South Dakota or anyone who succeeds Mid-continent Cable Systems Company of South Dakota.

Habitable Floor - Any floor unusable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor."

Housing Code - The Uniform Housing Code promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

Industrial Wastes - The wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.

Inspector - The building and zoning inspector or agent who performs under any zoning or building ordinances of the City.

Junk Dealers - Any person, firm or corporation engaged in business as a dealer or trader in junk, old metals, rags, waste paper, green hides, old automobiles or other articles or things which from their worn condition are rendered useless for the purpose for which made.

Junk Yard - Any area, lot or location where two (2) or more unusable automobiles, or old metal, rags, waste paper, green hides or other articles are unloaded or stored.

Junked Motor Vehicle - Any motor vehicle as defined above which does not have lawfully affixed thereto both an unexpired license plate or plates or the condition of which is wrecked, dismantled, partially dismantled, inoperative, or discarded.

Landing Area - The area of Airport used for the landing, taking off, or taxiing of aircraft.

Law Enforcement Officer - Any employee or Officer of the State or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the criminal or highway traffic laws of the State of South Dakota or the City of Winner, within the City.

Liquefied Petroleum Gases - Any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butane (normal butane and isobutene), and butylenes.

Mean Sea Level - The average height of the sea for all stages of the tide.

Mobile Home - A structure, transportable in one or more sections, which is build on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

Motor Vehicle - Any vehicle which is self-propelled and designed to travel on the ground and shall include, but not be limited to automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf carts, campers, and trailers.

Natural Outlet - Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or groundwater.

New Construction – A structure for which the "start of construction" commenced on or after June 21, 1988.

New Mobile Home Park or Subdivision - A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after June 21, 1988.

Nonconforming Use - Any structure, tree, or use of land which does not conform to regulations prescribed in this Ordinance or an amendment thereto, as of the effective date of such regulations.

Occupant - Shall mean the individual or partnership who, or the corporation that, has the use of or occupies any building, either residence or commercial, or a part of a portion thereof, whether the actual owner, tenant or sub-tenant. In the case of vacant buildings, residences or commercial, or any vacant portion of the building, the owner, agent, or other person having custody of said building shall have the responsibility of an "occupant" of said building.

Owner - The actual owner of the building, individual, partnership, or corporation, the agent of the owner in charge of said building, the person to whom any rental upon said building is paid. In the case of building leased under agreement whereby the lessee is responsible for maintenance and repairs, the lessee will in such cases also be considered as the "owner" for the purpose of this Ordinance.

Pawnbroker - Any person who:

- A. Engages in the business of lending money on the deposit or pledge of personal property, other than chose in action, securities, or evidence of indebtedness; or
- B. 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 Ordinance by acquiring any pawn ticket of his own issued by transfer.

Permit - A permit issued under the authority of the City of Winner to carry on any or all of the above "commercial aeronautical activities."

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

Premises - A lot or parcel of land, improved or unimproved, parking areas thereon, walkways, and sidewalks.

Private Property - Any real property within the City that is privately owned and is not public property as defined in this Ordinance.

Properly Shredded Garbage - The wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half ($\frac{1}{2}$) inch (1.27 centimeters) in any dimension.

Public Property - Any street, alley, or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicle travel and shall also mean any other publicly owned property or facility.

Public Sewer - A common sewer controlled by a governmental agency or public utility.

Refuse - Includes all non-putrescible wastes.

Removal Agency - The police department of the City or any public body, private, or non-profit organization which shall be authorized by the City to remove and salvage abandoned, wrecked, dismantled, inoperative, junked, or partially dismantled motor vehicles.

Residence Building - Any structure which is used for the housing and living quarters for not more than one (1) family.

Residence District - The territory contiguous to a street not comprising a business district, when the frontage thereon for a distance of three hundred (300) or more feet is more than fifty (50) percent occupied by dwellings.

Right-of-Way - The privilege of the immediate use of the street.

Roadway - That portion of a highway, improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.

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

Secondhand Goods Dealer - Any person, other than a pawnbroker or dealer, in precious metals and previous gems, who purchases, collects, trades, sells, or deals in the following secondhand goods:

- A. Business machines;
- B. Tape recorders and tapes;
- C. All radio transmitters and receivers;
- D. Musical instruments;
- E. Cameras and camera accessories;
- F. Power tools;
- G. Sporting goods;
- H. Stereos, stereo equipment, and records;
- I. Tools and tool boxes;
- J. Television sets;
- K. Weapons;
- L. Bicycles;
- M. Radios;
- N. Microwave ovens; and
- O. Jewelry.

This definition shall exempt the following transactions:

- A. Any person selling new, unused articles, and any receiving or taking in used articles or trade from the purchasers of the new articles against the purchase price of said new articles with are sold for their market values;
- B. Any person collecting antique items for personal use only;
- C. Casual and occasional sales of used household goods by the owner thereof to the public, on a non-receiving basis, if the seller, at time of sale, is not engaged for profit in the business of selling goods of that or a similar nature; this category includes those sales commonly referred to as "garage sales;"
- D. Any person dealing exclusively in the resale of used automobiles;
- E. Any person that operates a junk yard for wrecked automobiles;
- F. Transactions involving goods sold on consignment; and
- G. Transactions in secondhand goods at stores or events sponsored by nonprofit corporations or associations or fraternal or religious organizations.

Sewage - The spent water of a community. The preferred term is "wastewater."

Sewer - A pipe or conduit that carries wastewater or drainage water.

Sexual - The genitals, pubic area, anus or perineum of any person, or the valva of a female.

Sidewalk - A strip of property lying in front of and between the curb line and property line of the adjoining or abutting lot, piece, or parcel of land within the City.

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

Snowmobile - Any engine driven vehicle of a type which utilizes sled type runners, wheels, or skis with an endless belt tread or similar means of contact with the surface upon which it is operated.

Start of construction - The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; 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 as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home parks or mobile home subdivisions, "Start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

Storm Drain or Storm Sewer - A drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.

Street - Any highway, avenue, boulevard, alley, or other road, square, or public place open to public travel by vehicles, motor or otherwise.

Street Intersection - That part of the street where a street joins another at an angle, whether it crossed the other street or not, and shall include the full width of the street between curb lines, extended, of the intersecting streets.

Structure - Any objects constructed or installed by man, including but without limitation buildings, towers, smoke stacks, and overhead transmission lines and radio antenna.

Subscribers - Those persons contracting to receive cable television reception services.

Substantial Improvement - Any repair, construction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure:

- A. Before the improvement or repair is started; or
- B. If the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition "substantial improvements" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions, or the structure. The term does not, however, include:

- A. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- B. Any alteration of a structure listed on the National Register of Historic Places.

Superintendent - The superintendent of wastewater facilities and/or of wastewater treatment works, and/or of water pollution control of the City or his authorized deputy, agent, or representative.

Suspended Solids - Total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as non-filterable residue.

Tree - Any object of natural growth.

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

Utility Supervisor - Shall mean the duly appointed supervisor, or sanitary officer, or his duly authorized representative.

Variance - A grant of relief to a person from the requirements of this Ordinance that permits construction in a manner otherwise prohibited by this Ordinance where specific enforcement would result in unnecessary hardship.

Vehicle Operator - Every person who operates or who is in actual physical control of a motorized vehicle.

Vehicle Owner - Any person, other than a lien holder, having the property in or title to a motorized vehicle and entitled to the use and possession thereof.

Water - From the City Water Supply System.

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

Wastewater Facilities - The structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

Wastewater Treatment Works - An arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."

Water Course - A natural or artificial channel for the passage of water either continuously or intermittently.

CHAPTER 2: ADMINISTRATION

Article 1 - Wards and Precincts

<u>Section 2.1.01</u>	<u>Area Description</u>
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There shall be three wards in the City and each of the three wards shall be divided into two precincts:

- A. The First Ward shall be the area east of Main Street and South of Third Street and shall be divided into two precincts described as follows:
 - 1. The area south of Third Street and east of a line starting at the intersection of Third Street and Washington Street thence south to the center of the intersection of Sixth Street and Washington Street thence east to the section line lying between Sections 21 and 22 in township 99, North Range 76, West of the 5th P.M., thence south to the southwest corner of the Hospital Addition to the City shall constitute the East Precinct of the First Ward; and
 - 2. The area south of Third Street and east of Main Street, except the area hereinbefore set out as the East Precinct, shall be designated as the West Precinct of the First Ward.

- B. The Second Ward shall be the area west of Main Street and south of Third Street and shall be divided into two precincts described as follows:
 - 1. The area south of Fifth Street West to the City Limits and the West side of Lamro Street South to the City Limits shall constitute the West Precinct of the Second Ward; and
 - 2. The area south of Third Street and west of Main Street, except the area hereinbefore set out as the West Precinct, shall be designated as the East Precinct of the Second Ward.

- C. The Third Ward shall be the area north of Third Street and shall be divided into two precincts described as follows:
 - 1. The area north of Third Street and east of Van Buren Street shall be the East Precinct of the Third Ward; and
 - 2. The area north of Third Street to Lamro Street, South to Fifth Street, and west of Van Buren Street to the City Limits shall constitute the West Precinct of the Third Ward.

Article 2 – Elected Officials

<u>Section 2.2.01</u>	<u>Representation of Wards</u>
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There shall be two (2) representatives from each ward to serve two (2) year terms and elected in alternate years.

Section 2.2.02

Mayor Term and Election

The Mayor shall be elected by the registered City voters for a two (2) year term in the even numbered years.

Article 3 – City Employees

The Council pursuant to SDCL 9-14-1 as amended, establishes the office of City Finance Officer instead of an Auditor and Treasurer.

The Mayor shall appoint, with the approval of the Council, a Finance Officer, who shall perform such duties as .

Section 2.3.02

Chief of Police

The Mayor shall appoint, with the approval of the Council, a Chief of Police, who shall perform such duties as prescribed by the Council, pursuant to SDCL 9-14-1.

Article 3 – City Employees

Section 2.3.01

Finance Officer with Administrative Duties

The Council pursuant to SDCL 9-14-1 as amended, establishes the office of City Finance Officer instead of an Auditor or Treasurer.

The Mayor shall appoint, with the approval of the Council, a Finance Officer with Administrative Duties, who shall perform such duties as prescribed by the Council, pursuant to SDCL 9-14-1.

The Finance Officer with Administrative Duties, in addition to having the normal duties and responsibilities of a Finance Officer, and shall be responsible to the Mayor and Council for the proper administration of the City. The duties as Finance Officer, with Administrative Duties, shall include the following:

- A. Recommend to the Mayor and Council the appointment and removal of department heads. Upon recommendation of a department head, to recommend to the Council the employment, or discharge, any other employee in accordance with City policies or bargaining unit procedures.
- B. Prepare the annual budget and submit it to the Mayor and Council, prior to August 1, together with an explanation of important features, and be responsible for its administration after adoption;
- C. Prepare and submit to the Mayor and Council, as of the end of the fiscal year, an annual report on the finances and administrative activities of the City;
- D. Keep the Mayor and Council advised of the financial condition and future needs of the City with appropriate recommendations;

- E. Oversee the various departments of the City and work in conjunction with the department heads to insure that the policies of the Council are being properly implemented and administered;
- F. Recommend to the Mayor and Council of such necessary measures of the continuation and improvements of administrative services;
- G. Recommend to the Mayor and Council the consolidation of officers, positions, or departments as may be deemed necessary for the imposition of City services;
- H. Attend all meetings of the Council and the City Council and boards, unless excused by the Mayor, and take part in the discussions of all matters presented. The Finance Officer shall be entitled to notice of all such meetings;
- I. Supervise the purchase of all materials, supplies, and equipment for which funds are provided in the budget. No purchase shall be made, contract let, or obligations incurred for any items or service which exceeds the current budget appropriation. No contract in excess of the amount established by state law shall be let except by the Council nor shall any purchase in excess of City policy be made without consent of the Council. The Finance Officer may issue such rules governing purchasing procedures within the administrative organization as the Council shall provide;
- J. Oversee the due enforcement of all laws and ordinances;
- K. Investigate all complaints in relation to matters concerning the administration of the government of the City, and in regard to service maintained by public utilities in the City, and see that all franchises, permits, and privileges granted by the City are faithfully observed;
- L. Keep apprised of rules and regulations of the utility operations of the City and work with Department heads to insure all utility operations are in compliance with state and federal rules and regulations;
- M. Promote the City and its enterprises and represent the Council in addressing public concerns and in embracing the economic development activities in the City;
- N. Perform such duties as may be required by the Mayor and Council, no inconsistent herewith; and
- O. Recommend to the governing body a standard schedule of pay for each appointed office and position in the City service.

The following are examples of duties of the Finance Officer with Administrative Duties:

- A. Attends meetings of the Council, attends meetings between the Council and other governmental officials, business and private citizens, and acts as official representative at public and organization meetings;
- B. Drafts correspondence, including letters, proclamations, prepares reports and Research on special projects as directed;

- C. Maintains liaison and coordinates with executive, legislative, and

Administrative officials at the Federal, State and Local government levels and assists with the review of departmental applications for Federal and State aid;

- D. Directs and advises department heads concerning activities and plans for various departments, transmits requests and recommendations from the Council and Mayor;

- E. Such other duties and functions as are necessary or incidental to the proper performance of the position.

Section 2.3.04

City Superintendent

The Mayor shall appoint, with the approval of the Council, at the first meeting of the new Council in each year, one person, who shall be superintendent of the system of waterworks of the City and who shall, before entering upon the discharge of his duties, give a bond in the sum of two thousand (2,000) dollars, conditioned for the faithful discharge of his duties.

It shall be the duties of the said superintendent:

- A. To see that all ordinances and resolutions of said Council in reference of said systems of waterworks are executed and complied with;
- B. The conditions of all contracts by or with said Council are faithfully complied with;
- C. The assessments of the water rents are duly made, collected, and paid over to the City Finance Officer;
- D. On the first day of each month, present all claims on account of the running and operating of said system of waterworks, and submit the same to the Council with such explanations as to enable the members to act advisedly thereon;
- E. At the first regular meeting of the Council in June and December of each year, make a full and detailed report that includes:
 - 1. The condition and operation of said system of waterworks;
 - 2. The amount of money received on account of each branch indicating:
 - a. From whom the money was received;
 - b. The date the money was received; and
 - c. What service was provided.
 - 3. A statement of all expenditures made in the operation and repairs of said works, of each branch separately.

- F. Supervise all machinery, pipes, hydrants, engines, dynamos, and everything connected with said system of waterworks;
- G. To have the care of and attend to the running and operating of all pumps, engines, and dynamos and other machinery connected therewith;
- H. Perform such other duties as the Council may prescribe.

The salary of the superintendent shall be fixed by the Council.

Section 2.3.05 City Engineer

The Mayor shall appoint, with the approval of the Council, a City Engineer, whose duties shall include, but are not limited to:

- A. Review all development permits to assure that the permit requirements of this Ordinance have been satisfied;
- B. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies from which prior approval is required;
- C. Assure that maintenance is provided within the altered or relocated portion of said whatever course so that the flood carrying capacity is not diminished;
- D. Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood proofed;
- E. Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood proofed;
- F. When flood proofing is utilized for a particular structure the City Engineer shall obtain certification from a registered professional engineer or architect;
- G. 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 City Engineer shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article;
- H. When base flood elevation data has not been provided in accordance with Section 2.3.05(F), the City Engineer shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer the provisions of Sections 12.4.12 – 12.4.15; and
- I. All records pertaining to the provisions of this Ordinance shall be maintained in the office of the City Engineer and shall be open for public inspection.

Section 2.3.06

Airport Manager

It is understood the manager will provide aeronautical services of a private business nature other than the management of the airport. These services will include Aircraft Maintenance and gasoline sales. In that regard it is understood that the manager is considered to be an employee or agent of the City when he is engaged in activity directly related to the management of the airport and for other services provided by him other than for management he shall not be considered an employee of the City.

The Manager shall:

- A. Furnish management for the airport and program general duties therefore;
- B. Represent the City in matters pertaining to the airport when requested, attend all meetings relative to the operation of the airport, and attend any conference requested by the Mayor or the Airport Committee of the City;
- C. Operate on a seven (7) day week basis from 8:00 a.m. until sundown, and in case of necessity at any hour or hours;
- D. Supervise or provide supervision for the day-to-day maintenance of the airport, buildings, grounds, hangar and the landing area;
- E. Check the airport lighting at least once a week or more often if required, to determine if the runway lighting system is in good working order and whether all light bulbs, light fixtures, wind tee, obstruction markers and airport marking beacon are functioning properly. The Manager shall make minor repairs as found by his inspection to be necessary, and shall replace burned-out light bulbs promptly; light bulbs are to be supplied by the City. He shall notify the City of any repairs required that are of a major nature and beyond his ability to repair, and request instructions as to how to proceed to have the deficiency corrected. It shall be his duty to analyze from time to time the runway lighting system performance record, and advise the City of any repairs that should be made to the system, which are revealed as a result of examination of the performance record;
- F. Maintain the turf and grounds as necessary on airport property not leased to others. The City shall furnish the equipment for this maintenance;
- G. Be responsible for notifying the City when snow removal is necessary. The Manager shall make frequent inspections of the landing area during the wintertime, and shall promptly notify the City of drifting conditions or other circumstances that require immediate attention;
- H. The Manager shall be responsible for snow removal from walkways, paths, roadways, and such snow as may be immediately adjacent to and surrounding the hangar. The intent of this provision is to require the Manager, by janitor service, to take care of such minor snow removal as he can reasonably be expected to do by means of hand shoveling and which would otherwise be uneconomical for the City to perform;
- I. Thoroughly clean (or cause to be cleaned) the hangar and office, and keep same in a clean and livable condition at all times. The rest rooms in the terminal building

shall be kept clean at all times and supplied with the necessary facilities. Windows shall be kept clean at all times;

- J. Be responsible for notifying the Federal Aviation Administration promptly of all field conditions affecting the safe use of the airport;
- K. Cooperate with all Federal, State and Municipal bodies insofar as all matters are concerned which are under their control;
- L. Consult with the City in all matter relating to proposals from businesses to locate on the airport, and handle all correspondence and other matters relating to such proposals as directed by the City;
- M. Manager shall see that the premises are kept clean, neat, safe and orderly at all times free of waste, rubbish, weeds and debris, and shall mow the airport runway areas as often as is necessary.
 - 1. Manager shall maintain and mow all of the premises with City equipment, it being understood that the City will furnish the necessary water and electricity for the operation of the runway facilities of the Municipal Airport. The utilities used in the municipally owned buildings located thereon shall be the responsibility of the Manager.
 - 2. An inventory of all of the municipally owned tools and equipment is the responsibility of the Manager. Said Manager is responsible for the returning of the same to the City at the expiration of this said Agreement or any extension thereof and in as good condition as it is now, normal wear and tear and damage by the elements excepted.
- N. Manager will not purchase nor contract for any debts in the name of the City without first obtaining specific approval thereof on proper requisition;
- O. Said Manager agrees to obtain and pay for all licenses, permits, approvals, fees or similar authorizations or changes required under Federal, State, local laws, or ordinances insofar as the same are necessary to exercise the conditions of this said agreement;
- P. Manager will be responsible for all notes, reports, notices or advice to pilots for all FAA and State Aeronautical Commission Publications and shall see that any of such notes, reports, notices or advice to pilots is given the widest possible circulation to all interested pilots;
- Q. The Manager shall from time to time advise the City as to all commercial and private plane activity at the airport;
- R. The Manager shall report all violations by Commercial Operators and private pilots, to appropriate Federal and State agencies and the Chief of Police of the City.
- S. The Manager shall procure premises liability insurance for the shop where he intends to do his repair work, products liability insurance for all products including, but not limited to, the sale of gasoline, for repair and replacement work on aircraft, and for aircraft sales. This coverage shall be for \$300,000 per occurrence and \$100,000 per person. The Manager shall also procure hangar man's liability insurance for \$100,000 per occurrence. The City shall be listed as additional insured on all of above said insurance coverage and Manager shall deposit with the City Finance Officer a certificate of above said insurance.

The Manager shall provide the following services:

- A. Attendant on duty seven (7) days a week from 8:00 a.m., local time, until sundown, and in case of emergency or necessity at any hour or hours;
- B. Maintenance shop for aircraft mechanic;
- C. Sale of gasoline;
- D. Air ambulance service;
- E. Air taxi service;
- F. Aircraft rental; and
- G. Student instruction.

The City shall not be liable for any negligence on the part of the independent contractors or operators.

The failure of the Manager to provide an attendant seven (7) days a week or to procure an independent operator to provide air ambulance and air taxi service shall be deemed a material breach of this contract.

Section 2.3.07 City Attorney

The Mayor shall appoint, with the approval of the Council, a City Attorney.

Section 2.3.08 Assistant City Attorney

The Mayor shall appoint, with the approval of the Council, a Assistant City Attorney.

Article 4 – Planning Commission

Section 2.4.01 Establishment

There is hereby established a Planning Commission for the City which shall be designated as City of Winner Planning Commission.

Section 2.4.02 Number of Members

There shall be seven (7) members appointed by the Mayor and confirmed by the Council.

Section 2.4.03 Appointed Years

Of the first seven (7) members appointed, half shall be appointed for three (3) years and the balance for five (5) years. Thereafter, appointments are for five (5) years.

Section 2.4.04 Chairman of Planning Commission

The Planning Commission shall elect its chairman from among its members for a term of one (1) year with eligibility for re-election. The chairman may fill other offices as the Planning Commission may create in a manner prescribed by the rules of such Commission.

Section 2.4.05 Employees of Planning Commission

The Planning Commission may appoint such employees as it may seem necessary for its work, whose appointment, promotion, demotion, and removal shall be subject to the same provisions of law, including civil service regulations, as govern other corresponding civil employees of the municipality. The Commission may also contract with city planners, engineers, architects, and other consultants as well as federal and state agencies for such services as it may require, provided, that all contracts shall first be approved by the Council.

Section 2.4.06 Information Furnished by Public Officials

All public officials shall, upon request, furnish to the Planning Commission, within a reasonable time, such available information as it may require for its work. The Commission, its members, and employees, in the performance of its functions, may enter upon any land, make examinations and surveys, place and maintain necessary monuments and marks thereon. In general, the Commission shall have all such powers as may be necessary to enable it to fulfill and perform its functions, promote municipal planning to carry out all the purposes of this Ordinance.

Section 2.4.07 Expenditures

The expenditures of the Planning Commission, exclusive of those made from funds received by gift, shall be within the amounts appropriated for the purpose by the local legislative body, which shall provide the funds, equipment, and accommodations necessary for the Commission's work.

Section 2.4.08 Preparation of Comprehensive Plan

It shall be a function and duty of the Planning Commission to make and adopt a plan for the physical development of the municipality, including any areas outside of the boundary and within its planning jurisdiction which, in the commission's judgment bear relation to the planning of the municipality. The Comprehensive Plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the Commission's recommendations for the said physical development and may include, among other things, the general location, character, and extent of streets, bridges, viaducts, parks, parkways, waterways and waterfront developments, playgrounds, airports, and other public ways, grounds, places and spaces; the general location of public schools, of public buildings and other public property; a zoning ordinance for the regulation of the height, area, build, location, and use of private and public structures and premises, and of population density as may be provided by law; the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, light, power, heat, sanitation, transportation, communication, and other purposes; the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities, or terminals; the general location, character layout, and extent of community centers and neighborhood units, and the general character, extent, and

layout of the re planning of blighted districts and slum areas. The Commission may from time to time amend, extend, or add to the plan or carry any of the subject matter into greater detail.

Section 2.4.09 Surveys and Studies

In the preparation of the Comprehensive Plan, the Planning Commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the municipality and its environs. The plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality, which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.

Section 2.4.10 Adoption of Comprehensive Plan

The Planning Commission shall adopt the Comprehensive Plan as a whole by a single resolution, or, as the work of making the whole Comprehensive Plan progresses, may from time to time adopt a part or parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter of the plan.

Section 2.4.11 Public Hearing

Before adoption of the Comprehensive Plan or part thereof, the Planning Commission shall hold at least one public hearing, notice of the time and place of which shall be given at least ten days in advance by publication in a legal newspaper of the City.

Section 2.4.12 Vote Requirement

The adoption of the plan or any part, amendment or additions, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the Planning Commission. The resolution shall refer expressly to the maps, descriptive matter, and other matters intended by the Commission to form the whole or part of the plan, and the action taken shall be recorded on the adopted plan or part thereof, by the identifying signature of the chairman and the secretary of the commission, and a copy of the plan or part thereof shall be certified to the City Council.

Section 2.4.13 Approval for Construction

Whenever any such Planning Commission shall have adopted the Comprehensive Plan of the municipality or any part thereof, then and thenceforth, no street, park, or other public way, ground, place, space, no public building or structure, no public utility, whether publicly or privately owned, if covered by the Comprehensive Plan or any adopted part thereof, shall be construed or authorized in the municipality or within its subdivision jurisdiction as defined in SDCL 11-6-26, until and unless the location and extent thereof shall have been submitted to the Zoning Administrator for review pursuant to Appendix C of this Ordinance.

Section 2.4.14

Submission and Approval of Improvement Projects

The acceptance, widening, removal, extension, relocation for any street or other public way, ground, place, property, structure, shall be subject to submission and approval similar to that provided in SDCL 11-6-19 to 11-6-21, inclusive, and the failure to approve may be similarly overruled.

Section 2.4.15

Platting Jurisdiction of Municipality

From and after the time when the Planning Commission of any municipality shall have adopted a Comprehensive Plan which includes at least a major street plan or shall have progressed in its Comprehensive Planning to the stage of making and an adoption of a major street plan, and shall have filed a certified copy of such major street plan in the office of the register of deeds of the county in which the municipality is located, no plat of a subdivision of land lying within the municipality, or of land within three miles of its corporate limits and not located in any other municipality, shall be filed or recorded until it shall have been submitted to and a report and recommendations thereon made by said Commission to the Council and the Council has approved the plat.

Section 2.4.16

Approval on Platting of Land

Any platting or subdivision of land containing two or more lots, no matter how described, must be submitted to the Planning Commissions for approval. Any plat submitted for approval shall contain the name and address of a person to whom notice of hearing may be sent; and no plat shall be acted upon by the Council without affording a hearing thereon, notice of the time and place of which shall be sent by mail to said address not less than five days before the date fixed therefore.

Section 2.4.17

Time Allowance

The plat shall be approved or disapproved within sixty days after submission thereof; otherwise such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Council on demand; provided, however, that the applicant for the approval may waive this requirement and consent to the extension of such period. The ground of disapproval of any plat shall be stated upon the records of the Council.

Section 2.4.18

Dedication not Accepted by Approval of Plat

The approval of a plat by the Council shall not be deemed to constitute or effect an acceptance by the municipality of public of the dedication of any street or other ground shown on the plat.

Section 2.4.19

Plat Approval Before Being Recorded

When any map, plan, plat, or re plat is tendered for filing in the office of the register of deeds, it shall be the duty of any such officer to determine whether such proposed map, plan, plat or re plat is or is not

subject to the provisions of this Article and whether the endorsements required by this Article appear thereon, and no register of deeds or deputy shall accept for record, or record any such map, plan, plat or re plat unless and until the same shall have been approved by the Council of such municipality as required by SDCL 11-6-26, 11-6-26.1.

Section 2.4.20 Penalty

Whoever being the owner or agent of the owner of the land located within platting jurisdiction of any municipality as described in SDCL 11-6-26, knowingly or with intent to defraud, transfers or sells or agrees to sell or negotiates to sell such land by reference to or exhibition of or by other use of a subdivision of such land before such plat has been approved by the Council and recorded in the office of the register of deeds, shall forfeit and pay a penalty pursuant to Section 14.01 for each lot so transferred or sold or agreed or negotiated to be sold; and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. Said municipality may enjoin such transfer or sale of agreement by action for injunction or may recover the said penalty by civil action.

Section 2.4.21 Approval After Attachment of Platting Jurisdiction

From and after the time when the platting jurisdictions of any municipality shall have attached by virtue of the adoption of a major street plan as provided in SDCL 11-6-26, the municipality or other public authority shall not, except as provided by SDCL 11-6-37, accept, lay out, open, improve, grade, pave, or light any street or lay or authorize the laying of water mains, sewers, connections, or other facilities or utilities in any street within the municipality unless such street shall have been accepted or opened as, or shall have otherwise received the legal status of, a public street prior to the adoption of a Comprehensive Plan, or unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the Council or on a street plat made by and adopted by the Planning Commission.

Section 2.4.22 Street Construction

The Council, or, in the case of a street outside of the municipality, the governing body of such outside territory, may locate and construct or may accept any other street if the ordinance or other measure for such location and construction or for such acceptance be first submitted to the Planning Commission for its approval, and, if disapproved by the commission, be passed by not less than two-thirds of the entire membership of Council or said governing body; and a street approval by the commission upon such submission, or constructed or accepted by said two-thirds vote after disapproval by the commission, shall have the status of an approved street as fully as through it has been originally shown on a subdivision plat approved by the Council or on a plat made and adopted by the commission.

Section 2.4.23 Buildings Prohibited on Unapproved Streets

From and after the time when the platting jurisdiction of any municipality shall have attached by reason of the adoption of a major street plan as provided in SDCL 11-6-26, no building permit shall be issued for or no building shall be erected on any lot within the territorial jurisdiction of said commission as provided in SDCL 11-6-26, unless the street giving access to the lot upon which said building is proposed to be

placed shall be accepted as opened as, or shall have otherwise received the legal status of, a public street prior to that time, or unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the Council or on a street plat made and adopted by said commission or with a street located or accepted by the Council, or, in the case of territory outside of the municipal corporation, by the governing body thereof, after submission to said commission, and, in case of said commission's disapproval, by the favorable vote required in SDCL 11-6-37. Any building erected in violation of this Section shall be deemed an unlawful structure, and the municipality or governing body may bring action to enjoin such erection or cause it to be vacated or removed.

Article 5 – Retirement System

Section 2.5.01 Participating Municipality

Effective since June 1, 1974, the City is a participating municipality in the South Dakota Retirement System, as provided by law, for the purpose of including full-time policemen and full-time general employees in its employee Retirement System.

As a participating municipality, the Retirement System benefits for City employees are in accordance with the South Dakota Retirement System, as of the effective date of this Ordinance, and will be changed or updated as required.

Section 2.5.02 Membership

All full-time policemen and full-time general employees of the City shall be included in the membership of the retirement system.

Section 2.5.03 Salary Deduction

The City Finance Officer is hereby directed to deduct eight (8) percent of the salaries paid to full-time policemen and to deduct five (5) percent of full-time general employees and forward same to the retirement system. The deductions are to be made from each and every participating member's salary on each and every payroll and for each and every payroll period subsequent to the City's participation in the retirement system.

Section 2.5.04 Matching Funds

The City Finance Officer is hereby authorized to pay from City funds:

- A. Eight (8) percent matching funds for full-time policemen; and
- B. Five (5) percent matching funds for full-time general employees.

These matching funds are to be forwarded the Retirement System, together with the payment of the employees contributions as provided in Section 2.5.03.

Article 6 – Travel Expenses

Section 2.6.01 Rates

The following rates shall be used for travel expenses by elected officials, employees, and volunteer fire personnel of the City while transacting business for the City outside of the corporate limits:

- A. Twenty-four (24) cents per mile for each mile necessarily traveled;
- B. Meals not to exceed fifteen (15) dollars per day upon submission of receipts;
- C. Lodging per day allowed at state rate if offered to city employee or representative. If not offered, lodging per day is not to exceed the South Dakota out-of-state rate for a standard room.

No elected official, employee, or volunteer fire personnel shall receive any remuneration while performing any services for the City within a radius of ten (10) miles of the corporate limits.

Article 7 – Casualty Reserve Fund

Section 2.7.01 Establishment of Fund

The City hereby establishes a fund to be designated as the Casualty Reserve Fund. The City shall, in their annual appropriation, set forth a specific amount of monies not to exceed the sum of thirty thousand (30,000) dollars, which shall be deposited in the Casualty Reserve Fund and said amount appropriated shall be transferred to the Casualty Reserve fund.

Section 2.7.02 Maximum Amount

Pursuant to South Dakota Law SDCL 9-21-16.1, at no time shall the money in the Casualty Reserve Fund exceed the sum of one hundred thousand (100,000) dollars.

Section 2.7.03 Restricted Use of Fund

That the monies in the Casualty Reserve Fund shall only be expended for the payment of expenses to replace and repair property of the municipality which may be damaged or lost as a result of the casualty loss.

Section 2.7.04 Interest Earned from Investment

That if the Casualty Reserve Fund is at the maximum amount allowed as set out above, any interest earned from investment of the fund shall be placed in the Municipalities General Fund.

Article 8 – Sales Tax

Section 2.8.01 Purpose

The purpose of this article is to provide additional needed revenue for the City by imposing a municipal retail sales and use tax, pursuant to SDCL 10-52 entitled Uniform Municipal Non-AD Valorem Tax Law, and acts amendatory thereto.

Section 2.8.02 Enactment of Tax

A tax, measured by two (2) percent of the gross receipts of all persons engaged in business within the jurisdiction of the City who are subject to the Retail Sales and Service Tax, SDCL 10-45 and acts amendatory thereto, is hereby imposed as a municipal retail occupational sales and service tax.

Section 2.8.03 Food Sales

Notwithstanding the above rate, the rate of tax upon receipts from sales of food as defined by the Food Stamp Act of 1977, as amended through January 1, 1983, is one (1) percent.

Section 2.8.04 Exempt Sales

The following are hereby exempt from the tax imposed by this Article:

- A. Gross receipts from sales of parts or repairs on machinery or equipment which are clearly identifiable as used primarily for agricultural purposes as taxed pursuant to SDCL 10-45-3;
- B. Farm machinery or equipment taxed pursuant to SDCL 10-45-3;
- C. Agricultural animal health products and medicines; and
- D. Construction materials delivered to a truck of a construction company for use outside City limits.

Section 2.8.05 Collection

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

Section 2.8.06

Use Tax

In addition there is hereby imposed an excise tax on the privilege of use, storage, and consumption within the jurisdiction of the City of tangible personal property or services purchased from and after the 1st day of November, 1988, at the same rate as the municipal sales and service tax upon all transactions or use, storage, and consumption which are subject to the Use Tax, SDCL 10-46, and acts amendatory thereto.

Section 2.8.07

Use of Revenue

Any revenues received under this Article in excess of the amount received, if the rate of tax in Section 2.8.02 were one (1) percent, may be used only for capital improvement, land acquisition, and debt retirement.

Section 2.8.08

Interpretation

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

Section 2.8.09

Penalty

Any persons failing or refusing to make reports or payments prescribed by this Article and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, and SDCL 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue.

ORDINANCE NO. 771

AN ORDINANCE IMPOSING A MUNICIPAL GROSS RECEIPTS TAX FOR THE MUNICIPALITY OF WINNER, TRIPP COUNTY, SOUTH DAKOTA UPON GROSS RECEIPTS OF LEASES OR RENTALS OF LODGING ACCOMMODATIONS AND SALE OF ALCOHOLIC BEVERAGES AND SALES OF FOOD AND BEVERAGES IN ESTABLISHMENTS WHERE THE PUBLIC IS INVITED TO EAT AND TICKET SALES TO PLACES OF AMUSEMENT, ATHLETIC AND CULTURAL EVENTS.

BE IT ORDAINED by the Municipality of Winner, Tripp County, South Dakota as follows:

Section 1: PURPOSE: The purpose of this Ordinance is provide additional needed revenue for the Municipality of Winner, Tripp County, South Dakota by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52A, and acts amendatory thereto.

Section 2: EFFECTIVE DATE AND ENACTMENT OF TAX: From and after the 1st day of July, 2007, there is hereby imposed a municipal gross receipts tax at the rate of one percent (1%) upon the gross receipts of all leases or rentals of hotel, motel, campsite or other lodging accommodations within the municipality for periods of less than 28 consecutive days, the sales of alcoholic beverages as defined in SDCL 35-1-1, establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic and cultural events, or any combination thereof. The tax applies to the gross receipts of all persons or entities engaged in business within the jurisdiction of the Municipality of Winner, Tripp County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

Section 3: COLLECTION: Such tax is levied pursuant to the authorization granted by SDCL 10-52A and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue of the State of South Dakota shall lawfully prescribe.

Section 4: INTERPRETATION: It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

Section 5: USE OF REVENUE: Any revenues received under this ordinance may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic center, auditoriums or athletic facility buildings, including the maintenance, staffing and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions, activities and any other lawful activity as is envisioned in SDCL 10-52A.

Section 6: PENALTY: Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$200.00 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.

Section 7: SEPARABILITY: If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby.

Article 9 – Capital Improvement Fund

Section 2.9.01

Purpose

The purpose of the capital improvement fund will be for the renovation and improvement of the physical facilities of the City Jail.

The capital improvement fund may not be used for any other purposes other than for the renovation and improvement of the physical facilities of the City Jail.

Section 2.9.02

Allocation

The City will allocate to the capital improvement fund two (2) dollars out of each prisoner day that is paid to the City by other governmental entities that contract with the City for housing prisoners. In other words, if the contracting entities pay thirty (30) dollars per prisoner day to the City, the City shall take two (2) dollars out of each prisoner day payment and shall place the amount into the capital improvement fund.

CHAPTER 3: FRANCHISE UTILITIES

Article 1 – Telephone

Section 3.1.01

Right to Use Street

Golden West, a corporation, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys, and other public places of the City for the purpose of constructing, maintaining, and operating a general telephone and telegraph system within said City.

Section 3.1.02

Rights Granted

The rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said City.

Section 3.1.03

Binding Contract

This Article shall be in full force and effect and shall constitute a binding contract between the City and Golden West when the same shall have been approved by majority of the electors of said City voting thereon at the election provided for herein, and when the provisions hereof shall have been accepted in writing by Golden West and such acceptance filed with the City Finance Officer.

Article 2 – Cable TV

Section 3.2.01

Grant of Non-Exclusive Authority

In consideration of its past performance in operating the cable television system in the City and the performance and observance of the conditions which are hereinafter specified, the non-exclusive right is hereby continued, extended and granted to Mid-continent Cable Systems Company of South Dakota and to its successors, assigns, or designees, 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 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 television system for the purpose of transmission and distribution of audio, visual, electronic and electric impulses 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 of twenty-four (24) years, expiring October 19, 2011.

The right to use and occupy said streets, alleys, public ways, and places for the purposes herein set forth shall not be exclusive.

Section 3.2.02 Compliance

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

Section 3.2.03 Territorial Area

This Article relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance.

Section 3.2.04 Liability and Indemnification

Grantee shall, at all times, keep in effect the following types of insurance coverage:

- A. Workmen's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City.
- B. Property Damage Liability insurance to the extent of two hundred fifty thousand (250,000) dollars as to each occurrence and two hundred fifty thousand (250,000) dollars aggregate, and personal injury liability insurance to the extent of five hundred thousand (500,000) dollars as to each occurrence and five hundred thousand (500,000) dollars aggregate. Excess bodily injury and property damage of one million (1,000,000) dollars each occurrence and one million (1,000,000) dollars aggregate. Automobile bodily injury and property damage liability combined one million (1,000,000) dollars each occurrence.

Grantee shall 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 Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts 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. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation Laws in effect that may be applicable to Grantee. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. A certificate evidencing such insurance shall be deposited with and kept on file by the City Finance Officer.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance omission complained of is authorized, allowed, or prohibited by this Article.

Section 3.2.05 System Channels

Grantee will construct, maintain, and operate a system with a minimum capacity of thirty-five (35) channels (300 MHz). The facilities used by the Grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

Section 3.2.06 Technical Standards

Grantee shall be governed by technical standards established by the FCC.

Section 3.2.07 Operation and Maintenance of System

The Grantee shall 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.

Section 3.2.08 Service to Schools and City

The Grantee shall provide basic cable service to public and parochial school buildings within the City, subject to the line extension provisions of Section 3.2.12, at one junction terminal per building, for educational purposes upon request of the school system. Grantee shall also furnish to those buildings basic cable service to all sets connected within such school to the terminal junction at no monthly service charge.

Grantee shall, subject to the line extension provisions of Section 3.2.12, also provide to the City at four City-owned buildings other than nursing homes, apartments, hospitals, or buildings at the airport, to be selected by the Council of the City without charge, one junction terminal to each of said buildings at a location therein to be selected by the City. Grantee shall also furnish to those buildings, basic cable service to all sets connected within such buildings to the terminal junction at no monthly service charge.

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

Section 3.2.09

Emergency Use of Facilities

In the case of any emergency or disaster, the Grantee shall, upon request of the Mayor or his designee, make available its facilities to the City for emergency use during the emergency or disaster. If the City wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the City and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system.

Section 3.2.10

Safety Requirements

The Grantee 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.

Section 3.2.11

Limitations on Rights Granted

- A. All transmissions and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City Superintendent or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City.
- B. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of the City affecting electrical installation, which may be presently in effect, or changed by future ordinances.
- C. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the City Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.
- D. If at any time during the period of this Ordinance, the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- E. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less

than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

- F. The Grantee shall have the authority to trim trees upon the overhanging streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
- G. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change of establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, the Grantee shall in all cases have the privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.
- H. In all sections of the City where the City designates an area where all presently above ground services are to be placed underground, the Grantee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other above ground services in the designated areas.
- I. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section 3.2.17, promptly remove from the streets, or public places all such property and poles of such in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
- J. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

Section 3.2.12

Extension of Facilities

Grantee shall not be obligated to extend service beyond its existing system where it is not economically feasible to do so, except upon payment by the person requesting service of the capital costs incurred by the Grantee in bringing service to such site. Grantee shall evaluate each such request for service and file with the City a proposal, for its approval, for furnishing service and the terms of repayment of the cost of furnishing such service.

Section 3.2.13

Ownership and Removal of Facilities

All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.

Section 3.2.14

Transfer of Article

The Grantee shall not assign this Article to another person without prior approval of the Council, which approval shall not be unreasonably withheld.

Section 3.2.15

Payment to the City

From and after November 24, 1987, Grantee shall pay to the City annually the sum of three (3) percent of the total annual gross subscriber revenues of said CATV system, as compensation for the rights granted herein.

"Gross subscriber revenues" shall consist of those revenues derived from the monthly service charges paid by subscribers for basic cable service and premium pay services such as HBO. Subscriber revenues shall not include revenues received as installation charges and fees for reconnections, inspection, repairs, or modifications of any installations.

Such payments by Grantee to City shall be in lieu of any occupation tax, license tax, or similar levy, and shall be paid annually. Nothing herein contained, however, shall in any way relieve Grantee or its assigns or successors from the obligation of paying property taxes to the City or any other general taxes lawfully levied by the State of South Dakota or any governmental subdivision of the State of South Dakota on the operation of Grantee.

Grantee shall pay the fee required in this Section on a monthly basis based on the preceding year's gross subscriber revenues as shown by the auditor's statement.

Grantee shall file with the City, within ten (10) days after the completion of the independent audit of Grantee's parent company, a statement prepared by the auditor showing the gross subscriber revenues as defined herein. It shall be the duty of Grantee to pay to the City within fifteen (15) days after the time for filing such statement, the balance due, if any, for the operating year covered by such statement.

Section 3.2.16

Duration and Renewal

The rights granted to Grantee herein shall, except as provided in this Section, terminate twenty-four (24) years from October 19, 1987, which shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the Article shall remain in effect even if the original fifteen (15) year term has expired. If this Article is not renewed or if it is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communication Policy Act of 1984. -

Section 3.2.17

Erection, Removal and Common Use of Poles

- A. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire holding structure of the Grantee shall be removed or modified by the Grantee at its own expense whenever the Council or its designated representative determines that the public convenience would be enhanced thereby.
- B. Where poles or other wire-holding structures already existing in use in servicing the City are available for use by Grantee and authorization is being granted to Grantee to use the poles of the municipal power company, but it does not make arrangements for such use, the Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- C. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's position.

Section 3.2.18

Rates

- A. Grantee 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.
- B. During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission Regulations and then such regulation shall only be in accordance with the provisions of such regulations.

In the event that the City has authority to regulate rates, the following procedures shall be used:

1. Before making any changes in the rates and charges to subscribers for Basic CATV Service, Grantee 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. If the City takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 30-day notice period.
2. If the Council wishes to hold a hearing on the proposed rate increase, the hearing shall be held within forty-five (45) days of the filing of the proposed rate increase by grantee. Following the hearing, the Council shall take final action on the proposed increase within thirty (30) days.

- C. Any rate subject to regulation under the above provisions may be increased without the approval of the City, at the discretion of Grantee by an amount not to exceed five percent (5%) per calendar year. In addition, Grantee shall have the right to pass along to subscribers state and local sales taxes, programming cost increases and copyright fee increases.
- D. The monthly rate set forth in Section 3.2.18 (A) shall be payable in advance.
- E. The Grantee, 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 Federal Communications Commission Regulations.

Section 3.2.19

Miscellaneous

- A. Grantee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested person.
- B. Complaints regarding the quality of service, equipment malfunctions, and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the City Finance Officer for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The City Finance Officer shall attempt to resolve the complaints and, if this cannot be achieved, he shall submit a recommendation to the Council, which shall:
 - 1. Dismiss the complaint; or
 - 2. Specify corrective steps to be taken by Grantee.

Appeal from the Council's actions may be made to the appropriate judicial or administrative forum.

Section 3.2.20

Modification of Obligations

In addition to any other remedies provided by law or regulation, grantee's obligations under this Article may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984, as it now exists, or as hereafter amended.

Section 3.2.21

Unauthorized Receipt of Service, Tampering, and Damage to Property

It shall be unlawful for any person to obtain any cable television services from Grantee, any firm, or private person, without paying the required fee therefore, or by in any way damaging grantee's property, or by installing, rearranging or tampering with any facilities or equipment of grantee unless the same is done with the written permission of Grantee.

CHAPTER 4: CITY OWNED UTILITIES AND SERVICES

Article 1 - Collections

Section 4.1.01 Electricity and Water Meters

Meters must be obtained from the City and shall measure all electricity and water supplied by the City.

Section 4.1.02 Utility Statements

Statements of the amount of utilities shall be mailed by the Finance Office at the end of each month to the consumer and such bill and amount shall be deemed unpaid or delinquent by the 10th of the month if funds for said amount of statement are not received in the Finance Office on or before the 10th of the month.

Section 4.1.03 Hearings on Delinquent Accounts

Payments not received by the Finance Office on or before the 10th day of each month shall be considered delinquent and subject to disconnect. And evaluation of delinquent accounts shall be done by the Finance Office and disconnect notices prepared. The customer shall be notified by the 20th day of each month with a termination notice that if the delinquent account is not paid in full by the last Monday of each month, the electrical service shall be disconnected.

Bills that remain unpaid twenty-five (25) days after the original billing date shall be subject to the following late fees or interest charges:

\$5.00 - \$200.00.....Late Charges of \$10.00/month
\$200.00 and higher.....2.5% interest/month on the unpaid balance

When the electric service has been disconnected, it shall not be reconnected until all back utility charges, a delinquent account fee of ten dollars (\$10.00) and a reconnection fee of twenty-five dollars (\$25.00) shall have been paid. The revenue generated shall be fore general fund purposes. Payment arrangements shall be allowed for accounts that have had their electric utility disconnected without the approval of the City Administrator and Finance Officer.

Appeals on disputed charges shall be addressed to the Finance Officer, by written notice, between the hours of eight a.m. to five p.m., Monday through Friday. The customer shall be given and opportunity to appeal the decision of the Finance Officer if the appeal is denied at this level. All appeals on disputed charges shall be brought before the City Council at its next regularly scheduled meeting and service shall be continued until the appeal is heard.

An advance deposit shall be required of all electric consumers that provide a favorable credit reference from a previous utility supplier and is received at the Finance Office within two (2) weeks of connection of service and no consumer shall be connected until the advances have been paid. Failure to produce a favorable utility credit reference shall result in immediate disconnection of service unless consumer deposits an additional amount as set by the Council with the Finance Office. The additional amount will be carried as a credit to consumers account for one year, to be returned to the consumer, providing utility payments have been received in the Finance Office by the 10th of each month for that year, or until final settlement is made. Any person residing within or without the City who desires water from the City shall submit a deposit that shall be carried as a credit against the applicant's account until final settlement is made.

Section 4.1.04 Payment of Utility Page

All utility payments shall be made at the Finance Office in the Winner Municipal Building.

Section 4.1.05 Reinstatement

A hook-up fee of twenty-five (25) dollars for electrical service reinstated and a hookup fee of twenty-five (25) dollars for water service reinstated shall be collected, prior to reinstatement.

Section 4.1.06 Payment of Utility Bill

All utility payments shall be made at the Finance Office in the Winner Municipal Building.

Section 4.1.0 Churches Outside City Limits

Any church or parsonage that is located outside of the City limits and is connected to the City Utility Service, shall pay the same rate for utilities as those rates paid by residents of the City for residential utility service.

Any church or parsonage outside of the City limits that has an outlaw tap to City Utility Services can qualify for utility rates at the residential rates of the City if said church or parsonage is owned by a church and qualifies under the Internal Revenue Service regulations as a non-profit entity.

Any church or church-owned parsonage located outside the City limits which request City Utility Rates to be billed at the same rate as residents of the City shall agree by paying the City residential rates, to sign any petitions for inclusion into the City limits which may be circulated by any person owning land who wants said land included within said City.

Section 4.1.08 Obtaining a Permit to Dig

After any street, avenue or alley in the City shall be paved, it shall be unlawful for any person to tear up, dig up, or open said pavement for the purpose of laying gas, water or sewer pipes, drains or tunnels or for the purpose of erecting gas or electric lights or lines or telephone lines upon or under said pavement, or for any purpose whatever, without first obtaining a permit to do so from the City Finance Officer of said City and such permit shall be granted only upon a written application and deposition with the City Auditor, the sum of twenty-five (25) dollars for each square yard, or fraction thereof, of pavement to be cut and opened up, and then such proposed excavation shall be made under the supervision of the City Superintendent, and any excavation so made shall be refilled and the pavement rebuilt and replaced in as good condition as it then was; the same to be done under the supervision of the City Superintendent and the expense there of certified to the City Finance Officer by the City Superintendent and the amount thereof deducted by the City Finance Officer from the deposit made as aforesaid, and the remainder of said deposit, if any, shall be returned by the City Finance Officer to the person making the same.

Article 2 – Electricity

Division 1 – General Regulations

Section 4.2.01 Establishment of Authority

An Article providing for the approval by the governing body of the City of a franchise authorizing the Winner Light and Power Company, Inc., its successors or assigns, to occupy any of the streets or alleys of public places of the City for the purpose of operating a public utility for the production, transmission, distribution, and sale of electric light, heat, and power within the limits of the City and providing for the submission of such proposition to the electors of said City by an election thereon.

All protection of electric motor(s) against low voltage or voltage loss on one or more phases of three-phase electric motor(s) is at the option of the customer. The City of Winner will not be held responsible.

Section 4.2.02 Approval

The Council approves of a proposed franchise granting to the Winner Light and Power Company, Inc. the right to use the streets, alleys, and public places of the City in the manner and for the purpose set forth in said franchise.

Section 4.2.03 Franchise

- A. Terms - The right and privilege is hereby granted to the Winner Light and Power Company, Inc., its successors and assigns, to occupy any of the streets, alleys, or public places of the City for the purpose of operating a public utility for the production, transmission, distribution and sale of electric light, heat and power within said City for a period of ten (10) years from and after the 28th day of February, 1942, provided, however, that the right herein granted shall not be exclusive.
- B. Erection, Maintenance, and Operation - The said Winner Light and Power Company, Inc., its successors and assigns, shall erect, maintain and operate for the said period of ten years, a complete, adequate and sufficient electric light and power plant within the limits of the City and shall erect, operate and maintain a complete, adequate and sufficient electric distribution system within the limits of said City, which shall be in all respects fully adequate to supply the demand of the City and inhabitants thereof with electricity for light, heat, and power purposes.
- C. Erection, Location Of Poles, Wire And Conduits - In erecting poles, stringing wires and placing conduits the Winner Light and Power Company, Inc., its successors and assigns shall conform to all reasonable regulations prescribed by the Council to prevent the injury to streets, alleys, sidewalks, and public places and to persons and property. The conducting wires and poles on which the same are erected, must be of such material and construction as the governing body of said City shall approve and must be placed and located under the supervision of said governing body or such officer of the City as may be designated by said governing body, and shall be subject at all times to change of location, by and at the expense of the said Winner Light and Power Company, Inc., its successors and assigns, whenever the Council shall so direct. No poles, conduits, or wires shall be set on the Main Street of said City; and where it is necessary to cross Main Street with electric wires or poles the poles for said wires shall in all cases be set at least six (6) feet from said Main Street and such poles shall be of sufficient height to carry such wire at an elevation sufficient not to interfere with the normal use of said Main Street and in no event shall such poles be less than thirty-five (35) feet in height.
- D. Financial Statement - The Winner Light and Power Company, Inc., its successors and assigns, shall when requested by the Council of said City, at its own cost and expense, file with the Finance Officer of the City, a full and complete financial statement of the affairs of said Company in the City which statement shall be audited

and certified by a Certified Public Accountant and which statement shall disclose any and all facts pertaining to the Financial constitution of said company.

- E. Save City Harmless - The Winner Light and Power Company, Inc., its successors and assigns, shall be liable for all damages due to it's negligence in erecting, operating, or maintaining it's electric system within said City and shall at all times save the City harmless from any and all liability arising out of negligence of the Company.

Section 4.2.04 Membership Agreement

The City enters into a certain agreement for membership in the Missouri Basin Municipal Power Agency.

Section 4.2.05 Executor of Agreement

The Mayor is hereby authorized and directed to execute such agreement for, on behalf of, and in the same of the City and the City Finance Officer is authorized to affix the seal thereto and attest to such agreement.

Section 4.2.06 Adoption of Electrical Code

The City hereby adopts as its electrical code the National Electrical Code and that the installation of any electrical wiring in the City shall be done pursuant to the National Electrical Code.

Article 2 – Electricity

Division 2 – Requirements for Connection

Section 4.2.07 Electrical Deposits

Providing a favorable credit reference from a previous utility supplier is received at the Finance Office within two (2) weeks of connection of service, an advance deposit of sixty (60) dollars shall be required of all electric consumers and no consumer shall be connected until the advances have been paid.

Failure to produce a favorable utility credit reference will result in immediate disconnection of service unless consumer deposits an additional one hundred (200) dollars with the Finance Office to be carried as a credit to consumers account for one year, to be returned to the consumer, providing utility payments have been received in the Finance Office by the 10th of each month for that year, or until final settlement is made.

Section 4.2.08 Temporary Service

Where from good and sufficient cause, it is necessary to have electricity on any installation before final inspection certificate is issued, the City may issue a temporary permit, providing that all parts to which

current is applied are in a safe and satisfactory condition. Said temporary permit shall be in effect for a period not to exceed thirty (30) days.

Section 4.2.09 Connecting or Disconnecting

It shall be unlawful for any electric light, heat or power company to make any electrical connections to any building until a certificate stating that, "all electrical wiring has been approved," has been issued by the City Superintendent or his representative.

Section 4.2.10 Fire Zone Installations

All electrical wiring hereafter installed in or on any building located within the fire zone of the City shall be in approved conduit in conformity with the National Electrical Code.

Section 4.2.11 Service Entrances

All service entrances hereinafter installed in or on any building, (except those located in said fire zone) shall be installed in either approved steel conduit or approved entrance PVC pipe with the outer end equipped with an approved service head or fitting and extending, without outlet or junction box, into the service cabinet of approved steel construction, with underwriters label or approval attached thereto. Said service cabinet shall be located inside the walls of the building, (unless said cabinet is constructed of approved weather proof material and design and permission has been granted for use of same) in the nearest accessible place to the point of where the wires enter the building, but in no case may it be located over fifteen (15) feet from the point of entrance or an exit to the building. Service or entrance cabinet shall be so arranged that the handle of the main disconnect thereof shall not be over six and one-half (6 ½) feet above a permanent floor. Conduit or cable shall be secured and permanently bonded and grounded.

Section 4.2.12 Inspectors Duties

The inspector, or authorized representative, is hereby authorized, empowered, and directed to have general supervision over all electrical wiring now in existence or to be placed in service in the future. The inspector is directed to inspect and determine the condition of wiring located in or on any building within the City. The inspector shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to enforcement of this Article or the regulations set forth there under. It shall be the duty of the occupants or persons in charge thereof, or the owners of any property to give the inspector or his representative free access to such premises at reasonable times for the purpose of inspection. Whenever any electrical wiring or other electrical apparatus becomes unsafe or in a defective insecure condition the said inspector or his representative shall notify the owner or occupant to repair or remove the defective wiring or apparatus within twenty-four (24) hours, or within such time as the inspector may deem necessary, if correction is not made within the allotted time then the inspector or department shall cause all services to be discontinued until such time that inspection shows that correction has been made.

Section 4.2.13 Tie In Fee

Tie In Fee..... \$300.00

Fee to include primary line. All Additional secondary material and labor is the responsibility of User.

Article 2 – Electricity

Division 3 – Rates

Section 4.2.14 Establishment of Rates

Electrical rates shall be established by the City Council at any regular meeting upon presentation of an ordinance setting forth the rates. The following schedule of electrical rates or charges for electricity is hereby established:

A. RESIDENTIAL RATES:

Customer Charge – per month.....	\$10.50
Charge per kWh.....	.0850

B. Multiple Dwellings:

Customer Charge – per month, per living unit.....	\$10.50
Charge per kWh.....	.0850

C. Small Commercial Rates: Available to non-residential customers with single-phase or three-phase service requirements with monthly demands of less than 25 kW in ten or more months out of the previous twelve months.

Customer Charge – per month.....	\$15.00
Charge per kWh.....	.0900

D. Large Commercial Rates: Available to non-residential customers with single or three-phase service requirements with monthly demands exceeding 25 kW in three or more months out of the previous twelve months. Once moved to this class, a customer will remain on this rate for a minimum of 12 months.

Customer Charge – per month.....	\$25.00
Energy Charge per kWh.....	.0530
Demand Charge per demand kW.....	\$9.10

D. Security Light – per light per month	
charge.....	\$6.00

Bills become delinquent on the 10th day of the month and if not paid, electrical service shall be disconnected after notice. A reconnect charge of twenty-five (25) dollars must be paid in addition to the delinquent amount of the utility bill before electrical service can be restored. This policy shall be applicable to all residential and commercial customers and for all domestic and commercial uses including small motors not more than 3 h.p. individual capacity, single phase.

Article 3 – Water

Division 1 – General Regulations

Section 4.3.01 Establishment of Authority

An Article concerning the system of waterworks of the City and establishing the water rates, rules, regulations, and penalties for the government of water consumers, contractors, licensed plumbers, and others.

Section 4.3.02 Violation of Contract

If any part of contract is violated, the water will be shut off and payments will be forfeited.

Section 4.3.03 Certain Uses Subject to Regulation

The use and withdrawal of water by any person for the following purposes is hereby subject to regulation by resolution of the Council:

- A. Watering Lawns - The sprinkling, watering or irrigating of shrubbery, trees, grass, ground covers, plants, vines, gardens, vegetables, flowers, or any other vegetation.
- B. Washing Mobile Equipment - The washing of automobiles, trucks, trailers, trailer-houses, railroad cars, or any other type of mobile equipment.
- C. Cleaning Outdoor Surfaces - The washing of sidewalks, driveways, filling station aprons, porches, and other outdoor surfaces.

Section 4.3.04 City Water Mains as a Heating and Cooling Source

- A. Only buildings owned by governmental units are eligible to use the City's water main as a heating and cooling source;
- B. No connections of any governmental building to the City's water main for heating or cooling purposes without the governmental unit owning the building and first obtaining permission from the Council. In seeking permission, the governmental unit owning the building shall file with the City Finance Officer, all plans for connecting to the water mains for heating and cooling and said plans shall be specifically approved by the Council.
- C. Any government entity owning a building that obtains approval from the Council to connect to the City water mains for heating and cooling purposes shall pay to the City a fee of four (4) cents per square foot per year, of the area heated by the system using the City's water mains as a heating and cooling source. The usage payments shall be divided into twelve (12) equal payments and shall be payable monthly. Delinquent payments shall be collected in the same manner as other delinquent utility payments and shall be subject to the same rate of interest.

- D. The one (1) commercial business presently using the City's water mains for a heating and cooling source shall pay to the City a fee of eight (8) cents per square foot per year of the area heated by the system using the City's water mains as a heating and cooling source. The usage payments shall be divided into twelve (12) equal payments and shall be payable monthly. Delinquent payments shall be collected in the same manner as other delinquent utility payments and shall be subject to the same rate of interest.
- E. Any government entity owning a building that obtains approval for the use of the City's water mains as a heating and cooling source shall execute a hold harmless agreement that shall be binding upon the owner and any successors, heirs, administrators, or assignees. The hold harmless agreement shall state that the owner of the governmental building shall be solely responsible and totally liable for any contamination or damage to the City's water sources and mains arising from the use of the heating and cooling system. Further, there is presently one (1) commercial business using the City's water mains as a heating and cooling source and said business is grand fathered in and the hold harmless agreement herein applies to said business.
- F. The governmental entity owning a building who obtains approval for the use of the City's water mains as a heating and cooling system shall insure the quality of the water returning to the City's main by doing the following:
1. Install taps on the influent and effluent lines of the heating and cooling system. The purpose of the taps shall be for the taking of water samples before the water has been discharged into the City's mains;
 2. The expense and costs involved in placing, installing, and maintaining the taps described shall be born by the governmental entity owning the building using the City's water main for heating or cooling purposes;
 3. Any government entity owning a building that uses the City's water main for heating or cooling purposes agrees to install the above-mentioned taps and hereby consents to City inspectors obtaining water samples, both influent and effluent, from each building site for testing as follows:
 - a. Total Coliform Monthly
 - b. Lead Three times per year (June, July, August)
 - c. Copper Three times per year (June, July, August)
 - d. Volatile Organic Chemicals (VOC) Annual

The City shall take a sample of the water from the influent and effluent taps as set above and send the same to an appropriate laboratory for analysis to determine if there are any contaminants in the water caused by circulation through the heating and cooling system. Additionally, the laboratory costs for analyzing the water samples for contaminants as described above, shall be born by the governmental entity owning the building that is using the City's water main for heating and cooling.

4. The City shall take any other samples of the water from the influent and effluent taps as they deem necessary to insure the quality of the

drinking water. The cost of these tests shall be at the expense of the City.

- G. If any contamination or damage to the City's water sources of mains arises from the use of the heating or cooling systems, the City may disconnect the City's water mains from the cooling and heating system and prohibit further use by the governmental building of the water mains for heating and cooling.
- H. The provisions of this Section shall apply to all users of the City's water main for heating and cooling, including those users connected to the City's water main for heating and cooling purposes prior to the adoption of this Ordinance.
- I. Any government entity that obtains permission from the City to use the water main for heating or cooling purposes agrees to hold the City harmless from any injuries, damages, or interruptions of business that might occur if it is necessary for the City to shut off the water service to the governmental building for purposes of maintenance or repair upon water lines.
- J. Any government entity that uses the City's water main for heating and cooling purposes and does not comply with the above regulations for testing shall be in violation and as such, shall be guilty of a Class II Misdemeanor each day such violation is committed, or permitted to continue, and shall constitute a separate offense and shall be punishable as such, pursuant to Section 14.01.

Section 4.3.05 Exception to Maintain Sanitation

The City Superintendent shall have the authority to permit a reasonable use of water in any case necessary to maintain adequate health and sanitation standards.

Section 4.3.06 City Superintendent Provides Information

The City Superintendent shall have available and furnish all records necessary to determine the uses of water restricted by this Section.

Section 4.3.07 Discontinuance of Service

The City Superintendent shall have the authority to enforce the provisions of this Article by the discontinuance of water service in the event of violation hereof.

Section 4.3.08 Watering Schedule

- A. Hours for Watering - 6:00 P.M. to 10:00 P.M. 5:00 A.M. to 10:00 A.M.

- B. Days for Watering - Houses with uneven house numbers would water on uneven numbered calendar days. Houses with even house numbers would water on even numbered calendar days.
- C. The areas of town and surrounding areas on the West side of Main Street, without house numbers, Wagon Wheel Trailer Court, and East Haven Trailer Court will water on even calendar days.
- D. The areas of town and surrounding areas on the East side of Main Street, without house numbers, West Haven Trailer Court, Nagel Trailer Court to water on uneven calendar days.

The Mayor will issue the order for water restrictions when warranted.

Section 4.3.09

Read-O-Matic Feature

Any new installation of a standard water meter shall be required to have the Read-O-Matic feature or outside dial. Any existing water meters that are not easily accessible to the meter reader will also require conversion to a standard water meter with the Read-O-Matic outside dial. These standard "ROM" meter/dials shall be installed at the discretion of the City.

The customer receiving such service shall pay a one (1) time minimum charge plus tax. Any customer receiving such service shall pay any additional plumbing fee as required to make a standard "ROM" installation.

Article 3 – Water

Division 2 – Requirements for Connection

Section 4.3.10

Water Deposit

Any person residing within or without the City who desires water from the Municipal System shall deposit the following amounts and such amount shall be carried as a credit against the applicant's account until final settlement is made:

- A. Residential \$40.00
- B. Commercial or agricultural use \$30.00

Section 4.3.11

Water Meters

- A. The installation of all water meters to any residential or commercial entity shall be purchased and installed at the expense of the residential or commercial user.
- B. All water meters servicing any residential or commercial users shall be deemed owned by the user. If any repair, maintenance, or replacement is required on any such water meter in town, then the users shall be responsible for all of the expenses involved in such replacement, maintenance, or repair of the water meter.

- C. The City shall have the right to inspect all water meters servicing any residential or commercial users. If the water meter is not properly measuring the amount of water that goes through the meter, then the City will notify the residential or commercial owner of the meter to repair the same. In the event that the user of the meter does not repair the meter, the City shall have the right of ingress and egress upon the property to repair or, if needed, replace the water meter. The City will then bill the costs of repairs and/or replacement of the meter to the owner of the meter and such costs will be on the monthly utility bill. If the meter repair or replacement is not made, the City may enforce the collection of the repair or maintenance in the same fashion as the City may collect on a water bill. If the water meter, at any commercial business or residence, is not function because of any negligence on behalf of the City, then the City shall be responsible for the repair and/or maintenance of such water meter.
- D. In the event that a water meter must be replaced or repaired as set out above, the commercial or residential entities must purchase any replacement water meter through the City, at City's cost. The purpose is for the City to insure that quality water meters are installed.
- E. All water meters installed by residential or commercial users after this Ordinance is in full force and effect, shall have shut off valves on both sides of the meter and also shall have dual check valves installed in front of the meter. If any water meters need to be replaced or repaired, the costs shall be born by the water user. However, if any repair or replacement is required because of negligence of the City, the City shall be responsible for the cost of repair or replacement, including the labor therein.
- F. All water meters, couplings, and seals purchased by residential or commercial users must be purchased through the City and all meters will be sold at the City's cost. The purpose is to insure that all water meters will be standardized within the City and will be quality meters.

Section 4.3.12

Meter Rates

The City shall purchase meters and charge to each water consumer using any such meter the rates it costs the City to purchase them.

Title to said meters to be retained by the City.

Section 4.3.13

Installation of Meters

- A. Outside meters shall be placed in a container not less than thirty (30) inches in diameter and at a depth of the service pipe leading into said container, said enclosure to be constructed under the supervision of the City Superintendent of tile or brick or concrete walls with double lids spaced twenty (20) inches apart, the top lid to be an approved iron lid such as a Clark meter box cover to be placed flush with the ground; said enclosure to be constructed and furnished in place ready for meter by consumer at his own expense.
- B. All meters installed in basements shall be so placed so as to be readily accessible and properly protected from climatic conditions.

- C. All meters shall be installed under the supervision of the City Superintendent.
- D. Any repairs needed for the meter which is due because of carelessness or neglect of the water user will be charged to the consumer and must be paid upon receipt of the bill from the City Finance Officer.

Section 4.3.14 Unauthorized Disturbance of Water Meters

No person unless authorized by the City shall connect, disconnect, remove, repair, or otherwise disturb any water meters of the City.

Section 4.3.15 Access to Water Meter

If for any reason access cannot be gained to a water meter for reading or repairing purposes and if the obstruction to the reading of such water meter is not removed within five (5) days after notice to the owner of such obstruction, the water shall be turned off by the City Superintendent and not be turned on again until such obstruction is removed and upon the payment of two (2) dollars to the City Finance Officer of the City and a receipt issued therefore. When the water has been shut off because of delinquency or other infringements it cannot be turned on again until a certificate is issued by the auditor authorizing the City Superintendent that the same may be turned on.

Section 4.3.16 Rules and Regulations

All rules, regulations, and ordinances of the City governing water usage shall be considered a part of the contract with every person who is supplied with water through the water system of the City and every such person by taking water shall be considered to express his or their assent to be bound thereby and whenever any of them are violated or such others as the Council may hereafter adopt, the water shall be cut off from the building or place of violation.

Section 4.3.17 Laying of Pipes

All service pipes must be laid as much under the surface of the ground as the depth of main in the street. In all cases the pipe is to be protected so as to prevent rupture from freezing. The plumber making or installing the water service, must within ten (10) days, complete the tapping record in the office of the City Finance Officer furnishing location of service box in feet from lot line.

Section 4.3.18 Hydrants and Drinking Fountains

No public drinking fountains shall be placed within the limits of any street or alley unless the overflow is connected with the sewer.

Section 4.3.19 Water Free for Fire Purposes

If proprietors of lumber yards, factories, halls, stores, elevators, warehouses, hotels, or public buildings, or regular consumers of water from the waterworks, wish to lay large pipes with hydrants and hose couplings to be used only in case of fire, they will be permitted to connect with the street mains at their

own expense upon the application and will be allowed to use water for fire purposes only, free of charge. Such connections must be made under the supervision of the City Superintendent.

Section 4.3.20 Covering of Pipes

No water pipes laid under the ground shall be covered and trenches filled by any person until after the water has been turned in such pipes and said pipes have been tested by the City Superintendent and found to be water tight.

Section 4.3.21 Inspection Period

The City Superintendent may require twenty-four (24) hours notice to inspect a tap in the main.

Section 4.3.22 Placement of Pipes

No person, consumer, owner, or occupant of premises shall be permitted to construct or lay water pipes across another lot or lots or fraction thereof to other premises for serving or supplying water for domestic or commercial use. All water service pipes shall enter on the street at the front of the building nearest the sidewalk. Not more than one house shall be piped or connected with water mains or line from the same tap. Any person, consumer, owner, or occupant of premises who are getting water from the City water distribution system is not permitted to dispose or barter any water registered through his water meter without first making application to the Council setting forth what the possible amount consumed will be and obtaining a special rate from the Council for that purpose.

Section 4.3.23 Property Not to be Tampered With

No person shall willfully or carelessly break, injure, mar, deface, interfere with or disturb any building, machinery, apparatus, fixtures, attachments, or appurtenances of the waterworks of said City, or any public or private hydrant or stop cock, meter, water supply or service pipe, or any part thereof; nor shall any person deposit anything in any stop cock box or commit any act tending to obstruct or impair the intended use of any of the above mentioned property.

Section 4.3.24 Opening of Public Hydrants

All the hydrants erected in said City for the purpose of extinguishing fires are hereby declared to be public hydrants and no person (other than the members of the fire department and then only for the uses and purposes of said department, or persons specially authorized by the Council, and then only in the exercise of the authority delegated by the Council) shall open any of said hydrants or attempt to draw water from the same, or at any time uncover or remove any protection from any of the hydrants of said City, or in any manner interfere with any of the hydrants.

Section 4.3.25 Delegation of Authority

No person authorized to open hydrants shall delegate his authority to another, or let out or suffer any person to take away the wrenches furnished him, or suffer the same to be taken from any house of said City except for the purposes strictly connected with the fire department, or as they accompany hose trucks on occasions of fires.

Section 4.3.26 Excavation when Ground is Frozen

No persons shall make any excavation in any street or highway, within 6 feet of any laid water pipe while the ground is frozen, or dig up or uncover so as to expose the frost any water pipe, except by permission of the City Superintendent.

Section 4.3.27 Protection of Boilers

All house boilers shall be constructed with one safety valve near the top of the inlet pipe and be sufficiently strong to bear the pressure and ram of the water mains. All persons taking water shall install and maintain at their own expense their service pipe, stop cocks, and apparatus and protect from frost at their own risk and expense and shall prevent all unnecessary waste of water; and is expressly stipulated by the Council that no claim shall be made against the City or its officers by reason of the breaking of any service pipe or service cock, or if from any cause the supply of water should fail or from damage arising from the shut off of the water to make repairs to the mains making extension or connections, or for any other purpose that may be deemed necessary, and the right is hereby reserved to cut off the supply of water at any time, any permit granted or regulations to the contrary notwithstanding.

Section 4.3.28 Water Cocks

Every service pipe must be provided with an I. V. Minneapolis Pattern, like Mueller No. G-15150 or its equal stop cock for each consumer placed outside the lot line easily accessible and so situated so that the water can be conveniently shut off. All stop cocks in the line of the service pipe or branches under the ground must be stops with circular water ways of the same diameter of the waterways as the pipe in which each are placed, have "T" handles and be in every respect as required by the Council or the City Superintendent.

Section 4.3.29 Placement of Stop Boxes

Unless otherwise permitted stop cocks shall be placed in the service line or the outer edge of the property line and protected by a box or pipe reaching from the tap to the surface of the ground of suitable size to admit a stop key for turning on and off the stop; also with a heavy metal cover having the letter "W" marked thereon, visible and even with the pavement.

Section 4.3.30 Stop Key

No person, other than the City's Representative, shall be permitted to use a stop key for the purpose of turning on or off the stop cock of any water service without the consent of the City Superintendent.

Section 4.3.31 Excavation of Streets

In making excavations in the streets or highways for the laying of service pipes or making repairs, the paving or earth must be deposited in a manner that will occasion the least inconvenience to the public, and provide for the passage of water along gutters.

Section 4.3.32 Barricades and Night Warning Lights

No person shall leave any excavation made in the Street or highway for the laying of service pipe or any other cause, open at any time without barricades and during the night warning lights must be maintained at such excavations.

Section 4.3.33 Refilling Procedure

After the service pipes are laid, in refilling the opening, the earth must be laid in layers of not more than 9" in depth, and each layer thoroughly washed in, rammed, or paddled to prevent settlement later, and this work, together with the replacing of sidewalk, ballast, and paving, must be done so as to make the street at least as good as it was before it was disturbed and to the satisfaction of the Water Superintendent.

Section 4.3.34 Meter Failure

If for any cause a meter fails to register the amount of water used for any month, the amount of water so used shall be estimated by the City Superintendent; said estimates to be based on the average amount of water registered during a like period, under like conditions, considering usage and number of persons living in the premises.

Section 4.3.35 Tapping Mains

No person, except an employee of the City waterworks, person under contract with the City, or plumbers duly licensed by resolution of the Council, as hereinafter provided, shall do any work on any pipes or connections made with the mains, or insert stop cocks or ferrules therein, or in any way or under any circumstances interfere with the water supply of the City. The Council at all times reserves exclusive control of all service pipes from the main to the lot line. In case the City deems it expedient to allow such work as is mentioned in this Section to be done by contract, then in that event, it shall only be done, after due notice has been published in the official newspaper of the City for one week; said notice to contain the date when sealed bids will be received by the Council, the nature and character of the work and all such bids must be accompanied with a certified check in the amount fixed by the Council in notice to be published as evidence of good faith and all contracts shall then be let to the lowest bidder. The Council shall at all time reserve the right to reject any and all bids. All persons receiving a contract for such work shall before entering into said contract execute and deposit with the City Finance Officer a bond with two or more sufficient sureties or surety bond to be approved by the Council in the penal sum deemed necessary by the Council, conditioned that he will construct said work and furnish the material according to the plans and specifications and that he will save harmless and indemnify the City of and from all accidents and damages caused by any negligence in prosecuting and protecting his work, and that he will restore all earth, pavement and other material in and over any opening he may have made in laying any of the service pipes and for any other purpose, to as good a state and condition as it was before such opening was made, and keep and maintain the same in good order and to the satisfaction of the City Superintendent or Council for a period of one month thereafter.

Section 4.3.36 Inspection by City Superintendent

Every person taking water supplied through the water system of the City shall permit the City Superintendent at all hours of the day between 7:00 o'clock a.m. and 6:00 o'clock p.m. to enter their premises or building to examine the pipes and fixtures and the manner in which the water is used; and they must at all times frankly and without concealment answer all questions put to them relative to its consumption.

Section 4.3.37 Water Shut Off

When water has been shut off from the premises the consumer shall not turn it on or permit it to be done without the consent of the City Superintendent.

Section 4.3.38 Water Turn On

The water shall not be turned on in any house or private service pipe except upon the order of the City Superintendent nor until the applicant shall have paid the required deposits; and plumbers and others are strictly prohibited from turning water into any service pipe except upon the written order of the City Superintendent.

Section 4.3.39 Distance Between Water and Sewer Lines

Water lines and sewer lines are prohibited from being placed in the same ditch. They must be at least ten (10) feet apart.

Section 4.3.40 Distance Between Meter and Hydrant Box

The meter box should be at least ten (10) feet from the hydrant box.

Section 4.3.41 Service Repairs

No water user shall be permitted to repair any iron service when such service breaks or in any way causes a leak, it shall be replaced with copper pipe, at the expense of the water user or property owner and shall be installed under the supervision of the City Superintendent.

The Council shall at all times have the power to change or adopt any rules or regulations by presenting the same in form of an ordinance at any regular or adjourned meeting and such action shall become effective upon the passage and publication of such resolution.

Section 4.3.42 Installation of Water Service

The purpose of this Article is to protect and enhance the City streets and private properties where there is a buried water service.

Section 4.3.43 Materials

At least the grad of "k" type copper or better. An AWWA approved plastic at least one hundred sixty (160) pounds test.

Section 4.3.44 Size

All service lines will be at a minimum of one (1) inch with the exception of mobile homes that can have a minimum of a three-quarter ($\frac{3}{4}$) inch service line. Also all service lines and connections will be made of a lead free material. City to provide a three-quarter ($\frac{3}{4}$) inch by one (1) inch water meter as standard size. Property owners requiring larger meters to bear total cost of such meter. The brands to be installed must be only those manufactured by Hershey, Trident, Neptune, or Rockwell, with City's preference to be Rockwell. The City keeps a stock of repair parts only for those named above.

Section 4.3.45 Responsibilities

The property owner will be responsible for the cost of installation and materials of service line from the corporation connection to the building for which it is intended.

Section 4.3.46 Materials Used

The property owner will be required to install a curb stop and box one to three feet in back of curb and gutter line. The property owner will be required to use a "k" soft copper from the point at the corporation to the curb stop. If they so choose to use an AWWA 160 lbs. test plastic line from the curb stop to the structure, they may do so.

Section 4.3.47 Country Taps

The Council shall have the right to approve or reject any application for water tap outside of the City limits. It will be necessary for the Council to at all times take into consideration any hazard or responsibility to the patrons in the City before such application is approved. If application is approved it will be necessary for applicant to pay all expense of making said tap including transportation of City Superintendent at the rate of \$24.50 per mile or fraction thereof. The tap must be made under the supervision and direction of the City Superintendent.

That at any time the Council finds it is necessary to shut off the water that they have the right to do so without any recourse from the customer.

Section 4.3.48 Violation of Any Provisions

If any owner of any property fronting or abutting on any street or avenue as aforesaid shall fail, refuse, or neglect to lay, construct, or replace any and all water service pipes, and connections as required by the provisions of this Article, or shall in any manner violate any of the provisions hereof, then it shall be the duty of the City Superintendent, and he is hereby required, to cut off the City Water Supply at such premises without additional notice, and each and every person whose water supply is thus cut off shall not be permitted to turn on said water and lay the pipe and connections as required without the permission of the City Superintendent and upon complying with the provisions of this Article.

Article 3 – Water

Division 3 – Rates

Section 4.3.49 Water Rates

The following schedule of rates and charges for water and service is hereby established:

A. Residential dwellings, churches, schools, and hospital water rates:

- First 2,000 gallons or less \$7.00
- Next 3,000 gallons.....\$5.50 per thousand gallons
- Excess of 5,000 gallons.....\$1.25 per thousand gallons

B. Commercial Water Rates:

- First 2,000 gallons or less \$9.00
- Next 3,000 gallons or more \$5.50 per thousand gallons
- Next 10,000 gallons or more \$1.25 per thousand gallons
- Excess of 15,000 gallons \$1.00 per per thousand gallons

C. A bulk water delivery system, located at the North Shop, is available for use by the general public, and fees, method of payment, and access to the system are as follows:

Minimum 2,500 gallons \$30.00 per month

Each 1,000 gallons over 2,500 gallons \$5.00 per month

Minimum fee for up to 2,500 gallons, per month per patron, payable in advance by the 1st of each month, to be deposited with the Finance Officer prior to receiving the system. Excess gallons over the 2,500 gallons minimum will be determined and billed to the appropriate customer.

Those patrons, who have deposited the required minimum thirty (30) dollars will be placed on a list, maintained at the office of the North Shop and only those patrons who have made a payment will be permitted to obtain a key which will allow access to the facility.

The system will be accessible from 8:00 AM through 5:00 PM, Monday through Friday, on regular working days.

- D. Surplus rates - Consumers located without the municipal limits, but within one (1) mile thereof, shall be charged rates equivalent to those adopted by the Tripp County Water User District, Effective May 1, 1989.

*New rate schedule will be adopted when necessary to conform to Tripp County Water User rates.

- E. Consumers located without the municipal limits but within one (1) mile thereof shall pay a tapping fee of:

Up to One Inch Line \$350.00

Up to Two Inch Line \$550.00

Other Tapping Negotiable

Fee to include tap saddle and shut off on existing main. All additional material and labor are the responsibility of Consumer.

This Section shall not apply to Consumers who have executed easements for the transmission line of the City.

Section 4.3.50 Non-Profit Organizations

Non-profit recreational organizations, which are users of Winner Municipal Water and located outside of City limits, beginning on January 1, 2007 shall pay a monthly rate of fifteen (15) cents per M gallons, or fraction thereof, for the first one thousand (1,000) gallons and all over one thousand (1,000) gallons. On January 1, 2008 the rate shall be increased by five (5) cents and shall be increased by five (5) cents each succeeding year on January 1 until the year of 2011 whereby the rate shall remain fixed unless revised by the Winner City Council. The following rates for Non-Profit Organizations outside of the City Limits shall become effective on January 1, 2007 and shall be increased by five (5) cents each succeeding year up and to January 1, 2011.

The following schedule of rates and charges is hereby established:

January 1, 2007 15 cents per thousand gallons

January 1, 2008	20 cents per thousand gallons
January 1, 2009	25 cents per thousand gallons
January 1, 2010	30 cents per thousand gallons
January 1, 2011	35 cents per thousand gallons

These rates shall apply to all non-profit recreational organizations whose total acreage devoted to recreational purposes shall exceed forty (40) acres.

All sales of water to non-profit recreational organizations shall be made only after the user shall sign an agreement, which shall in effect state that user understands that the City reserves the right without any reason to immediately discontinue for any length of time furnishing water without any notice of any kind to said consumer.

Article 4 – Sewer

Division 1 – General Regulations

Section 4.4.01 Unlawful Deposits

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

Section 4.4.02 Unlawful Construction or Maintenance

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

Section 4.4.03 Installation of Toilet Facilities

The owner(s) of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the City is hereby required at the owner(s) expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Article, within ten (10) days after date of official notice to do so, provided that said public sewer is within fifty (50) feet of the property line.

Section 4.4.04 Private Water Disposal

- A. Where a public sanitary or combined sewer is not available under the provisions of Section 4.4.05, the building sewer shall be connected to a private waster water disposal system complying with the provisions of this Section.
- B. Before commencement of construction of a private wastewater disposal system, the owner(s) shall first obtain a written permit singed by the superintendent. The application for such permit shall be made on a form furnished by the City, which the

applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the superintendent. A permit and inspection fee of one hundred (100) dollars shall be paid to the City at the time the application is filled.

- C. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the superintendent.
- D. The type, capacities, location, and layout of a private wastewater disposal system shall comply with all recommendations of the Department of Public Health of the State of South Dakota. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than three thousand two hundred (3,200) square feet (square meter). NO septic tank or cesspool shall be permitted to discharge to any natural outlet.
- E. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 4.4.06 (D), a direct connection shall be made to the public sewer within sixty (60) days in compliance with this Ordinance, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
- F. The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all time no expense to the City.
- G. No statement contained in this Section shall be construed to interfere with any additional requirements that may be imposed by the health officer.

Section 4.4.05

Unauthorized Disturbance

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent.

Section 4.4.06

Two Classes of Building Sewer Permits

There shall be two (2) classes of building sewer permits:

- A. Residential and commercial service; and
- B. Service to establishments producing industrial wastes.

In either case, the owner(s) or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee on one hundred (100) dollars for a residential or commercial building sewer permit and two hundred (200) dollars for an industrial building sewer permit shall be paid to the City at the time the application is filed.

Section 4.4.07 Costs and Expenses

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

Section 4.4.08 Separate and Independent Building Sewer

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection before mentioned.

Section 4.4.09 Old Building Sewers

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

Section 4.4.10 Building and Plumbing Code Requirements

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

Section 4.4.11 Elevation

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

Section 4.4.12 Approval for Connection

No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the superintendent for purpose of disposal of polluted surface drainage.

Section 4.4.13 Connection of Building Sewer into Public Sewer

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

Section 4.4.14 Inspection and Connection

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

Section 4.4.15 Excavations

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

Section 4.4.16 Discharge of Unpolluted Waters

No person shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, ground water, roof runoff, subsurface drainage, or cooling water to any sewer, except storm water runoff from limited areas, which storm water may be polluted at times, may be discharged to the sanitary sewer by permission of the superintendent.

Section 4.4.17 Storm water

Storm water, other than that exempted under Section 4.4.17, and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, to a natural outlet approved by the superintendent and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the superintendent, to a storm sewer, combined sewer, or natural outlet.

Section 4.4.18 Prohibited Discharge

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

- A. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.
- B. Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
- C. Any waters or wastes having a pH lower than (5.5) or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.
- D. Solid or viscous substances in quantities or of such size capable of causing obstruction the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

The following described substances, materials, waters or waste shall be limited in discharges to municipal systems or concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property or constitute a nuisance. The superintendent may set limitations lower than the limitations established in the regulations below if in his opinion such more sever limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the superintendent will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treat ability of the waste in the wastewater treatment plant, and other pertinent factors. The limitations or restrictions on material or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the superintendent are as follows:

- A. Wastewater having a temperature higher than 150 degree Fahrenheit (65 Degree Celsius);
- B. Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils, or product of mineral oil origin;
- C. Wastewater from industrial plants containing floatable oils, fat, or grease;
- D. Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from home, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers;
- E. Any waters of wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the superintendent for such materials;
- F. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the superintendent;
- G. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations;
- H. Quantities of flow, concentrations, or both which constitute a "slug" as defined herein;
- I. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters; and
- J. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.

Section 4.4.20

Proposed Discharge Into Public Sewers

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 4.4-14, and which in the judgment of the superintendent may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may:

- A. Reject the wastes;
- B. Require pretreatment to an acceptable condition for discharge to the public sewers;
- C. Require control over the quantities and rates of discharge; and/or
- D. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 4.4-26.

When considering the above alternatives, the superintendent shall give consideration to the economic impact of each alternative on the discharger. If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent.

Section 4.4.21

Grease, Oil, and Sand Interceptors

Grease, oil and sand interceptors shall be provided when in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in Section 4.4.19 or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the superintendent and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates and means of disposal which are subject to review by the superintendent. Any removal and hauling of the collected material not performed by owner(s) personnel must be performed by currently licensed waste disposal firms.

Section 4.4.22

Pretreatment/Flow-Equalizing Facilities

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

Section 4.4.23

Building Sewer Carrying Industrial Wastes

When required by the superintendent, the owner(s) of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the superintendent. The structure shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

Section 4.4.24

Compliance

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

- A. Wastewaters discharge peak rate and volume over a specified time period;
- B. Chemical analyses of wastewaters;
- C. Information on raw material, processes and products affecting wastewater volume and quality;
- D. Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control;
- E. A plot plan of sewers of the user's property showing sewer and pretreatment facility location;
- F. Details of wastewater pretreatment facilities; and
- G. Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

Section 4.4.25

Characteristics of Water and Wastes

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

Section 4.4.26

Special Agreement or Arrangement

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

Section 4.4.27

Entering Properties

The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing pertinent to discharge to the community system in accordance with the provisions of this Article.

Section 4.4.28

Obtaining Information

The superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes that have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

Section 4.4.29 Safety Rules

While performing the necessary work on private properties referred to in Section 4.4.28, the superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section 4.4.24.

Section 4.4.30 Entering Private Properties

The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited, to inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Section 4.4.31 Damage Done to Facilities

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

Section 4.4.32 Settling of Disputes

A Hearing Board shall be appointed as needed for arbitration of differences between the superintendent and sewer users on matters concerning interpretation and execution of the provisions of this Article by the superintendent. The cost of the arbitration will be divided equally between the municipality and the sewer user.

Section 4.4.33 Members of Hearing Board

Members of the Board shall include:

- A. A registered professional engineer;
- B. A practicing sanitary engineer;
- C. A representative of industry or manufacturing enterprise;
- D. A lawyer; and
- E. One member shall be selected at large for his interest in accomplishing the objectives of this Article.

Article 4 – Sewer

Division 2 – Requirements to Connect

Section 4.4.34 Guidelines to Laying Sewer Lines

It shall be unlawful for any person to tap or lay a lateral sewer lines to connect with the main trunk sewer line upon the public streets or alleys of the City without the same being done under the direct supervision of the City Superintendent of the City and all such work shall be done strictly in accordance with specifications as to work, material and manner of connection as required by the City, City Superintendent of such City, and all tapping shall be done by a licensed plumber.

Section 4.4.35 Tapping of Lateral or Trunk Sewer

It shall be unlawful for any person to break into or tap any lateral or trunk sewer in the City at any other place than where it has been placed for the connecting of the service sewers, except upon written permission of the City Superintendent of said City, and no opening or connection shall be made in any lateral or trunk sewer of said City at any point by any person without having first made an application therefore to the Winner City Finance Officer and said application shall have been approved by the Council.

Section 4.4.36 Inspection of Service Sewer

No sewer or lateral sewer trench shall be filled or sewer pipe covered until the service sewer has been inspected by the Winner City Superintendent and all persons making service sewer connections shall give at least five hours notice to the City Superintendent of the time when such service sewer will be ready for inspection, and it shall be the duty of the City Superintendent, within a reasonable time after such notice, to inspect such service sewer and if in his judgment such service sewer is properly connected and laid with the proper grade and with proper material and in good workmanship manner he shall give permission for the filling of the trench or ditch and if he finds such service sewer defective or improperly laid or connected, he shall order the same taken out and relaid in accordance with his directions, and when such service sewer is completed and approved by the Winner City Superintendent he shall give permission to the owner or person in charge of such property by said service sewer, to turn water therein and use the same, but no such service sewer shall be used until such permission is first obtained from the Winner City Superintendent.

Section 4.4.37 Cost of Construction

It shall be unlawful for any person to connect with or tap any main sewer trunk line of the City until all of the cost of construction of the sewer line adjacent to said property and the sewer cost per front footage has been paid to the Winner Finance Officer and the amount of said front footage charge that shall be paid is the cost per front footage as determined by the Winner City Engineer.

Section 4.4.38 Separate Connection of Main Sewer Drain

The main sewer drain of every house or building shall be separately and independently connected to the sewer where the sewer is in front or along the side or rear of said building, and where it is necessary to construct a private sewer to connect with the sewer in an adjacent street, such sewer plans may be used as shall be approved by the Winner City Engineer or the Winner City Superintendent. When it is desired to connect two or more buildings with one branch or lateral sewer, the person desiring to do so shall first file a plan of such sewer with the Winner Finance Officer and the Winner City Superintendent shall inspect the same and make his recommendations thereon and submit the same to the Council for approval or rejection. Also an easement shall be taken out and filed by the applicant with the City Finance Officer and recorded in the office of the Register of Deeds of Tripp County, South Dakota, when crossing private property.

Section 4.4.39 Angle of Tapping Main Sewer Line

In tapping the main sewer line all sewer laterals connecting therewith shall be laid at an angle of forty-five (45) degrees and in such manner that such sewer pipe can be rotted.

Section 4.4.40 Back Water Check Valve

That a back water check valve of four (4) inches or larger shall be installed in all new sewer lines constructed or replaced sewer lines in all residential and commercial construction.

Section 4.4.41 Violation of Provisions

Any person found to be violating any provision of this Article, except Section 4.4.33, shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

Section 4.4.42 Penalty

Any person who shall continue any violation beyond the time limit provided for in Section 4.4.41, shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01. Each day in which any such violation shall continue shall be deemed a separate offense.

Section 4.4.43 Liable for Expense

Any person violating any of the provisions of this Article shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.

Article 4 – Sewer

Division 3 – Rates

Section 4.4.44 Establishment of Rates

The sanitary sewer rates shall be established by the Council at any regular meeting upon proper presentation of an ordinance setting forth the rate. The sanitary sewer rate shall become effective after passage and publication of said ordinance.

Section 4.4.45 Sewer Use Fees

The following schedule of rates and charges for sanitary sewer use and services is hereby established for all residential dwellings, churches, schools, hospital and commercial business.

- Between 0000 - 3,000 Gallons/water used/month ..\$7.50/month minimum
- Between 3,001- 4,000 Gallons/water used/month ..\$7.51 - \$10.50/month
- Between 4,001- 5,000 Gallons/water used/month ..\$10.51-\$17.00/month
- Between 4,001- 20,000 Gallons/water used/month ..\$17.01-\$21.00/month
- Between 20,001-45,000 Gallons/water used/month ..\$21.01-\$25.00/month
- Between 45,001-95,000 Gallons/water used/month ..\$25.01-\$32.00/month
- Between 95,001-145,000 gallons/water used/month or more..\$32.01-\$40.00/month

Section 4.4.46 Sewer Taps

Sanitary Sewer Taps: Users located without the municipal limits but within one (1) mile thereof.

Tapping Fee = \$200.00 Fee to include access to existing main. All additional material and labor is the responsibility of the user. Extension of the main line is at the discretion of the city and subject to negotiation with the user.

Section 4.4.47 Request for Irrigation Exemption by Residential Customers

For irrigation purposes of lawns and gardens, residential customers the receive a utility bill for use of the sanitary sewer may apply to the Deputy Finance Officer in charge of utility billing for a reduction in their summer sanitary sewer rate. The reduction in rates will be given for water used by the resident in the months of June, July and August and such rate will be based on the residential customers average water used for the months of January, February and March. The residential customer's billing statement for August, September and October will reflect this reduced rate. Residential customers must apply for this reduction to the Deputy Finance Officer by the 15th of June to receive the full three month reduction.

Article 5 – Sanitation

Division 1 – General Regulations

Section 4.5.01 Establishment of Authority

The City has previously advertised for bid for a private waste management firm to dispose of garbage accumulated in the City and following the advertisement for bids, the successful bidder was Heartland Waste Management. As the successful bidder, the City hereby authorizes Heartland Waste Management to be the exclusive garbage collector within the City limits of the City.

Section 4.5.02 Responsibility

The City has contracted for garbage service with Heartland Waste Management. The City will bill for all of the garbage services. Heartland Waste Management will bill the City directly for services provided.

Section 4.5.03 Billing

All residential and business waste service fees shall be billed by the City, along with the City utility bill at the end of each month for the proceeding month's waste services.

Section 4.5.04 Containers

The containers to be used for storing refuse and garbage but not including ashes, shall be no larger than thirty (30) gallons and shall be of heavy gauge galvanized metal, or high impact plastic, with tight fitting covers of the same metal or plastic and the capacity of said containers for ease in handling. The containers shall be so fastened so that dogs or other animals can not upset or tip over said containers, said containers shall be placed on racks eighteen (18) inches above the ground level and located at or near the alley. The covers of the containers used for refuse and garbage but excluding ashes shall be fastened to the rack or stake so that it can not be easily removed from the area in which the container is kept.

Section 4.5.05 Preparation of Garbage and Refuse for Collection

- A. All garbage shall be bagged before placing same in garbage containers;
- B. Yard waste, grass clippings must be separated from household garbage and placed in degradable, bio-degradable bags or cardboard containers;
- C. Ashes must be placed in containers having a capacity not to exceed ten gallons but need not have covers; and
- D. Cardboard boxes and like material shall be flattened and tied in bundles and placed in rat proof containers until picked up, providing that business buildings shall keep waste papers, cardboard boxes, and all like materials separate from the garbage.

Section 4.5.06 Covered Loads to the Landfill

All vehicles hauling debris to the landfill shall be adequately covered or secured to prevent any scattering of debris upon any public roadway, street or private property. An adequate cover shall constitute a tarp or other similar material (tie-down) to secure the load.

The city shall charge \$10.00 for each load delivered to the land fill that is not adequately covered. This charge shall be in addition to those fees as set out elsewhere in Chapter 4, City Owned Utilities and Services, Articles 5 - Sanitation, Division 2 - Rates.

Section 4.5.07 Method of Collection

Heartland Waste Management shall designate the days on which collections shall be made in the residential and commercial sections. On these days, the owner or occupant shall place all containers at the site designated by Heartland Waste Management.

Section 4.5.08 Storage of Food and Feed

All food and feed kept within said City for feeding poultry, cattle, swine, horses or other animals shall be kept and stored in rat free and rat proof containers, compartments or rooms, unless kept in a rat proof building.

Section 4.5.09 Accumulation of Garbage and Refuse

- A. It shall be unlawful for any person to place, leave, dump, or permit the accumulation of any garbage, rubbish or trash in any building or upon any premises in said City so that same shall provide food or harborage for rats or a breeding place for flies and other vermin.
- B. It shall be unlawful for any person to permit to accumulate upon any premises, whether improved or vacant, or upon any open lots, street, or alley in said City, any lumber, boxes, barrels, bricks, stones or any other materials or permit the same to remain thereon for any longer time that a temporary period reasonably required for the building or repairing of property, unless same shall be placed on open racks that are elevated not less than eighteen (18) inches above ground, and evenly piled or stacked.

Section 4.5.10 Inspection by Health Officer

The Public Works Director shall from time to time make inspection of all alleys, buildings, and premises, and if a violation of the provisions of this Article is found, he shall notify in writing the owner, tenant or agent of such premises of such violation, and said owner, tenant, or agent shall with three (3) days correct the violation.

Section 4.5.11 Method of Disposal

- A. All garbage and refuse (except tree branches and trees) shall be disposed of by the sanitary-fill method. The site for such fill shall have the approval of the Utility Supervisor and the State Department of Health and shall not create a fire hazard, a breeding place for rodents, flies or other vermin and shall in no way endanger the safety and welfare of any person and shall be kept and maintained in such manner as to cause no nuisance or inconvenience to adjoining property owners and tenants;
- B. No dumping of garbage or refuse shall be at any other place than that as designated by the Council;
- C. It shall be unlawful to burn garbage or other refuse; and
- D. No leaves, tree branches, or other rubbish shall be burned upon any sidewalk or pavement within said City.

Article 5 – Sanitation

Division 2 – Rates

Section 4.5.12 Rates for Service

Rates for the collection and hauling of garbage and refuse except trees and bulky articles from residences, public buildings and other premises shall be fixed by Resolution of the Council and may be changed from time to time to meet the expenses thereof and payment shall be made monthly at the office of the City Finance Officer and the monthly rates for the various classes shall be assessed against the occupant and if the premises are not occupied against the owner thereof, and the amount shall be billed with and collected with the collection of the electric light service of said City.

Section 4.5.13 Mandatory Payment of Monthly Fees

The business and commercial rates shall be a mandatory fee on each business in the City, South Dakota. The fee shall be applied to each business entity whether the business is in the same building or structure as other businesses. The fee shall be applied to each separate business and the business shall be required to pay the fee even if the business' garbage is deposited in the garbage cans of another business or whether the business disposes of their garbage in some other manner.

Residential garbage fees shall be paid for each separate dwelling unit in the City. For example, if a home owner lives in a home and has the basement rented out for dwelling purposes, each of the separate dwelling units in the home shall be assessed the residential fee for garbage pickup and it shall be mandatory that the fee be paid for each dwelling unit.

Section 4.5.14

Collection Rates

The sanitation collection rates for garbage and rubbish collected within the corporate limits of the City are as follows:

Section 1: The residential sanitation collection rates for the residents of the City

of Winner South Dakota for the collection of garbage by Heartland Waste

Management shall be \$17.00 per month. The \$17.00 per month garbage collection fee

shall be for three (3) thirty (30) gallon cans of garbage per pickup, then each additional thirty (30) gallon container or portion thereof shall be billed at an extra rate of \$4.00 per month. Each apartment, duplex, house or other structure which receives an electric bill from the City of Winner shall be billed for garbage collection as set out above.

Section 2: Residential garbage collection for the residents of the City of Winner shall be once per week.

Section 3: There shall be two (2) garbage collection rates for commercial businesses. Commercial business shall be broken down into small business collection services and large business collection services. Small business collection services shall be provided to all small businesses which maintain a physical address within the City limits and are serviced by City utility services. The small business collection Services monthly rate shall be \$20.00 per month and shall be based upon weekly (1 day per week) of three (3) thirty (30) gallon containers or less of non-hazardous, municipal, solid waste without the use of a dumpster. Small businesses which generate more than three (3) thirty (30) gallon containers of non-hazardous, municipal, solid, waste shall be charged an additional monthly service of \$6.00 per thirty (30) gallon container or portion thereof which is collected on a weekly basis.

The City shall review small business accounts with the City's contracted waste hauler on a quarterly basis to determine if any small business rates warrant any rate changes.

Section 4: All other commercial or business establishments located within the City limits of Winner, South Dakota, which utilize City utility services, excluding the small business as defined in Section 3 above, shall be charged in accordance with the size of the dumpster which said business utilizes, the number of dumpsters utilized and the number of pickups per week. The large business commercial rates shall be established as follows based upon the use of dumpsters:

A). Two (2) cubic yard dumpsters shall be billed at \$50.00 per month for one (1) per week pickup. Each additional pickup day added or necessary per week shall increase the monthly service rate by \$40.00 per month.

B). Collection of three (3) cubic yard dumpsters shall be billed at \$77.50 per month for one (1) day per week pickup. Each additional pickup per week, if necessary, shall increase the monthly service rate by \$60.00 per month.

C). The monthly collection rate for a four (4) cubic yard dumpster shall be billed at \$105.00 per month for one (1) day per week pickup. Each additional weekly pickup that may be required shall increase the monthly service billing by \$80.00 per month.

D). A six (6) cubic yard dumpster shall be billed at \$155.00 per month for one (1) day per week collection. Each additional per week pickup shall increase the monthly service rate by \$120.00 per month.

Section 5: The charges reflected in Section 4 above include rentals of the dumpster and if any business that uses dumpsters owns the same, then such business would not be charged for rental of the dumpster and the fees would be based upon \$5.00 per cubic yard for the dumpsters.

Section 6: All residential and business waste service fees shall be billed by the City, along with the City utility bill at the end of each month for the proceeding month's waste services.

Section 7: Any hauler of debris to City Landfill wherein the debris comes from a person or entity not being served on a monthly basis by garbage collection and not making payment under any of the above family or business schedules, then the Landfill usage rates shall be as follows:

Pickup load	\$15.00
Truck load	\$25.00
Trailer load.....	\$15.00
Large Animals (per carcass).....	\$15.00
Small Animals (per carcass).....	\$10.00
Car Body	\$35.00

Any hauler of debris to the City Landfill shall identify, upon request by the Landfill operator, the name of the business, entity or person from where the debris originated and the hauler shall also give his name, address, business or other information requested by the City Landfill operator. This information shall be given prior to the dumping of the debris in the City Landfill.

Section 8: The cost for depositing tires in the landfill has been previously established by a City Ordinance and said cost shall remain the same as set out in said Ordinance.

Section 9: The City of Winner, South Dakota has previously advertised for bid for a private waste management firm to dispose of garbage accumulated in the City of Winner and following the advertisement for bids, the successful bidder was Heartland Waste Management and as the successful bidder, the City of Winner hereby authorizes Heartland Waste Management to be the exclusive garbage collector for collection of garbage within the City limits of the City of Winner, South Dakota.

Section 10: Ordinance No. 724 is hereby repealed and all Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 4.5.15 Tire Dumping

The City will charge the following rates for the dumping of tires the City Dump:

Car tire, Pickup, Van Tires - 4 ply (less or over)... \$2.00

Truck tires... \$5.00

Tractor tires. \$10.00

Large tires. \$20.00

Article 6 – Cemetery

Section 4.6.01

Headstones and Footstones

All cemetery lots in the City may have either upright or flat headstones with footstones at ground level, centered over the foot of the grave space. All headstones, whether upright or flat, shall face east.

In placing any headstones or footstones in the Winner City Cemetery, the same shall be done so as not to change the contour of the land.

All cemetery lots in the City may have either upright or flat headstones with footstones at ground level, centered over the foot of the grave space. The maximum length of the headstone and/or base or footstone shall be no more than 48 inches per grave space. All headstones, whether upright or flat, shall face east.

In placing any headstone or footstones in the Winner Cemetery, the same shall be done so as not to change the contour of the land.

Section 4.6.02

Maintenance Policy

The Winner Cemetery Maintenance Employees will fill, sod and/or seed, water, mow, and provide for the general maintenance of each and every grave site within the area known as the Winner City Cemetery.

Individuals may care for the site of an immediate family member's grave only. This is limited to mowing and may not interfere with the maintenance crew and the performance of their duties. No one is allowed within the cemetery from 9 p.m. to 8 a.m. daily.

Permanent grave markers, memorials, headstones, and/or footstones may be placed on each grave site by qualified monument companies, provided placement is accomplished as directed in compliance with existing City Ordinances and under the supervision of cemetery personnel.

Maintenance of those markers, etc., shall be the responsibility of surviving family members. If maintenance is required, as determined by City authorities, the City shall have the right to hire monument companies or use City personnel to restore such markers, etc, to an upright or ground level position, whichever is necessary as determined by the original placement of the marker. In the event that the monument, marker, headstone, or footstone is damaged or destroyed, in the process of repositioning, the City and its employees shall not be held liable. Every reasonable effort shall be taken to provide proper and careful restoration of the marker, etc., to its original position.

Vases which are significantly damaged or destroyed by City crews will be replaced by the City at the City's expense. Replacement of vases damaged or destroyed by natural wear or elements shall be the responsibility of family members.

Flowers, temporary memorials, or decorations may be placed on the grave site for one week prior to Memorial Day and may remain on the grave site for one week following Memorial Day. The City will not assume responsibility for, or salvage of, any decorative items so placed.

There shall be no planting of trees, shrubs, or other permanent plantings within the City Cemetery by any firm or corporation, except by the written permission of the Council.

Flowers, plants or decorations may be placed at any time, provided they are placed in vases or receptacles, which are an integral part of the headstone, memorial, marker, or footstone and do not inhibit the general maintenance of the cemetery.

Section 4.6.03 Rates

Section I: The price of all single burial spaces in the Winner City Cemetery,
 Winner, South Dakota shall be computed at \$300.00 per burial space.

Section II: The fee for a standard single burial grave opening shall be \$400.00
 Monday through Friday and \$500.00 on Saturday and Sunday and
 Legal holidays.

The fee for a grave opening deeper than the standard opening for a single burial shall be an additional \$200.00 and shall be allowed only in areas of the Cemetery where soil conditions are conducive. Prior approval must be obtained from the City of Winner.

Requests for exhuming any remains from the Winner Cemetery shall be as follows:

1. Casket with a vault-----\$1,500.00
2. Casket without a vault-----\$2,000.00

In the event the casket is placed in another area of the Winner Cemetery, an additional burial fee of \$300.00 will be assessed, and fees shall be payable in advance of process, which shall be done only during regular working hours of cemetery employees.

A charge of \$75.00 will be assessed for the burial of cremation remains.

Section III: The monies derived from the sale of spaces and grave openings shall
 Be used solely for the purpose of maintaining the gravesites in the City
 Cemetery.

Section IV: All Ordinances or parts of Ordinances in conflict are hereby repealed.

Section V: This Ordinance shall be in full force from and after its passage,
 Approval, and publication.

Section 4.6.04

Casket Enclosure

All adult caskets buried in the Winner Municipal Cemetery must be enclosed in a vault or liner made of concrete, steel, or equally hard material excluding fiberglass.

Article 7 – Airport

Section 4.7.01

Establishment of Authority

An Article defining terms used herein and regulating the private and commercial operation of aircraft from the Winner Municipal Airport providing for:

- A. The lease of hangars and hangar sites;
- B. Permits for commercial and private aeronautical activities and fees;
- C. The regulation and restriction of the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of the Winner Municipal Airport by creating airport approach, turning and transition zones and establishing the boundaries thereof;
- D. Changes in the restrictions and boundaries of such zones;
- E. The building regulations of structures located on the Winner Municipal Airport;
- F. The control of said regulations by the board of adjustment; and
- G. Enforcement and imposing penalties.

Section 4.7.02

Naming

In fond memory of the work and industry that the late Bob Wiley contributed to the improvement and betterment of the Winner Municipal Airport and the high standards which he maintained at all times in connection with the operation of the same, the name of the Winner Municipal Airport be and the same is hereby changed to be as follows, "BOB WILEY FIELD".

Section 4.7.03

Zones

All of the land within the boundaries of the Winner Municipal Airport and within the number of miles of the landing area of the Airport determined as necessary by the Board of Adjustment in accordance with the requirements and recommendations of the Federal Aviation Administration shall be divided by the Board of Adjustment into Airport Approach Zones, Airport Turning Zones, and Airport Transition Zones. The boundaries of which will be shown on the Winner Airport Approach Plan as the same is amended from time to time by the Board of Adjustment in conjunction with the Federal Aviation Administration.

Section 4.7.04

Height Limits

No structure or tree shall be erected, altered, allowed to grow, or maintained in any airport approach zone, airport turning zone, or airport transition zone to a height in excess of the height limit herein established for such zone.

The height limits established shall be done by the Board of Adjustment and shall not exceed those limits which are set by the Federal Aviation Administration unless a variance is permitted by the said Federal

Aviation Administration and such limit regulations established by the Board of Adjustment shall be made available to the public in the permanent records of the said Board of Adjustment.

Section 4.7.05 Use Restrictions

No use may be made of land within any airport approach zone, airport turning zone, or airport transition zone in such a manner as to:

- A. Create electrical interference with radio communication between the airport and aircraft;
- B. Make it difficult for flyers to distinguish between airport lights and other;
- C. Result in glare in the eyes of flyers using the airport
- D. Impair visibility in the vicinity of the airport; or
- E. Endanger the landing, taking-off, or maneuvering of aircraft.

No use shall be made of any building, or area set aside for airport use at the Winner Municipal Airport which is not directly associated with aeronautical activity.

Section 4.7.06 Nonconforming Uses

The regulations herein prescribed in this Article shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any non-conforming use.

Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted and completed within two years thereof.

Section 4.7.07 Variances

Any person desiring to erect any structure or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this Article, may apply for a variance therefrom. Such variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be in accordance with the spirit of this Article.

Section 4.7.08 Permits

No material change shall be made in the use of land, and no structure or tree shall be erected, altered, planted, or otherwise established, in any airport approach zone, airport turning zone or airport transition zone, unless a permit therefore shall have been applied for and granted. Each application shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit applied for shall be granted.

Before any existing use, structure, or tree may be replaced, substantially altered, or repaired, rebuilt, allowed to grow higher, or replanted, within any airport approach zone, airport turning zone, or airport transition zone, a permit must be secured authorizing such replacement, change, or repair. No such permit shall be granted that would allow the establishment or creation of an airport hazard or permit a

non-conforming use, structure, or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of this Ordinance or than it is when the application for a permit is made. Except as indicated, all applications for a permit for replacement, change, or repair of existing use, structure, or tree shall be granted.

Section 4.7.09 Owner Responsibilities

Any permit of variance granted under Sections 4.7.07 and 4.7.08 may, if such action is deemed advisable to effectuate the purposes of this Article and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the owner at its own expense, to install, operate, and maintain thereon, such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Section 4.7.10 Zoning Board of Adjustments Control

All of the regulations and controls as set forth in this Article and permits issued hereunder shall be under the control of the Zoning Board of Adjustment of the City and all permits granted and appeals therefrom and any and all related procedures set forth in the Zoning Ordinance (Appendix C) of the City as the same has been and is amended from time to time.

Section 4.7.11 Aircraft Control Zone

No aircraft shall be permitted to operate over the corporate limits of the City nor upon or from the Winner Municipal Airport, nor within any control zone thereof unless the operation thereof is done within strict compliance of all Federal rules and regulations.

Section 4.7.12 Aircraft Noise Restrictions

Unnecessary noise by operator of aircraft within or over the corporate limits of the City and over or on the Winner Municipal Airport is hereby prohibited.

Section 4.7.13 Airport Parking

No vehicle or truck of any kind or type shall be allowed upon any area of the airport except in designated parking or unloading areas.

Section 4.7.14 User Permit

No person shall hereafter operate or conduct any commercial aeronautical activity upon or from the Winner Municipal Airport for any commercial purpose or any purpose whatsoever for hire by such person without first obtaining a permit for such operation or activity from the City. No permit for any commercial aeronautical activity will be issued until the person seeking such permit shall have submitted to said City an application stating the applicant's name, business name, address, complete description of the commercial activity and of the equipment to be used in connection therewith, and, if the applicant be a non-resident of the City, the person he has designated to accept notice, services of process and summons on his behalf, which designation shall continue during the time any permit is in force. All permits and leases issued by the City shall be done so as to comply with minimum Federal and State rules and regulations so far as the same shall apply.

Section 4.7.15 Receipt of Fees

The City shall upon receipt of the fees in such sums as the Council shall from time to time by resolution determine, issue to the applicant a permit to conduct commercial aeronautical activity or activities. Said

permit shall clearly state the aeronautical activities in which the holder may engage and the length of time covered by the permit.

Section 4.7.16 Cancellation of Permit

Any permit may be cancelled by Resolution of the Board of Adjustment for the violation of this Article, any pertinent ordinance, State Aeronautics Commission, or Federal Aviation Administration rules and regulations by the holder of said permit, his agents, employees, or servants upon fifteen (15) days written notice given to the permit holder and hearing held thereon by the Board of Adjustment of the City.

Section 4.7.17 Supervision and Control

The Winner Municipal Airport shall be under the supervision and control of the Council through the Board of Adjustment who is hereby charged with the duty of maintaining, operating, and controlling said Airport, under the terms and provisions of Resolutions or ordinances adopted by the Council. The Board of Adjustment is hereby authorized to promulgate such rules and regulations as it may deem necessary or advisable for the proper management, control and operation of said Airport. Prior to the adoption of such rules and regulations by the Board of Adjustment, they shall be first submitted to the Airport Advisory Committee for their consideration and said Board may thereafter adopt the same in whole or in part with or without said Airport Advisory Board approval. Said rules and regulations as are adopted in accordance herewith shall be in full force and effect upon the filing of copies of the same with the Winner City Finance Officer and shall be subject to the violation penalties as hereinafter provided in Section 4.7.26 of this Ordinance.

Section 4.7.18 Storage of Gasoline or other Inflammable Materials

The storage of any gasoline or highly inflammable material in any hangar located on the Winner Municipal Airport is expressly prohibited. All paints, dopes, vanishes and solvents shall be stored and kept in accordance with appropriate fire and safety rules and regulations. No gasoline may be sold or disposed except through a state approved stationary gasoline pump except that trucks may be used to deliver gasoline to buried gasoline tanks and refuel aircraft within those areas as designated by the Board of Adjustment including but not limited to tie-down areas, aircraft parking areas and hangar areas.

Section 4.7.19 Right to Enter

The City, through its designated officials reserves the right to enter and inspect any hangar or building located on the Municipal Airport at the City's discretion and any and all leases shall have in their provisions an agreement permitting such entry and inspection.

Section 4.7.20 Building Construction

No construction, building, alteration, and the like in any manner or form or any structure upon the Winner Municipal Airport shall be done or performed unless a building permit shall have been obtained from the Inspector. The regulations and controls concerning any building alteration and construction shall be adopted by the Board of Adjustment. Copies of regulations shall be kept on file and available upon request to any person interested in the Office of the Auditor of the City and shall contain the minimum requirements necessary that shall be not less than the requirement that the construction be made from fireproof material upon the outer surface, namely, metal, brick, and concrete and shall be of generally uniform design, architecture, and color, and any variation in the design, architecture, or color of buildings thereafter must be first approved by Inspector, in accordance with said regulations. The places where construction shall be allowed shall be as designated by the Board of Adjustment. A permit must be likewise obtained for the location of any facility such as, but not necessarily limited to, gasoline pumps, advertising signs, and similar facilities from Inspector in the same manner and forms and building permits.

Section 4.7.21

Rentals from City Hangar

Any rentals received from the use of the City Hangar and Tie Downs shall be payable to the City Finance Officer.

Section 4.7.22

City Obligations

- A. Airport Premise Liability Insurance - The City shall procure Airport Premise Liability Insurance for an amount acceptable to the City.
- B. Gas - The Manager may sell gas at his own risk and the City will furnish tanks and pumps therefore.
- C. Lighting - The City will furnish and pay for all exterior lighting at the Airport.
- D. Snow Removal - The City will, upon notification of the Manager and under his direction, remove snow from runways, parking and taxi ways and roads to and from the county road access. In the event of emergency, the City will provide such snow removal as is necessary.
- E. Fencing And Runway Markers - The City will furnish and install all fencing and runway markers.
- F. Radio - The City will furnish all Radio equipment and maintenance for the same used for airport advisory service.

Section 4.7.23

Nonperformance and Breach

In the event the Manager should fail to observe any of the provisions of this said Agreement then written notice of such failure shall be given to Manager and if not fully corrected within sixty (60) days after the receipt of said notice then City may terminate this said Agreement by written notice which shall become effective immediately upon the receipt of.

- A. The failure of the Manager to perform, keep, and observe the terms and covenants and conditions of this said Agreement. In the event of said failure to so perform after notice of the same is given as hereinbefore provided City shall have the right to at once enter upon and assume full possession of the said space which has been herein delegated to and occupied by the Manager under this said Agreement and to remove therefrom any and all goods and chattels not belonging to City and without being liable for prosecution therefore or to any claim for damages incurred by virtue of such removal and said City shall thereafter be entitled to select a suitable Manager and this said Agreement shall thereafter be null and void.
- B. Manager will not purchase nor contract for any debts in the name of the City without first obtaining specific approval thereof on proper requisition.
- C. Manager agrees to operate the said Airport for the use and benefit of the public and to furnish good, prompt and efficient services adequate to meet all of the reasonable demands for services at the said Airport and to furnish said service on a fair, equal and non-discriminatory basis to all users thereof and to charge fair, reasonable and non-discriminatory prices for each unit of said sale or services providing, however, that Manager may make such reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

- D. The Manager nor any of his agents and employees will not discriminate against any person or class of persons by reason of race, color, creed or national origin in providing any service or in the use of any of the Municipal Airport facilities provided for the public in any manner. Manager further agrees to comply with such enforcement procedures as the United States through its proper agencies may demand that City take in order to comply with the Sponsors Assurances.
- E. The Manager has no right or privilege granted to him, his agents or employees which would operate to prevent any person operating aircraft on the Airport from performing any service on its own aircraft with its own aircraft with its own regular employees including but not limited to maintenance and repair that it may choose to perform.
- F. Nothing herein contained may in any manner or form be construed to grant or authorize the granting of an exclusive right in the Manager by the City.

Section 4.7.24 City's Rights

The City reserves the sole right to develop and improve the landing area of the Airport or any facilities thereon in any manner it sees fit regardless of the desires or views of the Manager and without interference or hindrance. City reserves the rights to maintain and keep the repair of the landing area of the said Airport and all publicly owned facilities on the same together with the right to direct and control the activities of Manager in this regard. City reserves their right to lease the landing area or any part thereof to the United States Government for any military or naval use during time of war or national emergency and any provisions of said Agreement to the contrary shall be suspended during that period of time.

City reserves the right to take any action it considers necessary to protect the aerial approaches of the said Airport against obstruction together with the right to prevent Manager from erecting or permitting to be erected on any area leased by Manager any building, structure or the like or adjacent to the Airport which in the opinion of the City would limit usefulness of the said Airport or constitute a hazard to aircraft.

Section 4.7.25 Payment of Utilities

It is expressly agreed that the Manager shall furnish and pay for all utilities except the following:

- A. City shall be responsible for heating, sewer, and water in rest rooms located in the administrative office attached to the hangar.
- B. City shall furnish outside pay phone station on the premises.
- C. City shall be responsible for all exterior lighting, water and sewer.

Section 4.7.26 Penalty

Anyone who violates this Article shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01. Further, any building or structure maintained, erected, constructed, moved, or converted or any building, structure, or land that is used in violation of this Article or any facility located without a permit is hereby declared to be a nuisance and shall be abated as such. Each day that a violation is permitted to exist shall constitute a separate and distinct offense.

CHAPTER 5: CITY STREET AND SIDEWALKS

Article 1 – General Regulations

Section 5.1.01

Location of Sidewalk

The inner line of the sidewalk:

- A. Upon all ninety (90) foot streets shall be sixteen (16) feet from the lot line;
- B. Upon all sixty (60) foot streets shall be six (6) feet from the lot line; and
- C. Upon all forty (40) foot streets shall be one foot from the lot line.

The same shall apply to all streets upon which no sidewalks have been constructed, except the following sidewalks, which shall be placed four (4) feet from the lot line:

- A. On the east side of Madison Street between First Street and Second Street;
- B. Between Third Street and Fourth Street; and
- C. On the west side of Madison Street between First Street and Fourth Street.

Sidewalks to be constructed on either side of any other street in the City shall be placed as to conform with the sidewalks already constructed upon that side of the street.

All blocks upon which curb and gutter have been constructed, the sidewalk, with the consent of the majority of the abutting property owners, shall be placed along and abutting the curb and gutter. Any trees, shrubbery, posts, fences, or other obstructions planted, constructed, or placed along any street shall be not less than four (4) feet from the inner edge of the sidewalk.

Section 5.1.02

Width of Sidewalk

All sidewalks in front of lots on Main Street, between First and Fifth Streets, shall be sixteen (16) feet in width. All sidewalks one (1) block to the east and one (1) block to the west of Main Street on Second, Third, and Fourth Streets shall be eight (8) feet in width and shall be placed four (4) feet from the inside of the sidewalk to the lot line. All other sidewalks, except those herein before mentioned, shall be not less than four (4) feet in width.

All sidewalks in front of lots upon Sixth Street, or any forty (40) foot street upon which no sidewalks have been constructed, shall be four (4) feet in width and the inner line thereof shall be placed one (1) foot from the lot line. Sidewalks that have already been constructed upon either side of Sixth Street, or any other forty (40) foot streets, other sidewalks shall be constructed on either side of said street so as to conform to the sidewalks already constructed.

Section 5.1.03

Parking

The parking abutting:

- A. All ninety (90) foot streets shall be thirty (30) feet from the lot line;
- B. All sixty (60) foot streets shall be fifteen (15) feet from the lot line; and
- C. All forty (40) foot streets shall be five (5) feet from the lot line.

Section 5.1.04 Water Main Location

Where any water main of said City is located upon the line of any sidewalk to be hereinafter built in accordance with the provisions of this Article, such sidewalk shall be placed to the side of such water main so as not to interfere with the digging up or repair of such main, but in no case shall the outer line of such sidewalk be placed more than twenty (20) feet from the lot line.

Section 5.1.05 Trees

If any trees are planted in the parking upon any ninety (90) foot street mentioned herein, they shall be planted in the center of the parking. No trees shall be planted in the parking upon any forty (40) or sixty (60) foot streets, but nothing in this Article shall effect the location of any trees already planted in any such parking where planted, pursuant to the provisions of an ordinance then in force.

Section 5.1.06 Dedicated Land

That the occupant, person in charge, or owner of any lot in the City which abuts or adjoins a street or alley that contains dedicated land which is not being utilized by the City, shall be responsible to cut the weeds and tall grass on said unused dedicated land as if said person owned the land. In other words, the plats in the City establish that many streets and alleys have been dedicated to include areas wider than actually used by said City and that, if there is any grass or weeds growing on the unused portion of said street or alley, the adjoining or adjacent landowners shall be responsible for cutting the grass and weeds shall apply therein.

Section 5.1.07 Sidewalk Construction Material

That all sidewalks hereafter built in said City shall be of concrete and in accordance with the specifications on file with the City Finance Officer.

Section 5.1.08 Supervision of Construction

That no sidewalk shall be constructed on any street without being constructed under the supervision of a City Superintendent.

Section 5.1.09 Existing Sidewalks

Nothing in this Article shall apply to sidewalks already constructed pursuant to ordinance then in force, upon any street except upon Main Street.

Section 5.1.10 Contractor's Responsibility

- A. The related costs of maintenance and restoration of approved haul roads shall be the contractors' responsibility;
- B. Any contractors performing jobs within the corporate limits of the City who haul sand, rock gravel, cement, or debris shall designate to the City Finance Officer any city street that the contractors will utilize in their hauling as a haul road;
- C. Any haul road designated by the contractor shall be reviewed by the City Engineer. If the City Engineer finds that the haul road is not adequate for the contractors'

hauling, the City Engineer may designate a different haul road for the contractor to use;

- D. If the contractor elects to use a different haul road than those designated by the contractor or the City Engineer, the contractor shall secure written approval from the engineer before the haul road is used;
- E. Before a contractor may use a designated haul road, a joint inspection of the roads will be made by the contractor and the City. Following the inspection, an agreement shall be executed on a form provided by the City, signed by the contractor and the City, stating existing conditions and setting forth any special conditions of restoration of the haul road. This agreement shall be approved by the City or City Engineer prior to hauling over the route;
- F. While hauling operations are in progress over the designated haul road, the contractor shall maintain the haul road in a condition satisfactory to the City Engineer;
- G. When hauling operations are completed, the contractor shall restore the haul road to a condition that satisfies the conditions stipulated in the agreement signed by the City and the contractor. The City Engineer will determine the kind and amount of restoration work required on the haul road, if any;
- H. The fact that other traffic has used the haul road concurrently with the contractor shall not relieve the contractor of any obligation to maintain and restore the haul road. If other contractors concurrently haul materials over the same route, the City Engineer will determine the amount of maintenance and restoration obligation to be assessed against each contractor;
- I. Upon completion of the restoration work on a haul road, a joint inspection of the haul route will be made by the contractor and the City. If the restoration is satisfactory, then the City shall execute a haul road release on a form provided by the City;
- J. A contractor will not be required to designate a haul road unless the contractor is going to haul more than five (5) loads of rock, gravel, cement, sand, or debris over the City streets;
- K. Any contractor who fails to restore the haul road shall be civilly liable to the City, for any damages done to the haul road; and
- L. It shall be unlawful for any contractor to fail to designate a haul road or to fail to restore any damages done to a haul road and if a contractor violates the provisions herein shall be fined pursuant to Section 14.01 per day. Each day that a contractor is in violation shall be considered a separate crime.

Article 2 – Snow Removal and Snow Routes

Section 5.2.01

Snow Removal and Dumping

No person shall remove snow from private properties and dump the snow on a public street, alley, highway, or right-of-way within the City. Additionally, no person shall dump snow upon Highway 18 or cause any other obstructions to be placed upon Highway 18 within the City.

Section 5.2.02

Snow or Ice Accumulation

It shall be unlawful for any person in charge of any lot or parcel of ground fronting or abutting upon any public sidewalk within the City to permit or allow any accumulation of snow or ice, which obstructs, impedes or in any manner interferes with the free unobstructed and safe use of such sidewalk by pedestrians, to be or to remain upon any sidewalk, along or in front of any lot or parcel of ground owned, occupied or controlled by him or it, for more than forty-eight (48) hours after the cessation of the storm during which the same fell.

Section 5.2.03

Snow or Ice Removal

In the event that any person in charge of any lot or parcel of ground fronting or abutting upon any public sidewalk within the City does not remove snow or ice that obstructs, impedes, or in any manner by pedestrians within forty-eight (48) hours after the cessation of the storm during which the same fell, then the City may remove said snow and/or ice. The City will do so and will assess the owner, occupant, agent, or person in charge of said lot or parcel of ground snow or ice removal fees of \$40.00.

Section 5.2.04

Unlawful Placement of Snow or Ice

It shall be unlawful for any person in charge of any lot or parcel of ground mentioned in Section 5.2.02 hereof to permit, allow, or place any of said snow or ice as mentioned in Section 5.2.02 hereof on any public street or alley within the corporate limits of the City.

Section 5.2.05

Snow and Ice Removal Signs

At any time the Chief of Police finds it necessary for any streets or alleys of the said City to be cleaned or to have the snow or ice removed there from, he shall have signs placed in the center and on either end of any street intersection and in the center and on either end of any alley to be cleaned or to have snow and ice removed.

Section 5.2.06

Designated Hours

Signs mentioned in Section 5.2.05 hereof shall designate the hours between which no person shall leave motor vehicle parked.

Section 5.2.07

Length of Notice

The Chief of Police shall have said signs placed as stated in this Article at least six (6) hours prior to the time of said street cleaning or snow and ice removing.

Section 5.2.08

Designated Snow Routes

The following routes shall hereby be designated as official snow routes for purposes of ambulances, medical vehicles, and other traffic traveling from Highway 18 to the Winner Regional Hospital in Winner, South Dakota:

- A. From Highway 18 or Second Street to the Winner Regional Hospital;
- B. Lamro Street from Highway 18 to Seventh Street;
- C. Lincoln Street from Highway 18 to Seventh Street; and
- D. Wilson Street from Seventh Street to Eighth Street.

Section 5.2.09 Parking on Snow Routes

All parking upon the streets designated above as official snow routes, shall be prohibited any time that there is an accumulation of four (4) inches or more of snow upon the streets and said parking shall be prohibited until the snow has been removed from said streets.

Section 5.2.10 Prohibitive Parking

It shall be unlawful for any person to leave, allow, or let remain parked on any street or alley within the corporate limits of the City any motor vehicle, after the City has caused signs to be placed on said streets prohibiting the parking of said motor vehicles.

Section 5.2.11 Restricted Areas

Any time that four (4) inches or more of snow has accumulated, it shall be unlawful for any person to leave, allow, or let a vehicle remain parked in the following locations until the snow has been removed from said streets by the City:

- A. On the outside parking lanes of Highway 18, a/k/a Second Street, within the corporate limits of the City from the Lil Feller convenience store on the east end to the Winner Food Center on the west end during upon said highway;
- B. Within the parking lanes on both sides of Highway 18, a/k/a Second Street, within the City limits from the Lil Feller convenience store to the west side Market;
- C. Upon Harding Street, between Seventh and Eighth Streets.

Section 5.2.12 Towing

The City may cause to be towed from the parking lanes and impounded, any vehicle which is parked in the areas designated as no parking zones any time snow accumulation has exceeded four (4) inches and that the owner, operator, or lessee of said motor vehicle so towed must pay the towing charges before the vehicle will be released to said owner, operator, or lessee.

In the event any motor vehicle is left parked on any said street or alley in violation of any Section of this Article, the said Chief of Police is hereby directed to cause such motor vehicle so parked in violation of this Article to be removed to the City parking lot.

Section 5.2.13 Towing Fee

Before any person whose motor vehicle has been removed shall be returned possession of the same, a fee of ten (10) dollars for towing shall be paid to the Chief of Police or his authorized representative and said fee shall then be turned over to the City Finance Officer who shall pay for the towing charge out of said monies.

A storage charge of ten (10) dollars per day shall be assessed each vehicle until the vehicle is claimed. The towing charge shall be assessed against said vehicle and must be paid before the vehicle is removed from storage.

Section 5.2.14 Unauthorized Removal of Impounded Vehicles

No person shall remove a vehicle impounded by the City because of violation of traffic ordinances until all fines or bonds, towing, and storage fee have been paid to the City.

Section 5.2.15 Penalty

Anyone who violates this Article shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01. Additionally, anyone who violates this Article and has a vehicle towed out of the snow route shall be assessed the towing charge.

CHAPTER 6: LICENSES AND PERMITS

Article 1 – Alcoholic Beverages

Section 6.1.01 Construction and Definition of Terms

For the purposes of this Article, all of the terms used herein are defined as they are defined in SDCL Title 35.

Section 6.1.02 Required License

No person shall engage in business as a distiller, wholesaler, package dealer, a club, dining car company, a transportation company, or solicitor of intoxicating liquor until he shall have procured a license covering the class of business operation to be engaged in by him within the City, except as provided by law.

Section 6.1.03 Number of Licenses

There shall be issued within the municipality not to exceed eight (8) on-sale and five (5) off-sale licenses. All club licenses shall be counted as on-sale licenses for purpose of limitation of the number of licenses.

Section 6.1.04 Classifications and Fees

The following classifications and fees are established for on and off-sale dealers in distilled spirits, wines, and malt beverages other than low point beer:

- A. The on-sale yearly license fee for private club and public facilities shall be eight hundred (800) dollars;
- B. The off-sale yearly license fee for the sale of alcoholic beverages, other than malt beverages, shall be four hundred (400) dollars; and
- C. An additional fee of two hundred (200) dollars shall be charged to each licensee granted a licensee to sell alcoholic beverages on Sunday.

Section 6.1.05 Location of Applicant's Business

No Class D, E, or F license, as defined by law, shall be approved by the Council for the issuance of a license where the applicant's place of business is within one hundred (100) yards, measured by the regular and usual path of travel, of any door or exit of any now existing school or church.

Section 6.1.06 License Removal

No licenses under any class shall remove from one location to another within the corporate limits of the City in which the license was originally issued without permission of the Council.

Section 6.1.07 Refilling Container

It shall be unlawful, within the City, to refill any container of intoxicating liquor.

Section 6.1.08 Empty Bottles or Containers

No person shall be permitted, within the City, to buy or sell any empty bottles or containers of intoxicating liquor.

Section 6.1.09 No Deliveries of Liquor

No package dealer as defined by law shall be permitted, within the City, to make any deliveries of intoxicating liquor outside of his place of business.

Section 6.1.10 Possession in a Public Place

No person shall be permitted to have an unsealed original package in his possession in a public place within the City. Provided, however, that this shall not apply to an on sale dealer who shall have unsealed packages with proper stamps on his premises from which to serve his customers; and provided, further, that for the purpose of this provision a hospital or sanitarium shall not be considered to be a public place and patients in said hospital or sanitarium may have unsealed original packages.

Section 6.1.11 Payment of Tax

No person shall have in his possession in the City any intoxicating liquor on which the tax has not been paid nor without having the same in a container upon which the stamps evidencing the payment of the tax as hereinbefore provided are securely affixed. This Section shall not apply to intoxicating liquor in the possession of a Class A or Class B License, or to intoxicating liquor which has been sold by a Class A Licensee for export in interstate commerce outside of this state and which intoxicating liquor is in the course of transit out of this state.

Section 6.1.12 Selling Hours

No licensee of any class within the City shall sell any intoxicating liquor outside of the hours in which his license permits him to sell.

Section 6.1.13 Selling Liquor on Sundays

The Council may at its discretion provide in any on-sale liquor establishment the right to sell, serve, or allow to be consumed alcoholic beverages between the hours of one o'clock P.M. and twelve Midnight on Sunday with the serving of food where said licensee has facilities for the serving of prepared meals from a fixed restaurant with the simultaneous seating capacity of at least thirty-five (35) patrons.

Section 6.1.14 Serving Liquor Outside of Establishment

No on-sale dealer shall be permitted to serve within the City any intoxicating liquor outside of the building for which his license was issued; provided that the view through the windows of the building where said business is carried on shall be completely unobstructed either by curtains, advertising, window glazing or other obstructions whatsoever and provided further that no liquor shall be served in any booth wherein all

the occupants are not within full view of every other occupant in the room and observable from any and all points in the said room.

Section 6.1.15

Beer Garden

- A. A beer garden is defined for purposes of this Article as an area adjacent to an establishment which has been issued an on-sale beer or liquor license where patrons of said establishment may consume alcoholic beverages sold by the establishment in an area outside of the establishment but adjacent thereto.
- B. Any on-sale liquor or beer licensee may operate a beer garden so long as the beer garden is adjacent and connecting to the licensed establishment and the only entry into the beer garden is from an entry way into the licensed establishment. Any beer garden shall have a fence at least six (6) feet high around the beer garden constructed in such a way that no person may crawl through or under said fence. Further, if there are any outside bands, jukeboxes, or loud speakers in a beer garden the same shall cease playing or operating at 1:00 a.m.
- C. The fence to be constructed around the beer garden as set out above, shall, in all respects comply with the Zoning Ordinance (Appendix C) and any ordinances amendatory thereto insofar as the location of said fences in regards to the proximity of streets, alleys, and property lines or boundaries.
- D. Any on-sale liquor or beer establishment who operates a beer garden shall have located within said establishment a telephone that will accept outgoing calls.
- E. Any licensee operating a beer garden shall abide by all rules and regulations as set out by state or local statutes involving the sale of said alcoholic beverages.
- F. The only alcoholic beverages to be consumed within the premises defined as a beer garden shall be those alcoholic beverages sold by the licensed establishment operating the beer garden.
- G. This Article does not apply to those establishments which request permission to operate a beer garden on one particular time a year.

Section 6.1.16

Public Nudity Prohibited

(B) It shall be unlawful for any person on premises licensed for the sale of alcoholic beverages, while in the presence of any other person, to appear in a state of nudity as defined herein.

(C) It shall be unlawful for a licensee in alcoholic beverages, its manager or agent to authorize, permit, or suffer any person on the licensed premises to violate the provisions of subsection (B) of this ordinance.

D) For purposes of this ordinance, the following definitions shall apply:

(1) State of Nudity means the showing of the human male or female genitals or pubic area with less than fully opaque covering, the showing of the female breast with less than a fully opaque covering on any part of the areola and nipple, or the showing of covered male genitals in a discernibly turgid state.

(E) There shall be no physical contact, such as kissing, fondling, or embracing between employees or performers and patrons for gratuity, pay or other remuneration, direct or indirect, or in conjunction with or

as part of any performance or entertainment in premises licensed by the governing body of the City for consumption of liquor, including beer, on such premises.

(F) (1) Any person upon whom a duty is placed by the provisions of this ordinance, who shall fail, neglect, or refuse to perform such duty, or who shall knowingly violate any provision hereof, shall be deemed guilty of a class 2 misdemeanor. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such.

(2) The violation of any of the provisions of this ordinance in connection with the operation of the licensed business by the licensee or by any employees or agents of the licensee, shall be sufficient to cause the revocation or suspension of the license of such licensee by the City Council. Such revocation or suspension shall be cumulative with the addition to any penalty or fine imposed by the ordinance of the City of Winner.

(G) Any employee and/or independent contractor of a business licensed for the sale of alcohol shall be at least twenty-one (21) years of age and shall possess proper identification and proof of age and shall display said identification to appropriate officials upon request .

Section 6.1.17 Age to Enter onto Premises

No on-sale licensee of any class within the City shall permit any person under the age of twenty-one (21) years within said licensee's building or premises except where said person under the age of twenty-one (21) years is in the company of his parent or guardian.

Section 6.1.18 Intoxicated Person Entering Premises

No licensee of any class within the City shall permit any intoxicated person to enter his premises or to become intoxicated thereon or therein.

Section 6.1.19 Original Packages

No person within the City shall buy from any on-sale dealer any intoxicating liquor in any original package whether the said original package be sealed or unsealed, or whether said original package be full or partially full.

Section 6.1.20 Off-Sale Sales

That no package or off-sale licensee within the City shall sell or allow to be sold alcoholic beverages between the hours of twelve o'clock midnight and seven o'clock a.m.

Section 6.1.21 Sunday Off-Sale

Pursuant to the authority granted by SDCL 35-4-81.1, the City hereby permits the sale of alcoholic beverages by off-sale licensees on Sundays. No sales of alcoholic beverages by off-sale licensees may be made on Sundays between the hours of 12:00 o'clock midnight and 7:00 o'clock a.m. of the following day.

Section 6.1.22

On-Sale Sales

No on-sale licensee within the City shall sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of two o'clock A.M. and seven o'clock A.M. or on Sunday after two o'clock A.M., or on Memorial Day after one o'clock A.M. or at any time on Christmas Day. The Sunday exclusion contained above shall not apply to those licensee's who shall obtain a license for the sale of alcoholic beverages on Sunday as provided in Section 6.1.13 of this Ordinance. It shall be unlawful for any licensee, employee, agent, or servant of an on-sale liquor establishment whose principle business is the sale of alcoholic beverages to allow any patron or customer to remain on the premises after the above designated closing time.

Section 6.1.23

Central Standard Time and Central Standard Daylight Savings

All times for opening and closing hours prescribed in Sections 6.1.13, 6.1.15, 6.1.20, 6.1.21, and 6.1.22 shall be Central Standard Time or Central Standard Daylight Savings time when such time is in effect in the local community of Winner.

Section 6.1.24

Unsealed Container

It shall be unlawful for any person to possess an alcoholic beverage in an unsealed container or in an open receptacle either within or without a motor vehicle on any sidewalk, street, alley, or highway within the City limits.

This Section shall not apply:

- A. In or upon described property which is publicly owned, or owned by a non-profit corporation, when the governing body of this municipality has authorized by permit, pursuant to SDCL 35-1-5.3, persons to consume or blend alcoholic beverages, but not to engage in the sale thereof, for a period not to exceed twenty-four (24) hours.
- B. In or upon described property which is publicly owned, or owned by a non-profit corporation, when the governing body of this municipality has authorized by permit, pursuant to SDCL 35-4-11.4, a special malt beverage retailers license to any civil, charitable, educational, or fraternal organization in conjunction with a special event within the municipality.

Section 6.1.25

Possession of Open Bottle or Can

It shall be unlawful for any person to consume or have in his possession an opened bottle or can of alcoholic liquor, as defined in SDCL 35-1-9.1 through 35-1-9.3, upon any public street or alley either within or without a motor vehicle within the City Limits or upon any public right-of-way or highway within one (1) mile of the City Limits.

Section 6.1.26

Penalty

Any person violating any of the provisions of this Article shall be guilty of a Class II Misdemeanor and shall be fined pursuant to Section 14.01.

Article 2 – Pawn Dealers

Section 6.2.01

Required License, Fee, and Term of License

- A. It shall be unlawful for any person to engage in the business of pawnbroker or secondhand dealer, without first obtaining a license from the City finance office. The application for such license shall contain all pertinent information required by the City Finance Office and provisions of Winner City Ordinances relating to licensure. Any person applying for a pawnbroker's license or a secondhand dealer's license, must, before their application will be considered, come to the Winner Police Department and furnish adequate identification. No license under this Article shall be issued to any person who has been convicted of a felony; no license under this Article shall be issued to any corporation, one or more officers or directors of which have been convicted of a felony.
- B. The annual license fee for a pawnbroker's license shall be one hundred (100) dollars, payable in advance.
- C. The annual license fee for secondhand dealers shall be twenty-five (25) dollars, payable in advance.
- D. Any person having a business which encompasses more than one of the two (2) designated categories set forth in this Article, and all businesses being conducted on one premises, shall obtain all appropriate licenses, but the total fee for licenses for the single premises shall not exceed one hundred (100) dollars.
- E. The term of the license shall be one (1) year.

Section 6.2.02 Fix Premises

No person shall engage in business as a pawnbroker or secondhand dealer unless said person has a fixed premise where said business is conducted, either on a continuing basis or from time to time, and unless said person has first obtained a license to engage in that business as that premises.

For the purposes of this Section, "fixed premises" shall include any non-mobile premises where such business is conducted and said pawned or purchased secondhand articles are held according to the provisions of Section 6.2.11, whether or not that premises remains in the same location during the period the license is in effect.

Section 6.2.03 Bond

Each pawnbroker doing business in the City shall furnish a good sufficient bond, with a surety to be approved by the Council; in the sum of one thousand (1,000) dollars, conditioned for faithful observance of this Article and conditioned for the safekeeping or return of all articles held in pledge of such pawnbroker.

Section 6.2.04 Suspension or Revocation of License

- A. A license issued to a licensee under this Article, who shall have violated the provisions of this Article, 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 Article after ten (10) days written notice and a public hearing.
- B. A license issued to a licensee under this Article, who shall have violated the provisions of this Article, may be revoked by the Council after ten (10) days written notice and a public hearing.

Section 6.2.05

Separate License and Bond

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

Section 6.2.06

Change in Location of Licensed Premises

If, during the effective period of a license issued under this Article a pawnbroker or secondhand dealer changes the location of the licensed premises within the City, such dealer shall inform the City finance office of such change of location and shall have the new premises to be licensed noted on the license. There shall be no additional fee charged for changing the location of the licensed premises.

Section 6.2.07

Records Required

- A. Every pawnbroker shall keep books or records of pawn tickets in a manner satisfactory to the chief of police, where he shall accurately and intelligibly 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, a record of 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, which shall include, if available, the manufacture's name, style model number, serial number, engraved initials, or other identifying marks.
 - 3. The date and time of transaction.
 - 4. The amount necessary for redemption.
 - 5. The date when the article is to be redeemed.
 - 6. Any mortgage or bill of sale taken, or receipt of pawn ticket given.
- B. 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.
- C. Every secondhand goods dealer shall keep books or records for those articles defined herein in a manner satisfactory to the chief of police or his designee. The dealer shall accurately and intelligently enter, in ink, in the English language, at the time of purchasing or receiving any article or item, the following information.
 - 1. The name of the person from whom the property was purchased or received, his place of residence, and his date of birth.
 - 2. Date and time of the transaction.
 - 3. A detailed description of the item which shall include, if available, the manufacturer's name, style model number, serial number, engraved initials, or other identifying marks.

4. If the seller is not known personally to the dealer or the dealer's agent, the dealer is required to obtain the person's drivers license number and the state of issuance or, if available the identifying number from at least one form of government issued identification.
 5. The amount paid for the article.
- D. 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 a City police officer during reasonable business hours, or who shall destroy or willfully permit such records to be destroyed or lost, shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.
 - E. The records required by this Section shall be maintained for one (1) year after the date of purchase or receipt and shall be made available for inspection to City police officers during reasonable business hours.

Section 6.2.08 Inspection of Records or License

- A. The books or records required by Section 6.2.07 to be kept by pawnbrokers or secondhand dealers shall be open to the inspection of City Police Officers during reasonable business hours.
- B. The pawnbroker shall produce and show any article pledged in connection with any loan.
- C. The licenses required by Section 6.2.01 for pawnbrokers or secondhand dealers shall at all times be on display in a conspicuous place and available for inspection by City police officers during reasonable business hours. This subsection shall not apply when the license is being taken to the City finance office to have a change of location recorded.

Section 6.2.09 Pawn Tickets

At the time of receiving a pledge and upon the subsequent renewal of a loan, the pawnbroker shall deliver to the pledger or his agent a pawn ticket, which pawn tickets shall be correspondingly serially numbered, and shall contain the following information:

- A. The name and address of the pawnbroker;
- B. A generic description of the pledge with such particular details of description noted whenever possible in order to distinguish the article or articles;
- C. The date and time of the transaction; and
- D. 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 Article.

Section 6.2.10

Duty of Police Department

It shall be the duty of the Winner Police Department to periodically contact the licensed premises under this Article to inspect or obtain copies of records required to be kept according to Section 6.2.07 hereof, setting forth a description of the person by whom they were left in pledge or sold.

The Chief of Police or his designee shall have the power and authority to require such reports to be made in a manner and form subject to his approval.

Section 6.2.11

Holding Period

- A. Any person licensed as a pawnbroker, who shall purchase any new or secondhand goods of any individuals not engaged in trade, shall keep the same for inspection for ten (10) days from the time of the transfer, except on written release from the Chief of Police or his designee. The above-mentioned property shall be held during this period on the licensed premises or some other secure location within the City and shall not be disposed of or altered from the form in which it was received during this period.
- B. Any person licensed as a secondhand goods dealer who shall purchase any new or secondhand goods as defined herein of any individual not engaged in trade shall either:
 - 1. Keep the same for inspection for ten (10) days from the time of transfer, except on written release from the Chief of Police or his designee. The above-mentioned property shall be held during this period on the licensed premises or some other secure location within the City and shall not be disposed of or altered from the form in which it was received during this period, or;
 - 2. Keep the same for three (3) working days, excluding Saturdays, Sundays, and calendar holidays, after delivering the required records to the Winner Police Department. The time period shall begin when said records are delivered to the Winner Police Department. The above-mentioned property shall be held during this period in the licensed premises or some other secure location within the City and shall not be disposed of or altered from the form in which it was received, except on written release from the Chief of Police or his designee.
- C. When articles are acquired by a pawnbroker or secondhand dealer in a group, they shall be kept together for identification purposes and not separated until the ten-day period has elapsed, unless released prior on written authorization by the Chief of Police or his designee.

Section 6.2.12

Pawned Articles

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 City police officer, during reasonable business hours.

Section 6.2.13

Effect of Hold Order

The chief of police or any authorized police officer may, by written order, order a pawnbroker or secondhand dealer to hold any specified article or articles, deposited with or in custody of such pawnbroker or secondhand dealer, for purposes of further investigation by the Police Department, when said item or items are believed to be stolen. A hold order shall remain in effect for a period of thirty (30) days commencing the day on which the hold order was delivered to the pawnbroker or secondhand dealer. A hold order shall supersede the provisions of Sections 6.2.11 and 6.2.12 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.

Section 6.2.14 Accepting Articles

A pawnbroker who accepts in pledge any article as security for a loan from a pledger 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 pledger 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.

Section 6.2.15 Unlawful Transactions

It shall be unlawful for any pawnbroker or secondhand dealer 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.

Section 6.2.16 Concealing Articles

No pawnbroker or secondhand dealer shall conceal, secrete or destroy, for the purpose of concealing, any article purchased or received by him, for the purpose of preventing identification thereof by City police officers.

Section 6.2.17 Examination of Premises

No pawnbroker or secondhand dealer or any other personnel shall refuse, resist or attempt to prevent any City police officer without a warrant from examining the licensed premises occupied by the pawnbroker or secondhand dealer, or other secured premises within the City limits where property is stored, during reasonable business hours for the purpose of discovering stolen property.

Section 6.2.18 Penalty

Any person that violates any of the provisions of this Article or fails to comply with any provision thereof, shall be deemed guilty of a Class II Misdemeanor and shall be fined pursuant to Section 14.01.

Article 3 – Junk Dealers and Junk Yards

Section 6.3.01 License Requirement

No person shall engage in business as a Junk Dealer or operate a Junk Yard within the City or within one mile thereof as defined in this Article without first have secured a license therefore as herein provided.

Section 6.3.02 Application for License

Any person desiring a license to operate as a Junk Dealer, shall make application in writing to the Council and said application shall state:

- A. Name;
- B. Post office address;
- C. Length of time applicant has resided in the City;
- D. The premises where the business is or will be located or conducted and description shall be given by lot and block number or by legal description; and
- E. Any other information the Council may require.

Section 6.3.03 Annual Fee

Every Junk Dealer or operator of a Junk Yard shall pay an annual fee of twenty-five (25) dollars, for each establishment or place of business which shall include one Junk Yard and the sum of ten (10) dollars for each additional Junk Yard, and that the operator of the Junk Yard shall at all times keep said yard and with his place of business in such condition so that the same will not become offensive or obnoxious and said premises shall at all times be kept free from rodents.

Section 6.3.04 Approval of Application

Upon filing of the application together with the necessary license fee, the Council, if they deem such applicant a fit and proper person to engage in such license shall be issued by the Auditor in the manner provided for the issuance of other licenses.

Section 6.3.05 Right to Revoke License

The Council shall have the right to revoke any license granted under this Article if it determines upon investigation and after hearing that the licensee has violated any of the provisions of this Article and providing that a notice of the hearing shall be served upon the licensee named in the license at least five (5) days before the hearing, either by personal service of a copy of the notice or by mailing a copy of the same to the person at the address given in the application. That should any license granted under this Article be revoked, no refund of the license fee shall be made.

Section 6.3.06 Daily Written Record

Every Junk Dealer shall keep a daily written record of all articles and quantities purchased by him setting forth the name, residence, age and occupation of the person from whom each article or articles were purchased and the name of the employer of such person, and the date and hour the purchase was made and the price paid and such other information as the Chief of Police, with the approval of the Council, shall require. Such record shall at all times be opened for the inspection of the Police officers or any officer of the law to make investigation and also for securing evidence in connection with any violation of law.

Section 6.3.07 Records Made Available

Every Junk Dealer upon being served with written notice to so do by a member of the Police Department, shall report to the chief of Police, giving a written description of all goods, articles and things purchased or received by him in the course of business as a Junk Dealer and covering such a period of time as may be specified in the notice. Such written report shall state the amount paid for each item and the name, residence, and a general description of the person from whom the goods, articles, or things were received.

Section 6.3.08

Restrictions on Operations

- A. No Junk Dealer shall carry on a business at or from any other place than the premises designated and described in the application and license, and all junk of any kind described shall be kept wholly within the boundaries of such premises.
- B. It shall be unlawful for any junk dealer to burn junk or refuse on the premises covered by said license or any other place within the City.
- C. The wrecking and dismantling of old cars for the purpose of securing parts shall be done wholly inside of the buildings occupied by said junk dealer or within the enclosure hereinafter provided for and shall not in any event be done upon the highway or streets or alleys of the City, or outside of the premises described in the application and license.
- D. In all cases where the business of a Junk Dealer is to be conducted on a vacant lot or lots, or in a partially enclosed structure, the Council shall have the right to inspect and determine whether or not the appearance of the lots or lot distract from the sightliness of the area in which such premises may be located, and in the event the Council find the appearance of the lot or lots does distract from the appearance of the area in which located, no license shall be granted until such lot or lots shall have an enclosure with a tight, well constructed and well painted fence of at least seven (7) feet in height or of a sufficient height to cut off the public view and must not be located nearer than one hundred fifty (150) feet from any State or Federal highway. After the construction of such fence it shall at all times be suitably maintained and kept in good repair by the licensee. In no event shall any such licensee permit any advertising matter of any sort to be placed upon said fence, except that such licensee may use not to exceed fifty (50) square feet of said fence for the purpose of advertising his business.

Article 4 – Taxi Cabs

Section 6.4.01

License Requirement

No person shall operate, hire out, keep or use for hire upon the streets of the City any taxi cab, cab, bus or buses, or any other vehicle of any description or name whatsoever for the conveyance of passengers for hire within the City without first obtaining a license for each of said vehicles.

Section 6.4.02

License Fees

There shall be paid to the City Finance Officer before the issuing of said license by the parties applying for the same, the following sums:

- A. Each cab or taxi cab operation within the City \$10
- B. Each bus \$10

Section 6.4.03

Term of License

All licenses granted hereunder shall continue in effect until the first Monday in May after date of issuance and such license shall not be transferable. The license shall be issued in the name of the City and shall be signed by the Mayor and attested by the City Finance Officer. If the term for which said license shall

be issued is less than six months before its expiration date, the license fee payable by such applicant shall be one-half of the license fee as herein above fixed.

Section 6.4.04 Application and Issuance of License

Each applicant for any license hereunder shall appear in person before the Council at a regular meeting thereof and the Council shall not approve the issuance of any license to engage in the business of operating a taxi cab, or taxi cabs, or bus or buses only upon being satisfied that the applicant has met or will meet the following requirements:

- A. A fit person to engage in such business.
- B. Vehicles and equipment are such as are consistent with the safety of the public.
- C. Has indemnity and public liability insurance covering the operation of each vehicle, to protect such operation of each vehicle, to protect such operation against liability to passengers and third persons for personal injury suffered or sustained by them as a result of the operation of such taxi cab or bus, and said policies to be in an amount of not less than ten thousand (10,000) dollars for damages to any one person and not less than twenty thousand (20,000) dollars for damage to more than one person injured as the result of any one accident, and not less than one thousand (1,000) dollars for property damage, resulting from any one accident. Such policies shall be maintained during the term of the license.
- D. In case of application to operate bus or buses, the Council may request changes or alterations in the proposed route or routes, time schedule, rate of fare or stops before granting license. After the license has been issued the operator shall not materially change or alter the approved route or routes, time schedules, rates of fare or stops without first receiving the approval of the City County to make such change.

Section 6.4.05 Operator's License

No person shall operate, drive or be engaged or employed in the business of driving upon the public streets or Winner, any taxi cab or bus, without first having produced a license therefore from the City Finance Officer. An applicant for such a license shall be at least twenty-one (21) years of age, or sound physical and free from infirmity that would effect his or her ability to properly drive a taxi cab or motor bus. The applicant must be a resident of Tripp County, South Dakota, for at least six (6) months prior to the date of the application, and must furnish letters of recommendation from three reputable citizens of Winner that they know of the applicant and that he is, in their opinion, a fit person to drive a motor bus or taxi cab in the City. No person shall be licensed, under this Article, to operate a taxi cab or motor bus, who has pled guilty or has been found guilty of the commission of a felony or driving while intoxicated, as defined in the South Dakota Code, within three (3) years of the date of application. A license fee of ten (10) dollars shall be paid to the City Finance Officer before such license shall be issued by the City Finance Officer and the licensee shall have such license in his possession whenever engaged in driving a taxi cab or bus, and exhibit it for inspection whenever requested to do so by a police officer. Any such driver's license may be revoked by the Council for cause, and any license issued under the provisions of this Article shall be revoked by the Council upon discovery of any false statement made in the application for such license.

Section 6.4.06 Inspection

Every operator of any bus and cab licensed hereunder shall be inspected for cleanliness and shall clean the interior of each taxi and bus after each days operation. Such inspection shall be conducted by the Chief of Police.

Section 6.4.07

Revocation of License

Any person found guilty of violating any provision of this Article shall at the discretion of the Council have his said license revoked by the Council.

Article 5 – Digging

Section 6.5.01

Permit

It shall be unlawful for any person to dig in or upon any street or alley in the City without first securing a permit to do so from the City. The application for the permit shall be signed by the person applying and filed with the City Finance Officer and if the permit is granted by the Council, the person so applying shall deposit with the City Finance Officer in the form of cash or certified check an amount of not less than one hundred (100) dollars and an additional fifty (50) cents per linear foot of excavation, and the Council may require an additional amount if, in their judgment, it is required to guarantee that the applicant will comply with the requirements of this Article.

Section 6.5.02

Back-Fill

All excavations shall be properly back-filled, and the back-fill shall be tamped as it is replaced and must be left level with the present grade of the street or alley. That during the time that the ditch or excavation is open, it shall be the responsibility of the person to whom the permit is issued to see that sufficient burning flares are placed at the opening while the excavation is open, during the hours of from twilight to dawn and shall place blockades at the ditch or excavation, to block traffic during the entire period that said excavation shall remain open and see that safety precautions are taken at all times to protect the public and traffic.

Section 6.5.03

Refund of Deposit

The deposit so made shall remain with the City for a period of not less than three or more than six months and any settling of the back-fill must be brought up to grade level by the person to whom the permit was issued when notified by the Street Commissioner of the City to put in more back-fill at the place of excavation, and at the end of the period, the excavation and back-fill shall be inspected by the Street Commissioner of said City and when approved by him, the deposit so made shall be refunded if said excavation has been properly filled and packed. Should any person making the excavation or digging upon any street or alley pursuant to this Article fail, neglect or refuse to properly refill any ditch or excavation made by them pursuant to this Article when requested, then, and in the event, it shall be the duty of the Street Commissioner of the City to cause said excavation to be properly filled and tamped or properly back-filled and the cost thereof shall be reported to the Street Commissioner to the City Finance Officer and the amount of the cost thereof shall be deducted from the amount so deposited herein and that any sum then remaining in the hands of the City by virtue of said deposit shall then be refunded to the person that obtained said permit.

Section 6.5.04

Penalty

Any person found guilty of violating any of the provisions of this Article shall be guilty of a Class II Misdemeanor and, upon conviction, shall be fined pursuant to Section 14.01.

CHAPTER 7: TRAFFIC REGULATIONS AND VIOLATIONS

Article 1 – General Regulations

Section 7.1.01 Rate of Speed

No person shall drive any vehicle upon any street or alley in the City at a greater rate of speed than is reasonable and proper under all the circumstances, having due regard to the traffic, use and condition of the street or alley or at a reckless or dangerous rate of speed, or in a careless or negligent manner.

Proof of the following facts shall be prima facie evidence that a person operating a vehicle is guilty of driving the same at a greater rate of speed than is reasonable as defined in the preceding paragraph:

- A. Driving at a greater rate of speed than fifteen (15) miles per hour passing a school zone;
- B. Driving at a greater rate of speed than twenty (20) miles per hour or posted limit in a business or residence districts, except where such street is designated as an arterial street or highway, then at a rate of speed of not more than thirty (30) miles per hour or posted limit;
- C. Driving in such a manner as not to have the vehicle under complete control; and
- D. Driving at a greater rate than ten (10) miles per hour upon the dedicated streets in the Wagon Wheel Trailer Court in Flynn's Addition to the City.

Section 7.1.02 Traveling Abreast

Vehicles shall not travel two (2) or more abreast on any street or pass a moving vehicle at a street intersection.

Section 7.1.03 Slow Driving

No person shall drive any vehicle at an unnecessarily slow rate of speed so as to hinder and retard traffic.

Section 7.1.04 Exhibition Driving

Any person shall be guilty of exhibition driving who drives a vehicle within the limits of the City in such a manner

- A. That creates or causes unnecessary engine noise, or tire squeal, skid, or slide upon acceleration or stopping;
- B. That simulates a temporary race; or
- C. That causes the vehicle to unnecessarily turn abruptly or sway.

Section 7.1.05 Use of Motor Vehicles, Traction Engine, Tractors, and Road Rollers

- A. It shall be unlawful for any person to park or drive any motor vehicle, traction engine, tractor, or road roller on the streets or alleys within the corporate limits of the City in violation of the provisions of this Section.
- B. At any regular or special meeting of the governing body of said City, said governing body may direct the police department of said City to place such parking, loading, load, and driving restrictions on any or all streets and alleys within the corporate limits of said City, as in the opinion of the said governing body may be necessary at any particular time.
- C. At any regular or special meeting of the governing body of said City, as set out in Section 7.1.05 (B), the said governing body shall place or cause to be placed in their official minutes such restrictions as in their opinion may be necessary on said streets and alleys within the corporate limits of said City; that said governing body shall then direct the police department to place signs on the said restricted streets and alleys which shall set out the restriction imposed by the governing body; that after said signs shall be posted by the police department, the said restriction shall be in full force forthwith.
- D. In order to give adequate notice to the public of said restrictions as described, the governing body of said City shall direct the police department of said City to place a sign describing said restriction at every street and alley intersection on which the restriction is imposed which shall face traffic.
- E. It shall be unlawful for any person to destroy, tamper with, damage, or tear down any sign hereinbefore referred to in this Article.

Section 7.1.06 Brakes, Horn, and Signals

Every motor vehicle shall be provided with adequate brakes in good working order and sufficient to control such motor vehicle at all times when the same is in use, and ad adequate horn or other devise for signaling.

Section 7.1.07 Lights

A motor vehicle shall, during the period from half an hour after sunset to half an hour before sunrise, display at least two lighted lamps on the front and one on the rear of such motor vehicle, which rear lamp shall display a red light, plainly visible from the rear; provided that a motorcycle shall be required to display but one lighted lamp in front and one showing a red light in the rear.

Section 7.1.08 Electric Head Lights

It shall be unlawful to use electric head lights or side lights upon any vehicle upon any of the streets or alleys in the City unless the same are dimmed in such a manner as to prevent the light being dazzling or blinding to persons using the street.

Section 7.1.09 Entering Street

It shall be unlawful for any person driving any vehicle to drive onto an arterial street in the City without first coming to a full stop prior to entering upon said arterial street. Vehicles on the arterial street shall have the right of way. This Article shall not apply to ambulances and Fire and Police Department vehicles and apparatus while being operated in an emergency.

Section 7.1.10 Turning

Every driver of a vehicle turning into another street, alley, or highway to the right shall turn the corner as near to the right hand curb of the street as possible, and in no instance passing beyond the center of the street.

Section 7.1.11 Left Turn

Every driver of a vehicle turning into another highway, street or alley to the left shall at a distance of ten (10) feet before entering intersection signal his/her intention so as to be plainly visible to any driver of vehicles in the rear, and shall, whenever possible, turn to the left of the center of the intersection of the two streets or highway, unless otherwise marked.

Section 7.1.12 Stopping after Accident

Every driver of a vehicle or motor vehicle after colliding with any other vehicle or motor vehicle or after injuring any person or damaging any vehicle or motor vehicle or after damaging any property whatsoever, shall forthwith bring his vehicle or motor vehicle to a full stop, return at once to the scene of the accident and give to any person demanding the same his name and address, and, if operating a motor vehicle, the registration number of the same, and shall forthwith report the accident to the police department of the City.

Section 7.1.13 Brakes while Standing

No person shall leave a motor vehicle unattended or parked on any street of the City unless the brakes are firmly set.

Section 7.1.14 Muffler

It shall be unlawful to operate a motor vehicle, unless such motor vehicle is provided with a muffler that shall at all times be kept closed so that the exhaust is effectively muffled.

Section 7.1.15 Brakes and Signaling Device

Every motor vehicle driven upon the streets of the City shall be provided with adequate brakes in good working order and sufficient to control such motor vehicle at all times when the same is in use and an adequate bell or horn or other device for signaling.

Section 7.1.16 Age of Driver

No person who is under the age of fourteen (14) years shall operate or drive a motor vehicle upon the streets of the City unless such person is accompanied by the owner of the motor vehicle or his or her parent or guardian.

Section 7.1.17 Catching on to or Tying to Motor Vehicle

It shall be unlawful for any person to catch on to or hang on to, or attempt to propel or guide any bicycle, sled or other vehicle holding on to the motor vehicle while the same is moving on the streets of the City.

Section 7.1.18 Riding on Running Boards, Hood or Fenders

It shall be unlawful for any person owning or driving or in charge of a motor vehicle to allow or permit any person to ride upon the running boards or on the outside of any such motor vehicle, or for any person to ride upon the running board or outside of any motor vehicle.

Section 7.1.19 Tampering with Motor Vehicles

No person shall, without authority of the person in charge, climb upon or into any vehicle or motor vehicle, whether the same is in motion or at rest, nor shall any person without authority of the person in charge while any motor vehicle is at rest and unattended, sound the horn or other signaling device, or attempt to manipulate any of the levers, starting devices, brakes or machinery thereof.

Section 7.1.20 Driving While Intoxicated

It shall be unlawful for any person to drive or operate or attempt to drive or operate any vehicle or motor vehicle upon any of the public streets, alleys or public grounds of the City while such person is in an intoxicated or drunken condition or under the influence of intoxicating liquor.

Section 7.1.21 Pedestrians Crossing Streets

It shall be unlawful for any pedestrian to go from one side of the street to the other except at a right angle at a regular cross walk at the end of a block upon any street in the City.

Section 7.1.22 Noise in Quiet Zones

The making of any unnecessary noise by fast driving or riding, ringing of bells, blowing of horns, whistles or other devices, or doing any other thing upon any street tending to disturb the peace, comfort and quiet of any inmate of a hospital or disturbing church services while church services are being held is unlawful.

Section 7.1.23 Right of Way

- A. When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right except as otherwise provided herein. The driver of any vehicle traveling at an unlawful speed shall forfeit any right of way which he might otherwise have hereunder.
- B. The driver of a vehicle about to enter or cross a public highway from an alley, building, private road, or driveway, shall yield the right of way to all vehicles approaching on such public highway.
- C. The driver of a vehicle upon a highway shall yield the right of way to police and fire department vehicles when the latter are operated upon official business, and ambulances, and the drivers thereof sound audible signal by bell, siren, or exhaust whistle. The provision of this Section shall not operate to relieve the driver of a police, fire department vehicle, or ambulance from the duty to drive with due regard to the safety of all persons using the highway nor shall it protect the driver of any such vehicle from the consequence of an arbitrary exercise of such right of way.
- D. Highway and street maintainers in the performance of their duties of maintaining the streets shall have preference or right of way and shall be permitted to drive upon the

left hand side of the traveled portion of the highway for the purpose of dumping materials, or repairing the streets and also for smoothing the road surface. A highway maintainer shall not in discriminatorily block traffic but shall allow reasonable room on the traveled portion of the highway for other vehicles to pass; such highway maintainers shall not, however, be required to turn to the right when meeting other vehicles or allowing them to pass when his work requires him to remain on the other side of the traveled portion of the street; such maintainer, however, shall be subject to the other rules of this Article except when the performance of their maintenance work requires them to do otherwise.

Section 7.1.24 Reversing

No person driving a vehicle shall reverse the same without ample warning having been given and, while reversing, care must be exercised not to injure those in the rear.

Section 7.1.25 Ample Warning

A standing vehicle about to start shall give moving vehicles the right of way and the driver thereof shall give ample warning before starting.

Section 7.1.26 Funeral Procession

No driver of a vehicle shall drive through or otherwise interfere with any funeral procession on any of the streets of the City, and it shall be the duty of any person driving any vehicle to stop when reaching a street on which a funeral procession is passing and wait until such funeral procession has entirely passed.

Section 7.1.27 Bicycle upon Sidewalk

No person shall ride any bicycle upon or along any public sidewalk of any street in the City.

Section 7.1.28 Flat Service Wheels

No person shall drive upon any crossing or pavement of the City any tractor or steam engine having other than flat surface wheels, unless before driving upon such pavement or crossing good and sufficient plank shall be placed under the wheels so that no portion of the wheels shall touch the pavement or crossing.

Section 7.1.29 Wide Loads

No person shall drive any vehicle upon any street in the City with a load or part of a load projecting more than four (4) feet beyond the rear end or front end, or more than two (2) feet beyond the sides of the body or carrying part of said vehicle unless there be attached to the extreme ends and sides of such projecting load a warning sign or signal consisting of red cloth at least eighteen (18) inches square in daytime or a suitable light, red in color, at night, such sign or signal to be so placed as to be plainly discernible to other drivers and clearly indicating the projecting load.

Section 7.1.30 Truck Routes

Those vehicles exceeding a three (3) ton chassis classification as set out above, are confined to the designated travel route through the City posted as a truck route and said Highway 18 through the City, as well as South County Road, North County Road and North Main Street shall be designated as the truck routes.

Anyone who violates this Section shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

Section 7.1.31 Traffic Ticket Citations

- A. The police of the City are hereby empowered to issue both warning and violation ticket citations for any and all violations of the traffic ordinances of the City which shall state the violation and cite said person to appear in the proper court at a time and place designated in said ticket.
- B. The said ticket shall contain the following form as a minimum; the violation complained of, a citation stating the time and place where the appearance shall be made, the name of the Defendant, if known, and if not known, the license plate of the car involved in said violation.
- C. Any person who shall fail to appear as required in said citation at the time and place designated in said ticket shall be deemed guilty of a Class II Misdemeanor and upon conviction thereof shall be subject to a fine pursuant to Section 14.01.

Article 2 – Traffic Control Devices

Section 7.2.01 U-Turns

No vehicle shall be permitted to make a complete turn or a turn of 180 degrees on the following streets:

- A. The intersection of Main Street with Second Street;
- B. The intersection of Third Street and Fourth Street;
- C. On East Seventh Street between the intersections of:
 - 1. East Seventh and Main; and
 - 2. East Seventh and East County Road.
- D. The intersection of U.S. Highway 18-183 with South Dakota Highway 44 on the eastern edge of the City.

Section 7.2.02 One-Way Streets

The City shall install appropriate traffic control signs to designate one-way streets.

- A. The portion of Main Street from its intersection with Highway 18 south to its intersection with Fifth Street is hereby declared to be a one-way street. Traffic upon that portion of Main Street herein described, shall move one-way in a southerly direction only; and
- B. All vehicular traffic traveling on Third Street between South County Road and West Park Street shall travel in one-way from west to east.

Section 7.2.03 Four-Way Stop Signs

The City shall install four-way stop signs at the following intersections:

- A. The intersection of Fifth Street and Main Street;
- B. The intersection of West Third Street and East Park Street; and
- C. The intersection of Seventh Street and East Park Street.

Section 7.2.04 Yield Signs

The City shall install yield signs at the following intersections:

- A. On Third Street when crossing Polk Street;
- B. On Fourth Street when crossing Polk Street;
- C. On Fifth Street when crossing Polk Street; and
- D. In Pamida parking lot when crossing East Fifth Street.

Section 7.2.05 Stop Signs

The City shall install stop signs at the following intersections:

- A. On Third Street when crossing Lamro Street;
- B. On Fourth Street when crossing Lamro Street;
- C. On Fifth Street when crossing Lamro Street;
- D. On Fifth Street when crossing East Park Street;
- E. On Fifth Street when crossing Monroe Street;
- F. On Sixth Street when crossing Lamro Street;
- G. On Sixth Street when crossing Main Street;
- H. On East Eighth Street when crossing Country Club Road;
- I. On Ninth Street when crossing Country Club Road;
- J. On Tenth Street when crossing Country Club Road;
- K. North bound on Country Club Road crossing Sixth Street;
- L. North bound on Harding Street crossing Seventh Street and Harding Street;
- M. On Harding Street when crossing East Tenth Street;

- N. On Iowa Street when crossing County Road; and
- O. On Lincoln when crossing Fifth Street.

Section 7.2.06

Automatic Signaling Devices, Stop Signs, and Other Signaling Devices

- A. Every person driving, operating, or propelling any vehicle or motor vehicle, shall bring the same to a complete stop before crossing a cross walk, street intersection, or any other place, street or alley in the City when any automatic signaling device, stop sign, or other signaling device indicating said vehicle or motor vehicle to stop, is placed in front, or above said vehicle or on the right or left said of said walk, street or intersection;
- B. In case of an automatic signaling device, the person driving, operating or propelling said vehicle shall not start to pass or cross the cross walk, street intersection, other place, street or alley until said automatic signaling device shall give or exhibit the word or signal "GO" or give a green light.
- C. Said automatic signaling devices, stop signs, and other signaling devices shall be erected only after the Council by resolution duly incorporated into the minutes of the meeting, shall order the same erected; that after said duly adopted resolution, said Council may use or hire any person it deems fit to erect said signaling device or devices.
- D. Said automatic signaling devices, stop signs, and other signaling devices shall be taken down only after the Council by resolution duly incorporated into the minutes of the meeting, shall order the same taken down; that after said duly adopted resolution, the Council may use or hire any person it deems fit to take said signaling device or devices down. This shall include stop signs.
- E. The Council hereby and by this Article does approve every existing automatic signaling device, stop sign, and other signaling devices which is now erected and hereby resolves that they are lawful and in full force and effect and shall be obeyed by every person.
- F. Traffic officers shall be considered as a signaling device in this Section, and when directing traffic at any given time, drivers of vehicles or motor vehicles shall obey the directions of said traffic officers exclusive of all other signaling devices at that particular place and time.
- G. Unless otherwise directed by a traffic officer, pedestrians shall not cross a cross walk over which vehicles and motor vehicles have the right of way under direction of an automatic signaling device, stop signs, or other signaling devices, otherwise, when crossing at the proper place, pedestrians shall have the right of way when crossing streets.

Section 7.2.07

Establish and Maintain Signs

The Winner Chief of Police is hereby directed to establish and maintain signs to effectuate the purpose of this Ordinance.

Article 3 – Parking

Section 7.3.01 Parking

Except as herein otherwise provided no vehicle shall be parked on any street or alley of the City except such vehicle be parallel to the curb and no closer than four feet to any other vehicle, front and rear, and the front and rear wheels on the right of such vehicle shall not be more than twelve (12) inches from the curb.

Section 7.3.02 Diagonal Parking

All vehicles parked upon the Main Street of the City shall be parked at an angle with curb approximately forty-five (45) degrees with the front wheel touching the curb, or where diagonal parking spaces have been painted or marked off on said street, such vehicles parked thereon must be parked at an angle to conform to and be within said parking spaces with the front wheel touching the curb. It shall be unlawful for any driver of any vehicle to park such vehicle in the center of the Main Street.

Section 7.3.03 Handicapped Parking

The City will cause signs designated as "handicapped parking" to be placed at the last parking space on the south side of each block of the West side of Main Street, and those parking spaces will be reserved for such mobile handicapped individuals.

Section 7.3.04 Length of Parking

No vehicle shall be parked upon any of the streets of the City longer than a continued period of twenty-four (24) hours.

Section 7.3.05 Restricted Vehicles

No trucks or vehicles including its load measuring more than twenty (20) feet in length from tip to tip and eight (8) feet in width from one outside extremity to the other, shall be parked upon the Main Street of the City. No tractors shall be parked upon the Main Street of the City.

It shall be unlawful for any person to park or drive any motor vehicle exceeding a three (3) ton chassis classification, as made by the manufacturers, on the streets, alleys, or sidewalks within the residential areas of the City except when receiving or making deliveries to that residential area.

Section 7.3.06 Recreational Equipment

No major recreational equipment, such as travel trailers, pickup campers, coaches, tent trailers, and the like, shall be parked on a City street in a residential district for more than twenty-four (24) hours when used for living, sleeping, or housekeeping purposes.

Section 7.3.07 Parking in Alleys

No vehicles shall be parked in the alleys of the City except for the purpose of loading or unloading goods, wares or merchandise and then only for such length of time as may be necessary to load and unload.

Section 7.3.08 Double Parking

Vehicles shall not be double parked on any street in the City except when unloading or loading passengers, goods or merchandise and then only such length of time as may be necessary to load and unload.

Section 7.3.09 Parking Near Fire Hydrants

It shall be unlawful to park where curb is painted yellow or within ten (10) feet of a fire hydrant.

Section 7.3.10 Parking by Intersecting Sidewalks

No person shall park any vehicle, motor or otherwise, with any part of such vehicle within a distance of ten (10) feet of any intersecting sidewalk or crosswalk, or a line extended from any such sidewalk or crosswalk.

Section 7.3.11 Prohibitive Parking

- A. No vehicle shall park any vehicle, motor or otherwise, on the east side of Lincoln Street within ninety (90) feet of the Intersection of Highway 18 and Lincoln;
- B. No person shall park any vehicle, motor or otherwise, upon the east side of Madison Street between the intersections of Madison and Second Street and Madison and Third Street adjoining the curb on said east side;
- C. No person shall park any vehicle, motor or otherwise, adjoining the curb or in the street on either side of that part of First Street located within the corporate limits of the City from Van Buren Street west to the point where First Street connects with U.S. Highway 18; and
- D. No person shall park any vehicle, motor or otherwise, upon the north side of Sixth Street adjoining the curb on said North side.

Section 7.3.12 Parking Distances

Vehicles, motor or otherwise, may be parked upon the South side of Sixth Street; said vehicle so parked to be parallel to the curb and no closer than four feet to any other vehicle, front and rear, and the front and rear wheels on the right of such vehicle shall not be more than twelve inches from the curb. No vehicle, motor or otherwise having a width exceeding six (6) feet six (6) inches shall be permitted to park on 6th Street.

Section 7.3.13 Bus Stops

There shall be established certain parking spaces on certain streets within said City to be used for bus stops, to be designated by the Chief of Police of said City and such spaces so designated shall be marked by him by painting the words "Bus Stop" on the curb or appropriate marker and designating the hours for use of said spaces as a bus stop.

It shall be unlawful for any person to park in any space in said City marked "Bus Stop" during the hours designated.

Article 4 – Emergency Vehicles

Section 7.4.01 Emergency Vehicles Right-of-Way

- A. Upon the approach of any police or fire department vehicle giving audible signal by siren or otherwise, the driver of any vehicle shall immediately yield the right of way to such police or fire department vehicle and shall pull to the right hand edge of the curb or as near as possible there to and stop until such police or fire department vehicle or vehicles have passed.
- B. No driver of a vehicle shall follow a fire department vehicle or vehicle traveling to a fire or in answer to a fire alarm at a distance closer than five (5) hundred feet and shall not park any vehicle within one (1) block of such fire vehicle or vehicle which such vehicles are being used at any fire.
- C. Every driver of a vehicle shall yield the right-of-way to an ambulance.

Section 7.4.02 Following Fire Apparatus

It shall be unlawful for any driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or to drive into or park such vehicle within the block where the fire apparatus has stopped in answer to a fire alarm or any public emergency.

Section 7.4.03 Crossing of Unprotected Hose

It shall be unlawful for any vehicle to be driven over any unprotected hose of the fire department when laid down on any street or private driveway to be used at any fire or alarm of fire, without the consent of the fire marshal or fire department official in command.

Article 5 – Snowmobiles

Section 7.5.01 Private Property

It shall be unlawful to operate snowmobiles or all terrain vehicles on or across the private property of another unless permission to do so has been first obtained by the vehicle operator or vehicle owner of the snowmobile or all terrain vehicle.

Section 7.5.02 Registration and Licensing Requirements

All snowmobiles and all terrain vehicles operated within the City must comply with all title registration, annual registration, and licensing requirements of the State of South Dakota.

Section 7.5.03 Roadway Restrictions

Snowmobiles and all terrain vehicles may be operated on the roadways of the City subject to the following restrictions:

- A. No snowmobiles or all terrain vehicles may be operated within the City limits during the hours of darkness except as provided by Sections 7.5.03 (G) and 7.5.04 hereof.
- B. All snowmobiles and all terrain vehicles operated on City roadways shall display a 12" x 12" orange flag attached to the snowmobile or vehicle in such a manner that the bottom of the flag measures 60" from the roadway surface.
- C. City roadways may only be used for travel in the most direct route to and from the Municipal City Limits except as provided in Sections 7.5.03 (G) and 7.5.04 hereof.

- D. All snowmobiles and all terrain vehicles are prohibited from operating on Main Street and Second Street, except for crossing and except as provided in Sections 7.5.03 (G) and 7.5.04 hereof.
- E. Snowmobiles and all terrain vehicles are prohibited from operating in all City parks and recreation areas.
- F. All snowmobiles and all terrain vehicles operated within the City shall be subject to the same traffic ordinances, rules and regulations as pertain to the operation of motor vehicles when the snowmobiles and all terrain vehicles are operated on City roadways.
- G. In the event of an emergency permission may be granted by any law enforcement officer, the mayor or City civil defense director for the use of the City roadways which permission shall waive the restrictions of Sections 7.5.03 (A), (C), and (G).

Section 7.5.04 Travel on Closed Roadways

The Mayor or Chief of Police may also permit persons, associations, or clubs formed by vehicle owners of snowmobiles or all terrain vehicles to operate on roadways which are closed to travel to other motor vehicles or which during the hours of use by snowmobiles or all terrain vehicles will be adequately posted for warning to other motor vehicle operators. The permit shall specifically define the routes and the time of day that the vehicle operators shall be permitted to use the roadway.

Section 7.5.05 Unlawful Operation

It shall be unlawful for any person to operate or drive any type of motorized vehicle on City-owned land off of a highway, street, alley, or recognized thoroughfare. This Article does not apply to City-owned vehicles.

Section 7.5.06 Penalty

Any person guilty of violating this Article shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

CHAPTER 8: HIGHWAY REGULATIONS

Section 8.1.01 Encroachment on Second Street

- A. All encroachments on or above the right-of-way on Second Street in the City shall be prohibited.
- B. The use of the right-of-way on Second Street by owners or lessees of abutting property for the storage of vehicles, placement of portable signs, or other private use thereof shall be prohibited.
- C. Where Second Street passes through established business districts and the buildings are at the property line and are continuous or very closely spaced, encroachments overhanging the right-of-way line will be permitted under the following conditions:

1. Awnings, canopies, marquees, signs, and similar installations supported wholly from the face of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the edge of such encroachment be not less than three feet back from the face of the curb.
 2. Advertising or other similar signs which are less than three (3) feet back from the face of the curb and are supported wholly from the front of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the bottom of such encroachment be not less than fourteen and one half (14 ½) feet above the curb elevation.
 3. The replacement of obsolete or installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than three feet back from the face of the curb and eight feet above the curb elevation.
 4. In the event the encroachments referred to in (1), (2) and (3) above, by reason of color or placement, obscure or in any way detract from the effectiveness of highway signs or traffic signals, the City shall cause the removal of such encroachments or take appropriate measures to improve the effectiveness of the highway signs or traffic signals.
- D. All signs, canopies, or other encroachments supported from the ground within the right-of-way of Second Street shall be removed.
- E. The use of sidewalks or other areas of the right-of-way of Second Street for the display or storage of merchandise shall be prohibited.
- F. In cases where there are encroachments of long standing which will in no way impair the highway operation of Second Street or interfere with the free and safe flow of traffic and, in the opinion of the South Dakota Board of Transportation, the immediate removal would impose unreasonable hardship, the South Dakota Board of Transportation may at its discretion permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the Board's discretion.
- G. On Federal Aid projects, the permitting of such encroachments as described in the previous paragraph shall be in conformance with the Code of Federal Regulation #23, Paragraph 1.23.
- H. Any person violating any of the provisions of this Section, or failing to comply with the provisions thereof, shall be deemed guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

Section 8.1.02

City Responsibility

The City is responsible for snow removal from the highway driving lanes through town. However, when snow is piled near the intersections, it becomes a safety hazard to the public.

Section 8.1.03

Highway Right-of-Way

According to SDCL 31-32-3.1, "Intentional dumping on highway right-of-way is prohibited." The State right-of-way on Highway 18 is described as:

- A. McDonald's Restaurant, west to Edwards Oil and Anderson Tire Company is twelve (12) feet and four (4) inches from back of curb;
- B. From west of Edwards Oil to the east side of the bridge is forty two (42) feet and four (4) inches;
- C. At Country Club Motel five (5) feet and four (4) inches from back of curb; and
- D. Beginning at the corner of East 3rd and Highway 18, to East 7th Street, the right-of-way is twenty-three (23) feet and four (4) inches from back of curb.

Any snow falling on the right-of-way may be pushed into the street. However, additional snow from other areas, including parking lots, may not be pushed or piled on any highway right-of-way property. To do so is a violation of SDCL 31-32-3.1 and is a Class II Misdemeanor and shall be fined pursuant to Section 14.01.

CHAPTER 9: OFFENSES AND MISDEMEANORS

Article 1 – Curfew Law

Section 9.1.01 Loitering of Minors Prohibited

It shall be unlawful for any minor under the age of eighteen (18) years to loiter, idle, wander, stroll, or play in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, places of amusement and entertainment, vacant lots, or other unsupervised places between the hours of:

- A. 10:30 o'clock p.m. and 6:00 o'clock a.m., official City time, on nights before regular school days; and
- B. 12:00 o'clock p.m. and 6:00 o'clock a.m. on nights when school is not in session the following day.

However, the provisions of this Section do not apply to a minor accompanied by his or her parents, guardian, or other adult person having the care and custody of the minor, or where the minor is upon and emergency errand or legitimate business directed by his or her parent, guardian, or other adult person having the care and custody of the minor. Each violation of the provisions of this Section shall constitute a separate offense.

Any person that operates a business within the City shall not allow teenagers subject to the curfew to remain on said business premises after curfew hours as defined above.

Section 9.1.02 Responsibility of Parents

It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to knowingly permit such minor to loiter, idle, wander, stroll, or play in or upon the public streets, highways roads, alleys, parks playgrounds, or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots, or other unsupervised

places in violation of this Article. However, the provisions of this Section do not apply when the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or other adult person having the care and custody of the minor. Each violation of the provisions of this Section shall constitute a separate offense.

Section 9.1.03 Penalties

Any minor violating the provisions of Section 9.1.01 shall be dealt with in accordance with Juvenile Court law and procedure. Any parent, guardian, or other adult person having the care and custody of a minor violating or business operator or employee of any business violating this Article shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

Article 2 – Nuisances and Misdemeanors

Section 9.2.01 Nuisances Definition

A public nuisance consists in unlawfully doing an act, or omitting to perform a duty within the corporate limits of the City or in any public grounds or parks belonging to the City or within one mile of the corporate limits of the City not within another municipality, which an act or omission either:

- A. Annoys, injures, or endangers the comfort, repose, health or safety of others;
- B. Offends decency;
- C. Unlawfully interferes with, obstructs, or tends to obstruct or renders dangerous for passage any stream, public sidewalk, public park, square, street, alley or highway, or any public building where the public is invited to enter; or
- D. In any way renders other persons insecure in life, or in the use of property; and which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

The remedies against a public nuisance in addition to those prescribed herein shall be those prescribed by the South Dakota Code.

Section 9.2.02 Property Found in Streets and Other Public Places

No person shall abandon, leave or place in any street, alley or public place of the City any property of any kind; and no person shall permit any property of any kind so abandoned, left or placed to be or remain for more than twenty-four (24) hours in any street, alley or public place of the City, adjacent to or in heretofore and hereafter so abandoned, left or placed in any such street, alley or public place and any property heretofore or hereafter abandoned, left or placed by any person on any private property of which report or complaint may have reached any bureau or department of the City, is declared to be a public nuisance and an obstruction and a menace to the public welfare, comfort, safety and health.

Section 9.2.03 Removal and Abatement

It is hereby made a duty of the health officer and members of the health department or any member of the Police Department to report to the Chief of Police or to the Commissioner in charge of the Street Department as to any property so abandoned, left or placed and the Commissioner in charge of the

Street Department or the Chief of Police, shall look after the removal of such obstruction and abatement of such nuisance as soon as possible after receiving any such report.

Section 9.2.04 Expense Made Lien

It shall be the duty of the Police Department to take possession of any article of property so abandoned, left or placed on any public or private property, and if the same is believed to have any value, to keep it and make an attempt to find the owner thereof, and to retain any such article heretofore so taken up by it. It shall be the duty of said Department to maintain a place for the keeping of any such article until the same shall be claimed or otherwise disposed of and the City shall have a lien thereon for the reasonable expenses incurred and value or cost of the time and effort necessary in taking, removing and storing such article, and for the value of the storage and keeping thereof, and may retain possession until any and all such liens are discharged.

Section 9.2.05 Sale and Disposition

If any such article of property has been or is kept for ninety (90) days or more without being claimed, the same may be disposed of by said Department; if of no value or slight value, it may be destroyed; if of slight value but of use to the City, it may be turned over to the property Department and used until claimed and the charges hereby made a lien thereon shall be regarded as a sufficient offset to the value of any such use; if of more than slight value, it may be sold by said Department by public auction ten (10) days after notice of such sale has been given by one (1) publication in a legal newspaper published in the City and the City may be a bidder at such sale. If on any such sale an amount is bid in excess of the charges or lien of the City, such excess shall be deposited to the credit of the general fund of the City.

Section 9.2.06 Proper Manner

No person shall, in the City, conduct himself or herself in any unseemly manner or way, or in any manner tending to degrade and unsuited to the promotion of the morals, order, health or comfort of the inhabitants of this City.

Section 9.2.07 Indecent Exposure

No person shall, in the City, appear in any public place in a state of nudity, nor shall any person make any indecent exposure of his or her self or be guilty of any lewd or indecent acts, nor shall any person perform any indecent, immoral or lewd play. No person shall post, publish, print, show or exhibit, or cause to be posted, printed, published, shown or exhibited, or exposed to public grounds of the City any lewd, indecent or obscene, picture, print photograph, lithograph, or other representation either by exposing them stationary to view or causing them to pass before the vision of persons by moving picture machines or other article means.

Section 9.2.08 Disturbing the Peace

No person shall, in the City, disturb the peace of the City by any unlawful assembly of persons, nor disturb the peace of any neighborhood, family, or person by violence, tumultuous or offensive conduct, or by loud or unusual noises of voices or music by profane, obscene, indecent, violent, or threatening language, or by assaulting, striking, or by attempting to assault or strike, or inviting or defying another person to fight or quarrel, or by willfully and maliciously destroying or attempting or threatening to destroy or injure any property belonging to another, or be engaged in a fight with another person in this City.

Section 9.2.09 Assault and Battery

No person shall, in the City, commit any assault or assault and battery upon the person of another.

Section 9.2.10 Dangerous Weapons

No person, except officers of the law in the execution of their duties, or a person in self defense, shall in the City draw a pistol, revolver, knife or any other deadly or dangerous weapon upon another person.

Section 9.2.11 Concealed Weapons

It shall be unlawful for any person in the City to carry concealed about his person any pistol, fire arm, sling shot, brass knuckle or dirk knife, or any other dangerous or deadly weapon or any instrument or device which when used is likely to produce death or great bodily harm; provided that this Section shall not be construed to prohibit any peace officer from wearing or carrying such weapons as may be necessary and proper in the discharge of his official duties.

Section 9.2.12 Refusal to Obey

It shall be unlawful for any person to refuse to obey the Chief of Police or any policeman when such officer shall require his aid for arresting any person accused of a crime or suspected of a crime, or in the suppression of any riot or unlawful assembly, or in the preventing the commission of any offense against the City or the State of South Dakota.

Section 9.2.13 Loafing, Loitering, or Linger

It shall be unlawful for any person to loaf, loiter, or linger around or about the City Jail, or to furnish or deliver by any means whatever, any property to any person confined in the City Jail or Jail Exercise Yard of the City.

Section 9.2.14 Unauthorized Duties

No person not duly authorized to exercise the duties covered by law upon policemen of this City shall wear a policeman's badge or a detective's badge or represent himself as being a policeman or police officer, or detective, or attempt to exercise the duties of a police officer in the City.

Section 9.2.15 Discharge of Fire Arms

No person shall within the City discharge any pistol, revolver, shot gun, rifle, air rifle or any other fire arm, except in the performance of a public duty.

Section 9.2.16 Paint Balls and B.B. Guns

It shall be unlawful for any person under eighteen (18) years of age, within the City limits to possess any type of B.B. Gun, B.B. Rifle, B.B. Pistol, or Air Rifle or Pistol or Pellet Gun.

Section 9.2.17 House of Ill Fame

No person shall keep any bawdy house, house of prostitution, or house of ill fame, or assignation within the City limits or within one mile of the outer boundary of the City nor harbor or allow any person to be or remain in such house or place.

Section 9.2.18 Unlawful Sexual Acts

No person shall frequent any bawdy house, house of ill fame, or house of prostitution as assignation, nor be a inmate or visitor of such house or houses; nor shall any person use or occupy any room, house or building within the City for the purpose of unlawful sexual intercourse.

Section 9.2.19 Unlawful Solicitation

No person shall within the City or within one mile of the outer boundaries of the same, solicit, entice or urge any person to enter a house of ill fame, prostitution or assignation, nor solicit any person to occupy any room, house, building or other place for the purpose of unlawful sexual intercourse, nor shall any person solicit, entice or urge any other person to engage in unlawful sexual intercourse.

Section 9.2.20 Dog Fights

No person shall in the City by words, signs, or other wise set any dog or dogs to fight or to attack any other dog or dogs, nor shall any person said, abet or encourage any dog to fight, nor in any manner set on or encourage any dog to attack or chase any animal that is not engaged in any malicious act; and no owner, keeper, or harbinger of any such dog shall knowingly permit or allow such dog to fight without endeavoring so far as he is able to prevent the same.

Section 9.2.21 Littering

It shall be unlawful for any person to throw paper, rags, cans, bottles, or other litter on the streets, alleys, or public or private grounds of the City where it may be blown, or carried, onto and over the streets or alleys of the City or private property.

Section 9.2.21 Littering

It shall be unlawful for any person to sell or offer for sale in the City any spoiled, diseased or rotten meat or spoiled provisions of any kind.

Section 9.2.23 Curbs and Sidewalks

It shall be unlawful for any person to cross or pass over or upon any curbing or sidewalk with any team of animals, or any wagon, automobile, truck, tractor or other vehicle, or ride or drive thereon, except where crossings are provided therefore, in the City.

Section 9.2.24 Lounging and Loitering

No person shall obstruct or encumber any street corner or sidewalk, or other public place of the City, by lounging or loitering in, on or about the same, but shall immediately move on at the request of any officer of the City or any peace officer.

Section 9.2.25 Obstruction of Streets or/and Alleys

Whenever, from any cause, any street or alley of the City shall be obstructed by a press of automobiles, trucks, or other vehicles, loaded or otherwise, Chief of Police or other policeman may give such directions in regard to the removal of such automobiles, trucks, and vehicles as in his opinion may be required by the public convenience, and it shall be unlawful for any person to refuse to obey such directions.

Section 9.2.26

Obstruction of Sidewalks

It shall be unlawful for any person receiving or delivering goods, wares or merchandise to place or keep the same upon an sidewalk without leaving a passage at least five (5) feet wide; and such goods shall not be allowed to remain on such sidewalk for a longer period than two (2) hours, within the City.

Section 9.2.27

Obtaining Permission

It shall be unlawful for any person to obstruct any street, alley, sidewalk or other public ground by placing therein or thereon any building materials, or any kind of machinery, vehicle, or any article or thing; nor shall any person remove or assist in removing any building into, along or across any street, alley or public ground of the City, without first obtaining written permission from the Mayor, and conforming to such restrictions and conditions as he may prescribe and such regulations as are fixed by the ordinances of the City.

Section 9.2.28

Penalty

Any person violating any of the provisions of this Article or failing to comply with the provisions thereof shall be deemed guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

Any defendant found guilty under any of the provisions of this Article shall be committed to jail for one (1) day for every ten (10) dollars of such fine and costs, unless the same are paid, and the such defendant shall during such time and during the time of his jail sentence works for the City under the direction of the Chief of Police at such labor as the strength of the person will allow.

Article 3 - Abandoned Vehicles

Section 9.3.01

Other Ordinances Repealed

The Ordinance herein shall amend Chapter 9, Article 3 of the Winner Municipal Code and that the Ordinances described in the existing Chapter 9, Article 3 of the Winner Municipal Code are hereby repealed in all respects.

Section 9.3.02

Definitions

For the purposes of this article, the following terms, phrases words and their derivations shall have the meaning given herein:

(1) "Abandoned motor vehicle" means any motor vehicle, as defined in this section, which is left unattended on any public street, alley, public place or parking lot within the city for a longer period than twenty-four (24) hours without notifying the chief of police and making arrangements for the parking of such motor vehicle.

(2) "Antique/collectible vehicle" means any motor vehicle having special value because of its age or characteristics and does not meet the junked motor vehicle definition.

(3) "City" means the city of Winner

(4) "Inoperable vehicle" means any motor vehicle, as herein defined, which has not physically moved twenty-five (25) feet in a six (6) month period, or which is not in operating condition due to damage or removal or inoperability of one or more tires and wheels, damage or removal or inoperability of the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto a valid state license plate or which constitutes an immediate health, safety, fire or traffic hazard.

(5) "Junked motor vehicle" means any motor vehicle which does not have lawfully affixed thereto a valid state license plate or plates, or the condition of which is wrecked, dismantled, partially dismantled, inoperable or discarded.

(6) "Motor vehicle" means any vehicle which is designed to travel along, or on the ground or water and shall include, but not be limited to, automobiles, buses motorbikes, motorcycles, ' including three-wheel or all-terrain vehicles, motor scooters, snowmobiles, trucks, tractors, go-carts, golf carts, campers, trailers, boats, jet skis and farm equipment.

(7) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

(8) "Private property" means any real property within the city which is privately owned and which is not public property as defined in this section.

(9) "Public property" means any street alley or highway, or boulevard which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means any other publicly own property or facility

Section 9.3.03 Storing, Parking Or Leaving Abandoned, Wrecked, Dismantled, Inoperable, Junked or Partially Dismantled Motor Vehicles Declared Nuisance - Exceptions.

The presence of an abandoned, wrecked, dismantled, inoperable, junked or partially dismantled motor vehicle or parts thereof on private or public property is a public nuisance which may be abated as such in accordance with the provisions of this chapter. This section shall not apply to any motor vehicle enclosed within a building on private property or to any motor vehicle in connection with a business enterprise, lawfully licensed by the city and properly operated in the appropriate business zone, pursuant to the zoning laws of the city. A motor vehicle in operable condition specifically adopted or designed for operation on drag strips or raceways, covered by an appropriate fence or building to screen it from view during non-racing seasons, may be kept on private property. A motor vehicle in operating condition retained by the owner for antique collection purposes, covered by an appropriate fence or building to screen it from view may be kept on private property. All other motor vehicles must be in an appropriate enclose building or fenced area with the vehicles out of public view.

ABANDONED, WRECKED, DISMANTLED, OR INOPERABLE MOTOR VEHICLES ON PUBLIC PROPERTY

Section 9.3.04 Storing, Parking or Leaving Dismantles or Other Such Motor Vehicles On Public Property Prohibited

No person shall park, store, leave or permit the parking, storing or leaving of any abandoned, wrecked, dismantled, inoperable, junked or partially dismantled motor vehicle of any kind, whether attended or not, upon any public property or right-of-way within the city.

Section 9.3.05 Removal.

Whenever any police officer finds an abandoned motor vehicle or an unattended motor vehicle which is in a wrecked, dismantled, inoperable, junked or partially dismantled condition on public property within the city, he shall place on the vehicle a notice to remove in twenty-four (24) hours or the vehicle will be towed. If the vehicle is not removed within the twenty-four (24) hour time limit, the police officers are authorized to provide for the removal of such motor vehicle to a garage or place of safety as designated by the City. A motor may be removed at any time under the direction of the Police department.

Section 9.3.06

Notice to Owner.

It is the duty of the police department to notify, by certified mail or by personal delivery, the registered owner, if known, and if encumbered, the lien holder, of the removal and storage of any motor vehicle under the provisions of this chapter and where such motor vehicle has been stored. If the owner or his or her address is unknown, a notice of removal and storage shall be given by the county. If the owner, for whatever reason is not contacted after reasonable efforts have been made to contact him or her, a notice of removal and storage shall be given by one publication in a newspaper of general circulation in the county.

The notice shall set forth the date and place of the taking, the year, the make, model and serial number of the abandoned or wrecked motor vehicle and the place where the vehicle is being held, and shall inform the owner and any lien holders of their right to reclaim their vehicles.

Section 9.3.07

Sale of Unclaimed Motor Vehicle

If, after sixty (60) days from the date of mailing or publishing notice of removal and storage provided for by this chapter, the motor vehicle shall remained unclaimed, such motor vehicle may be sold by the police department at public auction upon notice of sale to be published in a newspaper of general circulation in the county not less than once a week for two (2) consecutive weeks. The removal agency shall have the rights and obligations conferred upon it by SDCL 32-36 in regard to titling or disposition of such unclaimed, abandoned or inoperable vehicle, except that, if not otherwise provided by State law, it shall have a possession lien upon any vehicle removed under the provisions of this article for the costs or reasonable charges in taking custody of and storing such vehicles.

Section 9.3.08

Notice of Sale

The notice of sale provided for by this chapter shall contain a description of the removed and stored motor vehicle, including the year, make, model, serial number, color, license number, if any; a statement that the motor vehicle was found abandoned, the date thereof, and the place, date and time at which such motor vehicle shall be sold, which date shall not be sooner than one (1) week following the date of the last publication of notice.

Section 9.3.09

Lien For Costs

The city shall have a possessor lien upon any motor vehicle removed under the provisions of this chapter for the costs in taking custody, including towing and storing, of such motor vehicle

Section 9.3.10

Title May Vest in City - When

If, after sixty (60) days from the date of mailing or publishing the notice of removal and storage provided for by this chapter, the motor vehicle shall remain unclaimed, the title to such motor vehicle may be disposed of as set out above. The proceeds of any such disposal shall first be applied to the costs incurred in the enforcement of this chapter with the balance to be deposited to the general fund of the city. The removal agency shall have the rights and obligations conferred upon it by SDCL 32-36 in regard to titling or disposition of such unclaimed, abandoned or inoperative vehicle, except that, if not otherwise provided by State law, it shall have a possession lien upon any vehicle removed under provision of this article for the costs for reasonable charges in taking custody of, including towing and storing such vehicle.

Section 9.3.11

Citation

If a vehicle as described above is located upon public property and the police officer gives notice of removal within twenty-four (24) hours and the vehicle is not removed, the police officer shall then arrange

for immediate removal of the vehicle and issue a citation to the owner, lessee, or person having possession of the motor vehicle.

WRECKED, DISMANTLED OR INOPERATIVE MOTOR VEHICLES ON PRIVATE PROPERTY

Section 9.3.12 Duty of Private Property Owners.

No person owning, in charge of or in control of any real property within the city, whether as owner, tenant, occupant, lessee or otherwise, shall allow any wrecked, dismantled, inoperable, junked or partially dismantled motor vehicle of any kind to remain on such property longer than five (5) years.

Section 9.3.13 Notice to Remove

Whenever it comes to the attention of the police department or the Code Enforcement Officer that any person has a wrecked dismantled, inoperable, junked, or partially dismantled motor vehicle on his property, a notice in writing shall be served upon such person requesting the removal of such motor vehicle within five (5) days or such notice may be served by certified mailing requesting the removal of such motor vehicle within seven (7) days. After notice to remove is given and the vehicle is not moved within the allotted day period, the city may remove the vehicle and the owner, tenant, occupant, lessee or possessor shall be responsible for the towing charges and storage costs that might be incurred by the city.

Section 9.3.14 Responsibility For Removal

Upon proper notice, the owner, lessee or possessor of the wrecked, dismantled, inoperable, junked or partially dismantled motor vehicle and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal.

Section 9.3.15 Notice Procedure.

The police department or the Code Enforcement Officer shall give notice of removal to the owner or occupant of the private property where it is located. It shall constitute sufficient notice when a copy of same is sent by certified mail or personally delivered to the owner or occupant of the private property at his last known address.

Section 9.3.16 Content of Notice

The notice shall contain the request for removal within seven (7) days after the mailing of such notice by certified mail or within five (50 days if the notice is served personally upon the owner or occupant of the private property, and the notice shall advise that failure to comply with the notice to remove shall be a violation of this chapter.

Section 9.3.17 Racing Vehicles or Antique Vehicles.

No owner or occupant of private property shall have a motor vehicle specifically adopted or designed for operation on the drag strips or raceways or a motor vehicle retained on private property for antique collection purposes unless such race cars or antique vehicles are either parked inside of a building or shall be parked being a fence shielding from public view.

Section 9.3.24

Penalty For Violation

Any person violating any of the provisions of this chapter shall be guilty of municipal ordinance violation punishable by a fin not to exceed Two Hundred Dollars (\$200.00) and each and every day that the violation continues shall constitute a separate offense.

All ordinances or parts of ordinances in conflict with this ordinance are hereby expressly repealed and from and after the effective date of this ordinance, this ordinance shall take precedence over any other ordinance previously adopted.

Article 4 - Vagrancy

Section 9.4.01

Vagrants Defined

The following described persons are vagrants:

- A. Any person who wanders about in idleness, or lives in idleness who is able to work and has no property sufficient for his support;
- B. Any person leading an idle, immoral or profligate life, who has no property sufficient for his support, and who is able to work and does not work;
- C. Any able bodied person with no property sufficient for his support, who loafs, loiters or idles in any city, town or village, or upon a public highway, or about any public place in this state without any regular employment;
- D. Any person trading or bartering stolen property, or who unlawfully sells or barter any spirituous, vinous or malt or other intoxicating liquors;
- E. Any person who shall attend or operate any illegal gambling device or apparatus;
- F. Any person who shall be engaged in practicing any tricks or device to procure money or other items of value or who shall engage in any unlawful calling;
- G. Any able bodies married man who shall without lawful excuse neglect or refuse to provide for the support of his family;
- H. Any person begging in any public place or from house to house or inducing children or others to do so; and
- I. Any person fraudulently representing himself as a collector of alms for a charitable institution or institutions or purpose.

Section 9.4.02

Proof of Vagrancy

Whenever it shall appear in any prosecution under the terms of this act, that any person is a vagrant, as defined in Section 9.4.01, then and in such case upon the introduction of such proof a prima facie presumption that such person is a vagrant shall be and the same is hereby declared to be established.

Section 9.4.03

Penalty

Any person convicted of being a vagrant as defined in this Article shall be fined pursuant to Section 14.01 or by being compelled to work upon the streets or public highways not to exceed thirty (30) days.

CHAPTER 10: PARKS AND RECREATION

Article 1 – General Regulations

Section 10.1.01 Protection of Park Property

It shall be unlawful for any person to deface, mar, injure, break, or in any way interfere with any house, building, bridge, or other property situated in any public park, belonging to the City. No person shall distribute any hand bills or erect any sign board or posts, or affix any notice or bill or other writing or printing to any tree, post, building, or other structure, within such park or possess any glass containers in the parks.

Section 10.1.02 Fees for Electrical Use of Ball Fields

The City provides the electrical power to the lights for Leahy Bowl, softball complex, McDonald's, and Bailey Park. Organizations wishing to use the lighting system shall:

- A. Pay a fee of ten (10) dollars per night, at the discretion of the Council;
- B. Submit a schedule of baseball or softball games and practice sessions to the City Finance Officer for evening usage; and
- C. Make arrangements for access to the locked electrical system, as determined by the Council.

Section 10.1.03 Protection of Trees and Shrubbery

It shall be unlawful for any person to climb any trees, or to cut, break, pluck, root up or in any way disturb any tree, flower, shrub, plant, or bulb, placed or growing in or upon any park, boulevard, parkway, park road, or other public ground of the City.

Section 10.1.04 Rubbish

It shall be unlawful for any owner, occupant or agent of land abutting upon any park, boulevard, parkway, or park road in the City to allow any litter, rubbish or offal from said land to fall or wash upon any part of said park, boulevard, parkway, or park road. It shall be unlawful for any person to throw or deposit, or cause to be thrown or deposited, any litter, dirt, offal, or rubbish of any kind upon such park, boulevard, parkway, or park road, or in any lake or stream within or adjoining any park, boulevard, parkway, or park road under the control of the City.

Section 10.1.05 Interfering with Animals and Birds

It shall be unlawful for any person to kill, wound, throw stones, or other missiles at, or in any way injure or chase, or by any means intentionally scare or chase any animal, bird, or fowl within any public park in the City.

Section 10.1.06 Protection of Grass

It shall be unlawful for any person to lead or drive any horse or other animal or any vehicle, bicycle, or motor vehicle over or upon any of the grass plots or planting spaces of any park, boulevard, parkway, or park road, except at such places as provided for the parking of vehicles. However, handicapped people in wheelchairs may enter the park.

Section 10.1.07 Selling Goods

It shall be unlawful for any person to do any hawking or peddling, or to sell or offer for sale any goods, wares, or merchandise in any of the public parks of the City, unless such person has been granted concession for the sale of refreshments therein by the Council. The concessionaire shall collect and dispose of any trash, rubbish, or litter at least once every twenty-four (24) hours or more often as directed by the Public Works Superintendent.

Section 10.1.08 Children Playing

It shall be unlawful for any person to permit children, or any person, to play any games or do any running around upon any of the grass plots or planting spaces under construction within any park or parkway with the City and all children shall be accompanied by their parents or other guardians.

Section 10.1.09 Boulevards

Any person owning or occupying any lot or parcel of land in this City shall keep in order the grass plots between the sidewalk and the curb line and cut the weeds and remove rubbish or other obstruction thereon, except such as placed thereon by permit of the governing body of the City.

Section 10.1.10 Disorderly Conduct

No person shall commit any act of disorderly, unchaste, or lewd conduct, or habitual loafing, or sleep on the ground or benches. No person shall engage in any quarrel or fight, or mark, aid, or assist in making any disorderly noise, riot, or disturbance of the peace within the limits of any park, boulevard, parkway, park road, or public ground within the City.

Section 10.1.11 Animals

It shall be unlawful for any person to bring any dog or other animal within any park within the City unless the same is kept in control by a leash. It shall be unlawful for any person to permit any dog or other animal owned by them or accompanying them to run loose in or about the parks of the City.

Section 10.1.12 Parks Open and Close

It shall be unlawful for any person, except caretakers, employed laborers, police officers, or other persons without the permission of the Council, to be in, about, or upon any of the public parks belonging to the City between the hours of eleven o'clock P.M. and five o'clock A.M. local time.

Section 10.1.13 Electricity

It shall be unlawful for any person to use City electricity within any public park, baseball or softball field, or concession stand for unscheduled events without approval of the Council.

Section 10.1.14 Enforcement

It shall be the duty of all policemen, officers and any special employees employed by the City, to enforce the provisions of this Article.

Section 10.1.15 Use of City Property (Liability Insurance)

Any person who obtains permission from the City to use City property for any activity wherein members of the public are invited to attend, shall first acquire liability insurance in an amount of at least one hundred thousand (100,000) dollars and shall name the City as an additional insured. The City shall be held harmless by said organization for any and all personal or property injuries that might occur to any person during such activity.

Section 10.1.16 Insurance Requirement

That any person who does not obtain liability insurance as set out above shall be prohibited from using City property.

Article 2 – Trees and Shrubs

Section 10.2.01 Tree Planting Responsibility

- A. The City is herein responsible for tree planting in all City parks and established control of street tree planting on boulevards. Private planting of trees is not subject to City control but the City encourages desirable species and planting practices.
- B. No person shall plant or set out any tree or plant on a boulevard or in a public place without first procuring permission from the Council. The applicant shall state the number of trees or plants to be planted or set out; the location and variety of each tree or plant; and such other information as the City shall find reasonably necessary to a fair determination of whether permission shall be granted.
- C. The City shall grant permission for the planting of a tree or plant on a boulevard or in a public place when it is found that the proposed planting conforms with the area involved.

Section 10.2.02 Location of Trees

No street trees, except small trees, may be planted under or within ten (10) feet of overhead utility wires. No trees shall be planted over or within five (5) feet of any underground water, sewer, or other service lines.

Section 10.2.03 Trimming Tree Branches

Any tree overhanging any street or right-of-way within the City shall have the branches trimmed so that such branches shall not block or otherwise inhibit street and sidewalk traffic and signs controlling said traffic. All large established trees shall be trimmed in such a manner so as to allow ten (10) feet clearance over sidewalks and twelve (12) feet clearance over all streets, provided however, that trees along principal traffic thoroughfares shall be trimmed so as to allow clearance of at least sixteen (16) feet. The City shall have the right to prune any tree or shrub on private property that obstructs the view of any street intersection, street lighting, or visibility of any traffic control device or sign or interferes with the delivery of electrical services by overhead power lines or causes danger to public safety or private or public property through transmission of electric power by overhead distribution lines.

Section 10.2.04

Dead or Damaged Trees and the Pruning of Trees

- A. The City shall have the right to prune and remove trees, plants and scrubs within the access of all street, alley, avenue and lane right-of-ways as may be necessary to insure public safety and to prevent any injury to sewers, electric power lines, water lines, or other public improvements.
- B. The City shall have the right to cause the removal of any dead or diseased tree on private property within the City. The City will notify in writing the owners of the real estate where such trees are located and removal shall be done by said owners at their own expense within sixty (60) days after the date of service of notice by registered or certified letter. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees or contract for the removal of such trees and charge the cost of removal of such trees to the owners of the property by special assessment on the property tax notice. The City also may require the removal of dead branches from trees that are partially dead in the same manner as set out above.
- C. If after giving notice, as set out above, the owner of real estate where a dead or partially dead tree is located fails to remove the trees or the dead part of a partially dead tree within sixty (60) days, then the owner of said real estate shall be in violation of this Article.
- D. If any owner of real estate fails to remove a dead or partially dead tree, as set out in this Article within sixty (60) days and the City elects to remove said dead tree or partially dead tree or contract for the removal of the same, it shall be unlawful for any person to prevent, delay, or interfere with the City removal of said dead tree or partially dead tree.
- E. Any trees located upon real estate owned by any person which real estate is subject to an easement by the City for street, sewer or other public improvements, shall be liable under the provisions of this Article for the removal of any dead tree or partially dead tree and it shall not be the responsibility of the City to remove said tree or partially dead tree, unless the trees are located upon real estate owned by the City.

Section 10.2.05

Interference of Trees

If at any time the trees, now or hereinafter, planted upon the parking of any street in the City shall interfere with the electric light poles and wires and the telephone poles and wires, said trees may be trimmed or removed under the direction of the City Superintendent.

CHAPTER 11: ANIMALS

Article 1 – General Regulations

Section 11.1.01

Injury to Animals

No person shall in the City cruelly or immoderately beat, maim, wound, torture, or injure any horse, mule, cow, or other animal whether it belongs to himself or to another; nor shall any person carry in or upon any vehicle or otherwise in a cruel and inhuman manner any animal. It shall be unlawful for any person to willfully or negligently maltreat any domestic animal by exposure to heat or cold, by deprivation from food or water for more than twelve (12) hours, by leaving hitched in the open air during cold weather or during

storms or in the night time, or by willfully abandoning to die any sick or disabled animal. Any police officer shall take charge of any such animal and cause the same to be taken care of and the charges therefore shall be alien on said animal and a legal charge against the owner thereof, and such action by any police officer shall not exempt the owner or person in charge of such animal from punishment for such offense.

Section 11.1.02 Domestic Fowls At-Large

No person shall allow any ducks, geese, chickens or other domestic fowls to run at large in the City. No person shall enclose or house any ducks, geese, chickens, or other domestic fowls in any house, pen, coup, enclosure or other building situated within a distance of twenty-five (25) feet of any dwelling house, store, or other building used as a residence of any person, or within twenty-five (25) feet of any church, school, or other public building.

Section 11.1.03 Animals At-Large

It shall be unlawful for any person to permit or suffer any horses, cattle, swine, sheep, goats, or other animals to run at large in the City.

Article 2 – Dogs

Section 11.2.01 Licensing Procedure for Dogs

No dog shall be kept in the City unless the owner, keeper, or harbored thereof shall on or before the first day of May of each year present to the City Finance Officer a certificate, by a duly licensed veterinarian of the State of South Dakota, showing said dog to have been vaccinated for rabies within ten (10) days of the application for license and pay to the City Finance Officer, for the City, the sum of two (2) dollars for each male or spayed female and five dollars for each female dog, not spayed and give a description of such dog to the City Finance Officer who shall register the same in a book to be kept for that purpose, and the City Finance Officer shall, after entering such description, furnish such owner or keeper of the dog or dogs with a metal plate or plates upon which the registered number of each dog and the year for which the tax is paid, shall be inscribed in plain figures; and the owner or keeper of dogs shall place and keep upon the neck of such dogs a substantial collar having such metal plate or tab affixed thereto and any dog not vicious or dangerous on which such license or tax is paid, and which is wearing a collar with the license plate affixed as aforesaid may run at large on and street, alley, or public grounds in this City, providing such dog or dogs do not become a nuisance or damage private or public property.

Section 11.2.02 Possession of Dog(s)

Any person becoming the owner or in possession of any such dog after the first day of May or any year shall pay said license within fifteen (15) days after becoming the owner or in possession of such dog. If person becomes such owner or in possession of such dog after July 1st, he shall be required to pay only one half (½) of such license or tax for that year.

Section 11.2.03 Exceptions

Sections 11.2.01 and 11.2.02 here of do not apply to dogs under six (6) months of age.

Section 11.2.04 Dog(s) Running At Large

It is unlawful for any person to have any dog owned, controlled, or harbored by person to run at large on the streets, alleys, or property of any other persons within the corporate limits.

Section 11.2.05

Control of Dog on Own Property

Any person owning, controlling or harboring any dog within the corporate limits shall keep the dog tied, leashed, or otherwise controlled upon the property of person owning, controlling, or harboring said dog so that said dog cannot run at large off of property of persons. By "at large," it is intended to mean off the premises of the owner or a member of his immediate family over the age of twelve (12), either by leash, cord, chain, or otherwise.

Section 11.2.06

Control of Dog(s) while off Owner's Premises

It shall be unlawful for any person owning, harboring, or controlling any dog within the corporate limits to have said dog off the premises of said persons without said animal being held in leash and accompanied by said persons or their authorized representative and said dog shall be absolutely held in leash by a person over the age of twelve (12) years at any time said dog is allowed off said premises. A leash is a cord, thong, or chain not more than ten (10) feet in length of sufficient strength to control said dog. A dog in an automobile shall be deemed on the owner's property.

Section 11.2.07

Enforcement

It shall be the duty of any police officer of the City to keep this Article enforced and if any dog is found running at large within the corporate limits in violation of any of the above Sections, the police officers are hereby charged with the duty to pick up said dog which is in violation of this Article and hold said dog for a period not to exceed seven (7) days. If said dog is not claimed by the person owning, controlling, or harboring said dog within said seven (7) day period, said police officers or their designated agent shall immediately destroy said dog in a humane manner.

Section 11.2.08

Claiming of Dog(s)

In the event a dog is claimed as provided for in the preceding Section 11.2.07, said person owning, controlling, or harboring the dog shall pay the sum of three (3) dollars per day, or a fraction thereof, to the City for the cost of keeping said animal.

Section 11.2.09

Impounding of Dog(s)

No dog of fierce, dangerous, or vicious propensities, and no female dog in heat, whether licensed or not, shall run at large or upon the premises of any person other than the owner. If any such animal is found running at large, it shall be taken up and impounded and shall not be released except on the approval of the Chief of Police after payment of the fees provided in Section 11.2.08. Provided, however, that if any dangerous, fierce, or vicious dog so found at large can not safely be taken up and impounded such dog may be immediately slain by any police officer. A dog is declared to be fierce, dangerous, and vicious within the meaning of this Section when it shall have bitten any person or when the propensity to attack or bite human beings shall exist and is known or ought reasonably to be known to the owner or any member of the owner's family over sixteen (16) years of age.

Section 11.2.10

Vaccination of Dog(s)

All animals which may be immunized by rabies shots and located within the corporate limits or within one (1) mile of the corporate limits, must be so vaccinated for rabies and such vaccination must be current. In the event that any animal is picked up in violation of any of the provisions of this Section and shall be found to not have been vaccinated for rabies shall be held for a period of not less than fourteen (14) days and then destroyed.

Section 11.2.11

Animals Infected with Rabies

Any person who shall suspect that any animal in the City is infected with rabies or hydrophobia, shall report such to the police or health authorities, describing the animal and giving the name of the owner, if known. If, upon examination by the health authorities, the dog shall prove in fact to be infected with said disease, the animal may be killed. When the health authorities have determined that an animal found in the City is infected with rabies or hydrophobia, the Mayor may, upon written advice from the health authorities that the public safety and general welfare require it, order by proclamation that all animals be muzzled when off the premises of the owner, and that all unmanned animals when found off the premises of the owner be immediately seized and impounded, and may further order that, after the proclamation has been published for forty-eight (48) hours, either by posting or printing in a newspaper of general circulation in the City, all animals found off the premises of the owner unmuzzled shall be seized, impounded, and killed, except that an officer may immediately kill any such unmuzzled animal, if with reasonable effort it cannot be first seized or impounded. All animals seized and impounded during the first forty-eight (48) hours after the publishing of any such proclamation, shall, if claimed within fourteen (14) days, be returned to the owner thereof without any impounding charge or cost, if not infected with hydrophobia or rabies, or any animal known to have been bitten by an animal known to be infected with rabies or hydrophobia.

Section 11.2.12

Disturbance of Peace

The owner of any animal shall not suffer or allow the same to disturb the peace and quiet of the City.

Section 11.2.13

Public Pound

The Council shall establish and maintain a public pound upon property owned by the City. Such public pound shall be under the charge and direction of the Chief of Police.

Section 11.2.14

Fierce, Dangerous, or Vicious Dogs

- A. The term "fierce, dangerous or vicious dog" as used in this Article shall include certain breeds of dogs that, by their unique hereditary characteristics, have a propensity to be vicious. These breeds include the Bull Terrier, American Staffordshire Bull Terrier, and American Pit Bull Terrier.
- B. No person can harbor, keep, or possess within the City limits any fierce, dangerous or vicious dog, including the breeds of dogs described in above.

Article 3 – Cats

Section 11.3.01

Number of Cats

Any person who shall keep, own, or harbor more than three adult cats within the corporate limits shall be guilty of creating a nuisance.

Section 11.3.02

Nuisance

The keeping, owning, or harboring more than three (3) adult cats within the corporate limits shall constitute and is hereby declared to be a nuisance.

Section 11.3.03 Exceptions to Provisions

Any licensed veterinarian or kennel doing business within the said corporate limits shall be excepted and excluded from the provisions of this Article.

Article 4 – Livestock

Section 11.4.01 Animals within City Limits

It shall be unlawful for any person to keep or maintain within the district hereinafter described, in and around the City, unless the regulations hereinafter prescribed are strictly followed, any pen, building, yard, shed, or enclosure, wherein any cattle, horses, sheep, or swine are collected, kept or fed by the owner, lessee or occupant of any property therein.

Section 11.4.02 Keeping or/and Feeding of Animals in City Limits

It shall be unlawful for any person to collect, keep or feed, any cattle, horses, sheep or swine within any pen, building, yard, shed or enclosure within said district unless the regulations hereinafter prescribed are strictly complied with.

Section 11.4.03 Incorporated District Limits

Said district shall comprise all of that part of the incorporated limits of the City and all areas within one mile of the corporate limits.

Section 11.4.04 Description of Enclosures

All pens, buildings, yards, sheds, or enclosures as hereinbefore described and included within the hereinbefore described district shall be maintained in such a manner that no offensive or nauseous odor shall emit from the same.

Section 11.4.05 Penalty

Any person violating any of the provisions of this Article shall upon conviction thereof be fined pursuant to Section 14.01 and each and every day any such pens, buildings, yards, sheds or enclosures shall be kept or maintained in violation of the regulations of this Article, or that any cattle, sheep, or swine shall be collected, kept or fed therein, in violation of the regulations of this Article, or where there shall emit from the pens, buildings, yards, sheds or enclosures any offensive or nauseous odor, within said district, shall be deemed a separate and distinct offense.

Section 11.4.06 Nuisance Declaration

The keeping or maintenance within the district aforesaid of any such pens, buildings, yards, sheds or enclosures in violation of the regulations of this Article, or the collecting, keeping or feeding of any cattle, sheep or swine in violation of the regulations of this Article or the keeping or maintaining of any such pens, buildings, yards, sheds, or enclosures where there shall emit from the same any offensive or nauseous odor, shall constitute and is hereby declared to each nuisance.

CHAPTER 12: MAINTENANCE OF PROPERTY

Article 1 – General Regulations

Section 12.1.01 Purpose

The purpose of this Article is to protect, promote, and enhance the welfare, safety, health, and property of the general public by prohibiting the keeping or maintaining of properties at a variance with or inferior to the level of maintenance of surround properties.

Section 12.1.02 Maintenance of Premises and Buildings

It shall be unlawful for any person owning, leasing, occupying, or having charge or possession of any buildings or premises in the City to keep or maintain such building or premises in a manner that is a variance with and interior to the level of maintenance of surrounding properties.

Any person violating this provision shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01 each day such violation is committed or, if permitted to continue, shall constitute a separate offense and shall be punishable as such.

Section 12.1.03 Premise Identification

Premise identification for all buildings are to be placed in such a position as to be plainly visible and legible from the street or road fronting the property.

- A. All addresses shall be numbers, no script;
- B. The numbers shall be posted on the structure in such a way that they will be visible at night, as well as daylight, using the following guidelines:
 1. Numbers shall be a contrasting color to the background that they are attached to;
 2. Numbers shall be a minimum of five (5) inches in height if the structure is fifty (50) feet or less from the roadway;
 3. Numbers shall be a minimum of seven (7) inches in height if the structure is from fifty (50) feet to two hundred (200) feet from the roadway;
 4. Numbers shall be a minimum of ten (10) inches in height if the structure is from two hundred (200) feet to three hundred (300) feet from the roadway;
 5. Numbers shall be a minimum of twelve (12) inches in height if the structure is three hundred (300) to four hundred (400) feet from the roadway; and
 6. If the structure is not visible from the roadway because of terrain, trees, or other obstructions, or if the structure is more than four hundred (400) feet from the roadway, the address numbers shall be posted on a post at the entrance of the driveway to the structure. The numbers on the post shall be a minimum of four (4) inches in height and shall be

visible from both sides of the approach to the entrance. The post with the numbers shall be a minimum of four (4) feet in height above the ground in a visible location within twenty (20) feet of the roadway.

Section 12.1.04

Enumeration

A building or premises is maintained or kept in a manner which is at variance with and inferior to the level of maintenance of surrounding properties and is hereby declared to constitute a public nuisance where there exists upon any building or premises any of the following condition(s):

- A. Buildings that are abandoned, boarded up, partially destroyed, or partially constructed and uncompleted subsequent to the expiration of the building permit. Building permits are not to run for more than one (1) year;
- B. Overgrown vegetation which is unsightly and/or likely to harbor rates or vermin;
- C. Unsightly trash, garbage or refuse cans, bins, boxes, bags, or other such containers permanently stored in front yards visible from public streets;
- D. Lumber, junk, trash, tires, debris, or salvage materials maintained upon any premises which is visible from a public street, alley, or adjoining property;
- E. Abandoned, discarded, or unused furniture, stoves, sinks, toilets, cabinets, or other household fixtures or equipment stored so as to be visible at ground level from a public alley, street, or adjoining premises;
- F. Unsightly abandoned, wrecked, dismantled, or inoperative trailers, mobile homes, campers, boats, and other motor vehicles which are accumulated or stored in yard areas;
- G. Broken windows, doors, attic vents, and under floor vents;
- H. Dead, decayed, or diseased trees, weeds, and other vegetation;
- I. Premises having a topography, geology, or configuration, which as a result of grading operations or improvements to land, cause erosion, subsidence, unstable soil conditions, or surface/subsurface drainage problems as to pose a threat to or be injurious to adjacent premises;
- J. Buildings with deteriorating or peeling paint that allows the exterior building coverings to deteriorate or to permit the effects of sun and water penetration so as to encourage decay, dry rot, and cracking;
- K. Building exteriors, walls, fences, driveways, or walkways which are cracked, broken, defective, deteriorated, in disrepair, or defaced; and
- L. Any like and similar condition or conditions.

Section 12.1.05

Sanitation of Premises and Buildings

It shall be unlawful to permit by act or omission the following specific acts, conditions, and things that are hereby also declared to be public nuisances:

- A. Maintaining upon a premises any unsightly, partly complete, or partly destroyed buildings, structures or improvements in the City which may endanger or injure neighboring properties or the public health, safety, or general welfare;
- B. Failing, refusing, or neglecting to keep the sidewalk in front of a house, place of business, or premise in a clean and safe condition; and
- C. Maintaining upon such premises or upon the sidewalk abutting or adjoining such lot, parcel, tract, or piece of land, loose earth, mounds of soil, fill material, asphalt, concrete rubble, or waste material of any kind (all such materials shall hereinafter be referred to as "waste materials"), except for waste materials used for construction or landscaping upon premises in which case it shall be the duty of the owner, lessee, occupant, or persons in possession of premises wherein the waste materials exist, to maintain weed control during construction and to level or remove waste materials after construction is completed, or in any event, within eight (8) months from time of placement of waste materials upon premises.

For sites where filling, grading, or excavation activities have or will span more than one (1) year, it shall be the duty of the owner, lessee, occupant, or person in possession of said to level or remove the waste materials from said premises at least twice each year during the months of either June, July, or August for the purpose of maintaining weed and rodent control.

Section 12.1.06 Enforcement of Article

The Building Official is hereby authorized and directed to administer and enforce all of the provisions of this Article.

Section 12.1.07 Right of Entry

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

No owner or occupant or any other person having charge, care of any building or premises shall fail or neglect, after proper demand made as herein provided, to properly permit entry therein by the Building Official or her or his authorized representative for purpose of inspection and examination pursuant to this

article. Any person violating this subdivision shall be guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

Section 12.1.08 Notice to Abate-Issuance

Whenever the Building Official is notified that any condition or conditions prohibited in this article exist on any premises located within the City, the Building Official shall give, or cause to be given, notice to abate the unlawful condition or conditions existing on the premises. Such notice shall be in writing to the person creating, permitting, or maintaining such nuisance to abate the same within a reasonable time as provided in the notice as follows:

- A. If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed sixty (60) days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances; and
- B. If the building official has determined that the building or structure must be demolished, that all required permits be secured therefore within sixty (60) days from the date of the order, and that the demolition be completed within such time as the building official shall determine is reasonable.

Section 12.1.09 Notice Waived

Whenever the owner, occupant, or agent of any premises in or upon which any nuisance may be found is unknown or cannot be located, the building official shall proceed to abate the nuisance without notice. In either case, the expense of such abatement shall be collected from the person who may have created, caused, or suffered such nuisance to exist.

Section 12.1.10 Right to Appeal

The owner or any person affected shall have the right to appeal to the City Planning Commission for investigation and review of the building officials determination. Such appeal shall be in writing, shall state the objections of the person filing the same, shall have filed with the Municipal Finance Officer within thirty (30) days after the date of posting, publishing, service, or mailing of Notice to Abate, and shall be presented to the Council by the Municipal Finance Officer at its next regular meeting. The City Planning Commission shall determine by resolution whether the building official shall proceed in accordance with the abatement notice, or as modified by the Council or not at all, and its decision thereon shall be final and conclusive.

Section 12.1.11 Abatement by City

In the event a person shall fail to abate any nuisance created, permitted, or maintained following written notice to do so, the building official shall cause such nuisance to be abated.

The Building Official shall not have to let bids, but shall hire available manpower or company for the razing, demolishing, removing, reconstruction, or other affirmative act necessary to abate the unlawful condition(s) and shall file such statement with the City Finance Officer. Such statement shall refer to the particular premises including any improvements, structures, or buildings, thereon, upon which the actions taken to abate the unlawful conditions occurred. With regard to the premises or each piece of property therein referred to, the statement shall show the number of the lot and block and the name of the addition or subdivision in which the lot lies or upon which the structures, improvements, or buildings were located at the time that the actions to abate the unlawful conditions were taken or shall describe such premises in any other way that they may be easily identified.

Section 12.1.12 Alternate Abatement Procedure

In addition to any method of abatement of nuisances within the City provided by the provisions of this article, any nuisance found within the City may be abated in the manner provided by state law.

Section 12.1.13 Notice of Equalization of Assessment

Within ten (10) days after the filing of the statement referred to in Section 12.1.11 of this article, the City Finance Officer shall cause to be served upon the owner, agent of the owner, lessee, occupant, or person

in possession of the parcel of land described in the statement and in the notice personally or by mail addressed to his last known address or to general delivery, Winner, South Dakota, if such address is unknown.

Section 12.1.14 Equalization of Assessment - Hearing

The owner of any person affected shall have the right to appeal to the Council concerning the proposed assessment. Such appeal shall be in writing, shall state the objections of the person filing the same, and shall be filed with the City Finance Officer within thirty (30) days after the notice. Said objections shall be presented to the Council by the Finance Officer at their next regular meeting. The Council shall determine by resolution the assessment and shall proceed to place a lien against the property until the assessment is paid.

Section 12.1.15 Recovery of Expenses - Special Assessment

The City may recover the expenses incurred by the Building Official in abating a public nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred.

Section 12.1.16 Recover of Expenses - Civil Suit

The City may recover the expenses incurred by the Building Official in abating any nuisance under the provisions of this article from the person creating, permitting, or maintaining the same in a civil suit instituted for such purpose.

Section 12.1.17 Boulevards

Any person owning or occupying any lot or parcel of land in this City shall keep in order the grass plots between the sidewalk and the curb line, and cut the weeds and remove rubbish or other obstruction thereon, except such as placed thereon by permit of the governing body of the City.

Section 12.1.18 Street Repair Levies

There is hereby levied upon all lots of the City fronting upon the streets of said City for the purpose of maintaining or repairing street surfacing or pavement not of a permanent type, a special front foot assessment amount to twenty-five (25) cents per front foot.

Section 12.1.19 Sewer Levies

There is hereby levied upon all lots or parcels of land of the City fronting or abutting upon the street or streets, alley or alleys, along any main, trunk or service sewer in said City for the purpose of maintaining its main, trunk, or service sewers and its septic tanks and sewage treatment plant the sum of four (4) cents per front foot against any lot or parcel of such abutting property.

Section 12.1.20 Reporting Levies

The City Finance Officer is hereby directed to certify to the County Auditor of Tripp County, South Dakota, the amount levied and assessed against each lot or parcel of land for maintaining or repairing streets and maintaining sewers and septic or sewage treatment plant giving the description of property so assessed and the amount of such assessment or levies.

Article 2 – Weeds and Tall Grasses

Section 12.2.01 Dedicated Land

The occupant, person in charge, or owner of any lot in the City which abuts or adjoins a street or alley that contains dedicated land that is not being utilized by the City, shall be responsible to cut the weeds and tall grass on said unused dedicated land as if said person owned the land. In other words, the plats in the City establish that many streets and alleys have been dedicated to include areas wider than actually used by the City and that, if there is any grass or weeds growing on the unused portion of said street or alley, the adjoining or adjacent landowners shall be responsible for cutting the grass and weeds.

Section 12.2.02 Nuisance Declared

All weeds or plants declared to be primary noxious weeds or secondary noxious weeds by the State Weed Board and all other weeds suffered or allowed to grow during the growing season and all grass allowed to grow to a length exceeding six (6) inches shall be deemed noxious, dangerous, and unhealthful vegetation and are hereby declared to be nuisances.

Section 12.2.03 Duty to Cut Weeds and Tall Grass

It shall be the duty of the occupant, person in charge of, or owner of any lot in the City to keep such lot free from noxious vegetation and to cut such noxious vegetation at such time as may be necessary to prevent the growth of the weeds and to prevent the grass from growing more than six (6) inches in length.

Section 12.2.04 Notice to Cut Weeds and Grass

The City Superintendent may at the beginning of or during the growing season by written notice to each occupant, person in charge, and owner of any lot, require all weeds and other noxious vegetation as above described upon any lot to be cut and removed within seven (7) days after the giving of such notice. Such notice shall be given by registered or certified mail to the occupant, person in charge, or owner of any lot at said person's last known postal address.

The occupant, person in charge, or owner shall within seven (7) days after receipt of such notice and at all times subsequent during the growing season as may be necessary cut and keep cut all noxious vegetation and grass exceeding six (6) inches in height.

Section 12.2.05 Weeds and Grass may be Cut by City

If the occupant, person in charge, or owner of any lot fails to cut weeds, noxious vegetation, and grass exceeding six (6) inches in length upon any such lot as required, the City Superintendent may cause such weeds, grass, and noxious vegetation to be cut, and for such purpose may enter upon any such lot or parcel of land.

The fees assessed for the cutting of such weeds, grass, and/or noxious vegetation shall be set by the Council. The occupant, person in charge, or owner shall be billed accordingly. In the event that the bill is not paid by the end of the growing season, the charges shall be collected by means of special assessment.

Section 12.2.06 Special Assessment for Noxious Vegetation Cutting

The City Superintendent shall cause an account to be kept against each lot of the cost for cutting the noxious vegetation during the growing season of each year, and the same shall be certified to the City Finance Officer on or before the 15th day of November of each year.

The Auditor shall prepare an estimate of the assessment against each lot for the cutting of noxious vegetation for the preceding growing season, including therein the expense of levying such special assessment against each lot. Such estimate shall be submitted to the Council for its approval on or before the 15th day of January of each year.

The Auditor shall cause to be served upon the occupant, person in charge, or owner of said lot by registered or certified mail of the time and place when the Council will meet for the purpose of approving such estimate.

Upon the day so named the Council shall meet and, if they find said estimate correct, they shall approve the same by resolution; or, if not correct, they shall correct or modify the same and approve the same as modified or corrected, and file such assessment roll with the Auditor.

From the date of the approval and filing of such assessment roll with the Auditor, the same shall be and become a special lien against the various pieces of property described in said assessment roll and shall be collected in like manner as the law provides for special assessments for public improvements as are now collected.

Section 12.2.07 Intent of Council

It is the intention of the Council to provide a means for the City to cause lots and parcels of land that contain noxious vegetation as described herein to be cut at no cost to the City.

Article 3 – Temporary Buildings

Section 12.3.01 Commercial Temporary Buildings

Seasonal, commercial temporary buildings usually consist of a rib structure covered by a transparent material.

After the commercial season of selling items from the temporary building is over with, the weather and elements tend to destroy the transparent material if it is not removed from the frame of the building and said transparent material blows around within the neighborhood and creates an unsightly situation.

Section 12.3.02 Maintain or Remove

The transparent material on said temporary buildings shall be maintained or removed from said temporary building after the seasonal business is completed so that the elements do not tear said material and creates an unsightly situation.

Section 12.3.03 Removal of Transparent Materials

The owners, lessees or operators of said temporary buildings shall have thirty (30) days after they have abandoned said temporary buildings in regards to selling items from the temporary building, to remove any transparent materials covering said temporary building.

Section 12.3.04 Board of Adjustment

The Board of Adjustments, pursuant to the Zoning Ordinance (Appendix C) for the City, shall have the power to find that any temporary or seasonal building which has not had the transparent material in good maintenance removed thirty (30) days after the temporary building has been abandoned for the season is a nuisance pursuant to the above statute.

Section 12.3.05 Penalty

Any person operating a temporary building who violates any of the provisions of this Article, shall be deemed guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

Article 4 – Flood Prevention

Section 12.4.01 Findings of Fact

- A. The flood hazard areas of the City are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extra-ordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the occupancy in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damages.

Section 12.4.02 Statement of Purpose

It is the purpose of this Article 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:

- A. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural flood plains, stream channels, the natural protective barriers, which are involved in the accommodation of flood waters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damage.
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section 12.4.03 Objectives

The objectives of this article are:

- A. To protect human life and health;
- B. To minimize expenditure of public money too costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;

- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in flood plains;
- F. To 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,
- G. To insure that potential home buyers are notified that property is in a flood area.

Section 12.4.04 Applicable Lands

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

Section 12.4.05 Development Permit

A Development Permit shall be required in conformance with the provisions of this Article.

Section 12.4.06 Compliance

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

Section 12.4.07 Interpretation

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

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

Section 12.4.08 Warning and Disclaimer of Liability

The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article 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 Article shall not create liability on the part of the City or by an officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made there under.

Section 12.4.09 Permit Procedures

Application for a Development Permit shall be made to the City Engineer on forms furnished by him and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage of materials; drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.

- B. Elevation in relation to mean sea level to which any non-residential structure has been flood proofed.
- C. Provide a certificate from a registered professional engineer or architect that the non-residential flood proofed structure meets the flood proofing criteria in Section 12.4.13 (B).
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

Section 12.4.10

Variances Procedures

- A. The Board of Adjustment as established by the City shall hear and decide appeals and requests for variances from the requirements of this Article.
- B. The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City Engineer in the enforcement or administration of this Article.
- C. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Section.
- D. In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other Sections of this Article, and:
 1. The danger that materials may be swept onto other lands to the injury of others;
 2. The danger to life and property due to flooding or erosion damage;
 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on individual owner;
 4. The importance of the services provided by the proposed facility to the community;
 5. The necessity to the facility of a waterfront location, where applicable;
 6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 7. The compatibility of the proposed use with existing and anticipated development;
 8. The relationship of the proposed use to the Comprehensive Plan and flood plain management program for that area;
 9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. 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;
 11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges; and
 12. Generally, 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 items (1 – 11) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- E. Upon consideration of the factors listed above and the purposes of this Article, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Article.
- F. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- G. Conditions for variances:
1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 2. Variances shall only be issued for:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. 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 law or ordinances.
 3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a 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.
 4. The City Engineer shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

Section 12.4.11

General Standards

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

- A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- C. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- D. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- E. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- F. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;
- G. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited; and
- H. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or it readily removable from the area within the time available after flood warning.

Section 12.4.12

Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Sections 2.3.05(l) or 12.4.05, the following provisions are required.

- A. Residential Construction - New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.
- B. Non-residential Construction - New or substantial improvement of any commercial, industrial or other non-residential basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, be flood proofed so that below the base flood level the structure is water tight 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 certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 12.4.10(C).
- C. Mobile Homes
 - 1. No mobile home shall be placed in floodway except in an existing mobile home park or existing mobile home subdivision.
 - 2. All mobile homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:

- a. Over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile homes less than fifty (50) feet long requiring one additional tie per side;
 - b. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with mobile homes less than fifty (50) feet long requiring four additional ties per side;
 - c. All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds; and
 - d. Any additions to the mobile home be similarly anchored.
3. For new mobile home parks and mobile home subdivisions; for expansions to existing mobile home subdivisions; for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds fifty (50) percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for mobile homes not placed in a mobile home park or mobile home subdivision, require that:
- a. Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
 - b. Adequate surface drainage and access for hauler are provided; and
 - c. In the instance of elevation of pilings, that lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten feet apart, and reinforcement is provided for pilings more than six feet above the ground level.
4. An evacuation plan indicating alternate vehicular access and escape routes shall be filed with the City Engineer for each mobile home subdivision located within City limits. This plan shall be prepared according to the directions of the City Engineer and shall be made available to concern Federal and local agencies.
- D. Floodways - Located within areas of special flood hazard established in Section 12.4.05 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectile and erosion potential, the following provisions shall apply:
- 1. Prohibits encroachments, including fill, new construction, substantial improvements and other developments unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.
 - 2. If Section 12.4.13(D)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 12.4.12 – 12.4.15.

3. Prohibit the placement of any mobile homes, except in an existing mobile home park or existing mobile home subdivision.

Section 12.4.13

Standards for Areas of Shallow Flooding (AO Zones)

Located within the areas of special flood hazard established in Section 12.4.05 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- A. All new construction and substantial improvements of residential structures have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the community's FIRM.
- B. All new construction and substantial improvements of non-residential structures shall:
 1. Have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the FIRM, or
 2. Together with attendant utility and sanitary facilities be completely flood proofed to or above the level so that any space below that level 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.

Section 12.4.14

Standards of Subdivision Proposals

- A. All subdivision proposals shall be consistent with the need to minimize flood damage.
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- D. Base flood elevation data shall be provided for subdivision proposals and other proposed development with is greater than the lesser of fifty (50) lots or five (5) acres.

Section 12.4.15

Non-Conforming Use

- A. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Article may be continued subject to the following conditions:
 1. No such use or substantial improvement of that use shall be expanded, changed, enlarged, or altered in any way that increases its non-conformity.
 2. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this Article. The

Utility Department shall notify the City engineer in writing of instances of non-conforming uses where utility services have been discontinued for a period of twelve (12) months.

3. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as non-conforming uses.
- B. If any non-conforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this Article. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Section 12.4.16

Penalty

Violation of the provisions of this Article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a Class II Misdemeanor. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

CHAPTER 13: BUILDINGS

Article 1 – General Regulations

Section 13.1.01

Requirements to Erect Building

No building shall be erected within the fire limits of said City without a continuous sill or plate placed on top of the joists or headers between the studding on top of the joists and also headers or a continuous plate placed directly under the ceiling joists.

Section 13.1.02

Filing a Statement

No person shall commence the erection of any building within the fire limits of the City without first filing with the City Finance Officer a statement showing the size and the kind of proposed building to be erected within said fire limits and obtaining a permit for the erection of said proposed building of the City.

Section 13.1.03

Building Permits

Prior to issuance of a building permit, the City Building Superintendent shall insure that the proposed building site, as well as any proposed fences shall be constructed in such a manner as to be in conformity with the City Building Code regarding locations therein and distances from the adjacent property lines in accordance with the requirements in the City Zoning Ordinance (Appendix C).

The City Building Inspector and/or the City Planning Commission shall be authorized to require the property owner to have a licensed surveyor set out the property lines if the property lines are in question or not firmly established. This shall be done prior to any excavation or construction.

Article 2 – Fire Zone

Section 13.2.01 Establishment of Fire Zones

Commencing at the Northwest corner of Lot 18 Block 6 on Monroe Street, and running south on Monroe Street to the Southwest corner of Lot 13 Block 27; thence east on Fifth Street to the Southeast corner of Lot 13 Block 26; thence north in the alley to the Southeast corner of Lot 20, Block 26; thence east to the Southeast corner of Lot 5 in Block 26; thence north on Madison Street to the Northeast corner of Lot 5 Block 7; thence west on First Street to the Northwest corner of Lot 18 Block 6, the point of beginning, shall be the fire limits of said City; and it shall be unlawful for any person, firm or corporation to erect or construct upon any lot or part of lots within said fire limits any building or other structure of any material other than stone, brick, cement, or cement blocks; and that any building erected or constructed within said fire limits shall be covered with some approved fire proof roofing material, provided, however that upon lots or parts of lots abutting upon either Monroe or Madison Streets or abutting upon First Street and Fifth Street and more than one hundred forty (140) feet from Main Street and within said fire limits; the Council may by resolution passed by two thirds vote of said Council permit the erection of wooden building covered with sheet iron or stucco to be erected or constructed thereon.

Section 13.2.02 Wooden Buildings

That if any wooden buildings now within said fire limits shall be destroyed in whole or in part, or be removed from its present location then said building so destroyed in whole or in part shall not be rebuilt or repaired except with the material provided in Section 13.2.01 hereof. That it shall be unlawful to remove any frame building from its location to a location upon any lot or parts of lot within the fire limits of said City.

Article 3 – Filling Stations

Section 13.3.01 Prohibited Location

The construction, operation and maintenance of gasoline and oil filling stations within or upon any parking or sidewalk on Main Street of the City or upon any parking or sidewalk within a distance of seventy-five feet of such Main Street on any street intersecting such Main Street, and within the fire limits of the City is hereby declared to be dangerous, against public safety and a public nuisance.

Section 13.3.02 Written Application

Any person, firm or corporation desiring to erect, construct, operate and maintain a filling station or bulk station for the purpose of selling or storing petroleum products, within the limits of the City, shall make application in writing to the Governing Body of the City, which said written application shall show specifically the location, construction of building or buildings, pumps, storage tanks and all appurtenances thereto and shall specify the Lot or Lots and Block upon which station is to be erected or maintained.

Section 13.3.03 Built to Meet Specifications

All buildings, pumps, storage tanks and appurtenances thereto shall be of such construction as to meet standard Fire Underwriters specifications and all petroleum storage tanks when placed under ground shall be so placed that such storage tank or tanks shall not have an air space or void, around, over or under such storage tank or tanks and shall be covered by at least one and one-half (1½) feet of earth or other suitable material.

Section 13.3.04 Service Facilities

Any filling station erected from and after the passage, approval, and publication of this Ordinance shall have the service facilities consisting of pumps and appurtenances thereto so located upon the premises that the vehicles served by such facilities shall not interfere or obstruct the traffic or obscure the clear view of the street or streets adjoining such filling station. In no event shall any filling station or stations be permitted upon the public streets, alleys or parking within the limits of the City, except service facilities erected prior to the passage of this Ordinance.

Section 13.3.05 Granting of License

That upon the approval by the Governing Body of the City of any application for the erection, construction and operation of such filling station the City Finance Officer shall issue a license for the operation thereof which said license shall grant to said applicant the privilege of operating and maintaining a filling station within the limits of the City. A license fee of one (1) dollar per year or fraction thereof shall be charged for such license.

Section 13.3.06 Enforcement of Regulations

The Council shall make, promulgate and enforce regulations for the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer, and utilizing liquefied petroleum gases, and for the odorization of said gases used therewith. Such regulation shall be substantially in conformity with the published standards of the National Board of Fire Underwriters as recommended by the National Fire Protection Association covering the same subject matter. Such regulations shall be made by the Council only after an investigation of the matters concerned.

Section 13.3.07 Penalty

It shall be unlawful for any person to erect, construct, maintain, or operate gasoline or oil filling stations within or upon any parking or sidewalk within a distance of seventy-five (75) feet of such street on any street intersecting said Main Street within the fire limits of the City, and any such person who shall erect construct, maintain, or operate any gasoline or oil filling station within such specified distance shall be guilty of maintaining a public nuisance and upon conviction thereof, shall be fined pursuant to Section 14.01.

Article 4 – Dangerous Buildings

Section 13.4.01 Purpose

It is the purpose of this code to provide a just, equitable and practicable method, to be cumulative with and in addition to, any other remedy provided by the Building Code, Housing Code or otherwise available at law, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished. The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code.

Section 13.4.02 Scope

The provisions of this code shall apply to all dangerous buildings, as herein defined, which are now in existence or which may hereafter become dangerous in this jurisdiction.

Section 13.4.03 Alterations, Additions, and Repairs

All buildings or structures which are required to be repaired under the provisions of this code shall be subject to the provisions of Sections 104.1 and 104.2 of the Building Code.

Section 13.4.04 Enforcement

- A. Administration - The Building Official is hereby authorized to enforce the provision of this code. The building official shall have the power to render interpretations of this code and to adopt and enforce rules and regulations supplemental to this code as he may deem necessary in order to clarify the application of the provisions of this code. Such interpretations, rules, and regulations shall be in conformity with the intent and purpose of this code.
- B. Inspections - The health officer, fire marshal, and building official are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this code.
- C. Right of Entry - Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the building official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code, provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official or his authorized representative shall have recourse to every remedy provided by law to secure entry.
- D. Authorized Representative - Shall include the officers named in Section 13.4.04(B) and their authorized inspection personnel.

Section 13.4.05 Abatement of Dangerous Buildings

All buildings or portions thereof which are determined after inspection by the building official to be dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Section 13.4.10 of this code.

Section 13.4.06 Violations

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

Section 13.4.07 Inspection of Work

All buildings or structures within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the building official in accordance with and in the manner provided by this code and Section 113 of the Building Code.

Section 13.4.08 Board of Appeals

- A. General - In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this code, there shall be and is hereby created a Board of Appeals consisting of members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The building official shall be an ex officio member and shall act as secretary to said board but shall have no vote upon any matter before the board. The Board of Appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant, with a duplicate copy of the building official. Appeals to the board shall be processed in accordance with the provisions contained in Section 13.4.14 of this code. Copies of all rules or regulations adopted by the board shall be delivered to the building official, who shall make them freely accessible to the public.
- B. Limitations of Authority - The Board of Appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

Section 13.4.09

Dangerous Building

Any building or structure that has any or all of the following conditions or defects shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, or safety of the public or its occupants are endangered.

- A. Whenever any door, aisle, passageway, stairway, elevators, fire escapes, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic;
- B. Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic;
- C. Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one half (1½) times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location;
- D. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings or similar structure, purpose, or location;
- E. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated, decayed, unsafe, unsanitary, or deteriorated that it:
 - 1. Is an attractive nuisance to children;
 - 2. Fails to provide the amenities essential to decent living and is unfit for human habitation;
 - 3. Is likely to cause sickness, disease, or cause injury to the health, morals, safety, or general welfare of those living therein;

4. Is a harbor for vagrants, criminals, or immoral persons; or
 5. Enables persons to resort thereto for the purpose of committing unlawful or immoral acts.
- F. Those having lights, air, or sanitation facilities which are inadequate to protect the health, morals, safety, or general welfare of human beings who live or may live therein;
- G. Whenever any portion or member or appurtenance thereof is likely to fail, become detached or dislodged, or to collapse and thereby injure persons or damage property;
- H. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one half ($\frac{1}{2}$) of that specified in the Building Code for new buildings or similar structure, purpose, or location without exceeding the working stresses permitted in the Building Code for such buildings;
- I. Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction;
- J. Whenever the building or structure, or any portion thereof, is likely to partially or completely collapse because of:
1. Dilapidation, deterioration or decay;
 2. Faulty construction;
 3. The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
 4. The deterioration, decay or inadequacy of its foundation; or
 5. Any other cause.
- K. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe, unsanitary, or dangerous to the health, morals, safety, general welfare of the people of the City, or for the purpose for which it is being used;
- L. Whenever the interior or exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base;
- M. Whenever the building or structure, exclusive of the foundation, shows thirty-three (33) percent or more damage or deterioration of its supporting member or members, or fifty (50) percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings;
- N. Whenever the building has improperly distributed loads upon the floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used.

- O. Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this City, as specified in the Building Code or Housing Code, any provision of the fire prevention code, or any law or ordinance of this state or City relating to the condition, location, or structure of buildings;
- P. Whenever any building or structure which, whether erected or not in accordance with all applicable laws and ordinances, has in any non-supporting part, member, or portion less than fifty (50) percent, or in any supporting part, member, or portion less than sixty-six (66) percent of the:
 - 1. Strength;
 - 2. Fire-resisting qualities or characteristics; or
 - 3. Weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.
- Q. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease;
- R. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exists, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard;
- S. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence; or
- T. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

Section 13.4.10

Notices and Orders of Building Official

- A. Commencement of Proceedings - Whenever the building official has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, he shall commence proceedings to cause the repair, vacation or demolition of the building.
- B. Notice and Order - The building official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:
 - 1. The street address and a legal description sufficient for identification of the premises upon which the building is located.
 - 2. A statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to

render the building dangerous under the provisions of Section 13.4.09 of this code.

3. A statement of the action required to be taken as determined by the building official.
 - a. If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed sixty (60) days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances.
 - b. If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a time certain from the date of the order as determined by the building official to be reasonable.
 - c. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed) sixty (60) days from the date of the order, and that the demolition be completed within such time as the building official shall determine is reasonable.
 4. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official (i) will order the building vacated and posted to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the costs thereof against the property or its owner.
 5. Statements advising (i) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to the Board of Appeals, provided the appeal is made in writing as provided in this code and filed with the building official within thirty (30) days from the date of service of such notice and order; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.
- C. Service of Notice and Order - The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property. One (1) copy thereof shall be served on each of the following if known to the building official or disclosed from official public records:
1. The holder of any mortgage or deed or trust or other lien or encumbrance of record;
 2. The owner or holder of any lease of record; and
 3. The holder of any other estate or legal interest of record in or to the building or the land on which it is located.

The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him by the provisions of this Section.

- D. Method of Service - Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his address as it appears on the last equalized assessment roll of the county or as known to the building official. If no address of any such person so appears or is known to the building official, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this Section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.
- E. Proof of Service - Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgement of receipt by certified mail shall be affixed to the copy of the notice and order retained by the building official.

Section 13.4.11 Recordation of Notice and Order

If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the building official shall file in the office of the county recorder a certificate describing the property and certifying (i) that the building is a dangerous building and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the building official shall file a new certificate with the county recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

Section 13.4.12 Repair, Vacation, and Demolition

The following standards shall be followed by the building official (and by the Board of Appeals if an appeal is taken) in ordering the repair, vacation or demolition of any dangerous building or structure:

- A. Any building declared a dangerous building under this code shall be made to comply with one of the following:
 - 1. The building shall be repaired in accordance with the current building code or other current code applicable to the type of substandard conditions requiring repair; or
 - 2. The building shall be demolished at the option of the building owner; or
 - 3. If the building does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured, and maintained against entry.
- B. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

Section 13.4.13

Notice to Vacate

- A. Posting - Every notice to vacate shall, in addition to being served as provided in Section 13.4.10(C), be posted at or upon each exit of the building and shall be in substantially the following form:

UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building,
or to remove or deface this notice.

Building Official
_____ of _____

- B. Compliance - Whenever such notice is posted, the building official shall include a notification thereof in the notice and order issued by him under Section 13.4.10(B), reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Building Code.

Section 13.4.14

Appeal

- A. Form of Appeal - Any person entitled to service under Section 13.4.10(C) may appeal from any notice and order or any action of the building official under this code by filing at the office of the building official a written appeal containing:

1. A heading in the words: "Before the Board of Appeals of the _____ of _____".
2. A caption Reading: "Appeal of _____," giving the names of all appellants participating in the appeal.
3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
4. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
5. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
6. The signatures of all parties named as appellants and their official mailing addresses.
7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within thirty (30) days from the date of the service of such order or action of the building official; provided, however, that if the building or structure is in such condition as to made it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is

posted in accordance with Section 13.4.13, such appeal shall be filed within ten (10) days from the date of the service of the notice and order of the building official.

- B. Processing of Appeal - Upon receipt of any appeal filed pursuant to this Section, the building official shall present it at the next regular or special meeting of the Board of Appeals.
- C. Scheduling and Noticing Appeal for Hearing - As soon as practicable after receiving the written appeal, the Board of Appeals shall fix a date, time and place for the hearing of the appeal by the board. Such date shall be not less than ten (10) days nor more than sixty (60) days from the date the appeal was filed with the building official. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each appellant by the secretary of the board either by causing a copy of such notice to be delivered by the secretary of the board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

Section 13.4.15 Effect of Failure to Appeal

Failure of any person to file an appeal in accordance with the provisions of Section 13.4.14 shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order or any portion thereof.

Section 13.4.16 Scope of Hearing on Appeal

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

Section 13.4.17 Staying of Order Under Appeal

Except for vacation orders made pursuant to Section 13.4.12, enforcement of any notice and order of the building official issued under this code shall be stayed during the pending of an appeal there from which is properly and timely filed.

Section 13.4.18 Procedure for Conduct of Hearing Appeals

- A. Hearing Examiners - The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted by him to the board of decision.
- B. Record - A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the board.
- C. Reporting - The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefore. Such fees may be established by the board, but shall in no event be greater than the cost involved.
- D. Continuances - The board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may

be granted except by him for good cause shown so long as the matter remains before him.

- E. Oath/Certification - In any proceedings under this Article, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.
- F. Reasonable Dispatch - The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

Section 13.4.19 Form of Notice of Hearing

The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the Board of Appeals or name of hearing examiner) at _____ on the _____ day of _____, 20__, at the hour _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefore with (Board of Appeals or name of hearing examiner)."

Section 13.4.20 Subpoenas

- A. Filing of Affidavit - The board or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefore which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his possession or under his control. A subpoena need not be issued when the affidavit is defective in any particular.
- B. Cases Referred to Examiner - In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.
- C. Penalties - Any person who refuses without lawful excuse to attend any hearing or to produce material evidence in his possession or under his control as required by any subpoena served upon such person as provided for herein shall be guilty of a Class II Misdemeanor.

Section 13.4.21 Conduct of Hearing

- A. Rules - Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- B. Oral Evidence - Oral evidence shall be taken only on oath or affirmation.
- C. Hearsay Evidence - Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

- D. Admissibility of Evidence - Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
- E. Exclusion of Evidence - Irrelevant and unduly repetitious evidence shall be excluded.
- F. Rights of Parties - Each party shall have these rights, among others:
1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 2. To introduce documentary and physical evidence;
 3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 4. To impeach any witness regardless of which party first called him to testify;
 5. To rebut the evidence against him;
 6. To represent himself or to be represented by any one of his choice who is lawfully permitted to do so.
- G. Official Notice
1. What may be Noticed In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the board of departments and ordinances of the City or rules and regulations of the board.
 2. Parties to be Notified Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
 3. Opportunity to Refute Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board of hearing examiner.
 4. Inspection of the Premises The board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided that:
 - a. Notice of such inspection shall be given to the parties before the inspection is made, and
 - b. The board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn there from. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.

Section 13.4.22

Method and Form of Decision

- A. Hearing Before Board Itself - Where a contested case is heard before the board itself, no member thereof who did not hear the evidence or has not read the entire record of the proceedings shall vote on or take part in the decision.
- B. Hearing Before Examiner - If a contested case is heard by a hearing examiner along, he shall within a reasonable time (not to exceed ninety (90) days from the date the hearing is closed) submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.
- C. Consideration of Report by Board-Notice - The board shall fix the time, date, and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five (5) days prior to the date fixed, unless it is otherwise stipulated by all of the parties.
- D. Exceptions to Report - Not later than two (2) days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present in its entirety, or may modify the proposed decision.
- E. Proposed Decision Not Adopted - If the proposed decision is not adopted ~~as provided in subsection (e)~~, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, he shall prepare a report and proposed decision as provided in (B) hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this Section.
- F. Form of Decision - The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested.

Section 13.4.23

Compliance

- A. General - After any order of the building official or the Board of Appeals made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a Class II Misdemeanor and shall be fined pursuant to Section 14.01.
- B. Failure to Obey Order - If, after any order of the building official or Board of Appeals made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may cause such person to be prosecuted under (A) or institute any appropriate action to abate such building as a public nuisance.

C. Failure to Commence Work - Whenever the required repair or demolition is not commenced within thirty (30) days after any final notice and order issued under this code becomes effective:

1. Vacated by posting at each entrance thereto a notice reading:

DANGEROUS BUILDING DO NOT OCCUPY

It is a misdemeanor to occupy this building,
or to remove or deface this notice.

Building Official

_____ of _____

2. No person shall occupy any building which has been posed as specified in this subsection. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the building official have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Building Code.

3. The building official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris there from removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

Section 13.4.24

Extension of Time to Perform Work

Upon receipt of an application from the person required to conform to the order and an agreement by such person that he will comply with the order if allowed additional time, the building official may, in his discretion, grant an extension of time, not to exceed an additional one hundred twenty (120) days, within which to complete said repair, rehabilitation or demolition, if the building official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The building official's authority to extend time is limited to the physical repair, rehabilitation, or demolition of the premises and will not in any way affect the time to appeal his notice and order.

Section 13.4.25

Interference with Repair or Demolition Work Prohibited

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this jurisdiction or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this code; or with any person to whom such building as been lawfully sold pursuant to the provisions of this code, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this code.

Section 13.4.26

Performance of Work of Repair or Demolition

- A. Procedure - When any work of repair or demolition is to be done pursuant to Section 13.4.23(C)(3) of this code, the building official shall issue his order therefore to the director of public works and the work shall be accomplished by personnel of this jurisdiction or by private contract under the direction of said director. Plans and specifications therefore may be prepared by said director, or he may employ such architectural and engineering assistance on a contract basis as he may deem reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed.
- B. Costs - The cost of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine is appropriate.

Section 13.4.27

Repair and Demolition Fund

- A. General - The legislative body of this jurisdiction shall establish a special revolving fund to be designated as the repair and demolition fund. Payments shall be made out of said fund upon the demand of the director of public works to defray the costs and expenses which may be incurred by this jurisdiction in doing or causing to be done the necessary work of repair or demolition of dangerous buildings.
- B. Maintenance of Fund - The legislative body may at any time transfer to the repair and demolition fund, out of any money in the general fund of this jurisdiction, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and may sum so transferred shall be deemed a loan to the repair and demolition fund and shall be repaid out of the proceeds of the collections hereinafter provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the treasurer of this jurisdiction who shall credit the same to the repair and demolition fund.

Section 13.4.28

Account of Expense, Filing of Report: Contents

The director of public works shall keep an itemized account of the expense incurred by this jurisdiction in the repair or demolition of any building done pursuant to the provisions of Section 13.4.23(C)(3) of this code. Upon the completion of the work of repair or demolition, said director shall prepare and file with the clerk of this jurisdiction a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice pursuant to Section 13.4.10(C).

Section 13.4.29

Report Transmitted to Council - Set for Hearing

Upon receipt of said report, the clerk of this jurisdiction shall present it to the legislative body of this jurisdiction for consideration. The legislative body of this jurisdiction shall fix a time, date and place for hearing said report and any protests or objections thereto. The clerk of this jurisdiction shall cause notice of said hearing to be posed upon the property involved, published once in a newspaper of general circulation in this jurisdiction, and served by certified mail, postage prepaid, addressed to the owner of the property as his name and address appear on the last equalized assessment roll of the county, if such so appear, or as known to the clerk. Such notice shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour and place when the legislative body will hear and pass upon the director's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

Section 13.4.30

Protests and Objection

Any person interested in or affected by the proposed charge may file written protests or objections with the clerk of this jurisdiction at any time prior to the time set for the hearing on the report of the director. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The clerk of this jurisdiction shall endorse on every such protest or objection the date it was received by him. He shall present such protests or objections to the legislative body of this jurisdiction at the time set for the hearing, and no other protests or objections shall be considered.

Section 13.4.31 Hearing of Protests

Upon the day and hour fixed for the hearing the legislative body of this jurisdiction shall hear and pass upon the report of the director together with any such objections or protests. The legislative body may make such revision, correction or modification in the report or the charge as it may deem just; and when the legislative body is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The decision of the legislative body of this jurisdiction on the report and the charge, and on all protests or objections, shall be final and conclusive.

Section 13.4.32 Personal Obligation or Special Assessment

- A. General - The legislative body of this jurisdiction may there upon order that said charge shall be made a personal obligation of the property owner or assess said charge against the property involved.
- B. Personal Obligation - If the legislative body of this jurisdiction orders that the charge shall be a personal obligation of the property owner, it shall direct the attorney for this jurisdiction to collect the same on behalf of this jurisdiction by use of all appropriate legal remedies.
- C. Special Assessment - If the legislative body of this jurisdiction orders that the charge shall be assessed against the property it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against a lien upon the property.

Section 13.4.33 Contested Assessment

The validity of any assessment made under the provisions of this Article shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within thirty (30) days after the entry of such judgment.

Section 13.4.34 Authority for Installment Payment of Assessments with Interest

The legislative body of this jurisdiction, in its discretion, may determine that assessments in amount of five hundred (500) dollars or more shall be payable in not to exceed five equal annual installments. The legislative body's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be by a resolution adopted prior to the confirmation of the assessment.

Section 13.4.35 Lien of Assessment

- A. Priority - Immediately upon its being placed on the assessment roll the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed,

respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

- B. Interest - All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of seven (7) percent per annum from and after said date.

Section 13.4.36 Report to Assessor and Tax Collector

After confirmation of the report, certified copies of the assessment shall be given to the assessor and the tax collector for this jurisdiction, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

Section 13.4.37 Certified Copy of Assessment

If the county assessor and the county tax collector assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county auditor on or before August 10th. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.

Section 13.4.38 Collection of Assessment: Penalties for Foreclosure

The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected; and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection, and enforcement of property taxes shall be applicable to such assessment.

If the legislative body of this jurisdiction has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary property taxes.

Section 13.4.39 Repayment of Repair and Demolition Fund

All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the treasurer of this jurisdiction, who shall credit the same to the repair and demolition fund.

Article 5 – Moving Of Buildings

Section 13.5.01 Permit Process

Any person desiring to erect, alter or repair or remove any building, into or within the corporate limits shall file an application therefore with the City Finance Officer for a permit for such purposes, and furnish plans and specifications sufficient for the Council to determine whether such building, alteration or repair is in compliance with the provisions of this Article and shall furnish plans and specifications, together with a photograph of any building proposed to be moved into the City or of any building proposed to be moved from one location to another within the City, and if said permit is granted by the Council the applicant shall furnish a bond to the City in the sum of five hundred (500) dollars for the faithful performance of and the carrying out of the alteration or repair of any such building moved into the City limits of said City,

according to the application of the person applying for such permit, and such bond shall be approved by the Council and when said bond is so approved such permit shall be signed by the City Finance Officer.

Section 13.5.02 Complying with Provisions

It shall be unlawful to erect, alter, or repair or move into said City or remove any buildings within the corporate limits of the City located outside of the fire limits of said City any building or addition to any building without first having complied with the provisions of Section 13.5.01 hereof.

Section 13.5.03 Protecting Paved Streets

Any person moving any house or building over or across any paved street shall when so provided in the permit, or when directed by the Street Commissioner having charge of the streets of the City, cause such paved street to be protected by laying planks thereon.

Section 13.5.04 Damage to Property

Nothing in any permit granted in pursuance of the provisions of this Article shall be construed as authorizing the holder thereof to break, injure or move any telegraph, telephone, electric motors or electric line, wire or poles, or in any way injure any shade tree or other property without permission of the owner or owners thereof.

Section 13.5.05 Stand Still Time Limit

No building or part of building shall be allowed to stand still in any public street or on any public ground in said City for more then twenty-four consecutive hours without written permission

Section 13.5.06 Building Material

It shall be unlawful to move in, alter, erect or remove to any of the grounds included within the fire limits of the City any building or addition to any building not made and built with entire outside walls composed of stone, cement, hollow tile, brick, or other hard and noncombustible material, not less than six (6) inches thick, and roofed with slate, tin, zinc, iron, cement, asbestos, magnesia, or other fireproof roofing; nor rebuild or repair any wooden building, with become damaged by fire, or otherwise decayed to the extent of fifty (50) percent or more of the value thereof, and no wooden building shall be repaired so as to be raised higher or to occupy a greater space than before.

Section 13.5.07 Definition of Wooden Buildings and Combustible Material

Buildings proposed to be erected or removed to other grounds, or additions made thereto, within said fire limits, the outer walls of which are or are proposed to be constructed in whole or in part of wood to be covered with corrugated iron or other metal, or veneered with brick, or a wooden frame building the walls of which are to be covered with stucco or similar material, shall be deemed under this Article a wooden building, and such outer walls of combustible materials are hereby prohibited within said fire limits.

Section 13.5.08 Determining Amount of Damage or Decay

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

Section 13.5.09 Buildings Declared Public Nuisances

Any building or addition to buildings hereafter erected or constructed within the fire limits in violation of the terms hereof, are hereby declared to be public nuisances, and it shall be the duty of the Council to forthwith abate the same. Any person violating the provisions of this Article by building, or aiding or abetting in building any such structure herein prohibited, shall be deemed guilty of a Class II Misdemeanor and fined pursuant to Section 14.01.

Section 13.5.10 Abating Nuisance

The cost of abating such nuisance shall be collectible from the owner of the property and may be established as a lien on said real estate, building, or material thereof. Each day's violation of any of the provisions of this Article shall constitute a separate offense.

Section 13.5.11 Furnaces, Stoves, Etc.

All furnaces and smoke flues within the City limits shall be kept at least twelve (12) inches from the woodwork. All furnaces shall be placed upon noncombustible foundations, which shall extend two (2) feet in front of the ash pit. Floors under stoves shall be protected by some noncombustible covering. The wood in boiler houses shall be at least six (6) feet from the boiler, unless sufficiently protected by noncombustible material, and all floors for boiler houses or room shall be of noncombustible material and shall extend not less than eight (8) feet from the boiler.

Section 13.5.12 Exits in Public Halls

Every public hall within the City limits designated to accommodate two hundred fifty (250) people or more shall have at least two exits, each at least five (5) feet wide, and the doors to such exits shall open outward, and no chairs or seats shall be allowed in the aisles when the audience is present.

Section 13.5.13 Unsafe Chimneys and Flues

The Council may examine or cause to be examined the chimneys and flues within the City limits, and if found in unsafe condition on account of the liability of fire to originate there from, and shall serve notice in writing upon the owner, agent, or occupant of said building specifying therein the chimney or flue, so found to be unsafe, and the repairs or changes required so as to make it safe and conformable to the provisions of this Article and said owner, agent, or occupant shall immediately place said chimney or flue in the condition required by said notice.

Section 13.5.14 Open Fires

It shall be unlawful for any person to set or cause to be set or allow to be set upon their premises any open fire.

Section 13.5.15 Stacking Hay, Straw, or Other Inflammable Material

It shall be unlawful for any person to deposit or stack any hay, straw, or other inflammable material upon or within the corporate limits of this City, so as to be a fire hazard.

CHAPTER 14: PENALTIES

Section 14.01 Penalty for Violations

Any person found guilty of violating any section of this Ordinance, shall be fined not more than two hundred (200) dollars, imprisonment in the City Jail for not more than thirty (30) days, or both such fine and imprisonment. Each day of violation shall be considered a separate offense. In addition, such person shall pay all costs and expenses involved in the case.

Section 14.02 Police Enforcement

Every police officer of the City shall, in connection with his duties imposed by law, diligently enforce the provisions of this Ordinance.

CHAPTER 15: LEGAL STATUS PROVISIONS

Section 15.01 Separability

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

Section 15.02 Purpose of Subtitles

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

Section 15.03 Repeal of Conflicting Ordinances

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

Section 15.04 Effective Date

This Ordinance shall take effect and be in force from and after its adoption.

APPENDIX B: AMENDMENTS TO ZONING ORDINANCE

Rezoning of Lots (Incorporated in Zoning Map, Adopted 03/04/02)

Lots 5, 6, 7, 8, 9, 10, 11, 12, and 13, Block 6, Wilson Park Addition, City of Winner, rezoned from R-3 (Multi-family Residential District) to C-1 (Highway Commercial District). (#647)

All of Block 6, Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 in Block 8, and all of Block 9 in East Hospital Subdivision Number 2 in the City of Winner shall be rezoned to a classification of R-3 (Multi-Family Residential District). (#662)

Lots 14, 15, 16, 17, and 18, Block 60, Park Addition, City of Winner, rezoned from R-2 (Single and Two-family Residential District) to C-1 (Highway Service Commercial District). (#685)

The west 156 feet of the south 320 feet of Tract B, City of Winner, shall be rezoned from C-1 (Highway Service Commercial District) to I-1 (Industrial District). (#693)

Lot D of the New Hospital Addition, City of Winner, and Lots 3 through 6, contained in Block 4, East Hospital Subdivision Number 2, all now being contained in Lot 3, in Winner Regional Health Care Center Campus in the City of Winner, from R-1 (Single Family Residential District) to R-2 (Single and Two-family Residential District). (#704)

Article XII, Section 3 (#728) (Incorporated into Section 1603 of Zoning Ordinance #737, Adopted 03/04/02)

Fences or hedges in residential districts within three (3) feet of lot lines shall not exceed four (4) feet in height in any required front yard, and shall not exceed six (6) feet in height in any required side or rear yard, subject to further restriction of Section 1 above.

Fences must be constructed of wood (redwood, cedar, pine, picket, laminated, or painted), plastic, vinyl, or metal, all of which must be attractive in appearance with the neighborhood.

The design and materials of such fence shall require Planning Commission approval and the petitioner shall send by certified mail, to the adjacent property owners, written notice of such Planning Commission meeting.

Article XVII(A), Section 1(a)(3) (#699) (Incorporated into Section 2013 of Zoning Ordinance #737, Adopted 03/04/02)

The applicant shall provide the names and addresses of the owners of all property within one hundred and fifty (150) feet of the property and shall obtain signatures of sixty (60) percent of adjoining and adjacent land owners approving the moving in the building, unless the building to be moved is of new construction and the receiving area has no covenants.

Article XVII(A), Section 1(a)(4) (#676) (Repealed--Planning Commission chose to NOT include in Zoning Ordinance)

The applicant shall be required to file an application for a compliance permit as required in Section 3 of Article XIX of Zoning Ordinance #642.

Article XVII(A), Section 2(H) (#653) (To be included in Subdivision to be adopted in 2002)

When any proposed plat on any addition or subdivision within or without the City limits of Winner shall be presented to the Council for approval, there shall accompany the plat a certification by the Board of Adjustment that the same conforms to the existing streets and alleys of the City and any subdivisions of said City. The certification shall further state that it conforms to all the rules, regulations, and ordinances of the City. Additionally, all R-3, commercial, and industrial zoned areas shall have streets measuring a minimum of ninety (90) feet in width. R-1 and R-2 Districts shall have

streets designated on the plats of a minimum sixty (60) feet in width and up to ninety (90) feet in width, if desired by the applicant filing the plat.

Article XIX, Section 6

Waiving Payment of Building Permit Fees on Buildings for Public Use (#666) (Incorporated into Section 2027 of Zoning Ordinance #737, Adopted 03/04/02)

The fees required for a building permit as set out in Section 6 of Article XIX of the Zoning Ordinance #642 shall not be required on building permits issued to the City, the Winner Independent School District, or Tripp County, South Dakota, where the entity requesting the permit has employed an architect to design the buildings to be constructed. The City waives the payment of fees only and the construction of any such building must be done in accordance with the regulations of the zoning and building ordinances in all other manners.

Fees (#676) (Compliance permit was repealed; remainder incorporated into Section 2025 of Zoning Ordinance #737, Adopted 03/04/02)

There shall be submitted with the compliance permit application a minimum fee of fifty (50) dollars or an amount equal to one (1) percent of the total estimated construction costs which will be refunded when the building or construction is completed providing the same has been done in accordance with the regulations of the zoning and building ordinances. There shall be a sum retained by the City for inspections and service fees:

REFUND SCHEDULE:

1. Fifty (50) percent of required deposit on building permits with estimated cost of building projects up to one hundred thousand (100,000) dollars City retains fifty (50) percent;
2. Sixty (60) percent of required deposit on building permits with estimated cost of building project from one hundred thousand one (100,001) dollars to two hundred fifty thousand (250,000) dollars, City retains forty (40) percent; and
3. Seventy-five (75) percent of required deposit on building permits with estimated cost of building project over two hundred fifty thousand (250,000) dollars, City retains twenty-five (25) percent.

In the event that the zoning and building ordinances are not complied with, then the total deposit shall be confiscated and placed in the general fund in the City of Winner.

Planning Commissioners

Board of Adjustment (Ordinance #519) (Repealed and clarified within Chapter 22 of Zoning Ordinance #737, Adopted 03/04/02)

The Board of Adjustment shall have as its members those individuals who are members of the City Planning Commission and said members shall be appointed according to the City Ordinance.

The City Planning Commission shall assume all duties and responsibilities of the Board of Adjustment as provided by law. However, when the Planning Commission sits as the Board of

Adjustment, it shall exercise only those duties and responsibilities expressly given to the Board of Adjustment.

Territorial Extent of Powers (Repealed and clarified within Section 205 of Zoning Ordinance #737, Adopted 03/04/02)

The legislative body of any incorporated municipality may exercise the Comprehensive Planning and zoning powers granted in this Article not only within its corporate limits, but also within three (3) miles in all directions of its corporate limits and not located in any other municipality.

Territorial Extent of General Zoning Powers (Repealed and clarified within Section 205 of Zoning Ordinance #737, Adopted 03/04/02)

The legislative body of any incorporated municipality and the Planning Commission, operating as the Zoning Commission, may exercise all zoning powers granted in SDCL 11-4 in the zoning of all land not only within its corporate limits, but also may zone all property within three (3) miles in all directions of its corporate limits not located in any other municipality. Provided, however, any ordinance intended to have application beyond the corporate limits of the municipality shall expressly so provide and any such ordinance shall be adopted in accordance with the provisions of SDCL 11-4.

Zoning Jurisdiction (Repealed and clarified within Section 205 of Zoning Ordinance #737, Adopted 03/04/02)

Whenever a municipality assumes zoning jurisdiction in an area outside the limits of such municipality the county zoning commission of the county in which such area lies, shall sit with the City Planning Commission on all matters pertaining to the planning and regulation of such area and no zoning powers provided by this Article shall be effective in any such area unless approved by a two-thirds vote of the members of each of the commissions.

Planning Commission Acting as Zoning Commission (Clarified within Chapter 21 of Zoning Ordinance #737, Adopted 03/04/02)

A Planning Commission shall have all powers heretofore granted to zoning commissions and shall also be the zoning commission of the municipality. The commission may make reports and recommendations relating to the plan and development of the municipality to public officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens. It may recommend to the executive or legislative officials of the municipality programs for public improvements and the financing thereof.

Reasons for Commission Disapproval (Repealed by legislature in 1995)

In case of disapproval of any construction or authorization submitted under SDCL 11-6-19, the Planning Commission shall communicate its reasons to the Council, and the Council, by vote of not less than two-thirds of its entire membership, shall have the power to overrule such disapproval and, upon such overruling the Council or the appropriate board or officer shall have the power to proceed.

Action of Public Bodies (Incorporated into Section 2207 of Zoning Ordinance #737, Adopted 03/04/02)

If the public way, ground, place, space, building, structure, or utility referred to in SDCL 11-6-19 be one the authorization or financing of which does not, under the law or character provisions

governing the same, fall within the province of the Council or other body or official of the municipality, then the submission of such to the Planning Commission shall be by the board or official having such jurisdiction, and the Planning Commission's disapproval may be overruled by said board by a vote of not less than two-thirds of its entire membership or by said official.

Failure to Act (Not incorporated into Zoning Ordinance #737; refer to SDCL 11-6-23)

The failure of the Planning Commission to act within sixty days from the after the date of official submission to it shall be deemed approval unless a longer period is granted by the Council or other submitting official.

Recommendation and Setback Regulations (Incorporated into Section 2107 of Zoning Ordinance #737, Adopted 03/04/02)

From and after the time when the Planning Commission of any municipality shall have adopted a Comprehensive Plan which includes at least a major street plan or shall have progressed in its Comprehensive Planning to the stage of the making and adoption of a major street plan, the Planning Commission may recommend and the Council is hereby authorized and empowered by ordinance to establish, regulate and limit, and to change and amend, building or setback lines on such streets and to prohibit any new building being located within such building or setback lines. The regulations authorized by this Section shall not be adopted, changed, or amended until a public hearing has been held thereon.

Variances in Hardship Cases (Incorporated into Sections 2105 and 2211 of Zoning Ordinance #737, Adopted 03/04/02)

The Council may provide for a Board of Adjustment or may authorize an existing zoning Board of Adjustment to modify or vary the regulations adopted under SDCL 11-6-24, in specific cases, in order that unwarranted hardship, which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, may be avoided.

Subdivision Regulations (To be included in Subdivision to be adopted in 2002)

In exercising the duties granted to it by this Article, the Planning Commission shall recommend and the Council shall by ordinance adopt regulations governing the subdivision of land within its jurisdiction as defined in SDCL 11-6-26. Such regulations may provide for the harmonious development of the municipality and its environs; for the co-ordination of streets within subdivisions with other existing or planned streets or with other features of the Comprehensive Plan of the municipality; for adequate open spaces for traffic, recreation, light and air; and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity. Before an adoption of its subdivision regulations or any amendment thereof, a public hearing thereon shall be held by the Council.

Streets and Utilities Covered by Regulations (To be included in Subdivision to be adopted in 2002)

Subdivision regulations may include requirements as to the extend to which and the manner in which the streets of the subdivision shall be graded and improved, and water sewer, and other utility mains, piping, connections, or other facilities shall be installed as a condition precedent to the approval of the subdivision. The regulations may provide for the tentative approval of the plat previous to such improvements and installation, but any such tentative approval shall not be entered on the plat.

Bond for Completion of Subdivision Work (To be included in Subdivision to be adopted in 2002)

Subdivision regulations may provide that, in lieu of the completion of such work and installations previous to the final approval of a plat, the Council may accept a bond, in an amount and with surety and conditions satisfactory to it, providing for and securing to the municipality the actual construction and installation of such improvements and utilities within a period specified by the Council and expressed in the bond; and the municipality is hereby granted the power to enforce such bonds by all appropriate legal and equitable remedies.

Special Assessment Provisions (To be included in Subdivision to be adopted in 2002)

Subdivision regulations may provide in lieu of the completion of such work and installations previous to the final approval of a plat for an assessment or other method whereby the municipality is put in an assured position to do said work and make said installations at the cost of the owners of the property within the subdivision.

Powers of the Board of Adjustment (Incorporated into Chapter 22 of Zoning Ordinance #737, Adopted 03/04/02)

All powers and jurisdiction previously delegated to the Board of Adjustment of the City are hereby canceled and held for naught and such board is authorized and empowered to exercise such functions as are contemplated in Section 2.4.23 hereof.