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TITLE I

GENERAL PROVISIONS APPLICABLE TO ENTIRE MUNICIPAL CODE

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10.01 : DEFINITIONS

In the construction of this code, the following rules shall be observed and the following definitions shall apply, unless the construction would be inconsistent with the manifest intent of the Council. Unless the context provides otherwise, the terms used in this Code shall be as defined in South Dakota Codified Law.

THE CITY or THIS CITY: The City of Box Elder, in the Counties of Meade/Pennington and the State of South Dakota.

CODE or THIS CODE: The Revised Ordinances of the City of Box Elder in their entirety, including each and every section thereof. The entire Code is intended by the Council to constitute an ordinance of the City, within the meaning of SDCL 9-19-16 and 9-19-17.

COUNCIL, COMMON COUNCIL or CITY COUNCIL: The Common Council of the City of Box Elder, constituting the governing body of the city.

COUNTY or THIS COUNTY: *The County of Meade and/or Pennington, South Dakota. (SDCL 9-1-1)*

ORDINANCE: *A permanent legislative act within the limits of its powers of the governing body of a municipality.*

RESOLUTION: Any determination, decision, or direction of the governing body of a municipality of a temporary or special character for the purpose of initiating effecting, or carrying out its administrative duties and functions.

SDCL: South Dakota Codified Laws.

SIGNATURE or SUBSCRIPTION: Include mark when a person cannot write.

YEAR: A calendar year

10.01 TITLE-CITATION-REFERENCE

This code shall be known as the Revised Ordinances of the City of Box Elder and it shall be sufficient to refer to the code as the Revised Ordinances of the City of Box Elder in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the Revised Ordinances of the City of Box Elder. Further reference may be had to the titles, chapters, sections and subsections of the Revised Ordinances of the City of Box Elder and the references shall apply to that numbered title, chapter, section or subsection as it appears in the code.

10.02 : SCOPE AND PURPOSE

The purpose of this Title is to set forth certain provisions applicable to all Titles of the Revised Ordinances of the City of Box Elder.

10.03 : RULES OF INTERPRETATION

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this Code as those governing the interpretation of state law.

10.04 : CAPTIONS

Headings and captions used in this Code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

10.02 : HEADINGS

Whenever a reference is made to this Code as the Revised Ordinances of the City of Box Elder or to any portion thereof, or to any ordinance of the City, herein, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter

made.

10.03 : TITLE, CHAPTER, SECTION HEADINGS

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of any provisions herein.

10.04 : EFFECT OF CODE ON PAST ACTIONS AND OBLIGATIONS

The adoption of this Code does not affect prosecutions for ordinance violations committed prior to the effective date of this Code, does not waive any fee or penalty due and unpaid on the effective date of this Code, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any provision of this Code.

10.05 : SEVERABILITY

If any provision of this Code is for any reason held to be invalid or unconstitutional, said holding shall not affect the validity of the remaining provisions of this Code.

10.10 : REFERENCE TO PRIOR CODE SECTIONS

References in the City forms, documents and regulations to titles, chapters, and sections of the former City Code of ordinances shall be construed to apply to the corresponding provisions contained within this Code.

10.11 : REFERENCE TO OTHER SECTIONS

Whenever, in one section, reference is made to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, re-codified or re-numbered unless the subject matter is changed or materially altered by the amendment or revision.

10.12 : ORDINANCES-WHICH AMEND OR SUPPLEMENT CODE.

- A. If the Council shall desire to amend any existing chapter or section of this Code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.
- B. Any ordinance which is proposed to add to the existing Code a new chapter or section shall indicate, with reference to the arrangement of this Code, the proper number of the chapter or section. In addition to this indication as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

10.13 : REFERENCES TO OFFICES

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of this local government exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

10.14 : ERRORS AND OMISSIONS

If manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any questions exists regarding the nature or extent of the error.

10.15 : ORDINANCES REPEALED

This Code, from and after its effective date, shall contain all the provisions of general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this Code shall be deemed repealed from and after the effective date of this Code.

10.16 : ORDINANCES UNAFFECTED

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this Code shall remain in full force and effect unless herein repealed expressly or by necessary implication

10.17 : REPEAL OR MODIFICATION OF ORDINANCE

- A. No suit, proceedings, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.
- B. When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former

ordinance, clause or provision, unless it is expressly provided.

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10.18 : POWERS AND AUTHORITIES ARE CUMULATIVE

Except as otherwise expressly provided, all powers and authorities conferred by any provision of this Code shall be cumulative and additional to, and not in derogation of, any powers and authorities otherwise existing.

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10.19 : VIOLATIONS-PROSECUTION WHEN OFFENSE CREATED BY MORE THAN ONE SECTION

In all cases where the same offense is made punishable or is created by different clauses or sections of this Code, the prosecuting officer may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense, provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

10.20 : DESIGNATED-CONTINUING VIOLATIONS

Whenever, in this Code an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever, in the code or ordinance, the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefore, any persons who shall be convicted of any such violation shall be fined not less than one-dollar (\$1) nor more than five-hundred-dollars (\$500) and/or thirty (30) days in jail, or both. Each day any violation of this Code or other ordinance continues shall constitute a separate offense.

10.21 : PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES

All offenses committed under laws in force prior to the effective date of this Code shall be prosecuted and remain punishable as provided by those laws. This Code does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Code. The liabilities, proceedings and rights are continued; punishments, penalties or forfeitures shall be enforced and imposed as if this Code had not been enacted. In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway and the election of corporate officers shall remain valid in all respects, as if this Code had not been enacted.

10.22 : GENERAL PENALTY

Except as specifically provided within the applicable Title, any violation of the provisions of the Revised Ordinances of the City of Box Elder is a Class 2 misdemeanor punishable

by the

maximum punishment set forth by the laws of the state of South Dakota pursuant to SDCL 22-6-2. Said punishment may also include payment of any cost and/or restitution authorized by this Title and/or state law.

CHAPTER 11- APPEAL

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11.01 : APPEAL PERMITTED

Any person aggrieved by a decision handed down by the Planning Commission, Officer, Agent, Employee and/or Committee under the provisions of this Code may appeal said decision to the City Council. All such appeals shall be submitted in writing within 30 days. Nothing in Chapter 11 shall apply to any employee or agent of the City.

11.02 : TIME OF HEARING AND NOTICE

A public hearing shall be held on all appeals within 45 working days after the filing of the appeal, unless; a later date is agreed upon by the aggrieved person and the City. The City shall cause written notice of the date, time and place of such hearing to be served upon the aggrieved person by personal service or certified mail to the address set for the in the appeal documents at least ten (10) days prior to the hearing. The appeal shall be scheduled on the agenda of a regularly scheduled meeting of the City Council for a period of more than thirty (30) minutes unless otherwise directed by the City Council.

11.03 : HEARING PROCEDURES

The following rules shall govern the procedures for an administrative hearing:

- A. Hearings and administrative appeals need not be conducted according to the technical rules relating to evidence and witnesses.
- B. Any relevant evidence shall be admitted at the hearing.

11.04 : RIGHTS OF PARTIES AT HEARING

The aggrieved person and the City shall have these rights among others:

- A. To call and examine witnesses on any matter relevant to the issue of the hearing;
- B. To introduce documentary, physical and oral evidence;
- C. To cross examine opposing witnesses on any mater relevant to the issues of the hearing; and
- D. To rebut evidence.

11.05 : DECISION

After each appeal hearing, the Common Council shall have thirty (30) days to consider the evidence and to conclude findings. The Council shall then provide written findings stating the following:

- A. The evidence the City Council relied upon in reaching its decision.
- B. Based upon such written findings, the Council may sustain or dismiss the decision. In sustaining the decision, the Council may in its discretion waive fees, waive permits, and/or reinstate waived regulations or requirements.

11.06 : REPORT, COSTS

A written report of the decision, including the findings, shall be furnished to the aggrieved person and the Finance Office within twenty (20) working days from the date of the decision. Other than the initial administrative fee requirement, the City and the aggrieved person shall bear their own respective cost of the appeal proceeding. The decision of the City Council shall be final.

11.07 : SUBJECT TO JUDICIAL REVIEW

The decision of the City Council may be subject to judicial review as provided by law.

CHAPTER 12- WARDS

SECTIONS:

12.01: Establishment of Wards 1-13


- A. The City is hereby divided into three Wards, as illustrated on the map attached to Ordinance 405, which is hereby adopted by reference as if set out in full herein, and which is described as follows.

- (1) *Ward One*: The part of the city which extends west from Valley Drive and Radar Hill Road; North and south of Interstate 90 including sections 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36; extending to the western city limits which extends to Elk Vale Road.

- (2) *Ward Two*: That part of the City which extends east from Valley Drive and Radar Hill Road; north and south of Interstate 90 including a portion of sections 13, 20 and 24; all of sections 18, 19, 29, 30, 31 and 32; extending to the east to North Ellsworth and Spruce Drive.

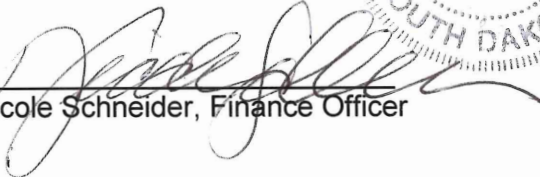
- (3) *Ward Three*: that part of the City which extends east from North Ellsworth to Highway 14/16 and following Highway 14/16 east to Spruce Drive; north and south of Interstate 90 including sections 16, 17, 20, 21, 28 and 33; extending to the eastern city limits.

CITY OF BOX ELDER



Larry Larson, Mayor

ATTEST:



Nicole Schneider, Finance Officer



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