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TITLE I

GENERAL PROVISIONS APPLICABLE TO ENTIRE MUNICIPAL CODE

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10.01: TITLE-CITATION-REFERENCE

This code shall be known as the Box Elder City Municipal Code and it shall be sufficient to refer to the code as the Box Elder Municipal Code 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 Box Elder

Municipal City Code. Further reference may be had to the titles, chapters, sections and subsections of the Box Elder Municipal Code 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 this City of Box Elder Municipal Code of Ordinances.

10.03: RULES OF INTERPRETATION

A. Generally.

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.

B. Specific rules of interpretation.

The construction of all ordinances shall be by the following rules, unless that construction is plainly repugnant to the intent of the legislative body or the context of the same ordinance.

- 1) Acts by assistants: When a statute, code provision or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.*
- 2) Gender; singular and plural; tenses: Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.*
- 3) General term: A general term following specific enumeration of terms is not to be limited to the class enumerated of terms unless expressly so limited. General terms descriptive of an officer, act, proceeding or thing shall have reference to a municipality concerned or affected. (SDCL 9-1-1)*

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.

10.05: 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.

Generally: the provisions of this code shall be liberally construed to effect the purposes expressed therein or implied from the expression thereof. In case of doubt or ambiguity in the meaning of provisions, the general shall yield to the particular. Reference for interpretation and construction shall tend to further the accomplishment of the elimination of the particular mischief's for which the provisions were enacted. Words shall be construed in their common and usual significance unless the contrary is clearly indicated.

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 Cit 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.

COMPUTATION of TIME: In computing any period of time mentioned in the provisions of this code, the day of the act, event or default after which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday.

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)*

DUTIES PERFORMED by AGENTS: Wherever, in this code, any act is required to be done by an officer in the line of his or her general duties, or by a department head or inspector, the same shall be construed to permit the doing of the act by the agent or subordinate of the person; provided, that the agent or subordinate is duly authorized and duly qualified to perform the act. The rule shall apply also to license holders, where the act is not otherwise required to be performed personally by the person, either by specific law or by the nature of the act.

ELECTION(S) or QUALIFIED ELECTOR(S): *Voter(s) (SDCL 9-1-1)*

~~**GENDER:** A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, associations and corporations, as well as to males.~~

GOVERNING BODY: *The Common Council, as the case may be, of the City. (SDCL 9-1-1)*

HEALTH DEPARTMENT: Means the County's Health Department, and the term.

HEALTH OFFICER: Means the Administrator of the County's Health Department.

JOINT AUTHORITY: Words purporting to give authority to three (3) or more officers or other persons shall be construed as giving such authority to a majority of officers or other persons, unless it is otherwise declared.

LOT: *Includes PARCEL or TRACT OF LAND. (SDCL 9-1-1)*

MONTH: A calendar month.

MUNICIPALITY or MUNICIPAL CORPORATION: *All cities and towns organized under the laws of this state but shall not include any other political subdivisions. (SDCL 9-1-1)*

NUMBER: Any word importing the singular number includes the plural and any word importing the plural number includes the singular.

OATH: Shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath and, in such cases, the words swear and sworn shall be equivalent to the words affirm and affirmed.

OFFICERS AND EMPLOYEES: Whenever reference is made in this code to a city officer or employee by title only, this shall be construed as though followed by the words, "of the City of Box Elder" and shall be taken to mean the officer or employee of the City having the title mentioned or performing the duties indicated.

OR: May be read "and", and **AND** may be read "or", if the sense requires it.

ORDINANCE: *A permanent legislative act within the limits of its powers of the governing body of a municipality. (SDCL 9-1-1)*

OWNER: *As used in this Code relating to local improvements, the grantee in the last deed of conveyance of any lot or parcel of land recorded in the office of the Register of Deeds of the county or counties in which the municipality is located, or his or her heirs or successors. (SDCL 9-1-1)*

PERSON: Includes persons, firms, corporations and every association or organization of people unless the context in which the term is used clearly excludes any of the aforementioned.

PUBLICATION: *Any requirement for publication shall mean publication in the official newspaper of the municipality concerned or affected, in any; but if none, then, in a legal newspaper published in the municipality, if any; but if none, then, in any legal newspaper which serves the municipality, except as provided by SDCL 9-13-13. Personal service either within or without the state upon the person affected thereby by delivery of a copy of a notice required to be published shall be equivalent to the required publication. (SDCL 9-1-1)*

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 9-1-1)

SDCL: South Dakota Codified Laws.

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

STREET: Includes, AVENUE, LANE, PLACE, ETC. (SDCL 9-1-1)

THE STATE or THIS STATE: The State of South Dakota.

TENSE: Words used in the past to present tense include the future as well as the past and present.

YEAR: A calendar year.

VARIATIONS IN PUNCTUATION, TYPOGRAPHICAL ERRORS AND THE LIKE: No variation in punctuation, either formal or informal, consistent or not, shall affect the validity of the code, nor shall obvious or apparent defects in spelling or typography be construed as to invalidate any portion hereof, so long as the purpose and intent of the section is clear.

In all cases where the words **WHOLESALE** or **WHOLESALE DEALER** are used, unless otherwise specifically defined, the terms shall be understood to relate to the sale of goods, merchandise, articles or things in quantity to persons who purchase for the purpose of resale, as distinguished from retail dealer who sells in smaller quantities direct to the consumer.

WRITTEN or IN WRITING: Include any representation of words, letters or figures whether by printing or otherwise.

YEAR: A calendar year.

10.06: HEADINGS

Whenever a reference is made to this code as the City of Box Elder Code of Ordinances 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.

10.07: 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.

10.08: 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.

10.09: CONSTITUTIONALITY

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 here of, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

10.12: ~~ORDINANCE IN REVISION INTENDED WHICH AMEND OR SUPPLEMENT~~ CODE.

- A. *If the legislative body 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, with the meaning of SDCL 9-19-16 and 9-19-17.*

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: DUTIES PERFORMED BY AGENTS

When in this code any act is required to be done by an officer I the line of his or her general duties, or by a department head or inspector, the same shall be construed to permit the doing of the act by an agent or subordinate of the person.

10.15: 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 in any questions exists regarding the nature or extent of the error.

10.16: POWERS TO ENACT, AMEND OR REPEAL ORDINANCES AND RESOLUTIONS; GENERALLY:

Every municipality may enact, make, amend, revise or repeal all such ordinances, resolutions and regulations as may be proper and necessary to carry into effect the powers granted thereto.

10.17: ORDINANCES REPEALED

This Code, from and after its effective date, shall contain all the provisions of general nature pertaining to the subjects here in 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.

10.18: ORDINANCES UNAFFECTED

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

10.19: 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.

10.20: COMPUTATION OF TIME

In computing any period of time mentioned in the provisions of this code, the day of the act, event, or default of which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday.

10.21: PUBLICATION AND EFFECT

This code shall take effect immediately upon its adoptions and completed publication of notice as pervaded by SDCL 9-19.

10.22: FRANCHISES

Title IV relating to Franchises is a compilation of such Ordinances heretofore passed in the manner provided for passage of such Ordinances, and nothing herein contained shall be construed to repeal any of the provisions of said Franchising Ordinances, or any other Ordinances and amendment thereto.

10.23: EFFECT OF CODE-MISCELLANEOUS ORDINANCES

Nothing in this code shall affect the validity of the following:

- A. Ordinances granting any franchise, right-of-way, easements or contract right;
- B. Ordinances providing for the issuance of bonds, special assessment certificates or other evidences of obligation;
- C. Ordinances providing for appropriations;
- D. Ordinances zoning or rezoning specific property or amending the City's zoning map, or defining the location and boundaries of zoning districts, and amendments thereto;
- E. Ordinances establishing classification plans and pay grades and scales for city officers and employees, and ordinances prescribing salaries for City Officers and employees; and
- F. Ordinances establishing or changing street grades, widths or names, as shown on the maps in the Public Works, Planning and Finance Office.

10.24: 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.

10.25: SEVERABILITY:

Notwithstanding any other evidence of intent, it is declared to be the controlling intent of the Common Council that, if any provision of this code or the application thereof to any

persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this code, or its application to other persons and circumstances, but the judgment shall be confined in its operation to the provisions of the particular chapter and circumstances directly involved in the controversy in which the judgment is rendered.

10.26: VIOLATIONS-LIABILITY OF CORPORATIONS

For a violation of this code or any ordinance of the city which, by nature, does not require intent exercisable only by natural persons, a corporation may be fined or punished by appropriate penalties in addition to any punishment provided for its agents who violate this code or other ordinance while acting as the agents.

10.27: 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.

10.28: DESIGNATED-CONTINUING VIOLATIONS

Whenever, in this code or in any ordinance of the city, 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 not 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.

10.29: 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.

10.30: GENERAL PENALTY

Except as specifically provided within the applicable Title, any violation of the provisions of this City of Box Elder Code of Ordinance 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, Committee and/or the Board for the City of Box Elder under the provisions of this code may appeal said decision to the City Council.

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 if it is the type of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission for such evidence after objection in civil actions in courts or competent jurisdiction in this state.
- C. Irrelevant and unduly repetitious evidence and evidence that lacks trustworthiness shall be excluded.

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 reinstatement 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 the appeal hearing is closed. 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: Redistricting 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.
- (B) Wards One, Two and Three of the city shall be redistricted to provide a more equitable distribution of voters based on population.
- (C) This section shall be come effective immediately upon passage and publication thereof. (Ord. 405, passed 2-17-2004)

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