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(g) *Manufactured homes shall be located on reinforced piers or foundations, anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. The foundation and method of anchoring shall be approved by the Zoning Board.*..... 123

(h) *Existing manufactured home park or subdivision.* ..... 124

(i) *Residential, nonresidential construction and recreational vehicles.*..... 124

(j) *Openings in enclosures below lowest floor.* ..... 124

(k) *Floodproofing.* ..... 124

(l) *Floodways.* ..... 125

# CITY OF TEA ORDINANCES

## Chapter 1. ADMINISTRATIVE CODE

### SECT. 1.01 MUNICIPAL EMPLOYEES

#### (a) *Appointment of Officers.*

At the first regular meeting after the annual election, there shall be appointed a Finance Officer, Chief of Police, Street Superintendent and Utilities Superintendent, and such other officers as may be provided by Ordinance, to hold office until the appointment and qualifications of successors. All such appointments shall be made by the Mayor with approval of the City Council. The City Council may by resolution enter into a contract pursuant to SDCL 9-14 with an attorney to provide legal services to the City as the City Attorney. (SDCL 9-14-3) Ord. 50

#### (b) *Employment Policies.*

All policies regarding personnel regulations and benefits of the City shall be included in a Personnel Policy Manual, which shall be filed with the Finance Officer and available to all municipal employees. Ord. 50

### SECT. 1.02 MAYOR AND CITY COUNCIL

#### (a) *Mayor - Duties.*

The Mayor shall preside at all meetings of the City Council but shall have no vote except in case of a tie. The Mayor shall perform such other duties as may be prescribed by laws and ordinances and ensure that such laws and ordinances are faithfully executed, and shall have the power to veto any part or item of an ordinance or resolution appropriating money. (SDCL 9-8-3) Ord. 50

#### (b) *Meetings.*

Regular meetings of the City Council shall be held in the City Hall on the first and third Mondays of each month at 7:00 p.m. Special meetings may be held at the call of the Mayor to consider such matters as may be mentioned in the call for the meeting. (SDCL 9-8-8) Ord. 123

#### (c) *President and Vice-President of Council.*

At the first regular meeting after the annual election in each year and after the qualifications of the newly elected council members, the City Council shall elect from among its members a president and vice-president, who shall hold their respective offices for the municipal year. The president of the City Council, in the absence of the Mayor, shall be presiding officer of the City Council, and during the temporary disability or absence of the Mayor from the City, shall be Acting Mayor and possess all of the powers of the Mayor. In the absence or disability of the Mayor and president of the City Council, the vice president shall perform the duties of the Mayor and president of the Council. (SDCL 9-8-7) Ord. 50

## CITY OF TEA ORDINANCES

**(d) *Compensation.***

The Mayor and members of the City Council shall be allowed compensation as provided by Resolution which shall be paid in such installments as may be determined by the City Council. (SDCL 9-14-28) Ord. 50

**(e) *Supervision of Departments.***

The Mayor, with approval of the City Council, shall appoint each year members of the Council to act in a supervisory capacity in each of the departments, and such council members, so appointed, shall have supervision over the department and shall as requested by the Council, report as to the condition and matters in said department. (SDCL 9-8-9) Ord. 50

CITY OF TEA ORDINANCES

**Chapter 2. BOUNDARIES, WARDS AND VOTING PRECINCTS**

**SECT. 2.01 BOUNDARIES**

**(a) Boundaries.**

The corporate limits of the City shall be declared to be such as have been legally established and amended by law and ordinances of the City as shown on the official map on file in the office of the Finance Officer. Such map shall be incorporated in this section by reference and adopted as the official map showing the boundaries and limits of the City. (SDCL 9-3-2, SDCL 9-4-1)

**SECT. 2.02 WARDS AND VOTING PRECINCTS**

**(a) Wards and Voting Precincts.**

The City shall be divided into three wards, which shall be combined and consolidated into one election precinct, and shall be designated as Wards One, Two and Three.

**(i) That portion of the City west of Poplar Avenue shall be and constitute Ward Number One (1).**

**(ii) That portion of the City east of Poplar Avenue and west of Main Avenue between the northernmost city limit and Apple Street, east of Poplar Avenue and west of Joseph Avenue between Apple Street and First Street, and east of Poplar Avenue and between First Street and the southernmost city limit shall be and constitute Ward Number Two (2).**

**(iii) That portion of the city north of Apple Street between Main Avenue and Joseph Avenue, and north of First Street between Joseph Avenue and the easternmost city limit shall be and constitute Ward Number Three (3).**

**(b) Conflicts.**

All prior Ordinances and parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed. Ord. 128

**(c) Separability.**

If any provision of this Ordinance is declared unconstitutional or otherwise invalid, the remainder of the Ordinance shall not be affected thereby.

CITY OF TEA ORDINANCES

**Chapter 3. HEALTH AND SANITATION**

**SECT. 3.01 NUISANCES**

**(a) Prohibited and Defined.**

No person shall create, commit, maintain, or permit to be created, committed, or maintained any nuisance as defined herein, within the City of Tea. The following specific acts, conditions and things are, each and all of them, hereby declared to constitute nuisances:

- (i) Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property, any household waste water, sewage, garbage, refuse, rubbish, fecal, excrement, decaying fruit, vegetables, fish, meat, bones, any fowl, putrid, or obnoxious liquid substance, putrescible and nonputrescible animal or vegetable wastes or solid wastes, or any other waste material which constitutes or tends to create a danger to public health, safety, and welfare. (SDCL 9-32-10, SDCL 34A-7-9)**
- (ii) The accumulation of manure, garbage or anything whatsoever which are breeding areas for flies, mosquitoes, and rodents. (SDCL 9-32-10)**
- (iii) Permitting weeds to grow to twelve inches on any private property, including but not limited to Canada thistle, sunflowers, ragweed, cockleburs burdock, black mustard, sweet clover, and bullthistle. Also, allowing the dense growth of any vegetation including brush or grass, without proper trimming or mowing, which may constitute a health, safety, or fire hazard. (SDCL 9-32-12)**
- (iv) For the owner of a dead animal to permit it to remain undisposed of longer than twenty-four (24) hours after its death. (SDCL 9-29-13)**
- (v) Any excavation, trench or open basement in which stagnant water is permitted to collect or which may jeopardize the life, limb or safety of the general public. (SDCL 9-29-13)**
- (vi) Throwing or letting fall on or permitting to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel or wood while engaged in handling or removing any such substance. (SDCL 9-32-10)**
- (vii) Burning, causing or permitting to be burned upon any private or public property any dirt, filth, manure, garbage, sweepings, leaves, ashes, paper, rubbish or material of any kind, except as otherwise permitted by the City Council. This provision shall not apply to the burning of wood in outdoor fireplaces or wood burners. (SDCL 9-33-1)**
- (viii) Maintain, or causing or permitting the same, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has**



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**any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building, if such conditions or defects thereby annoy, injure or endanger the comfort, repose, health, or safety of others, or if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the public or its occupants are jeopardized:**

- 1) Whenever any building or structure is (1) vacant and unoccupied for the purpose for which it was erected and; (2) the building is unfit for occupancy as it fails to meet minimum housing standards and; (3) the building has remained substantially in such condition for a period in excess of six (6) months.
- 2) Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence thereby depresses the market value of surrounding properties. (SDCL 9-29-13)

**(ix) The failure of any owner, lessee, occupant or person having charge of any parcel of real estate to remove snow and ice from any sidewalk located on or adjacent to such parcel of real estate, in which case the Chief of Police, without notice may have such ice and snow removed therefrom. A bill for the expense incurred thereby shall be presented by the Chief of Police to the owner personally by leaving the same at his residence, or place of business, or if he is a non-resident, by mailing the same to his last-known address by prepaid first class mail, or, if the name of such owner or his place or residence cannot be determined or ascertained after due diligence, by posting the same in a conspicuous place on his premises, and; if he shall fail to pay the same within thirty (30) days thereafter, the Chief of Police shall cause an account to be kept against each lot for the cost of doing such work, and the same shall be certified to the Finance Officer on or before the first day of November of each year for assessment against said property in the manner provided by this Title.**

**(x) Throwing or letting fall on or permitting to remain on any street, alley, or public ground any soil, earth, mud, clay, rock, or combination thereof while engaged in handling, working with, working in or removing any such substance.**

**(b) *Diseased Vegetation and Trees.***

**(i) Any owner, occupant, or person in charge of any property under the jurisdiction of the City of Tea shall remove at his or her own expense any trees, brush, wood, or debris infected with Dutch Elm disease or other infestations or infectious disease found thereon when so notified by the City to do so.**

**(ii) The notice requirements for nuisances for diseased vegetation and trees shall be governed by this section and not section 3.1(c). The City Council shall cause to be mailed to such owner, occupant, or person, written notice that they may appear before the said City Council at an appointed time not less than fourteen (14) days from the date of mailing of said written notice to show cause why said trees, brush wood, or debris should not be declared a public nuisance.**

**(iii) At said meeting the City Council may resolve and declare the same to be a**

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**public nuisance and may order its removal by said owner, occupant, or person within twenty-one (21) days from the date of service of said resolution and order on said owner, occupant, or person.**

- (iv) Any diseased vegetation stored in the City shall be debarked or covered with four (4) to six (6) mil clear plastic from April 1<sup>st</sup> to October 1<sup>st</sup>, such plastic to be sealed by placing all edges in a three to four-inch trench covered with soil. In addition, any diseased vegetation which is removed and not stored in accordance with the provisions of this Section shall be properly disposed of by burning or burying in a designated disposal site. (SDCL 9-32-1-2)**

**(c) Nuisances How Abated.**

Except as provided in Section 1, Subsection 3.1(a), the Chief of Police or Finance Officer shall give written notice or cause written notice to be given to any person creating, permitting, or maintaining any nuisance to abate such nuisance forthwith, and if such person shall neglect or refuse to do so within a reasonable time after such notice, he shall be deemed guilty of a violation of this Title. The City Council shall cause to be removed or abated any such nuisance upon the expiration of a reasonable time after the serving of such notice, and the City may recover the expenses so incurred from the person maintaining such nuisance in a civil suit instituted from such purpose, or may levy an assessment against the property and collect the same.

In addition to the methods herein provided, if any vegetation referred to in Section 1 (b) is found growing on any premises in the City from May 15<sup>th</sup> to September 15<sup>th</sup> of each year, the City may publish twice in the official newspaper, general notice covering all premises within the City, that unless such vegetation is destroyed within five working days from the date of publication of second notice, the City will destroy or cause to be destroyed the same, and the costs thereof will be assessed against the premises where said vegetation shall be found growing.

If the occupant, person in charge or owner of any lot or parcel of land fails to abate said nuisance in accordance with the notice given, the City Council may cause the abatement thereof and for such purpose may enter upon any such lot or parcel of land.

The Municipal Finance Officer shall cause an account to be kept against each lot or parcel of land for the cost of abating any nuisance thereon during the year, and the same shall be specially assessed as follows:

- (i) The Finance Officer shall prepare an estimate of the assessment against each lot or parcel of land for such nuisance abatement, including therein the expense of levying such special assessment against each lot or parcel of land, and such estimate shall be submitted to the City Commission for its approval on or before the 1<sup>st</sup> day of January of each year.**
- (ii) The Finance Office shall cause to be published in the official newspaper a notice of the time and place when the City Council will meet for the purpose of approving such estimate, such notice to be published once not less than one week**

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before such hearing.

- (iii) **Upon a day so named, the City 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 Municipal Finance Officer.**
- (iv) **From the date of the approval and filing of such assessment roll with the Finance Officer, 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 special assessments for public improvements are collected.**
- (d) **Keeping of Articles Abandoned or left on Private of Public Property.**

It shall be the duty of the Police Department to take possession of any article or property abandoned, left, or placed on any public or private property, and if the same is believed to have any value, to keep it and attempt to locate the owner thereof, and to retain any such article heretofore so taken up by it. It shall be the duty of the Police Department to maintain a place for the keeping of any such article until the same shall be claimed for otherwise disposed of, and the City shall have a lien thereon for the reasonable expenses incurred in the storage of such article. The City may retain possession of any article or property until any and all liens against it are discharged.
- (e) **Disposition of Unclaimed Property.**

If any abandoned article or property has been or is kept for thirty (30) days or more without being claimed, the same may be disposed of by the Police Department by one of the following methods.

  - (i) **If of no value or slight value, it may be destroyed.**
  - (ii) **If of slight value but of use to the City it may be turned over to the proper department and used until claimed. Any lien incurred by the City against the property shall be regarded as a sufficient offset to the value of such use.**
  - (iii) **If of more than slight value, it may be sold by the Police Department ten (10) days after notice of such sale as been published in the City's legal newspaper, 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 in the City's general fund.**
- (f) **Vegetation Nuisance Declared.**

All weeds or plants declared to be primary or secondary noxious weeds by the state weed and pest control commission, all weeds declared to be locally noxious, and all other weeds or grasses growing upon any lot or parcel of land in the city to a greater height than (twelve) 12 inches, or which have gone or are about to go to seed, shall be deemed noxious, dangerous and unhealthful vegetation, and are hereby declared to be a nuisance. Fallen tree limbs, disease or dead trees, and

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dead tree limbs shall also be declared dangerous and a nuisance. This shall not apply to vegetation which is not a primary or secondary noxious weed and is being grown as a crop, livestock pasture, native prairie display garden, wildflower display garden or other nature area designated by the department head of parks and recreation.

**(g) *Duty to correct.***

It shall be the duty of the occupant, person in charge, or owner of any lot or parcel of land in the city to keep such lot, to include any abutting city right-of-way, commonly known as the “parkway,” free of such vegetation nuisance by cutting, spraying or removal, as may be appropriate.

**(h) *Notice to correct.***

The Chief of Police is responsible for requiring compliance with this article on all property, and has the authority to require compliance. The Chief of Police or Finance Officer may cause personal or public notice to be given requiring all lots or parcels of land in the city to be kept free from all vegetation declared by Section 3.1(b) to be a nuisance.

The notice shall provide that all vegetation determined to be a nuisance and left uncorrected may be cut, sprayed or removed by the City, and the cost thereof assessed against that property, to include the cost of levying such special assessment.

The notice shall be by general public notice, published in the official newspaper once a week for two consecutive weeks, and shall be deemed sufficient to allow those actions authorized by Sections 3.1(c) and 3.1(d). The Chief of Police or Finance Officer may also provide an individual personal notice by sending notice certified to the address of the property owner as indicated on the official books of the County Treasurer.

The occupant, person in charge, or owner of any lot or parcel of land shall cut, spray or remove, as appropriate, any vegetation which could constitute a nuisance.

**(i) *Correction by City.***

If the occupant, person in charge, or owner of any lot or parcel of land fails to correct any such vegetation nuisance as required, the department head of parks and recreation, or his designate, may cause such vegetation to be cut, sprayed or removed, as appropriate, and for such purpose the person to do the work may enter upon any lot or parcel of land.

It is a public offense for any person to intentionally interfere or attempt to interfere with the cutting, spraying or removal of such vegetation nuisance, by physical force or violence.

**(j) *Special assessment.***

The Finance Officer shall cause an account to be kept, against each lot, of the cost to the City for the correction and control of vegetation nuisance during the

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growing season of each year, and the cost shall be certified to the County on or before September 1 of each year.

The Finance Officer shall prepare an estimate of the assessment against each lot for the correction and control of vegetation nuisance for the preceding growing season, including therein the expense of levying such special assessment against each lot. Such estimates shall be submitted to the City Commission.

Upon the filing of the assessment roll with the Finance Officer, the City Commission shall fix a time and place of hearing upon the assessment, not less than twenty (20) days from the date of filing thereof. The Finance Officer shall thereupon publish a notice of the time and place of hearing in the official newspaper, one week prior to the date set for the hearing. The notice shall in general terms describe the improvement for which the special assessment is levied, the date of filing of the assessment roll, the time and place of the hearing thereon, and that the roll will be open for public inspection at the office of the City Finance Officer, and shall refer to the special assessment roll for further particulars.

In addition to the publication of the notice of hearing, the Finance Officer shall mail a copy of the notice, by first class mail, addressed to the owner of any property to be assessed for the improvements, at his address as shown by the records of the Finance Officer. The mailings shall be at the least one (1) week prior to the date set for the hearing.

The owner of any lot or parcel of land against which a special assessment is to be so levied, or its occupant or person in charge, shall have the right to appear before the commission at such meeting to protest such assessment and to give reasons why such assessment should not be levied.

Upon the day so named, the commission shall meet, and if they find the estimate correct and the actions of the department head of parks and recreation resulting in the estimate to be in accordance with the provisions of this article, they shall approve the assessment by resolution and file such assessment roll with the Finance Officer; or, if not correct, they shall correct or modify the estimate, and approve the assessment as corrected or modified, and file such assessment roll with finance officer; or, if not in accordance with the provisions of this Title, shall disapprove such assessment.

From the date of the approval and filing of such assessment roll with the Finance Officer, the assessment shall be and become a special lien against the various pieces of property described in the assessment roll and shall be collected in a like manner as special assessments for public improvements as are now collected.

***(k) Vegetation nuisance removal fund.***

The City Commission may provide in the annual appropriation ordinance for a fund, to be expended under the direction of the department head of parks and recreation, for the correction and control of vegetation nuisances, as provided for in this Title. All monies collected for expense of correction and control of

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vegetation nuisance pursuant to the provisions of this article shall be credited to such fund.

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Chapter 4. COLLECTION OF GARBAGE

SECT. 4.01 OPERATORS, LICENSING AND RESTRICTIONS

(a) Private Operators.

The collection of garbage and refuse in the City shall be made by private contractors or operators approved by the City Council, who shall be subject to all local ordinances as well as all state and federal regulations. Collections shall be made at least once a week, unless otherwise required by the City Council by resolution and written notice to the private contractors.

(b) License Required. **SEE ORDINANCE 148**

~~(i) There shall be no more than three (3) private contractors or operators involved with the collection and disposition of garbage or refuse in the City, each of whom shall be required to apply in writing for an annual license to the City Council. Any license approved and issued may be revoked by City Council for violations of laws, regulations or stipulations concerning such operations. Any transfers of the annual license shall be subject to approval by the City Council. The annual license fee shall be set by resolution of the City Council.~~

(c) Restrictions on Equipment.

(i) In addition to compliance with license requirements, the equipment to be used by such licensees shall comply with the following:

**SEE ORDINANCE 139 ↓**

(ii) No licensee shall use a vehicle having a gross vehicle weight in excess of 10,000 pounds, except on posted truck routes. Customers requiring dumpster locations will be approved or rejected by the City Council.

(iii) All vehicles used by any such licensee shall be enclosed in a manner to retain within the vehicle all garbage or refuse being hauled by the vehicle.

(d) Penalty.

Any person violating any of the provisions of this title shall be guilty of a Class II Misdemeanor, and upon conviction shall be subject to a fine of not more than One Hundred Dollars (\$100), or imprisonment in the County Jail for not longer than thirty (30) days, or shall receive both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(e) City Not Liable.

The City shall not be liable for any expense incurred through the failure of a licensee or his agents and employees, to operate and maintain collection services in a proper and efficient manner, and for any actions that may result from or be attributed to such services performed. (SDCL 9-32-11)

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### **SECT. 4.02 ON SITE GARBAGE LICENSE**

#### **(a) On Site Garbage License Required.**

No person, firm or corporation may operate on site garbage service without having first obtained a license for it in compliance with this Ordinance. As used in this Ordinance, “on site garbage service” means the providing of garbage removal service for construction, remodeling or demolition projects by providing a container for such sites.

#### **(b) Application and Fee.**

Applications for on site licenses must be made to the City Finance Officer on a form provided by the Finance Officer. The application must show the location of the proposed on site garbage service, the name and address of the owner or operator and a telephone number where the owner or operator or an agent of the owner or operator can be reached twenty-four (24) hours of the day. The application will show the location of the proposed center, the size and location of access and parking, and the location and kind of containers or receptacles proposed to be used. The application must be accompanied by a fee of Five Dollars (\$5).

#### **(c) Containers.**

Each on site garbage service must have containers with firmly closed lids, no smaller than one hundred (100) gallons. All containers and lids must be secured to prevent any container, lid or contents from blowing around during normal winds. Trailers may be used for containers if the trailers conform to all of the requirements of this Ordinance. Each container or trailer must be clearly marked with reflective material so as to be easily identifiable at night.

#### **(d) Penalty.**

Any person, firm or corporation violating any provision of this Ordinance will be fined not less than One Hundred Dollars (\$100) for each offense, and a separate offense will be deemed committed on each day during or on which any offense occurs or continues. Ord. 124

### **SECT. 4.03 SWIMMING POOLS**

#### **(a) Compliance Required.**

It shall be unlawful to construct, maintain, install or enlarge any swimming pool in the City except in compliance with all the provision of this Ordinance.

#### **(b) Private Pool.**

The term “swimming pool” is hereby defined as a receptacle for water, or any artificial pool for water having a depth at any point of more than two (2) feet, intended for the purpose of immersion or partial immersion therein of human beings, and including all appurtenant equipment.



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**(c) Location.**

No portion of a swimming pool outside a building shall be located at a distance of less than stipulated by the established building codes and all pool construction shall be in compliance with the building codes. No pools shall be constructed in a front yard.

**(d) Permit Required.**

It shall be unlawful to proceed with the construction, installation, enlargement or alteration of any private residential swimming pool and appurtenances within the City unless permits therefor shall have first been obtained from the City.

**(e) Drawings, Plans and Permits.**

**(i) All drawings and plans for the construction, installation, enlargement or alteration of any swimming pool and appurtenances shall first be presented to the Zoning Board for examination and approval as to proper location and construction.**

**(ii) All plans and drawings shall be drawn to a scale of not less than one-eighth of an inch to the foot, on paper or cloth, in ink or by some process that will not fade or obliterate. All distances and dimensions shall be accurately figured and drawings made explicit and complete, showing the lot line, and including information pertaining to the pool, walk and fence construction, water supply system, drainage and water disposal systems, and all appurtenances pertaining to the swimming pool. Detail plans and vertical elevations shall also be provided in accordance with the Building Code.**

**(iii) All private residential swimming pools, appurtenances, water supply and drainage systems shall be constructed in conformity with the approved plans.**

**(f) Recirculation Pools.**

All swimming pools shall be of the recirculation type in which circulation of the water is maintained through the pool by pumps, the water drawn from the pool being clarified and disinfected before being returned to the pool. Equipment shall be provided for the disinfecting of all pool water.

**(g) Structural Design.**

Swimming pools shall be designed to withstand the water pressure of the earth when the pool is empty.

**(h) Fences**

All outdoor swimming pools shall be completely enclosed by a fence. All fence openings or points of entry into pool area enclosure shall be equipped with gates. The fence and gates shall be four (4) feet in height above the grade level and shall be constructed of a minimum number 9 gauge woven wire mesh corrosion-resistant material, or non-climbable wooden fence. All gates shall be equipped with self-closing and self-latching devices placed at the top of the gates.

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**(i) Outlets.**

If pools are equipped with facilities for completely emptying the pool, then the discharge of pool water shall be into the storm sewer. There shall be an air break between the pool drain and the service sewer line. Every swimming pool shall have a recirculating system with an hourly capacity equal to the pool volume divided by eight (8).

**(j) Electrical Requirements.**

All electrical installations provided for, installed and used in conjunction with private residential swimming pools, shall be in conformance with the Ordinance regulating Electrical Installation, and pursuant to the provisions as set for in Article 680 of the National Electric Code of 1962 Edition Amendments thereto.

**(k) Commercial Pools.**

The design of any commercial pool for public use must be submitted to the State Department of Health of the State of South Dakota for approval. After obtaining written approval from the said State Department of Health, an application for permit may be submitted to the City of Tea, South Dakota.

### ***SECT. 4.04 DECLARATION OF ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE MOTOR VEHICLES***

**(a) Definitions.**

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

**(i) *City* is the City of Tea**

**(ii) *Vehicle* is any vehicle which is designed to travel along the ground or in the water and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, pull trailers, go-carts, golf carts, boats, campers and trailers.**

**(iii) *Inoperable vehicle* is any vehicle, as defined by subsection (2) herein, which is not in operating condition due to damage, removal or in operability of one or more tires and wheels, 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.**

**(iv) *Abandoned vehicle* is any vehicle, as defined by subsection (2) herein, which is left unattended or stored on any public property as defined by subsection (7) therein, in the same or substantially same place within the City for a longer period than twenty-four (24) hours.**

**(v) *Person* shall mean any person, firm, partnership, association, corporation, company or organization of any kind.**

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- (vi) ***Private property*** shall mean any real property within the City which is privately owned and which is not public property as defined in this section.
- (vii) ***Public property*** shall mean any street, alley or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.
- (viii) ***Removal agency*** is any public body, private or nonprofit organization authorized by the City to remove and salvage abandoned or inoperable vehicles.
- (b) **Storing, parking or leaving dismantled, inoperable or abandoned vehicles declared nuisance.**
- The presence of an abandoned, discarded, wrecked, burned, dismantled, inoperable, junked or partially dismantled vehicle or parts thereof on private or public property is hereby declared a public nuisance, which may be abated as such in accordance with the provision of this Section. It is unlawful to keep or place any of the above-described vehicles or vehicle parts:
- (i) **Upon public streets or property except on an emergency basis; or**
- (ii) **Upon the private property of any person owning, in charge of, or in control of any real property within the City, whether as an owner, tenant, occupant, lessee or otherwise for longer than five (5) working days unless it is within a carport, fully enclosed building or structure. A tarpaulin, tent or of the similar temporary structure shall not be deemed to satisfy the requirements of this section.**
- (iii) **In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept or located on any premises.**
- (c) ***Exceptions.***
- This article shall not apply to:
- (i) **An inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. In the event this inoperable vehicle is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway longer than fourteen (14) days.**
- (ii) **Filling stations, automobile repair shops or any other motor vehicle related businesses in compliance with applicable City Ordinances may place inoperable vehicles being repaired or offered for sale on the premises.**
- (iii) **Junkyards operated and maintained in compliance with applicable City Ordinances.**
- (d) **Removal.**
- Whenever the Police Department finds an abandoned or inoperable vehicle on public property within the City, it is authorized to place written notice on the

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vehicle that it will be removed to a garage or place of safety unless the owner remove the vehicle from public property within twenty-four (24) hours of the giving of the notice. After the expiration of the twenty-four (24) hour period, the vehicle may be removed by a removal agency to a garage or place of safety. Nothing in this section precludes the Police Department from immediately removing a vehicle that constitutes an imminent health, safety or fire hazard.

**(e) Disposition of Unclaimed Vehicles.**

The removal agency shall have the rights and obligations conferred upon it by SDCL Chapter 32-36 in regard to titling or disposition of such unclaimed vehicle, except that, if not otherwise provided by state law, it shall have a possessory lien upon any vehicle removed under provisions of this Title for the costs of reasonable charges in taking custody of and storing such vehicles.

**(f) 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 abandoned or inoperable vehicle of any kind to remain on such property longer than five (5) working days.

**(g) Notice to Remove.**

A notice in writing shall be served by the City upon any person having an abandoned or inoperable vehicle on their property requesting the removal of such motor vehicle in the time specified in this article.

**(h) Responsibility for Removal.**

Upon proper notice, the owner of the abandoned or inoperable 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.

**(i) Notice Procedure.**

The City 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 registered or certified mail to the owner or occupant of the private property at his last known address.

**(j) Content of Notice.**

The notice shall contain the request for removal within five working (5) days after the mailing of such notice, and the notice shall advise that failure to comply with notice to remove shall be a violation of this article.

**(k) Penalty.**

Any person violating any of the provisions of this article shall be guilty of a Class II Misdemeanor, and upon conviction shall be subject to a fine of not more than One Hundred Dollars (\$100.00). Each day such violation is committed or

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permitted to continue shall constitute a separate offense and shall be punishable as such.

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## Chapter 5. LICENSES

### SECT. 5.01 GENERAL PROVISIONS

**(a) License, Unlawful Without.**

It shall be unlawful for any person, persons, firm or corporation to engage in any activity for which a license is required without first having obtained a license, as hereinafter provided. The City Council may at any time expand the general provisions of this Title by requiring any person, persons, firm or corporation engaging in any trade, business or occupation within the City of Tea which is not specified by this Title to obtain a license, as deemed necessary.

**(b) Application for License.**

Any person, persons, firm or corporation wishing to obtain a license as herein provided, shall make written application to the City Council, stating the name of the applicant, address, purpose of the activity, the length of time for which said license is wanted, and the particular place at which said license is to be used.

Fees for all licenses shall be fixed by the City Council, where not specified in this Ordinance, and all license fees shall be paid in full at the time of application in such manner as approved by said Council.

**(c) License Expiration.**

Any annual licenses granted under the provisions of this Title shall expire on the 31<sup>st</sup> day of December next following the granting thereof, except as otherwise provided, and shall not be granted for any sum less than the annual rate, and there shall be no rebate made on the termination of said calling, vocation, or kind of business for which said license was issued.

**(d) Revocation.**

The City Council shall have the authority at any time to suspend or revoke any license granted under the provision of this Title whenever said Council shall be satisfied upon written complaint that any such calling, vocation, or kind of business for which said license has been issued, has been made or conducted in an improper or illegal manner, and in case of such revocation, the City Council may refund to the holder of such license such proportionate amount of money paid therefore as said Council shall deem just.

**(e) Issuance of License.**

Except as otherwise provided, all licenses shall be issued by the Finance Officer after issuance of the license has been approved by the City Council and the applicant shall have complied with all requirements for issuance of such license. Unless otherwise provided, all licenses shall be signed by the Finance Officer and shall have affixed thereto the official seal of the City of Tea.

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**(f) Record of Licenses.**

The Finance Officer shall keep a record of all licenses issued by the City stating when and to whom issued, for what purpose and for what length of time, the amount of money paid for said license, and the place where such activity is to be carried on. (SDCL 9-34-1)

**SECT. 5.02 CONCERTS AND PUBLIC DANCES**

**(a) Public dances and concerts..**

All public dances and concerts require a dance license. A public dance or concert is defined as any dance or concert conducted outdoors. The Dance or Concert applicant shall be responsible and liable for any damage or littering resulting from such activity and as such shall assume all liabilities.

**(b) License requirement.**

All public dances and concerts require a dance license. The applicant shall deliver to the finance officer .Fifty Dollars (\$50) for a dance or concert license and an application which shall include:

shall pay to the Finance Officer a fee of a diagram of the proposed public dance or concert setting forth security, division or identification of minors where alcohol is served as may be required by state law;

Starting time, ending time not later than 1:00, and date;

Persons responsible for the event;

Whether the event is insured.

What type of security will be employed, if any.

The mayor or the City Council have the authority to approve an application.

**(c) Supervision.**

Public dances and concerts conducted hereunder may be required by the City Council to retain one or more supervisors, who shall be authorized to remove any person who is intoxicated or is conducting himself or herself in an improper or disorderly manner. No public dance, concert or public dance hall shall be conducted past the hour of one o'clock (1:00) a.m.

**(d) Community Exception.**

Nothing in this Title shall be construed to apply to dances or concerts conducted, maintained, or operated as a community enterprise and without personal profit to any person, firm or corporation. (SDCL 9-34-25, SDCL 42-4-1).

**SECT. 5.03 TRANSIENT MERCHANTS, PEDDLERS**

**SEE ORDINANCE 153 FOR VENDOR RULES**

**DEFINITIONS.**

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For the purpose of this Title, a “transient merchant”, “itinerant merchant” or “itinerant vendor” is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the City of Tea or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within said City. “Temporary business” is one established for temporary operation only. A business operated more than six (6) months in one place by the same person shall be deemed a permanent business, but one commenced and discontinued within six (6) months thereafter shall prima facie be presumed a temporary business, and its operator a transient merchant. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this Title merely by reason by associating temporarily with any local dealer, trader, merchant, or by conducting such transient business in connection with as a part of or in the same of any local dealer, trader, or merchant. The word “peddler” as used herein shall include any person, whether a resident of the City or not, traveling by foot, wagon, automotive vehicle, or other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, or merchandise, offering and exposing the same for sale, or making sales and delivering articles to purchasers. (SDCL 9-34-7)

**(a) *License Required.***

Every transient merchant, itinerant merchant, or itinerant vendor as defined herein shall pay to the City a license fee of Twenty Five dollars (\$25) per day that said transient merchant, itinerant merchant or itinerant vendor shall conduct said business licensed under this Title. Said license fee shall be payable in advance, and the license issued under this Title shall be posted conspicuously in the place of business named therein.

**(b) *Peddlers License.***

It shall be unlawful for any person to be engaged in the business of peddler within the corporate limits of the City of Tea without first obtaining a permit and license therefore as provided herein. The fees required for such peddlers for said licenses shall be Twenty Five Dollars (\$25) per day payable in advance, provided that no fees shall be required of one selling products actually produced by the seller. Peddlers are required to exhibit their licenses at the request of any citizen. (SDCL 9-34-8)

**(c) *Approval of License.***

Any person seeking to obtain a license under the provisions of this Title shall pay to the Municipal Finance Officer the amount provided for by this Title for such license, for which the Finance Officer shall furnish the applicant a receipt designating kind of place and activity applied for. Both the Municipal Finance Officer and Chief of Police shall endorse said receipt.

**(d) *Applicants shall furnish the following information:***



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- (i) **Name of Applicant (s);**
  - (ii) **Permanent address of applicant (s);**
  - (iii) **Whether he transacts business for himself or someone else;**
  - (iv) **If for someone else, the name and address of the person, firm, or corporation he represents;**
  - (v) **Whether he sells and delivers the property directly to the purchaser or takes orders for it by carrying samples or catalogs;**
  - (vi) **Manner in which he intends to travel and a complete description of the vehicle he intends to use in doing so;**
  - (vii) **Copies of contracts and agreements he intends to make with the customers;**
  - (viii) **South Dakota Sales Tax license.**
  - (ix) **Any other information as the Municipal Finance Officer or Chief of Police may require.**
- (e) ***Use of Permit.***
- No more than one (1) or two (2) persons shall deal on the same permit as agents or otherwise, nor shall such permit be assignable from the persons to whom it was originally issued to any other person, firm, or corporation.
- (f) ***Peddler Required to Leave.***
- No peddler shall remain upon the property of any customer or prospective customer who has requested the peddler or solicitor to leave such property. Any peddler, who does so, will have their license revoked without refund.
- (g) ***Revocation of License.***
- Any license issued hereunder may be revoked, after notice and hearing, for any of the following causes:
- (i) **Fraud, misrepresentation or false statements contained in the application for license;**
  - (ii) **Fraud, misrepresentation or false statements made in the course of carrying on the business as a peddler, itinerant merchant, itinerant vendor or transient merchant hereunder;**
  - (iii) **Any violation of this Title;**
  - (iv) **Conviction of any crime or misdemeanor involving moral turpitude;**
  - (v) **Conducting the business licensed hereunder in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of public;**

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(vi)

**(h) Penalties.**

Any person violating any of the provisions of this Title, shall, upon conviction thereof, be punished by fine of not less than Twenty Five Dollars (\$25.00), nor more than One Hundred Dollars (\$100) or by imprisonment not to exceed thirty (30) days or both such fine and imprisonment for each day of operation in violation of this Title. Each day in violation of this Title shall be deemed a separate offense.

**(i) Exceptions.**

Nothing in this Title shall extend to any sale of livestock or farm products, or any second hand furniture or household goods by or for any person or persons who shall have actually used the same in the City of Tea, or to any sale of goods, wares, or merchandise by public officers in the pursuance of legal process, or to goods, wares, or merchandise sold by, nonprofit enterprises, except that such nonprofit enterprises shall be required to obtain a special permit for said sales. The Municipal Finance Officer shall issue special permits, without the payment of any license fees or other charges therefore, to any enterprise, either regularly or temporarily, when charitable educational, literary, scientific or religious purpose. An applicant for a special permit shall submit an application therefore to the Municipal Finance Officer and shall furnish such additional information and shall make such Affidavits as the Municipal Finance Officer shall require. A person or organization operating under a special permit shall operate his nonprofit enterprise in compliance with this Title and other applicable rules and regulations. (SDCL 9-34-1)

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### Chapter 6. OFFENSES

#### **SECT. 6.01 ALCOHOLIC BEVERAGES**

**(a) License Required.**

No person shall sell, offer for sale, keep for sale, exchange, distill, manufacture, produce, bottle, blend, or otherwise concoct, within the City any alcoholic beverage as defined by statute, without having a license therefore as required by South Dakota Laws now in effect, or as hereafter amended. (SDCL 9-29-7, 35-1-1, 35-1-4, 35-1-5, 35-2 and 35-3)

**(b) Video Lottery License Fees**

There is hereby imposed on any person who is licensed pursuant to subdivision (4), (6), (11), (14) or (17), of SDCL 35-4-2 and who is issued a video lottery establishment license pursuant to SDCL 42-7A-41 an annual additional license fee for the privilege of locating video lottery machines on the licensed premises. The fee is established at Fifty Dollars (\$50) for each video lottery machine and shall be paid at the same time and in the same manner as the fees paid in SDCL 35-4-2. All fees received under this Ordinance shall be deposited into the general fund of the City of Tea. Ord 85

**(c) Application and License Fees.**

In any instances in which applications may qualify, applications for licenses for the sale of alcoholic beverages in the City of Tea shall be submitted as prescribed by South Dakota Laws, as amended. (SDCL 35-4-2)

**(d) License Restrictions.**

Applications for any alcoholic beverage license submitted to the City of Tea shall be accompanied by the maximum fee for such license provided by State Law, unless such application fee has been modified previously by the City, and the granting or rejection of any such application shall be as provided by State Law, as amended from time to time and in accordance with any Ordinances of the City of Tea. (SDCL 35-2, 35-3 and 35-4)

**(e) Approval or Disapproval of Applications.**

The City Council shall have discretion to approve or disapprove all such applications depending on whether it deems the applicant a suitable person to hold such license and whether it considers the proposed location suitable. (SDCL 35-1.2 and 35-2-6.2)

**(f) Times when On-Sale Service Prohibited.**

No on-sale dealer, including malt beverage retailers, may sell, serve or allow to be consumed on the premises covered by that dealer's license, alcoholic beverages between the hours of two o'clock a.m. and seven o'clock a.m., or at any time on Christmas Day, or on Memorial Day after one o'clock a.m., or on Sundays after

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midnight, except as herein provided. The City Council may approve applications for such on-sale licenses specifically requesting permission to sell alcoholic beverages on Sundays between the hours of eleven o'clock a.m. and midnight, if such applicant shall comply with the requirements of SDCL 35-4-2.1, as from time to time amended, and if said applicant shall also comply with such conditions and limitations which may be imposed on the granting of such applications by the City Council. (SDCL 35-4-81 and 35-4-2.1)

**(g) *Times When Off-Sale Service Prohibited.***

No off-sale dealer, including a malt beverage package dealer, may sell, or allow to be sold, alcoholic beverages between the hours of twelve o'clock midnight and seven o'clock a.m. of the following day, or at any time on Memorial Day, Christmas Day or Sundays, except as herein provided. The City Council may approve applications for such off-sale licenses specifically requesting permission to sell alcoholic beverages, on Sunday between the hours of seven o'clock a.m. and twelve o'clock midnight, if such applicant shall comply with such conditions and limitations which may be imposed on the granting of such applications by the City Council. (SDCL 35-4-81.1)

**(h) *Sanitation Facilities.***

Every on-sale dealer, shall maintain upon his or her licensed premises, toilets properly connected with the City water and sewer system with separate facilities for men and women. In each such facility there shall be maintained running water and approved sanitary drying facilities. Every licensee shall have such facilities equipped and maintained so as to comply with all federal, state or local health regulations at all times. (SDCL 34-18-20)

**(i) *Violations.***

Any person, firm, or licensee in violation of any of the provisions of this Title shall be deemed guilty of a misdemeanor. For failure to correct any offense when applicable, after conviction, each day of failure to do so shall constitute an additional separate offense. Whenever any person shall as clerk, servant, agent, or employee of any other person or establishment violates any of the provisions of this Title he shall also be deemed as guilty as a principal. Failure to comply with all existing requirements, including the provisions in this Title, shall provide cause for revocation of any licenses granted under the provisions of the South Dakota Laws, now in effect or as hereafter amended. (SDCL 35-2-10)

**(j) *Open Containers.***

It shall be unlawful to drink any alcoholic beverage or to possess any glass, can, or other unsealed container which contains any alcoholic beverage, in any public place, vacant building, automobile, street, alley, sidewalk or place of amusement or business establishment not authorized to sell such beverages unless authorized by the Common Council. (SDCL 35-1-5.3, SDCL 35-1-9.1)

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### **SECT. 6.02 OFFENSES AGAINST PUBLIC WELFARE**

#### **(a) Disorderly Conduct.**

A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance, he willfully does any of the following acts in a public place:

- (i) Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger of life, limb or health;**
- (ii) Commits an act in a violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged;**
- (iii) Causes, provokes or engages in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another, except in boxing exhibitions duly authorized and licensed under law;**
- (iv) Interferes with another's pursuit of a lawful occupation by acts of violence;**
- (v) Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way or place when ordered to do so by the City Police or other lawful authority known to be such;**
- (vi) Is in a public place under the influence of an intoxicating liquor or drug in such a condition as to be unable to exercise care for his own safety or the safety of others;**
- (vii) Resists or obstructs the performance of duties by the City Police or any other authorized official to the City when known to be such an official;**
- (viii) Incites, attempts to incite, or is involved in attempting to incite a riot;**
- (ix) Addresses abusive language or threats to any member of the City Police Department, any other authorized official of the City who is engaged in the lawful performance of his duties, or any other person when such words have direct tendency to cause acts of violence. Words merely causing displeasure, annoyance, or resentment are not prohibited;**
- (x) Damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy, or physically offensive condition;**
- (xi) Makes or causes to be made any loud, boisterous, and unreasonable noise or disturbance to the annoyance of any other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed, or the traveling public annoyed;**
- (xii) Fails to obey a lawful order to disburse by a police officer, when known to be**

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**such an officer, where one or more persons are committing acts of disorderly conduct in the immediate vicinity, and the public health and safety is eminently threatened;**

- (xiii) Throws a stone, snowball or any other missile upon or at any vehicle, building, tree or other public or private property or upon or at any person in any public or private way or place or enclosed or unenclosed ground;**

As used above, the following definitions shall apply:

- 1) “Public place” - Any place to which the general public has access in the right resort for business, entertainment, or other lawful purpose, but does not necessarily mean a place devoted solely to the use of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.
- 2) “Riot” - A public disturbance involving (i) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of another person or to the person or any other individual or (ii) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.
- 3) “Inciting riots” - Shall mean, but is not limited to, urging or instigating other persons to riot, but shall be deemed to mean the mere oral or written advocacy of ideas or expression of belief, not involving advocacy of any act or acts of violence or assertion of the rightness, or the right to commit, any such act or acts.

This Section shall not be construed to suppress the right to lawful assembly, picketing, public speaking, or lawful means of expressing public opinion not in contravention with other laws. (SDCL 9-29-3, SDCL 22-13-1)

**(b) *False Report of a Crime.***

No person in the City shall make to, or file with, the Police Department of the City any false, misleading, or unfounded statement or report concerning the commission or alleged commission of any crime occurring within the City. (SDCL 22-11-9)

**(c) *Injury or Removal of Public or Private Property.***

No person shall willfully, maliciously, wantonly, negligently, or otherwise injure, deface, destroy, or remove real property or improvements thereto or moveable or personal property belonging to the City or to any person in the City. (SDCL 22-34-1)

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***(d) Tampering in General.***

No person in the City shall tamper with, injure, deface, destroy or remove any sign, notice, marker, fire alarm box, fireplug or hydrant, typographical survey marker or monument, or any other personal property erected or placed by the City. (SDCL 22-34-1)

***(e) Tampering with Service Connections.***

It shall be unlawful for any person to connect, disconnect, or otherwise tamper with any service connection of any franchised cable television company or Broadband Communications Service Company without the express prior approval from a designated agent of said Cable Television company or Broadband Communications Service Company. (SDCL 22-34-28)

***(f) Carrying Concealed Weapons.***

No person shall carry concealed about his person, display in a threatening manner, any dangerous or deadly weapon including but not limited to, any pistol or other firearm without a permit, brass knuckle or knuckles of other material, or any sandbag, dagger, bowie knife, dirk knife, or other dangerous or deadly weapon, or any instrument or device which when used is likely to produce death or great bodily harm. Any police officer may wear or carry such weapons as may be necessary and proper for the discharge of his official duties. (SDCL 22-14-8 through 22-14-10)

***(g) Resisting, Escaping from or assaulting an Officer.***

No person shall resist or obstruct any police officer in the performance of any official duty, nor in any way aid or assist any person to escape from any lawful confinement. No person shall assault or strike any police officer in the discharge of his duty. (SDCL 22-11-4)

***(h) Indecency. As used in this Section, the following definitions shall apply:***

- (i) “Obscene” - To the average person applying contemporary community standards, taken as a whole, that the predominant appeal of the matter appeals to the prurient interests and (i) depicts or describes patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or (ii) depicts or describes patently offensive representations or descriptions of masturbation, excretory functions, or lewd exhibits of the genitals; and which, taken as a whole, lacks serious literary, artistic, political or scientific value.***
- (ii) “Prurient interest” - Shameful or morbid interest in nudity, sex or excretion which goes substantially beyond customary limits of candor in description or representation.***
- (iii) “Material” - Any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial***

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representation or any statute or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines.

- (iv) **“Dissemination” - To transfer possession of, with or without consideration.**
  - (v) **“Knowingly” - Being aware of the character and content of the material.**
  - (vi) **“Promote” - To cause, permit, procure, counsel or assist.**
- (i) *It shall be unlawful for any person within the City of Tea to:*
- (i) **Knowingly disseminate, distribute or make available to the public any obscene materials; or**
  - (ii) **Knowingly engage or participate in any obscene performance made available to the public; or**
  - (iii) **Knowingly engage in commerce for commercial gain with materials depicting and describing explicit sexual conduct, nudity, or excretion utilizing displays, circulars, advertisements and other public sales efforts that promote such commerce primarily on the basis of the prurient appeal; or**
  - (iv) **Appear in any public state in a state of dress intended to deceive others as to his or her sex, or make any indecent exposure of his or her person. (SDCL 9-29-9)**

### **SECT. 6.03 FIREWORKS, FIREARMS, AND EXPLOSIVES**

#### **(a) Discharging Firearms Prohibited.**

No person shall discharge or shoot off any gun, pistol, or any other firearm within the City of Tea, unless permitted by the City Council in firing ranges.

#### **(b) Fireworks Prohibited.**

The use, throwing, lighting, firing, display, or sale of fireworks within the City shall be prohibited. The term fireworks as referred to in this section shall include firecrackers, torpedoes, roman candles, toy cannons, detonating canes, blank cartridges, sky rockets or other pyrotechnic displays, but shall not include or apply to ammunition for firearms nor to dynamite and devices for exploding the same used in any industry or for the same. The discharge of firecrackers or other fireworks which conform to state law shall be allowed between the hours of 8:00 a.m. to 12:00 p.m. on the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> days of July. (Ord. 18 8-22-55)

#### **(c) Exceptions Provided.**

The provisions of this Title shall not apply to police officers of the City or to any person, firm or corporation duly licensed by the City Council in accordance with Title 4.1 of this Ordinance, to discharge fireworks for public entertainment at any public celebration in the City. (SDCL 9-33-1)



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### **SECT. 6.04 MINORS**

#### **(a) Curfew Hours and Exceptions.**

It shall be unlawful for any person under the age of sixteen (16) years to be on the streets, alleys, or public grounds of the City between the hours of 10:00 p.m. and 5:00 a.m. on the following day, and for any person under the age of eighteen (18) to be on the streets, alleys, or public grounds of the City between the hours of 11:00 p.m. and 5:00 a.m., unless accompanied by parents, legal guardian or some adult person over eighteen (18) years of age having the care and control of said person, or unless such person shall be upon some necessary errand by written permission of a parent, and except approved school functions and activities, and said person so permitted to be outdoors shall have with him or her such written permission and shall upon request of any police officer of the City exhibit the same to said police officer.

#### **(b) Responsibility of Officers.**

It shall be the duty of any police officer of the City to arrest and detain any person who violates any of the provisions of this Title and to keep such person detained until his or her parents, guardian, or person in control will appear before the police or other authorized personnel to answer to the charge of having violated this Title.

#### **(c) Responsibility of Parents or Guardians.**

It shall be unlawful for the parents, guardian, or other adult person having the care and custody of a minor under the age of eighteen (18) years to knowingly permit such a minor to be or remain in or upon the public streets, alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, vacant lots or other unsupervised public places within the City between the hours of 12:00 a.m. and 4:00 a.m. of the following day, except if the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor or when the minor is upon an emergency errand or legitimate business directed or authorized by his or her parent, guardian or other adult person having the care and custody of the minor.

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### Chapter 7. ANIMALS

#### **SECT. 7.01 COMPULSORY LICENSING OF ANIMALS.**

**(a) License Required.**

Each animal over the age of three (3) months shall be licensed by the City.

**(b) Application for License.**

The owner or keeper of any animal six months of age or older, shall submit to the Finance Office a license application for each animal, the license fee and rabies immunization certification

**(c) Terms and License fees.**

The initial license fee shall be Six Dollars (\$6.00) for a new license and Three Dollars (\$3.00) for each year thereafter. The City Common Council shall set the terms and the cost of the licenses periodically by resolution.

**(d) Display of Tag.**

An animal shall at all times display the license tag. The license shall be worn by all animals on a collar, harness, or chain when off the premises of the owner. If the animal wears a collar or harness, the license tag shall be affixed to the collar or harness in a manner to allow the tag to be easily seen.

**(e) Notification of loss or death of animal.**

The owner or keeper of the animal shall notify the City of the loss or death of such animal.

#### **SECT. 7.02 COMPULSORY IMMUNIZATION OF ANIMALS FOR RABIES.**

**(a) Compulsory Immunization of Animals for Rabies.**

Every dog, cat, or other animal held as a domestic pet in the City, six (6) months of age or older, shall be immunized against rabies by a licensed veterinarian or other qualified person designated by the City Council. Immunization against rabies shall be given at such intervals to guarantee immunity, and the minimum time period between vaccinations shall be determined by the available vaccine and based upon the recommendations and approval of the State Veterinarian.

**(i) Any owner acquiring a dog, cat, or other animal by purchase, gift, birth, or otherwise, shall have such animal immunized against rabies within one (1) month following acquisition or when such animal reaches the age of six (6) months.**

**(ii) Any animal impounded shall not be released by the Pound Master to any person until such animal has been immunized against rabies, provided, however, no animal so impounded shall be immunized if the owner can present a certificate**

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of a current immunization having been previously performed.

- (iii) All veterinarians or other qualified persons designated to immunize animals against rabies shall provide the owner at the time of immunization with a certificate or metallic tag showing the date of the immunization.
- (iv) Whenever metallic tags are so given for immunizations, such metallic tags shall be worn by all animals on a collar, harness, or chain when off the premises of the owner.

### **SECT. 7.03 RESPONSIBILITY OF OWNING, MAINTAINING OR ATTENDING ANIMALS, FOWL AND INSECTS**

#### **(a) *Diseased Animal Restriction.***

No person shall create or maintain any condition or operation any equipment or keep any animal, fowl, pet or insect under his jurisdiction in such a way that such condition or operation causes or is likely to cause transmission of diseases from animals or insects to man.

#### **(b) *Defecation Restriction.***

No owner, keeper, caretaker or attendant of an animal shall allow an animal to defecate on public or private property other than his own. If such animal does defecate upon public or private property, the owner, keeper, caretaker or attendant must immediately and thoroughly clean the fecal matter from such property.

#### **(c) *Fecal Cleanup requirement.***

Anyone walking an animal on public or private property other than his own must carry with him visible means of cleaning up any fecal matter left by the animal. Animals used in parades or involved in law enforcement are exempt from this section. Ord. 32

### **SECT. 7.04 RESPONSIBILITY OF OWNER TO PLACE ANIMAL FOR OBSERVATION.**

#### **(a) *Responsibility of owner to Place Animal for Observation.***

When any person owning or harboring a dog, cat or other animal has been notified that said animal has bitten or attacked any person, the owner shall within twenty-four (24) hours place the animal under the care and observation of the Pound Master or a licensed veterinarian for a period not less than ten (10) days.

- (i) At the end of the ten (10) day observation period, the animal shall be examined by a licensed veterinarian and if cleared by the veterinarian, may be reclaimed by the owner upon paying the expenses incident thereto.
- (ii) Any animal impounded or placed for observation, showing active signs of rabies, suspected of having rabies, or known to have been exposed to rabies, shall be confined under competent observation for such time as may be deemed

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necessary to determine a diagnosis.

- (iii) Any person who shall suspect that any animal in the City is infected with rabies, shall report said animal to the Animal Control, Pound Master, the Police Department, or other health authority, describing the animal and giving the name and address of the owner if known.
- (iv) No person shall knowingly harbor or keep any animal infected with rabies or any animal known to have been bitten by an animal known to have been infected with rabies.
- (v) Any person within the City receiving information or reports of suspected rabies in wild animals or domestic animals shall report such information to the Police Department of the City.
- (vi) Any rabid animal may be destroyed by the Pound Master or Police Department.
- (vii) Whenever the veterinarian, Police Department, Animal Control, Pound Master or Police Department shall have determined that there is danger of the existence or spread of rabies in the City, such facts shall be made known to the City Council in writing. The Council, upon receipt of said facts, may by proclamation, in the interest of public safety and general welfare of the citizenry, order all animals muzzled when off the premises of the owner. Forty-eight (48) hours after the publication of said proclamation all animals found off the premises of the owner unmuzzled shall be seized and impounded or may be immediately destroyed if all reasonable efforts to seize said animals fail. All animals seized and impounded shall be held for observation as hereinbefore provided for not less than ten (10) days, and if cleared by a licensed veterinarian, may be claimed by the owner upon paying the expenses incidental thereto. Any animal not claimed may be disposed of as hereinbefore provided.

### ***SECT. 7.05 DISTURBANCE OF PEACE BY ANIMALS.***

The owner or custodian of an animal shall not allow such animal to create a disturbance by making a load noises at any time of the day or night. Upon complaint, such owner will be notified by the Police Department and said owner shall abate such nuisance. If convicted upon failure to abate such nuisance, said owner will be guilty of further violations, for each day that such condition is allowed to exist or goes uncorrected. Any officer may remove and impound any animal which is disturbing the peace when the owner of the animal can not be located. A notice advising the owner of the impoundment shall be left at the premises. Any person having custody or control of any female dog or cat in heat shall be required to keep such dog or cat confined in a building, secure enclosure, veterinary hospital, or boarding kennel so that it cannot attract or come into contact with another animal on public or private property except for controlled breeding purposes.

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### **SECT. 7.06 STRAY, ABANDONED, OR UNKEPT ANIMALS.**

No person shall harbor or keep any stray animals within the City. Animals known to be strays shall be reported to the Police Department immediately. It shall be unlawful to abandon animals.

### **SECT. 7.07 DANGEROUS ANIMALS.**

#### **(a) Dangerous Animals.**

The following animals are hereby declared to be dangerous animals.

**(i) An Animal may be declared vicious by the health authority or the attending physician of the victim of an animal bite or scratch in cooperation with the health authority, after taking the following into consideration:**

**(ii) The nature of the severity of the incident**

- 1) Whether the animal has shown a propensity to display dangerously aggressive behavior and is able or likely to inflict injury to another person or animal.
- 2) After such declaration, the owner of the animal shall be notified in writing of the declaration and shall not allow the animal off the premises of its owner unless muzzled and on a leash and in charge of a person over sixteen (16) years of age. Any vicious animal found off the premises of its owner, other than provided in this article, shall be seized by the animal control officer or police officer and impounded.

### **SECT. 7.08 DANGEROUS ANIMAL LICENSING.**

#### **(b) Dangerous Dog Requirements.**

All owners of a dangerous animal are required to:

- (i) Annually renew a “dangerous animal license” which must have been obtained prior to enactment of the ordinance,**
- (ii) Proves that the animal has been spayed or neutered and has been vaccinated against rabies,**
- (iii) Keeps the animal confined or securely leashed and muzzled;**
- (iv) Maintains a \$100,000 in liability insurance; and**
- (v) Any additional requirements as may be set by resolution of the City Common Council.**

#### **(c) Dangerous Animal License.**

All dangerous animals must have a dangerous animal license in addition to the regular license. An application for such license may be obtained from the City

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Finance Office. The license fee for the dangerous animal license shall be set by the City Common Council annually.

### **SECT. 7.09 BANNING OF SPECIFIC BREEDS OF DOGS:**

**(d) Banned Breeds or dogs.**

“Banned breeds or dogs” are banned entirely and may not owned or in the City of Tea, South Dakota. “Banned breeds or dogs” are defined as any one of the following:

- (i) American Pit Bull Terrier;**
- (ii) Staffordshire Bull Terrier;**
- (iii) American Staffordshire Terrier;**
- (iv) Any dog whose sire or damn is a dog or a breed which is defined as a banned breed or dog herein;**
- (v) Any dog whose owner registers, defines, admits, or otherwise identifies said dog of being of a banned breed;**
- (vi) Any dog conforming, or substantially conforming, to the breed of American Pit Bull Terrier, American Staffordshire Terrier, or Staffordshire Bull Terrier as defined by the United Kennel Club or American Kennel Clubs; or**
- (vii) Any dog which is of a breed commonly referred to as “Pit Bull” and commonly recognized and identifiable as such;**
- (viii) Any dangerous dog which is found at large.**

Dogs owned as of date of May 22, 1996 the owner of a previously licensed Pit Bull may keep the dog only if the owner complies with the dangerous animal licensing requirements.

### **SECT. 7.10 RUNNING AT LARGE PROHIBITED.**

**(a) Definition and Penalties.**

No owner of any dog, cat, or other animal held as a domestic pet in the City shall permit such animal to run at large at any time, and any such animal found at large may be impounded as hereinafter provided and/or such owner may be penalized as provided in the provisions of this ordinance. The term “running at large” shall mean intentionally left outside of the enclosure of a legal fence, and off of the lands owned or controlled by the owner of such animal.

- (i) The City Council shall be authorized to appoint some person or persons, whose duty it shall be to impound any animals running at large, contrary to the provisions of this Title. Any police officer will likewise have such power. Upon impounding, the owner of such animal may at any time within three (3) working days after the same shall have been impounded, reclaim the animal by paying the**

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**expense of keeping such animal. If any animal so impounded shall not be reclaimed within three (3) working days and all efforts to locate the owner have failed, the Pound Master is authorized to destroy, sell, or otherwise dispose of such animal.**

- (ii) No person shall hinder, delay, or obstruct the Pound Master, his assistants or any law enforcement officer when engaged in capturing, securing or impounding any animal or animals.**
- (iii) The City Council shall be authorized to enter into a contract with some person, association or Humane Society to establish, operate and maintain an Animal Pound in and for the City of Tea. Such contract shall provide for the appointment of a Pound Master and his duties, for the enforcement of this Title, for the impounding, destroying and disposal of animals, for a schedule of fees to be charged for services rendered, and for a monthly amount to be paid by the City. The City may, in lieu of the provisions of this section, maintain its own impoundment area or quarters, under the supervision of the City Council.**
- (iv) Any owner allowing their animal to run at large as defined in the provisions of this section, if convicted, shall be guilty of a misdemeanor.**

**(b) Fines.**

- (i) The fines for animals running at large are as follows:**
  - 1) First offense shall be Fifty Dollars (\$50) plus court costs.
  - 2) Second and offenses thereafter shall be One Hundred Dollars (\$100) plus court costs.
- (ii) The fines shall not include the cost of housing the animals, which costs shall be paid to the entity housing the animals.**

**SECT. 7.11 CRUELTY TO ANIMALS.**

No person shall willfully or negligently mistreat or abuse or neglect in a cruel or inhumane manner any animal or fowl. It shall be unlawful for any person to willfully or maliciously administer or cause to be administered, poison of any sort whatsoever to any animal, on the property of another, with the intent to injure or destroy such animal, or to willfully or maliciously place any poison or poisoned food where the same is accessible to any such animal. (SDCL 9-29-11)

**SECT. 7.12 DISPOSITION OF ABUSED ANIMALS.**

In cases where an animal or animals have been seized by the animal control officer based upon cruelty, neglect or abandonment, such animal may be adopted to another owner or humanely euthanized thereby extinguishing all property rights of the existing owner following tile procedures as hereinafter provided:

Upon seizure of the animal or animals, the animal control officer shall serve notice upon the existing owner, if the identity of said existing owner is known,

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informing, said existing owner of the animal control officer's intent to have said animal disposed of.

**(a) Time limit for owner.**

The existing owner shall have three (3) business days to:

**(i) Declare in writing and deliver to the animal shelter keeping said animal or animals:**

- 1) Notice of said existing owner's intent to maintain ownership of the animal or animals and to object to the adoption or euthanasia thereof, and;
- 2) Notice that said existing owner shall pay where due all impoundment, board and veterinary costs until such time as the animal or animals shall be released to said existing owner or be adopted or euthanized.

**(ii) Pay all impoundment, board and veterinary costs up to the date of the owner's declaration of intent to maintain his ownership of said animal or animals to the animal control shelter.**

**(b) Intent to maintain ownership.**

Upon all notification of said existing owner's intent to maintain ownership of the animal or animals and the objection to the adoption or euthanasia thereof said existing owner shall continue said payments to the animal control shelter for impoundment, board and veterinary costs on a weekly basis until such time as the animal or animals shall be released to said existing owner or be adopted or euthanized.

**(c) Failure to notify.**

If the existing owner of the animal or animals fails to declare hereinbefore stated intent or fails to make any payment in a timely manner, or if the identity of said existing owner is unknown or notification to said existing owner cannot be made, ownership of the animal or animals will revert to the animal shelter.

**SECT. 7.13 LIVESTOCK & POULTRY IN CITY.**

No person shall keep or maintain any building or enclosure where livestock is kept, unless the same be at all times kept in a clean and sanitary condition. No person shall place, keep, or maintain any live hogs within the City. (SDCL 9-29-12)

**SECT. 7.14 IMPOUNDMENT.**

**(e) Impoundment Facility.**

The City is authorized to maintain its own impoundment area or quarters, under the supervision of the City Council. The City may also enter into a contract with any person, business or association to operate and maintain an impoundment



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facility for the City. The contract may be on such terms as the City Common Council determines.

(f) ***Impoundment and destruction of animal.***

Whenever an animal has been seized and impounded, the owner has three (3) business days to claim the animal by paying the impoundment fee, paying any fines imposed and by providing proof of immunization as required by City Code.

(g) ***Notice to owners of licensed animals.***

The City shall notify the owner of an animal who has been licensed within twenty-four (24) hours of the impoundment, if possible.

(h) ***Destruction of animals.***

If an impounded animal shall not be claimed and all efforts to locate such owner have failed, the City is authorized to destroy, sell or otherwise dispose of the animal. If the animal has been seized due to cruelty, neglect or abandonment, such animal may be disposed of after:

(i) ***Notice to owner of intent to dispose of animal.***

Notice shall be served upon the existing owner, if such identity is known, informing the owner of the intent to dispose of the animal.

(j) ***Notice of Objection to disposal.***

- (i) **The owner shall have three (3) business days after notice to the City of his or her objection to disposal, of intent to maintain ownership and intent to pay in full all impoundment and treatment costs. In addition, the owner shall pay all costs up to the date of notice of intent, including any fines and pays in advance weekly any costs of impoundment and treatment. If owner fails to comply with this section, the City may dispose of the animal.**

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### **SECT. 7.15 KENNEL REGULATIONS**

#### ***(a) Number of pets limited.***

It is unlawful for any person to have or to keep more than four domestic pets over the age of six months, except birds and fish, on any lot or premises in the city, unless such person residing on or in the lot or premises has a valid kennel license issued by the city. The city humane society, veterinarian offices, and retail pet stores are exempt from the provisions of this section.

#### ***(b) Definition of Kennel.***

Kennel shall be defined as any premises or portion thereon where dogs, cats, or other household pets are raised, trained, boarded, harbored or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

#### ***(c) Kennels Require Conditional Use Permit.***

A kennel shall require a conditional use permit for all zoning districts of the City.

#### ***(d) Kennels location.***

Kennels should be located in areas where the noise generated by such use would not be a nuisance or detrimental to adjacent properties. Generally, a fence separating the kennel operation from adjacent property owners shall be required.

#### ***(e) Kennel License.***

All persons owning and operating a kennel shall obtain an annual kennel license.

#### ***(f) Kennel License Fee.***

The annual kennel license shall be set by resolution by the common council. The initial fee shall be \$100 until said fee is changed by resolution.

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### Chapter 8. TRAFFIC CODE

#### SECT. 8.01 GENERAL PROVISIONS

(a) **Definitions.**

When in this Title the following terms are used they shall have the meanings respectively ascribed to them in this Section.

- (i) **“Authorized Emergency Vehicle” - Vehicles of any fire department, police vehicles, and such ambulances and emergency vehicles of municipal department or public service corporations as are designated or authorized by the Chief of Police or the City Council.**
- (ii) **“Crosswalk” - That portion of a roadway ordinarily included within the extension of curb and property lines at intersections, or any other portion of a roadway clearly indicated for pedestrian crossing by lines or other markings on the surface.**
- (iii) **“Intersection” - The area embraced within the extension of the lateral curb lines or, if none, then the lateral boundary lines of two or more streets or highways which join one another at an angle whether or not such street or highway crosses the other.**
- (iv) **“Motor Vehicle” - Every vehicle, as herein defined, which is self-propelled.**
- (v) **“Operator” - Any person who is in actual physical control of a vehicle.**
- (vi) **“Parking” - The standing of a vehicle whether attended or unattended, upon a roadway or street otherwise than temporarily for the purpose of and while actually engaged in loading or unloading, or in obedience to traffic regulations or traffic signs and signals.**
- (vii) **“Vehicle” - Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.**

(b) **Police to Direct Traffic.**

It shall be the duty of the City Police Department to enforce the provision of this Title. Officers are hereby authorized to investigate accidents and to carry out all duties specifically covered by this Title, and to direct all traffic either in person or by means of visible or audible signals in conformance with the provisions of this title, provided that in the event of a fire or other emergency or to expedite traffic or safeguard pedestrians, officers may direct traffic, as conditions may require.  
(SDCL 9-29-19)

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**(c) Obedience to Police.**

It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of a police officer, or refuse to submit to any lawful inspection or fail to comply with the provisions or requirements of any warning ticket issued by the police under this Title.

**(d) Persons Riding Bicycles or Animals Shall Obey Traffic Regulations**

Any person riding a bicycle or an animal upon a roadway and every person driving any animal, shall be subject to the provisions of this Title applicable to the operator of any vehicle, except those provisions of this Title with reference to the equipment of vehicles and except those provisions which by their nature can have no application. (SDCL 32-14-1)

**(e) Operation of Snowmobiles.**

Any person operating a snowmobile in the City of Tea shall observe all applicable regulations of this Title pertaining to motor vehicles. In addition, night driving shall be prohibited unless entering or leaving the City limits. (SDCL 32-20A-9)

### ***SECT. 8.02 OPERATION OF VEHICLES***

**(a) Driver's License Required.**

It shall be unlawful for any person to drive or operate upon any of the streets or highways within the City any motor vehicle without first having secured and having in his possession a valid license to do so. (SDCL 32-12-22)

**(b) Age of Operator.**

No person under the age of sixteen (16) years shall operate a motor vehicle upon the streets of the City unless such person is accompanied by the owner of the motor vehicle being operated, or is the holder of a restricted driving permit issued by the State. (SDCL 32-12-12)

**(c) Drive on Right Side of Street.**

Upon all streets the operator of a vehicle shall drive the same upon the right half of the street and shall drive a slow-moving vehicle as closely as possible to the right-hand edge or curb of a street unless it is impractical to travel on such side of the street, and except when overtaking and passing another vehicle subject to the limitations applicable to overtaking and passing set forth in this Title. (SDCL 36-26-1)

**(d) Vehicles Shall Not Be Driven on Sidewalk.**

The operator of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway. (SDCL 32-26-2-1-.1)

**(e) Operation of Vehicles on Approach of Authorized Emergency Vehicle.**

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Upon the approach of any authorized emergency vehicle or vehicles giving audible signal by bell, siren or exhaust whistle, the operator of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb of the street, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle or vehicles shall have passed, unless otherwise directed by a police officer. (SDCL 32-31-6)

It shall be unlawful for the driver of any vehicle, other than one on official business, to follow (closer than 500 feet) any fire apparatus, or to park any vehicle within the block where such fire apparatus has stopped to answer a fire alarm. It shall be further unlawful for the driver of any vehicle to drive over any unprotected hose of the Fire Department without the consent of authorized personnel.. (SDCL 32-31-7)

**(f) Backing Around Corners or into Intersection Prohibited.**

It shall be unlawful for the operator of any vehicle to back such vehicle around a corner at an intersection or into an intersection of public streets. (SDCL 32-30-20)

**(g) Reckless Driving.**

Any person who drives any vehicle upon a street, avenue, or alley carelessly and heedlessly in disregard of the rights or safety of others, or without due caution, and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

**(h) Careless Driving.**

Any person who drives any vehicle carelessly and without due caution, at a speed or in a manner so as to endanger any person or property, not amounting to reckless driving as defined in the previous section, shall be guilty of careless driving.

**(i) Exhibition Driving.**

Any person who drives any vehicle within the limits of the City in such a manner that creates or causes unnecessary engine noise, tire squeal, skid or slide upon acceleration or stopping; or that simulates a temporary race, or that causes the vehicle to unnecessarily turn abruptly or away, shall be guilty of exhibition driving.

**(j) Careless Driving, Reckless Driving and Exhibition Driving Prohibited.**

No person shall operate a motor vehicle in such a manner as constitutes careless driving, reckless driving, or exhibition driving. (SDCL 32-24-1)

**(k) Right-of-Way at Intersection.**

The right-of-way rule as between vehicles at intersections is hereby declared as:

- (i) The operator of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has fully entered the intersection.**

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**(ii) When two vehicles approach an intersection at approximately the same time, the operator of the vehicle at the left shall yield the right-of-way to the vehicle on the right.**

**(iii) The operator of any vehicle traveling at an unlawful speed shall forfeit any right-of-way which he or she may otherwise have hereunder. (SDCL 32-26-12)**

**(l) U-Turn at Intersection.**

At any intersection where warned by a traffic control sign displaying the words “No U-Turn”, it shall be unlawful for the operator of a vehicle to turn such vehicle at the intersection in a half circle so as to proceed in the opposite direction.

**(m) Right-of-Way, Left Turn.**

The operator of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said operator, having so yielded and having given a signal when and as required, may make such left turn and the operators of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

**(n) Turning Around in Mid-block Prohibited.**

The operator of a vehicle shall not turn such vehicle so as to park in the opposite direction or so as to proceed in the opposite direction except at an intersection.

**(o) Required Condition of Vehicles.**

Any vehicle having a loud or offensive muffler shall be considered illegal. Any vehicle not equipped with adequate brakes shall be prohibited from operating in the City. Any motor vehicle operated within the City shall be equipped with lights and a horn as required by state law. License plates shall be clearly displayed on each end of vehicle, and shall be kept clean and legible. (SDCL 32-14-2)

**(p) Action Required at Stop Sign.**

Except when directed to proceed by a police officer or traffic control signal, every operator of a vehicle approaching a stop intersection indicated by a stop sign shall come to a full stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the operator shall yield the right-of-way to any vehicle which has entered or is approaching the intersection from another highway and shall not proceed into the intersection until certain that such intersecting roadway is free from oncoming traffic which may affect safe passage.

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### (q) Action Required at Yield Sign.

The operator of a vehicle approaching a sign authorized by the City Council bearing the word “Yield” or “Yield Right-of-Way” shall in obedience to such sign slow down to a speed reasonable for the existing conditions, or shall stop if necessary and shall yield the right-of-way to any pedestrian legally crossing the roadway on which such operator is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. Said operator having so yielded may proceed and the operators of all other vehicles approaching the intersection shall yield to the vehicle so proceeding.

### (r) Obedience to Traffic Signs and Signals.

It shall be unlawful for any person to disobey the instructions of any official traffic sign or signal upon the street placed by the City Council, unless otherwise directed by a police officer.

### (s) Stop Required Before Operator Entering From Alley, Building or Private Road.

The operator of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where said operator has a view of approaching traffic thereon.

### (t) Pedestrian’s Right-of-Way.

The operator of any vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at the end of a block, except at intersections where the movement of traffic is being regulated by police officers or traffic control signals. Whenever any vehicle has stopped at a marked crosswalk or at any intersection to permit a pedestrian to cross a roadway, it shall be unlawful for the operator of any other vehicle approaching from the rear to overtake and pass such stopped vehicle. (SDCL 9-31-1)

## **SECT. 8.03      *SPEED RESTRICTIONS***

### (a) General Restrictions. **SEE ORDINANCE 156**

~~It shall be unlawful for any person to drive a vehicle on a street or highway at a speed greater than is reasonable and prudent under the conditions then existing or at a speed in excess of those fixed by this Title.~~

### (b) Speed Zones. **SEE ORDINANCE 156**

~~Establishment. No person shall drive a motor vehicle at a speed in excess of fifteen (15) miles per hour while passing through a school zone, or while traveling upon any street on or across which children are passing going to and from school during school days when such school children are present.~~

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### **SECT. 8.04      *PARKING, STOPPING***

#### **(a) Obstruction of Traffic.**

No vehicle shall be operated or allowed to remain upon any street under the jurisdiction of the City in such a manner as to form an unreasonable obstruction to traffic. Whenever any police officer finds a vehicle which constitutes an obstruction to traffic, such officer shall be authorized to provide for the removal of such vehicle by towing, if necessary, at owner's expense, with no liability to the City.

#### **(b) Parking in Streets.**

In the event of snow, creating the necessity for the blading and/or removal of snow, it shall be unlawful to leave any vehicle parked on a City street for more than six (6) hours following such snowfall or snow alert, as determined by the Police Department, so as to not interfere with the Street Department's snow blading, and/or removal operations. All major streets, church areas, and school zones shall be designated emergency snow routes, and it shall be unlawful to park vehicles on such emergency snow routes during the time that snow blading and/or removal operations are in progress.

#### **(c) Towing Vehicles.**

The Police Department and all members thereof assigned to traffic duty shall be authorized to remove and tow away, or have removed and towed away by commercial towing service, any car or vehicle illegally parked, parked in any place where such parked vehicle creates or constitutes a traffic hazard, blocks the use of a fire hydrant, or obstructs or may obstruct the movement of any emergency vehicle, or in any way in violation with the provisions of this Title. Cars towed away for illegal parking shall be stored in a place designated by the Police Department and shall be restored to the owner or operator of such car upon payment of a fee of Twenty-Five Dollars (\$25) plus towing charges, within twenty-four hours (24) after the time such car was removed, plus Five Dollars (\$5) for each additional twenty-four (24) hours or fraction thereof.

#### **(d) Abandoned Vehicles.**

The abandonment of a motor vehicle or other vehicle or any part thereof on any street in the City shall be subject to action and penalties as provided for in this Title. The abandonment of a motor vehicle or other vehicles or any part thereof on private or public property, other than a street, in view of the general public, anywhere in the City shall be prohibited except on property of the owner of such abandoned vehicle. A motor vehicle or other vehicle or any part thereof so abandoned on private property may be authorized for removal by or upon the order of the Chief of Police after a waiting period of five (5) days or more has expired. The provisions of this Section may be waived for commercial or business enterprises insofar as off-street parking is concerned. (SDCL 32-30-12.1)



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**(e) Towing Costs.**

When a vehicle is removed from either public or private property as authorized by order of the Chief of Police, the owner of the vehicle shall be responsible for all towing costs in addition to the fees provided in Section 7.4(c) hereof. In addition, the City shall not be liable for any damages to property or persons incurred as a result of such towing or storage.

**(f) Record of Towed Vehicles.**

When a motor vehicle or other vehicle is authorized to be towed away, the Police Department of the City shall keep and maintain a record of the vehicle towed, listing the color, year of manufacture, manufacturer's trade name, manufacturer's series name, body style, vehicle identification number, and license plate year and number displayed on the vehicle. The record shall also include the date and hour of tow, location towed from, location towed to, reason for towing and the name of the officer authorizing the tow.

**(g) Parking Prohibited in Certain Places.**

At any time it shall be unlawful to permit any vehicle to stop, stand, or park in any of the following places, except when necessary to avoid conflict with other traffic or in compliance with the directions of a policeman or traffic control device:

- (i) In any intersection.**
- (ii) In a crosswalk.**
- (iii) Within fifteen (15) feet of a fire hydrant.**
- (iv) At any place where the vehicle would block the use of a driveway.**
- (v) Within twenty (20) feet of the driveway entrance of a fire department station and on the side of the street opposite the entrance to any such station within one hundred (100) feet of such entrance.**
- (vi) On any sidewalk.**
- (vii) At any place where official signs prohibit parking.**

**(h) General Parking Restrictions.**

No vehicle shall be parked with the left side of such vehicle next to the curb, except on one-way streets. It shall be unlawful to park any vehicle upon any street for the purpose of displaying it for sale, or to park any vehicle upon any business street from which vehicle merchandise is peddled, unless authorized by the Chief of Police. It shall be unlawful to park any motor vehicle on any private property without the consent of the owner of the property.

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### (i) No Parking Areas.

The Chief of Police or any other person authorized by the City Council shall cause signs to be posted in all areas where parking is limited or prohibited, indicating such limitations or prohibitions, except that yellow curb painting may be used to indicate “No Parking” in certain street areas. (SDCL 9-31-1)

## **SECT. 8.05 TRUCKS**

### (a) Truck Routes.

No person shall drive or operate any truck upon any street in the City of Tea with or without load, other than those designated as truck routes. A truck shall be any vehicle with a gross weight of 26,000 pounds or greater or any vehicle defined in Section 3.2(c)(1). This definition shall include but not be limited to, truck tractors, commercial buses, motorized homes, house trailers when being moved, semitrailers and trailers. The following streets shall be designated as truck routes by the placing of appropriate signs along such routes:

First Street (County Highway 106)  
All of Poplar north of First Street  
All of Main north of Third Street  
300 feet of James north of First Street  
All of Mary south of First Street  
Third Street from Mary Avenue to Main Avenue  
Main Avenue from First Street to Third Street

#### Operation of Trucks.

It shall be unlawful for truck traffic to travel upon streets other than those designated as truck routes, and to park trucks on street areas where such action would be harmful to such areas, including hard surface streets in residential areas, or where otherwise determined on those streets with asphalt mat surfacing. Temporary parking to allow loading and unloading of trucks shall be permitted.

### (b) Exceptions to Use of Truck Routes.

The provisions of this Title shall not apply to emergency vehicles of the police department, fire department or health department, nor to any public utility vehicles where actually engaged in the performance of emergency duties necessary to be performed by said public departments or public utilities, nor to any vehicle owned by or performing work for the United States of America, the State or the City. (SDCL 9-31-2)

## **SECT. 8.06 MISCELLANEOUS PROVISIONS**

### (a) Clinging to Moving Vehicles.

No person traveling upon any bicycle, motorcycle, coaster, sled, roller skates, or any toy vehicles shall cling to or attach himself or such vehicle to any other moving vehicle upon any street.

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**(b) Riding on Outside of Vehicle.**

No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers. This provision shall not apply to persons riding within truck bodies in space intended for merchandise.

**(c) Exemptions to Authorized Emergency Vehicles.**

The provisions of this Title regulating the movement, parking, and standing of vehicles shall not apply to authorized emergency vehicles while the operator of such vehicle is operating the same in an emergency in the necessary performance of public duties. This exemption shall not, however, exempt the operator of any such vehicle from the consequence of a reckless disregard of the safety of others.

**(d) Application to Workers, Equipment.**

The provisions of this Title shall not apply to persons, motor vehicles and other equipment while actually engaged in work upon the surface of a street, but shall apply to such persons and vehicles when traveling to or from such work; provided, however, such persons and vehicles shall not indiscriminately block traffic, but shall allow reasonable room on the traveled portion of the street for other vehicles to pass.

**(e) Immediate Notice of Accident.**

The operator of a vehicle involved in an accident resulting in injury to or death of any person, or resulting in any property damage, shall immediately by the quickest means of communication give notice of such accident to the Police Department. (SDCL 32-34-3)

**(f) When Driver Unable to Report.**

An accident report shall not be required from any person, who is physically incapable of making such report during this period of such incapacity. Whenever the operator of a vehicle is physically incapable of making such report or is physically incapable of giving an immediate notice of an accident and there is another occupant in the vehicle at the time of the accident capable of doing so, such occupant in the vehicle at the time of accident shall cause to be given the notice not given by the operator.

**(g) Duty to Give Information, Render Aid.**

The operator of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the license number of the vehicle he is driving, and shall upon request and if available, exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or

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surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

**(h) Personal Injury.**

The operator of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 7.6(g). (SDCL 32-34-7)

**(i) Property Damage.**

The operator of any vehicle involved in an accident, resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 7.6(g). Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

**(j) Unattended Vehicle, Property.**

The operator of any vehicle which collides with any vehicle or other property which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall attach securely in a conspicuous place in or on the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. Such driver shall without unnecessary delay notify the Police Department of such accident. (SDCL 32-34-4)

**(k) Duty Upon Striking-Fixtures.**

The operator of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a street shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's license and shall make report of such accident when and as required in Section 7.6(j).

**(l) Duty Upon Striking Animal.**

The operator of any vehicle which collides with any dog or domestic animal causing injury thereto shall stop and attempt to ascertain the owner of such animal and shall notify the Police Department of such accident.

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### **(m) Authority to Install Traffic Control Devices.**

The City Council shall place and maintain traffic control signs, signals, and devices when and as required under the traffic code of this City to make effective the provisions of said code, and may place and maintain such additional traffic control devices as may be necessary to regulate traffic under the traffic code of this City or under state law or to guide or warn traffic. (SDCL 32-14-5)

### **(n) Obedience to Traffic-Control Devices.**

The operator of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed or held in accordance with the provisions of this Title unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this Title.

### **(o) Interference With Official Traffic Control Devices; Unauthorized Signs, Signals, or Markings.**

No person shall, without lawful authority, attempt to or in fact alter, twist, deface, injure, knock down, remove, or interfere with the effective operation of any official traffic control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic control device or any railroad sign or signal.

This Section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

Every such prohibited sign, signal, or device shall be declared a public nuisance and the Chief of Police shall be empowered to cause it to be removed without notice.

### **(p) Filing Accident Reports.**

The Chief of Police shall maintain a suitable system of filing traffic accident reports. Accident reports referred to the Police Chief shall be filed alphabetically by location. Copies of such reports may be provided to any person, and the City may charge a reasonable fee for each copy so furnished, set from time to time, by the Chief of Police but not exceeding the amount under SDCL 32-34-13 for copies furnished by the Secretary of Public Safety.

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**(q) Load Limit Restrictions.**

No person shall drive or operate any vehicle upon any designated street in the City of Tea, the gross weight of which including any load exceeds four (4) tons per axle. These load limits shall not apply to authorized emergency vehicles when such vehicles are responding to emergency calls in the city limits.

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### Chapter 9. STREETS, SIDEWALKS AND PUBLIC PLACES

#### SECT. 9.01 STREET NAMES AND ADDRESSES

**(a) Names of Streets and Avenues.**

The names of all streets and avenues in the City shall be fixed and adopted in accordance with the official map of the City on file in the Finance Office. All east-west thoroughfares shall be designated as streets and all north-south thoroughfares shall be designated as avenues. Any such act of naming, establishing, or vacating any street, alley or other public way in the City shall be so designated on such map.

**(b) Numbering Plan.**

A numbering plan for residences and businesses shall be maintained by the City Council. A listing of the assigned numbers and a map showing the location of addresses shall be maintained and filed with the Finance Officer. The Finance Officer shall be responsible for assigning new numbers, updating the list of such numbers, and updating of the location map. All residences and businesses shall be required to display their address number through the placement of numerals at least four inches (4") in height on the front of the said residence or business, in such a manner that the address number is clearly visible from the street fronting said residence of business.

**(c) Numbering Streets.**

The dividing line for numbering on all avenues running north and south shall be First Street. The dividing line for numbering all streets running east and west shall be Main Avenue. All streets and parts of streets running south from First Avenue shall be designated by prefixing to the names thereof the word south, and all streets and parts of streets running north from First Avenue shall be designated by prefixing to the names thereof the word north. All avenues and parts of avenues running west from Main Street shall be designated by prefixing to the names thereof the word west, and all avenues and parts of avenues running east from Main Street shall be designated by prefixing to the names thereof the word east.

**(d) Numbering of Lots.**

One number shall be apportioned to every subdivision of twenty-five (25) feet along all the thoroughfares of the City whether the same be occupied by buildings or not. In case any block or blocks or any lot or lots will not divide perfectly into subdivisions of twenty-five (25) feet, one whole number shall be assigned to the fractional part thereof.

In case more than one building is erected in a single space of twenty-five (25) feet the same may be numbered by placing thereon the regular number which appeared on the building formerly situated in said space or the number which

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would otherwise be allotted to the space and on the second building to be erected thereon the regular number plus the fraction, one-half (1/2).

### (e) **Numbering Intervals.**

All buildings shall be numbered consecutively in units as provided by the City Council, and all blocks consecutively in even hundreds. All numbering on east and west thoroughfares shall begin at the dividing line at Main Avenue and proceed outward to the limits of the City, placing odd numbers on the south side and even numbers on the north side of each thoroughfare. All numbering on north and south thoroughfares shall begin at the dividing line at First Street and proceed outward to the limits of each thoroughfare placing odd numbers on the west side and even numbers on the east side. The number of the first block on each side of the avenue proceeding from a dividing line shall be 100, the second shall be 200, and so on, and each block shall be numbered consecutively to the other limits of the City. The number on the first block on the south side of an east and west street, and on the west side of a north and south avenue, shall be 101 and the first number on the opposite sides thereof shall be 100. The first number on the second block shall be 201, and the first number on the opposite side thereof shall be 200, and so on, consecutively along all the streets and avenues throughout the City.

### (i) **SOURCE: SDCL 9-45-2 and Ord. 207 3-31-64**

## **SECT. 9.02 STREETS, SIDEWALKS, CURB AND GUTTER**

### (a) **Streets.**

Only street department personnel or other authorized persons shall be permitted to work on any of the streets, avenues, or alleys in the City. (SDCL 9-45-1) All streets shall be designed and constructed in compliance with the currently approved Engineering Design Standards for the City of Tea.

### (b) **Street Surfacing.**

The original hard surfacing of streets shall be at the expense of the owners of the property abutting the street(s) to be hard surfaced with materials meeting the currently approved Engineering Design Standards for the City of Tea. Total cost of the street improvement; including legal, engineering, grading and any other costs related to the improvement shall be assessed against the property on a frontage foot basis.

The cost of each street or alley intersection shall be assessed to all lots according to area so as to include one-half of the property between the street improved and the next street, whether such property abuts upon such street or not, but in no case shall such property situated more than three hundred (300) feet from such intersection be assessed. When the improvement is in or upon any alley, the assessment area shall be confined to the property within the block or blocks improved, and if not platted into blocks, to the property within one hundred fifty (150) feet of such alley. (SDCL 9-45-31)



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### **(c) Sidewalks.**

All sidewalks, except those designated hereafter, shall be designed and constructed in accordance with the currently approved Engineering Design Standards for the City of Tea (hereafter “EDS”). When considered necessary and advisable for the peace, welfare, and safety of the people, the City Council may direct that new sidewalk be constructed and assessed to any abutting property owner in accordance with SDCL 9-46. The Zoning Board has the authority to waive the EDS standards where EDS designed sidewalks would (1) not connect or would create sharp angles, (2) would interfere with public utilities, (3) would require removal of mature trees or (4) would require substantial earth and retaining wall work.

### **(d) Driveway Approaches.**

All driveways shall be designed and constructed in accordance with the currently approved Engineering Design Standards for the City of Tea.

### **(e) Curb and Gutter.**

All curb and gutter shall be designed and constructed in accordance with the currently approved Engineering Design standards for the City of Tea. The City Council may direct that curb and gutter be constructed and the cost assessed against any abutting property owner. (SDCL 9-45-5)

### **(f) Permits.**

When constructed separately from an over-all construction project, property owners or their agents shall submit applications for permits for approval by the City Council for sidewalks, driveway approaches, curbs, or curb and gutter. When these improvements are constructed simultaneously or as one project, only one application is necessary to include all improvements, and where any or all are part of new construction projects, only one permit for the over-all construction shall be issued. All installations and engineering recommendations shall be in conformance with the currently approved Engineering Design Standards for the City of Tea.

### **(g) Barrier-Free Construction.**

Whenever any person, firm or corporation makes new installations of sidewalks, curbs or gutters, in both business and residential areas, it shall be required that they utilize barrier free construction ramps. All such ramps shall be designed and constructed or installed in accordance with design specifications according to currently approved Engineering Design Standards for the City of Tea and the most current American National Standards Specifications published by the American National Standards Institute. (SDCL 9-46-1.1)

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### **SECT. 9.03 SNOW AND ICE REMOVAL**

#### **(a) Duty to Remove.**

It shall be the duty of the owner, tenant, or person in possession of any property abutting on any sidewalk to keep such sidewalk free from snow and to cause any accumulated snow to be removed from any such abutting sidewalk within twenty-four (24) hours after the termination of any snowfall, or snow accumulation.

#### **(b) Disposal of Snow.**

It shall be the duty of the property owner, tenant, or person in possession of any public or private driveway, parking lot or parking area to dispose of accumulated snow upon such property in such manner that any snow when removed shall not be deposited upon any sidewalk, within or upon any public street or alley, or in a manner that will obstruct or interfere with the passage or vision of vehicle or pedestrian traffic.

It shall be the duty of the property owner, tenant, or person in possession of any property abutting on any sidewalk to dispose of accumulated snow upon such sidewalk in such a manner that any snow when removed shall not be deposited within or upon any public street or alley, after such public street or alley has been cleared of snow by the grading of such snow away from the curb or the picking up and carrying away of such snow by the City. It shall be unlawful to deposit snow upon any other persons private property without their written approval.

#### **(c) Removal Costs Assessed.**

In the event any owner, tenant, or person in possession of any property shall neglect or fail to or refuse to remove such snow or ice within the time provided, any police officer of the City may issue a citation for such violation and the City Council may authorize such removal with the costs to be assessed against the abutting property owner. (SDCL 9-30-5)

#### **(d) Temporary Snow Fences.**

No person shall erect, construct or maintain any temporary fence in the City of Tea which may cause or create accumulations of snow, ice or water on public streets and sidewalks or other private properties, which are greater than those accumulations that would occur without such fence.

- (i) Any temporary snow fence hereafter erected, constructed and maintained in the City of Tea shall comply with all other ordinances of the City.**
- (ii) That a temporary fence shall be defined as any fence attached to the ground with a fixed location on the ground, and intended to be used for a limited period of time for the specific purpose of controlling snow accumulation.**
- (iii) That the penalty for failure to comply with the provisions of this Title shall be**

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**in accordance with Chapter 17 of the Revised Ordinances of the City of Tea, South Dakota.**

**(e) Definitions.**

For the purposes of this article, the following definitions shall apply:

**(i) “Snow removal alert” shall mean such times as there is a snow accumulation on the public streets of two (2) inches or more, or such times as the Mayor declares that snow removal operations on the public streets will commence and that the provisions of this article in regard to parking on public streets during snow removal operations are effective and will be enforced.**

**(ii) “Street” shall mean the entire width of any public roadway within the City and it shall not be limited to those roadways designated as a “Street”, but include “Avenues” and all other names by which public roadways are designated.**

**(f) Issuance of a Snow Removal Alert.**

When the Mayor determines that snow removal from the public streets will commence, the Mayor will announce through the local news media that there has been declared a snow removal alert and that the provisions of this article will be effective and enforced, designating a particular date and time when such alert shall commence. The determination to declare a snow removal alert will be based on the then existing weather conditions and the amount of snow then on the ground or expected according to forecasts from the National Weather Service.

**(g) Parking Restrictions During a Snow Removal Alert.**

In the event of a snow removal alert, all public streets in the City are designated as emergency snow routes.

In the event of a snow removal alert, it shall be unlawful to leave any vehicle parked following the start of the alert, as determined by the Police Department, so as not to interfere with the City’s snow blading and/or removal operations. North/South streets shall be cleared first; and upon their completion, East/West streets will be cleared.

Any vehicle remaining on a City street following the start of the alert shall be ticketed and towed as determined by the Police Department.

### **SECT. 9.04 MOVING BUILDINGS**

**(a) License Required.**

No person shall move any building or part of building into, along or across any public street, alley, or grounds in the City without having obtained a moving license. (SDCL 9-30-2)

**(b) Applications.**

Written application for a moving license shall be filed with the Finance Officer, and shall include the name of the applicant, the name of the owner of the building,

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a description of the lot on which such building is standing and the lot to which it is to be moved, if located in the City, the route along which it is proposed to move such building and the length of time which may be consumed in such moving.

Any application so filed shall be considered by the City Council for approval, and any other conditions to be complied with by the applicant, shall be stated.

### **(c) Surety Bond.**

No license shall be granted until the applicant shall file with the Finance Officer a bond running to the City in the penal sum to be established by the City Council by resolution, with sufficient surety, and conditioned that the applicant will promptly repair and make good, to the satisfaction of the Council, any and all damage to any pavement, sidewalk, cross walk, hydrant, street, alley, or other property, done or caused by himself or his employees, in moving such building or part thereof, or in connection with the moving thereof. The applicant shall indemnify and save harmless the City against any and all liability for damages, costs and expenses, arising or which may arise or be incurred in favor of any person by reason of any negligence or misconduct or act on his part or the part of his agents or employees, in connection with the moving of said building or part thereof, or the use of any public ground for the such purpose.

### **(d) Standing Buildings.**

No building or part of a building being moved, shall be allowed to stand still in any public street or any public ground for more than twenty-four (24) consecutive hours.

### **(e) Permission of Property Owners.**

No moving license granted by the City shall authorize the holder thereof to break, injure, or move any telephone or electric light or power wire or pole, or to cut, trim or otherwise interfere with any trees or to damage or in any manner interfere with any property without the written permission of the owner or owners thereof. (SDCL 9-34-1)

## ***SECT. 9.05 MUNICIPAL TREES***

### **(a) Authority and Jurisdiction.**

The City Council shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of trees on streets and other publicly owned property to insure the public safety and to preserve the aesthetics of such public sites. The City Council shall have the authority to determine the type and kind of trees to be planted upon municipal streets or in parks; and the Council may assist in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the corporate limits or within the area over which the City has jurisdiction, whether the same be on private or public property, and to make recommendations from time to time as to desirable statutes concerning the tree program and activities for the City.

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**(b) Permission to Plant and Maintain.**

No person shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree on any street or municipal-owned property without first receiving permission from the City Council.

**(c) Duties of Property Owners.**

It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection, except where such services are provided for by utility firms. The minimum clearance of any overhanging portion thereof shall be ten (10) feet whenever practicable, and twelve (12) feet over all streets except truck thoroughfares where the clearances shall be from fourteen (14) to sixteen (16) feet, unless otherwise determined by the City Council.

**(d) Abuse of Trees.**

Unless otherwise specifically authorized by the City Council, no person shall intentionally damage, put, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous liquid or solid substance which is harmful to such tree to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.

**(e) Permission to Deposit Materials.**

No person shall deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, and fertilizer to the roots of any tree growing therein, except by permission of the City Council.

**(f) Permission to Excavate.**

All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box, and all building material, dirt, or other debris shall be kept outside such barrier. No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any public tree without first obtaining permission from the City Council.

**(g) Removal of Hazards.**

Where any tree branches or hedges protrude or overhang on any thoroughfare within the City so as to be determined as in violation with this Title or affecting motor vehicle traffic and good maintenance practices, notification shall be given by the City Council to the property owner to remove such obstructions or undesirable branches or hedges within seventy-two (72) hours after receipt of notice. If not completed within that time, the City Council shall take immediate

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action to have such items removed with all costs assessed to the property owner.  
(SDCL 9-38-2)

### **SECT. 9.06 ABANDONED PROPERTY**

#### **(a) Definition of Abandoned Property.**

Any personal property, except for motor vehicles as described in Title 7 shall be deemed abandoned if it has been located for a period of at least forty-eight (48) hours on a street, sidewalk or other public place as the term “public place” is defined in Section 5.2.(a)(13)(A).

#### **(b) Notice of Intent to Claim Property.**

At such time as the City Council shall deem advisable, it shall cause to be published one time in the official newspaper of the City of Tea a notice describing all such abandoned property which has been taken into the possession of the City and further stating that, if such property is not

claimed and proof of ownership established by the owner thereof no later than thirty (30) days

following the date of such publication, such abandoned property shall be deemed to be the property of the City of Tea.

#### **(c) Reimbursement of Expenses Incurred by City.**

Any owner so claiming said abandoned property may have possession thereof upon payment to the City of all charges incurred by the City in connection with the storage of such property and the publication of such advertisement in the official newspaper, all such charges to be a lien against such property until paid in full.

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**Chapter 10. PROHIBITORY USES FOR PARKS, PARKWAYS AND  
PARK WATER AREAS**

**(a) *Entering Park Lake Prohibited.***

No person shall go on foot, swim in, or otherwise enter in or upon the park lake or water area.

**(b) *No Use of Park or Parkway Where Prohibited.***

No person shall use a park or parkway in a manner and location where any prohibitory sign is posted.

**(c) *Picking, Cutting or Defacing Prohibited.***

No person shall pick or cut any wild or cultivated flowers, or cut, break, dig or in any way deface any tree, shrub or plant within the limits of any park, parkway or park water area.

**(d) *Hunting, Trapping, Fishing Prohibited.***

No person may hunt, trap or fish in any park except if allowed by the City and where a sign allowing the activity is posted and such activity is in accordance with the State Game, Fish and Parks regulations.

**(e) *Fine.***

The fine for violation of this ordinance shall be Fifty Dollars (\$50.00).

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## Chapter 11. WATER AND SEWER

### SECT. 11.01 GENERAL PROVISIONS

#### (a) Utility Service-Application Required.

Any person desiring any utility service furnished by the City, including water or sewer service, shall make application for the same to the City Council. Such application shall contain the applicant's name, address and the uses for which such service is desired. A separate application shall be made for each premise to be served. The applicant shall abide by the rules and regulations established by the City relative to utility service in effect at the time of such application and as they may be revised from time to time in addition to conditions and agreements as the Council or the Water and Sewer Committee shall deem advisable.

#### (b) Same-Not Available to Debtors.

The City may decline, fail, or cease to furnish utility service to any person who may be in debt to the City for any reason, except ad valorem taxes and special assessments.

#### (c) Termination of Service.

The City shall have the right to disconnect or refuse to connect any municipal utility service for the following reasons:

- (i) **Failure to meet the applicable provisions of law.**
- (ii) **Violation of the rules and regulations pertaining to utility services.**
- (iii) **Nonpayment of bills.**
- (iv) **Willful or negligent waste of service due to improper or imperfect pipes, fixtures, appliances or otherwise.**
- (v) **Tampering with any meter, seal, or other equipment controlling or regulating the supply of utility service.**
- (vi) **Theft or diversion and/or use of service without payment therefore.**
- (vii) **Vacancy of premises.**

The City shall give the municipal utility service customer at least ten (10) days notice before termination of municipal utility service. At any time before the date of termination, a customer may dispute the correctness of all or a part of the amount shown on the utility bill or the determination that a violation of this Section has occurred giving rise to termination hereunder. A customer shall not be entitled to dispute the correctness of all or a part of the amount shown on the municipal utility bill if all or a part of the amount shown were the subject of a previous dispute under this Section.



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### **(d) Customer Disputes.**

The procedure for customer disputes shall be as follows:

- (i) Before the date of termination, the customer shall notify the City Finance Officer orally or in writing that the customer disputes all or a part of the amount shown on the municipal utility bill or the determination that a violation of this Section has occurred giving rights to a termination stating as completely as possible the basis for the dispute.**
- (ii) If the Finance Officer determines that the present dispute is untimely or invalid pursuant to 11.1(c) the Finance Officer shall notify the customer and proceed as if the customer had notified the municipal utility of the dispute.**
- (iii) If the Finance Officer determines that the present dispute is not untimely or invalid pursuant to 11.1(c) within three (3) days after the receipt of the customer's notice, the Finance officer shall arrange an informal meeting between the customer and the Finance Officer.**
- (iv) Based upon the municipal utility's records, the customers allegations and all other relevant materials available to the official, the Finance Officer shall resolve the dispute, attempting to do so in a manner satisfactory to both the municipal utility and the customer.**
- (v) Within five (5) days after the meeting, the Finance Officer shall mail to the customer a copy of the Finance Officer's decision resolving the dispute.**
- (vi) Within five (5) days of receipt of the notice, the customer may request, in writing, a formal hearing before the City Council.**
- (vii) The formal hearing shall be held within ten (10) days of the receipt of the request.**
- (viii) At the hearing, the City Council and the customer shall be entitled to present all evidence that is, in the Council's view, relevant and material to the dispute, be represented by counsel, and examine and cross-examine witnesses. A tape-recorded record of the hearing shall be maintained.**
- (ix) Based upon the record established at the hearing, the Council shall, within five (5) days of the completion of the hearing, issue its written decision formally resolving the dispute, which decision shall be final and binding upon the municipal utility and the customer.**

Utilization of this dispute procedure shall not relieve a customer of his or her obligation to timely and completely pay all other undisputed municipal utility charges and the undisputed portions of any amounts subject to the present dispute. Failure to so pay shall subject the customer to termination.

### **(e) Termination After Customer Disputes.**

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Until the date of the Finance Officer's or the City Council's decision, whichever is later, the municipal utility shall not terminate the utility service of the customer and shall not issue a notice of termination solely for nonpayment of the disputed amounts. If it is determined that the customer must pay some or all of the disputed amounts, the utility shall promptly mail to or personally serve upon the customer a notice of termination containing the following:

- (i) **Amount to be paid or violation under this Section;**
  - (ii) **Date of notice of termination;**
  - (iii) **Date of termination which shall be at least five (5) days after notice;**
  - (iv) **Notice that unless the municipal utility receives complete payment of the amount shown, if any, prior to the date of termination, municipal utility service shall be terminated.**
- (f) **Termination Procedures.**

Except as provided in 11.1(e) with respect to disputes, all terminations of municipal utility services for violations of 11.1(c) shall follow these procedures:

If by the payment date shown on the municipal utility bill, complete payment has not been received by the municipal utility, or another violation of 11.1(c) has occurred, the municipal utility shall mail to, or personally serve upon, the customer a notice of termination at least three (3) days after the payment date containing (i) the amount to be paid or a statement of violation of Section 3; (ii) the date of the notice of termination; (iii) the date of termination which shall be at least fifteen (15) days from the notice of termination; (iv) notice that unless the municipal utility receives complete payment of the amount shown, if any, service shall be terminated, or notice that service shall be terminated for another violation of 11.1(c).

If prior to the date of termination when the termination is for nonpayment; (i) the municipal utility has not received complete payment of the amount shown on the notice of termination; or (ii) the customer has not notified the municipal utility that he or she disputes the correctness of all or part of the amount shown on the notice of termination, or (iii) if, prior to the date of termination for other violation of 11.1(c), the customer has not notified the municipal utility that he or she disputes the violation, then the municipal utility shall terminate municipal utility service provided to the customer on the date of termination.

- (g) **Provisions for Termination of Service.**

The municipal utility shall terminate service hereunder only during the hours of 9:00 a.m. to 3:00 p.m. Monday through Thursday, except no termination shall be permitted on a legal holiday.

Municipal utility service shall be continued for a single thirty (30) day period upon receipt of a physician's certificate or notice from a public health or social service official that disconnection of municipal utility service will aggravate an

## CITY OF TEA ORDINANCES

existing medical emergency of the customer or another permanent resident of the customer's premises.

At his or her discretion, the City Finance Officer may agree to the partial payment of at least one-third (1/3) of the balance of the municipal utility bill and the customer's entering into a written agreement to pay the balance within sixty (60) days. Failure to make payments as agreed shall also be grounds for termination under the provisions of this Title.

### **(h) Service Taps - Extensions.**

Tapping of any water or sewer main for the purpose of making connection shall be done only by personnel authorized by the city and approved authorized city . Distribution mains shall be provided at the discretion of the City Council, in streets, avenues, or alleys abutting the property to be served. Extension of distribution or collection mains shall be only as specified by the Council in its discretion.

Any property owner may petition for a new hookup or connection to any city water and sewer line. The City Council, in its discretion, may allow such connection or hookup provided that the petitioning property owner pays the cost for said hookup or connection from the point it joins the City distribution or collection main for the total frontage to the petitioning property owner's lot line.

### **(i) Hookup Fees.**

An initial hookup fee shall be paid by all applicants for each water or sewer service connection. Such fee shall be set by the City Council by resolution and paid before the building permit is issued. The applicant shall also pay all costs, including piping, fixtures, digging, and appurtenances necessary to produce the connections, as well as the costs of a qualified plumber making the installation. Payments to the City for water and sewer hookups shall be paid prior to the turning of such service. Persons shall give notice of desire to tap any main at least twenty-four (24) hours before the tap is to be made except in an emergency. All new connections for water and sewer service shall be inspected and approved by an authorized representative of the City.

### **(j) Extension of Lines.**

The City may serve water or sewer customers outside the municipal corporate limits solely at the discretion of the City Council. Said water and sewer lines shall be constructed and maintained

by the customer, with all parties connecting onto such lines being regulated and charged connection fees and other fees as set forth and regulated by the City.

### **(k) Private Lines.**

Private water or sewer mains shall not be installed in the City unless authorized by the City Council. For the purpose of this Section, the phrase "private water and sewer mains" shall be construed to include any rural water pipelines, pipes or waterlines.

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### (l) Responsibility of Property Owners. **SEE ORDINANCE 142**

~~Persons served by City water and sewer shall keep all piping, fixtures, stop valves, heaters, and other apparatus for the use of water or sewer (including meters) in good repair and protected from freezing. The property owner shall be responsible for and pay the charges for replacement of any corroded or damaged piping, fixtures, stop valves, heaters, or other apparatus for the use of water or sewer, and for any charges for the repair or replacement of water meters, occasioned by the negligence of the property owner or user, or the freezing, overheating, or other external damage to any water meters. The property owner and/or water user shall place and maintain a brass stop inside the basement of any building where water is to be used at the lowest point practicable on the service pipe entering the building and as close as practicable to the wall through which the pipe enters, and easily accessible so that the water may be turned on or off by the user or occupant. Service connection repairs to the curb stop shall be the responsibility of the property owner.~~

### (m) *Excavation Permits.*

For the purposes of water and sewer connections and/or extensions, no person shall make or cause to be made any excavation in or under any street, parking area, sidewalk, alley, or public ground, or remove any earth, soil, paving, gravel, or material therefrom without having first obtained a permit therefor as hereinafter provided. Applications for such permit shall be made to the City Council, and accompanied by a deposit in such sum as deemed necessary to insure the replacement and refilling of any such excavation or to cover any damages which may be caused to any street or for replacement of bituminous surfacing. Any unused portion of said permit shall be refunded to the applicant upon recommendation and approval of the City Council. The City Council may waive this provision as it deems appropriate.

### (n) **Excavation Requirements.**

All excavations required for the installation of utilities shall be performed in accordance with the currently approved Engineering Design Standards for Public Improvements for the City of Tea.

### (o) **Guarding Excavations.**

Any person receiving a permit to make excavations in or upon any street, alley, sidewalk or public ground shall, during the progress and continuance of the work, erect and maintain around the same both day and night suitable guards, fences, flares, and signals so as to prevent injury to persons, animals, or vehicles on account of such excavations. No open trench shall be left open for any more time than considered absolutely necessary or reasonable.

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**(p) Liability of City.**

The City shall not be liable for any damage to the property of any customer of any water and sewer service furnished by the City due to back flow of the sewage system, failure of water supply, information of service or any cause outside the direct control of the City.

**(q) Right of Entry.**

Any person authorized by the City shall have free access at any time to all premises supplied with any water and sewer service by the City for the purpose of examination in order to protect the utility services from abusive use.

**(r) Damage, Trespass of Equipment.**

It shall be unlawful for any person, not having authority to do so, to open any water hydrant or tamper with any water and sewer service furnished by the City to consumers, or to in any other way molest, damage or trespass upon any equipment or premises belonging to the City connected with any such service.

**(s) Razing Permit.**

No person shall raze or remove any building or structure which is connected to a water or sewer main or disconnect any building or structure from such main without first having obtained a permit therefor from the Water and Sewer Committee.

**(t) Unlawful Use.**

No person, other than employees of the City, shall be authorized to connect, turn on, turn off or disconnect any water and sewer service offered by the City, or remove, replace or repair any equipment connected to any such service.

**(u) Violations.**

The City may, in its discretion, notify any person violating any provision of this Title with written notice stating the nature of the violation and providing a reasonable time for the correction thereof, but such notice shall not be necessary for the prosecution of any violators hereof. Any person, whether receiving such notice or not, violation any provision of this Title shall be liable to the City for any expense, loss, or damage, occasioned the City by reason of such violation. All provisions of this Title shall be subject to applicable state and federal law. (SDCL 9-47, SDCL 9-48)

### ***SECT. 11.02 WATER PROVISIONS***

**(a) Water Meters.**

Water meters shall be installed in all new homes and existing homes and businesses or as otherwise authorized by the City Council. Installation shall be

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done in accordance with the currently approved Engineering Design Standards for Public Improvements for the City of Tea.

**(b) Inspection of Meters.**

Any person authorized by the City Council to read water meters or make inspections shall be allowed free access at all reasonable hours to any building or premises where water is used. If such persons are not allowed such access, the City in its discretion, may estimate the water use, shut off the water, make additional charges, or take other action not inconsistent with the law.

**(c) Testing Meters.**

The owner of property may have his or her meter tested by depositing with the Finance Officer the sum set by the City Council by Resolution.

It is provided that should the meter register 105% or over, this sum will be returned to the property owner, and settlement made on the basis of over registration of meter; but should the meter be found to register 104.99% or less, the sum deposited will not be returned.

In case any meter fails to register for any cause the amount charged for water during such period shall be estimated by the City Council, such estimate to be based on the average amount register during a like period.

**(d) Water Lines How Laid.**

Waterlines shall be installed in conformance with the currently approved Engineering Design Standards for Public Improvements for the City of Tea.

**(e) Water Line Requirements.**

Waterlines shall be of the material called for in the currently approved Engineering Design Standards for Public Improvements and referenced manuals therein.

**(f) Payment of Water Rates.**

All meters shall be read and following said reading the City shall bill the property owner for water service, and amounts due from property owners for water used shall be due and payable on or before the 10<sup>th</sup> day of the month following the month of the billing.

Failure of property owners to comply with the time of payment of water bills shall subject them to be shut off from water service in accordance with Section 11.1(g). Rates for water service shall be set as the City Council in its discretion shall from time to time declare by resolution.

The property owner shall be primarily responsible for the payment of all charges arising out of the use of water at his or her premises, or any other charges provided for in this ordinance and assessed by the City Council. Such charges shall constitute a perpetual lien and continuing lien upon such property until paid

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in full, and no water shall be furnished to any property against which any charge hereunder remains unpaid.

**(g) Reconnection After Disconnection.**

In the event that any water service is disconnected for nonpayment of a bill, every property owner shall have the right to have the same reconnected only upon the payment of the amount due, and in addition to a reconnection fee. Such fee shall be determined by the City Council.

**(h) Voluntary Discontinuance of Service.**

Persons wishing to shall give a five (5) day notice thereof to the Finance Officer. Failure to do so shall render them liable for the payment of all bills until such notice has been given.

**(i) Interruption of Service.**

The users of any water service furnished by the City are hereby notified that the supply of such utility may be temporarily shut off at any time. Notice shall be given, if feasible, of the contemplated shutoff, but accidents may render this impossible; hence the City hereby warns those dependent upon the utility service for any purpose of this hazard. Immediately upon finding the supply shut off it becomes the duty of the occupant of the premises to take prompt precautions to prevent damages.

**(j) Restricting Use.**

The City hereby reserves the right to at any time restrict or prevent the use of any water service furnished by the City during periods of emergency or circumstances demanding such restriction or prevention of use.

Water shall be used only for beneficial purposes and shall never be wasted. The right is reserved to suspend the use of sprinklers and hoses for watering lawns, yards, and gardens whenever, in the opinion of the City Council, a public emergency exists.

**(k) Joint Water Users Liable.**

In case two or more users are supplied with water from the same service pipe, if any of the parties fail to pay the water charge when due, or to comply with any rule of the City, the City reserves the right to cut off the water from the whole service until such charge is paid, or the rules strictly complied with, and it is expressly stipulated that no claim for damage or otherwise may be made against said City by any user whose water charge has been paid, or who has complied with the rules of said City, because of such turn-off, it being expressly stipulated that the necessity for such turn-off shall be deemed to be the joint act of all served through such service.

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**(l) Use Assumed.**

All premises connected to any water service of the City shall be assumed to be using such service and the owner or occupant shall be charged therefore as long as such premises shall remain connected to the water service of the City. (SDCL 9-47)

### ***SECT. 11.03 WATER UTILITY FUND RESERVE***

**(a) Water Facilities Replacement Fund.**

A reserve fund called the Water Facilities Replacement Fund is hereby established within the water utility fund for the purpose of providing sufficient funds to be expended for obtaining and installing equipment, accessories, and appurtenances during the useful life (20 years) of the water facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed.

**(b) Setting of Reserve.**

The City Common Council shall set aside Ten Thousand Dollars (\$10,000) per year.

### ***SECT. 11.04 SEWER PROVISIONS***

**(a) Sanitary Sewer Required.**

A separate and independent sanitary shall be provided for every building, except where one building stands at the rear of another on an interior lot and no sewer is available or can be

constructed to the rear building through an adjoining alley, court, yard, or driveway, the sewer from the front building may be extended to the rear building and the whole considered as one sanitary sewer. Multiple hook-ups in all cases shall be as prescribed by the City Council.

**(b) Existing Sewer Connections.**

Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the Utilities and Street Superintendent, to meet all requirements of this Title.

**(c) Disconnection.**

When a disconnection from the sanitary sewer is made, the sewer service shall be closed to the satisfaction of the Utilities and Street Superintendent. Closure shall be at the curb line on residential property and at the property line on commercial property.



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### **(d) Sewer Pipe Requirements.**

All sanitary sewer shall be of the material approved by the installed in conformity with the currently approved Engineering Design Standards for Public Improvements for the City of Tea and referenced manuals therein.

### **(e) Certain Acts Prohibited.**

No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process

waters to any sanitary sewer.

It shall be unlawful to discharge to any natural outlet within the City of Tea, or in any area under the jurisdiction of said City, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Title.

The disposal by any and all persons of garbage, petroleum products, and other foreign debris into the sanitary sewer system of the City shall also be prohibited.

### **(f) Private Disposal System**

No connection from any private sewage disposal system shall be made with any public sanitary sewer under jurisdiction of the City. (SDCL 9-48)

No person shall make, or cause to be made any direct or indirect connection with the storm sewer system of the City, but any and all drainage thereto shall be accomplished by natural run-off to said system, whether through the City street system or otherwise. *Ordinance 95*

## **SECT. 11.05 SEWER USE**

### **(a) Definitions.**

#### **(i) Definitions.**

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

- 1) Biochemical Oxygen Demand (BOD) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter.
- 2) "Building drain" shall mean that part of the 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 inner face of the building wall.
- 3) "Building sewer" shall mean the extension from the building drain to the public

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- sewer or other place of disposal, also called house connection.
- 4) “Combined sewer” shall mean a sewer intended to receive both wastewater and storm or surface water.
  - 5) “Easement” shall mean an acquired legal right for the specific use of land owned by others.
  - 6) “Floatable oil” is 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.
  - 7) “Garbage” shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.
  - 8) “Industrial wastes” shall mean the wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.
  - 9) “Natural outlet” shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
  - 10) “May” is permissive.
  - 11) “Person” shall mean any individual, firm, company, association, society, corporation or group.
  - 12) “pH” shall mean 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  $10^{-7}$ .
  - 13) “Properly shredded garbage” shall mean 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  $\frac{1}{2}$  inch (1.27 centimeters) in any dimension.
  - 14) “Public sewer” shall mean a common sewer controlled by a governmental agency or public utility.
  - 15) “Sanitary sewer” shall mean 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.
  - 16) “Sewage” is the spent water of a community. The preferred term is “Wastewater”.
  - 17) “Sewer” shall mean a pipe or conduit that carries wastewater or drainage water.
  - 18) “Shall” is mandatory.

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- 19) “Slug” shall mean 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.
- 20) “Storm drain” (sometimes termed “storm sewer”) shall mean a drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.
- 21) “Superintendent” shall mean the superintendent of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the City of Tea, or his authorized deputy, agent, or representative.
- 22) “Suspended solids” shall mean 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 nonfilterable residue.
- 23) “Unpolluted water” is 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.
- 24) “Wastewater” shall mean 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 institution, together with any groundwater, surface water, and storm water that may be present.
- 25) “Wastewater facilities” shall mean the structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.
- 26) “Wastewater treatment works” shall mean 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.”
- 27) “Watercourse” shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

### **(b) Use Of Public Sewers Required.**

- (i) **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 of Tea, South Dakota, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.**
- (ii) **It shall be unlawful to discharge to any natural outlet within the City of Tea, South Dakota, or in any area under the jurisdiction of said City, any sewage or**

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other polluted water, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.

- (iii) 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 for any properties within the City limits.
  - (iv) 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 ordinance, within thirty (30) days after date of official notice to do so, provided that said public sewer is within 300 feet of the property line.
- (c) **Private Waste Water Disposal.**
- (i) Where a public sanitary or combined sewer is not available under the provisions of Section 11.05(b)(iv), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.
  - (ii) Before commencement of construction of a private wastewater disposal system, the owner(s) shall first obtain a written permit signed 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.
  - (iii) 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 notice the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice by the superintendent.
  - (iv) 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 43,560 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
  - (v) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 11.5.(b)(iv), 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

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wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

- (vi) The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the City.
  - (vii) No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer.
- (d) Sanitary Sewers, Building Sewers and Connections.
- (i) No unauthorized person(s) 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.
  - (ii) There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for 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 shall be set by City resolution.
  - (iii) 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.
  - (iv) 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 aforementioned.
  - (v) 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 ordinance.
  - (vi) 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 AST.M. and WT.C.F. Manual of Practice No. 9 shall apply.
  - (vii) Whenever possible, the building sewer shall be brought to the building at an

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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.

- (viii) No person(s) 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 purposes of disposal of polluted surface drainage.
- (ix) 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&T.M. and W.P.C.F. Manual of Practice No. 9. All such connections shall be made gas tight and water tight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.
- (x) 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.
- (xi) 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 works shall be restored in a manner satisfactory to the City.

### **SECT. 11.06 ESTABLISHING SEWER TRUNK AREA**

#### **(a) Trunk Areas Defined.**

There is hereby created Trunk Area One Trunk. Area One shall consist of that marked area indicated on the attached Exhibit A to Ordinance No. 126 made a part hereof and described as Section 25, the Northeast Quarter of Section 26, the Southeast Quarter of the Southeast Quarter of Section 23 and the South Half of the South Half of Section 24, Township 100 Range 51 West of the 5<sup>th</sup> Principal Meridian, and the Southwest Half of the Southwest Quarter except that area used for the interstate highway of Section 19, the Northwest Quarter of Section 30 except that area used for the interstate highway, Township 100 Range 50 West of the 5<sup>th</sup> Principal Meridian, Lincoln County, South Dakota. No area in Trunk Area One shall be eligible to be served by the City services until such time as it is annexed within the City or such time as may be negotiated with the City.

#### **(b) Amount to be Paid.**

The City of Tea through issuance of a Borrower Bond has caused the construction of a trunk sewer line and lift station designated the Highway 111 Sanitary Sewer

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Project. The City hereby finds that the amount to be apportioned shall be as follows:

Lift Station	\$ 61,660.00
Line	\$126,649.63
Apportioned Amount:	\$188,309.63
City Apportionment:	\$ 0.00

**(c) Hookup Fees.**

Those properties located in Trunk Area One shall pay the hookup fees at a rate of \$154.10 per acre of land to be included in the service area.

**(d) Collected Fees.**

All hookup fees shall be collected at the time the final plat is approved by the City, the property annexed in the City or at the time of hookup, whichever is earliest. All hookup fees shall be placed into Sales Tax Fund of the City to reimburse the City for the costs of the construction of the trunk sewer line and lift station.

**SECT. 11.07 ESTABLISHMENT OF WATER TRUNK AREAS.**

**(a) TRUNK AREA DEFINED.**

There is hereby created Water Trunk Area One. Trunk Area One shall consist of TRACT A AND EAST 200 FEET OF TRACT B OF ZELMER FIRST ADDITION TO THE CITY OF TA, LINCOLN COUNTY, SOUTH DAKOTA AND THE WEST 200 FEET OF THE NORTHWEST QUARTER OF THE SOUTH WEST QUARTER OF SECTION TWENTY-FIVE TOWNSHIP ONE HUNDRED NORTH RANGE FIFTY ONE WEST FIFTH PRINCIPAL MERIDIAN LINCOLN COUNTY, SOUTH DAKOTA

**(b) AMOUNT TO BE PAID.**

The City hereby finds that the amount to be apportioned shall be as follows:

Line:	\$18,000.00
Apportioned amount:	\$ 9,000.00
City Apportionment:	\$ 9,000.00

**(c) HOOKUP FEES.**

Those properties located in the Trunk Area One shall pay the hookup fees at the rate of \$4.11 per funning foot fronting or abutting the service area.

**(d) COLLECTED FEES.**

All hookup fees shall be collected at the time of hookup.

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## Chapter 12. STORM DRAINAGE

### SECT. 12.01 DEFINITIONS.

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

“Director” means the utilities support services manager appointed by the City Council members or their duly authorized representative.

“Manager” means the water/wastewater manager appointed by the City Council members or their duly authorized representative.

“Utility” means and includes the water, sewer, storm sewer, or any other utility services furnished by the City to consumers thereof.

### SECT. 12.02 STORM DRAINAGE FEE.

The purpose of this division is to establish a charge against real property within the City, for the operation, maintenance and capital expenses of the storm sewer and drainage system.

#### (a) Storm Drainage Fee.

All real property, except property owned by cemetery corporations, within the City shall be charged an annual fee for the operation, maintenance and capital improvements of the storm sewer and drainage system. The fee for such property shall be based on the lot area, a runoff weighting factor and a unit financial charge, and which fee is determined as follows:

##### (i) Storm Drainage Fee Calculation.

STORM DRAINAGE FEE equals the RUNOFF WEIGHTING FACTOR, multiplied by PARCEL AREA (in square feet), multiplied by UNIT FINANCIAL CHARGE (in dollars per square feet).

##### (ii) Runoff Weighting Factor.

RUNOFF WEIGHTING FACTOR- The runoff weighting factor is determined by the type of land use, and indicates the relative volume of storm water runoff from a land parcel, as a function of the percentage of impervious surfaces covering each land parcel. The runoff weighting factor is to be assigned by land use type, as shown in Table I:



## CITY OF TEA ORDINANCES

(iii) **TABLE I**

LAND USE	LAND USE FACTOR	RUNOFF WEIGHTING
CODE	FACTOR	WEIGHTING
11	Estate (lot area over 30,000 square feet)	2.50
11	Single-family (lot area of 30,000 square feet or less)	7.50
12	Duplex	7.50
13	Townhouses	7.50
14	Apartment building (1-3 stories)	11.25
15	Apartment building (4 stories or more)	11.25
16	Dormitories	11.25
17	Mobile homes and trailers	11.25
18	Other residential	11.25
21	Apparel and textiles	17.00
22	Wood, furniture, fixtures	17.00
23	Lumberyards	17.00
24	Printing and publishing	17.00
25	Warehouse, indoor storage	17.00
26	Electronic, scientific, optical	17.00
27	Construction yards, including plumbing, electrical heating contractors	17.00
28	Chemical, petroleum storage	17.00
29	Other light, pollution-free manufacturing not included elsewhere	17.00
31	Food, agricultural processing, stockyards, rendering	17.00

## CITY OF TEA ORDINANCES

32	Paper and pulp	17.00
33	Chemical, petroleum, rubber and plastic	17.00
34	Stone, glass, clay, cement, brick	17.00
35	Primary metal, smelting	17.00
36	Metal fabricating	17.00
37	Salvage, junkyard, resource recycling	7.50
38	Other heavy manufacturing not elsewhere coded	17.00
41	Bus, railroad yards, terminals, right-of-way	5.00
42	Airport	5.00
43	Auto parking ramps and lots (commercial or public only - not auxiliary parking)	18.75
44	Highway and street right-of-way	5.00
45	Communication (TV, radio, etc.)	17.00
46	Utilities (gas, sewer, water, telephone, etc.)	17.00
47	Truck terminal	17.00
48	Military base	17.00
49	Other transportation, communication and utilities	
	not elsewhere coded	17.00
51	Wholesale – food, produce	18.75
52	Wholesale – other	18.75
53	Extensive retail – building supplies, including lumber, home repair supplies	18.75
54	Extensive retail - farm equipment and implements	18.75
55	Extensive retail - new and used car dealers	18.75
56	Extensive retail - recreational vehicles, marine	18.75

## CITY OF TEA ORDINANCES

57	Extensive retail - tires, batteries, auto accessories	18.75
58	Extensive retail - auto repair, body shop	18.75
59	Extensive retail - other retail with outside storage	18.75
61	Food store	18.75
62	Neighborhood commercial, hardware, drugs, laundromat, beauty shop, barbershop, neighborhood shopping center	18.75
63	Gasoline, auto service station	18.75
64	Department store, discount store, regional shopping center	18.75
65	Clothes and apparel	18.75
66	Specialty retail – jewelry, gifts, etc-	18.75
67	Furniture, household appliances	18.76
68	Other retail not elsewhere coded	18.75
71	Banks and financial institutions	18.75
72	Churches	11.25
73	Nursing homes and hospitals	11.25
74	Colleges and universities, adult education	11.25
75	Primary and secondary education	11.25
76	Day care centers	11.25
77	Medical offices, clinics	18.75
78	Government offices	18.75
79	Offices not elsewhere coded (real estate, law, etc.)	18.75
81	Cultural activities - libraries, museums, etc.	18.75
82	Assembly areas, arenas, stadiums	18.75

## CITY OF TEA ORDINANCES

83	Theaters	18.75
84	Restaurants, bars, lounges	18.75
85	Hotels, motels, resort lodging	18.75
86	Public parks, golf courses, fairgrounds	1.00
87	Private country club and other recreational uses	1.00
88	Other cultural and entertainment uses, not elsewhere coded	1.00
91	Cropland and farms	1.00
92	Feedlots	1.00
93	Grasslands	1.00
94	Mining and quarrying**	1.00
95	Cemetery	1.00
96	Sanitary landfills	1.00
97	Vacant	1.00
98	Under construction	1.00
99	Other not elsewhere coded	1.00
100	Retention, detention and wet lands	0

\*Land included in the F-1 floodway zone shall have a runoff weighting factor of zero for the actual flood hazard area.

\*\*Quarries are individually calculated with a runoff weighting factor of zero for the actual quarry area.

**(iv) Owner Request for Study.**

Upon written request from a property owner, a detailed site study will be conducted by the City Engineering Department/Firm to determine the runoff weighting factor. This written request must be submitted to the director on or before April 30 of the year the fees are charged to the subject land parcel. The Engineering Department shall calculate the percentage of impervious area for the subject parcel which contributes storm water runoff to the drainage system of the City. This system includes the storm sewer system, drainageways, and the diversion channel within the City. The runoff weighting factor is then determined through utilization of Table II. This calculation shall be completed by July 1 of the year the written appeal is requested.

**CITY OF TEA ORDINANCES**

**(v) TABLE II**

PERCENTAGE IMPERVIOUS AREA	AVERAGE RUNOFF TO RAINFALL RATIO (Rv*)	RUNOFF WEIGHTING FACTOR (Rv X 25)
0	0.04	1.00
10	0.19	4.75
15	0.26	6.50
20	0.30	7.50
30	0.38	9.50
40	0.45	11.25
50	0.53	13.25
60	0.60	15.00
70	0.68	17.00
80	0.75	18.75
90	0.83	20.75
100	0.90	22.50

\*These values are derived from the “STORM” equation (figure 5-20, page 5-49), A Statistical Method for the Assessment of Urban Storm Drainage, EPA, Washington, D.C., January 1979. For low percentage impervious surfaces (zero percent to 20 percent), a linear relationship was assumed between the “STORM” equation and empirical data derived from drainage runoff in high depression storage, loose soils, and flat areas.

Interpolation of the runoff weighting factor for a given percentage of impervious area not listed in Table II may be obtained by assuming a linear relationship between the values listed.

The director may direct that the runoff weighting factor for a given parcel be calculated by a detailed site investigation and Table II, where an obvious departure from the percentage of impervious surfaces of similar land uses exists.

A determination of the runoff weighting factor, resulting from a detailed site investigation and Table II, brought about either by written request from a property owner or direction from the director, shall be used in the calculation of the subject parcels storm drainage fee and shall replace the factor previously derived from Table I, even if the resulting value is higher.

## CITY OF TEA ORDINANCES

**(vi) PARCEL AREA.**

Parcel area is to be obtained from the records of the Lincoln County Assessor's Office.

**(vii) UNIT FINANCIAL CHARGE.**

The unit financial charge shall be determined by the Council by Resolution.

***SECT. 12.03 COLLECTION.***

The storm drainage fee established in Section 10.2 shall be an annual charge. The first half of the fee is due on May 1, and the second half is due on November 1, of the same year, payable at the office of County Treasurer within which the land parcel lies. These fees shall be remitted or turned over to the City Finance Director, at least once a month, by the County Treasurer.

***SECT. 12.04 ESTABLISHED FUND.***

The drainage fees paid to the City shall be kept in a separate fund to be known as the drainage and storm sewer fund. This fund shall be used to pay the cost of financing the operation, maintenance or construction of the drainage and storm sewer system.

***SECT. 12.05 ANNUAL REVIEW.***

The unit financial charge of this division shall be reviewed annually and shall be revised as necessary to keep revenues reasonable in balance with anticipated expenditures. Excess funds may be carried forward from year to year in order to build sufficient funds for large drainage construction projects which are scheduled or programmed for the near future. In addition, funds may be carried over to provide sufficient manias for unanticipated repairs, replacements, or maintenance of the drainage system.

CITY OF TEA ORDINANCES

Chapter 13. TAXATION AND SURCHARGE

SECT. 13.01 MUNICIPAL SALES TAX SEE ORDINANCE 167

~~(a) Purpose.~~

~~The purpose of this Title is to provide additional needed revenue for the City of Tea, by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL 10-52 entitled Uniform Municipal Non Ad Valorem Tax Law, and acts amendatory thereto.~~

~~(b) Effective Date.~~

~~From and after the first day of July, 1982, there shall be imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax of one percent (1%) on the gross receipts of all persons engaged in business within the jurisdiction of the City of Tea, Lincoln County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.~~

~~(c) 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.~~

~~(d) Use Tax.~~

~~In addition there is hereby imposed an excise tax on the privilege of the use, storage and consumption within the jurisdiction of the City of tangible personal property purchased from and after the 1st day of July, 1982, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax, SDCL 10-46 and acts amendatory thereto.~~

~~(e) Interpretation.~~

~~It is declared to be the intention of this Title 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 the South Dakota 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.~~

~~(f) Penalty.~~

~~Any person failing or refusing to make reports on payments prescribed by this Title 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~~

## CITY OF TEA ORDINANCES

~~be fined not more than One Hundred Dollars (\$100) or imprisoned in the city jail for not more than thirty (30) days or both such fine and imprisonment. 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. (SDCL 10-52)~~

### **SECT. 13.02 REDUCED VALUATION FOR TAX PURPOSES SEE ORDINANCE 149**

#### **(a) Structures to Apply.**

Within the corporate limits of the City of Tea, all new industrial, commercial, and non-residential agricultural structures, or additions to existing structures, which new structures or additions have a true and full value of Thirty Thousand Dollars (\$30,000) or more, added to real property are specifically classified for the purpose of taxation.

#### **(b) Classification of Property.**

All real property qualifying under this section shall be classified in the manner prescribed in this

Title unless waived by the property owner.

#### **(c) Taxable Value Formula.**

Such structures or additions shall, following construction, be valued for taxation purposes in the usual manner, as now provided by law, except that the following formula for taxable value shall be used for tax purposes:

- (i) For the first tax year following construction, not more than twenty percent (20%) of the taxable value shall be used for tax purposes on such property;**
- (ii) For the second year following construction, not more than forty percent (40%) of the taxable value shall be used for tax purposes on such property;**
- (iii) For the third year following construction, not more than sixty percent (60%) of the usual taxable value shall be used for tax purposes on such property;**
- (iv) For the fourth year following construction, not more than eighty percent (80%) of the taxable value shall be used for tax purposes on such property;**
- (v) For the fifth year following construction, not more than one hundred percent (100%) of the usual taxable value shall be used for tax purposes on such property; and**
- (vi) Thereafter, such property shall be taxed at the same percentage as is all other property for tax purposes. (SDCL 10-6-35.2 and Ord. 253 1-23-76)**



CITY OF TEA ORDINANCES

**SECT. 13.03 IMPOSITION OF SALES AND SERVICE TAX FOR CAPITAL IMPROVEMENTS SEE ORDINANCE 167**

~~(a) Imposition of Sales and Service Tax for Capital Improvements.~~

~~To finance the making of capital improvements within the City of Tea, South Dakota, a municipal retail occupational sales and service tax is hereby imposed, in addition to any sales or use tax already imposed by the City of Tea, and said tax shall be measured by 1% of the gross receipts of all persons engaged in business within the City of Tea, Lincoln County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45, and acts amendatory thereto.~~

~~(b) Exemptions.~~

~~The following receipts are exempt from the tax imposed by this Title:~~

~~(i) Gross receipts from selling food, as defined by the Food Stamp Act of 1977 (P.L. 95-113) codified at 7 U.S.C. 2012(g), as amended through January 1, 1983.~~

~~(ii) Gross receipts from selling 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, if the part replaced is a farm machinery part assigned a specific or generic part number by the manufacturer of the farm machinery, farm machinery or equipment tax pursuant to SDCL 10-45-3, and agricultural animal health products and medicines.~~

~~(iii) Gross receipts for material incorporated in construction work pursuant to construction contracts did or entered into on or before the effective date of this ordinance.~~

~~(c) Deposit of Taxes.~~

~~Any revenues received under this Title shall be deposited to the municipal treasury in a fund designated as the Tea Sales and Use Tax Capital Improvements Fund, pursuant to SDCL 9-22.~~

~~(d) Limited Use of Fund.~~

~~Said fund shall be used only for the making of capital improvements within or adjacent to the City of Tea, South Dakota, in the manner provided by law.~~

~~(e) Separability.~~

~~If any provision of this Title is declared unconstitutional or the application thereof to any person or circumstances held invalid, the constitutionality of the remainder of a Title and applicability thereof to other persons or circumstances shall not be affected thereby.~~

## CITY OF TEA ORDINANCES

### **SECT. 13.04 ENTERTAINMENT TAX**

**(a) Findings.**

The City finds that construction of park facilities and operation of a system of parks is directly related to the civil affairs of the City. The park facilities and park system shall be the City's athletic, civic and cultural center to be used for music, athletic, cultural, commercial and other spectator events as well as promotion of the City and promotion of civic affairs of the community. The City finds that the parks and its facilities are the civic center, auditorium and athletic facility of the City of Tea.

~~**(b) Special Tax Rates. SEE ORDINANCE 150**~~

~~Notwithstanding the rate of tax established by Ordinance 50 and 67, from and after January 1, 1997, the rate of tax upon sales of leases or rentals of hotel, motel, campsites, or other lodging accommodations within the City for period of less than 28 consecutive days; sales of alcoholic beverages as defined in SDCL 35-1-1; sales of establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption; ticket sales or admissions to places of amusement, athletic, or cultural events is three percent (3%). Any revenues received under this Section in excess of two percent (2%) may be used only for the purposes of land acquisition, architectural fees, construction costs, and payment for parks and park facilities, including maintenance, staffing, and operations of such facilities and the promotion and advertising of the City, its facilities, attractions and activities.~~

~~**(c) Collection. SEE ORDINANCE 150**~~

~~Such tax imposed in the Section is levied pursuant to authorization granted by SDCL Ch. 10-52 and acts amendatory thereof and shall be collected by the State 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 State Commissioner of Revenue shall lawfully prescribe.~~

### **SECT. 13.05 ELEVATE TANK REVENUE FUND**

**(a) Creation of Special Fund.**

There is created a special fund designated the Elevated Tank Revenue Fund.

**(b) Surcharge for Bond Issue.**

There shall be charged a monthly surcharge for the services provided by the improvement financed by the Elevated Tank Revenue Bonds, Series RD 1997. The surcharge shall be segregated from other revenues of the utility and shall be used for the payment of the revenue bond. Provided that such surcharge shall create net income, remaining from time to time after first paying all reasonable and

## CITY OF TEA ORDINANCES

current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements.

**(c) Rates and Collection.**

The rate herein specific will be collected as a surcharge for the utility improvement. This surcharge shall remain in effect until such time as the revenue bond is discharged. The initial surcharge and any amendments thereto shall be set by resolution. The surcharge shall be collected monthly at the same time as other charges of the utility. All users, current and future, shall be charged the surcharge for it has been found that all users benefit from the improvement. The surcharge is found to be equitable for the services provided by the improvement.

**(d) Yearly Review.**

The amount of the surcharge shall be reviewed periodically and may be modified in order to provide such funds as are set forth herein.

## CITY OF TEA ORDINANCES

### Chapter 14. PLANNING AND ZONING

#### *SECT. 14.01 PLANNING COMMISSION*

**(a) Created.**

There is hereby created a planning and zoning commission which shall be referred to as the City Planning Commission. (SDCL 11-6-2)

**(b) Composition.**

The City Planning Commission shall consist of not less than five (5) members appointed by the City Council. The term of each appointed member shall be for five (5) years except that when the Planning Commission is first appointed three of the members shall be appointed for three (3) years and the balance of the members shall be appointed for five (5) years. Thereafter, appointments of each member shall be for terms of five (5) years so that there will be an overlapping of tenures.

**(c) Powers and Duties.**

The City Planning Commission may exercise all such planning and zoning powers granted in South Dakota Compiled Laws 11-4 and 11-6 and acts amendatory thereof, as may be necessary to enable it to fulfill and perform its functions, promote municipal planning or carry out all the purposes of this Title.

**(d) Comprehensive Plan.**

It shall be a function and duty of the City Planning Commission to make and adopt a comprehensive plan for the physical development of the City. The plan may include among other things, population and economic projections, park and recreation plans, a major street plan, water and sewer plans, and a land use plan which shows the Planning Commission's recommendations for future physical development. (SDCL 11-6-14)

**(e) Zoning and Subdivision Regulations.**

In exercising the duties granted to it by this Title, the City Planning Commission shall by ordinance adopt regulations governing land uses, building or set-back lines and the subdivision or platting of land within the City in accordance with SDCL 11-4 and 11-6.

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***SECT. 14.02 SECTION 2. ZONING AND SUBDIVISION REGULATIONS (SEE APPENDIX A)***

# CITY OF TEA ORDINANCES

## Chapter 15. LANDSCAPE STANDARDS

### SECT. 15.01 LANDSCAPE STANDARDS

#### (a) Landscape Standards.

It is the desire of the City of Tea to encourage development which is environmentally sensitive, socially responsive, as well as aesthetically pleasing. To assist in these objectives, a minimum standard for landscaped setback is prescribed, and landscape features are implemented to minimize the adverse effects commonly incidental to higher density residential, commercial and industrial property improvements. Under no circumstances is the use of artificial plantings acceptable to meet the requirements of this ordinance.

#### (b) Required Landscaping of Front Yard Setbacks.

At least ninety percent (90%) of required front yard setback in any zoning district shall be landscaped and maintained with living ground cover. The required setback may include necessary hard surfacing of driveways to reach allowable parking, loading or stacking areas. Poured or laid asphalt, concrete or similar hard surfacing shall not be used as allowable landscape material. Landscape areas must be capable of providing a substantially full expanse of foliage within three (3) years after planting.

#### (c) Trees.

Valuing the benefits provided from the use of trees in reducing heat, pollution, and the loss of habitat resulting from the use of expansive areas of hard surfacing for parking purposes, the following standards regarding trees shall be met and maintained:

- (i) **Total number of trees required: Trees shall be required at the rate of one (1) tree per fifty (50) feet of frontage or one (1) tree per six (6) parking, loading and stacking spaces provided on the site, whichever is greater. Where fractional trees result, the number of required trees shall be rounded to the nearest whole number.**
- (ii) **Exception: If parking facilities or building can utilize zero setbacks, one (1) tree per fifty (50) feet of frontage shall be provided within the right-of-way subject to approval by the City Engineer.**
- (iii) **Placement according to type and percentage allowed.**
- (iv) **Deciduous shade tree - May be utilized for one hundred percent (100%) of the total tree requirement. Only deciduous shade trees may be utilized for required interior trees or optional right of way planting, and no more than twenty percent (20%) of the total tree requirement may be planted in the right of way area.**
- (v) **Deciduous ornamental and evergreen or coniferous trees - Up to twenty-five percent (25%) of the required trees may be deciduous ornamental, evergreen or coniferous trees; however, they shall not be planted in a driveway or intersection**

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safety zone nor utilized for parking lot interior trees or right-of-way plantings.

- (vi) **Interior tree requirements:** When enclosed interior parking spaces are provided on the site, one (1) tree shall be required for every eighteen(18) interior parking spaces. Every interior tree shall be located in a planting island entirely within the hard-surfaced area utilized for parking and maneuvering purposes. Said islands shall have dimensions of at least five (5) feet wide and contain a minimum of thirty six (36) square feet per tree. Planting islands shall utilize raised curbs or wheelstops necessary to prevent damage from vehicles.
- (vii) **Existing tree bonus:** The City encourages preservation of any existing trees on a site which are in good condition and at least one and three-quarter (1 <sup>3</sup>/<sub>4</sub>) inch caliper in size. Such trees may be counted as part of the required number of trees on a site. A credit of two (2) trees toward the number of required trees shall be given for each existing tree on a site that is of an acceptable species which is over ten (10) inch caliper in size. This credit, however, may not be applied in reducing the number of required interior trees.

**(d) Parking Lot Buffer Areas.**

A setback area of at least five (5) feet shall be provided between the parking surface and property line where a parking lot abuts neighboring residentially used property.

Exception: Where a screen fence or wall is provided, the required setback may be reduced to two (2) feet.

**(e) Parking Lot Screening.**

A fence, wall, berm, or shrubbery four (4) feet in height and of a character necessary for adequate screening of a parking lot from adjacent residentially used property shall be provided. Where the residentially used property is across the right-of-way from a parking area, screening shall be provided in all cases except when the right-of-way is an arterial street.

Berms or other landscaping techniques may be used for all or part of the screening requirement and may be incorporated into a landscape setback area. Berms shall have a maximum grade of three (3) feet horizontal to one (1) foot vertical and shall be sodded or planted with other acceptable living ground cover.

**(f) Screening Dumpsters.**

All outside dumpsters or other garbage receptacles on the site shall be screened by an opaque fence or wall a minimum of six (6) feet in height.

**(g) Installation Requirements.**

Of the total number of trees required, a minimum of one (1) tree per forty (40) feet of street frontage shall be planted in the required front yard setback. Trees shall be located no closer than two (2) feet to any curb or hard surfaced area, and all landscape materials required by this section shall be installed in accordance

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with accepted industry standards. Minimum planting sized of landscape materials to meet the requirements of this ordinance are as follows:

- (i) **Hedges:** If hedges are utilized for the required screening of a parking lot, plantings shall be a minimum of eighteen(18) inches above ground level and of a species that is normally capable of reaching a height of four (4) feet within three (3) years. Spacing shall be eighteen (18) to thirty-six (36) inches apart, depending upon species.
  - (ii) **Ground covers and shrubs:** If ground covers or shrubs are utilized in area required to be landscaped, plantings shall be a minimum two (2) to five (5) gallon pot size and be spaced no more than four (4) feet on center depending upon species.
  - (iii) **Deciduous shade tree:** A minimum of one and three-quarters (1¾) inch caliper measured at a point six (6) inches above immediate ground level and normally capable of reaching a height of thirty (30) feet or more at maturity.
  - (iv) **Deciduous ornamental tree:** A minimum of one and one-fourth (1 ¼) inch caliper measured at a point six (6) inches above immediate ground level normally growing to a height of less than thirty (30) feet at maturity.
  - (v) **Evergreen or coniferous tree:** A minimum height of five (5) feet measured above immediate ground.
- (h) **Maintenance.**
- The use of in-ground sprinkler systems is encouraged, and at a minimum, water services shall be conveniently located to provide a permanent and easily accessible means of watering. Property owners shall be ultimately responsible for the proper maintenance of all required landscape materials, and any dead or substantially damages landscape materials shall be replaced.
- (i) **Building and Parking Lot Lighting.**
- In order to minimize the negative impact of building and parking lot trespass on adjacent properties, the City requires the use of ‘shoebox’ style lighting fixtures adjacent to any residential district.
- (j) **Right-of-way Landscaping.**
- The unpaved portion of a dedicated public right-of-way abutting any development shall be landscaped with sod, seed, or other living ground cover approved by the City. Nonliving ground cover, including, but not limited to, rock, stone, brick, concrete, asphalt or other like materials shall not be used as landscape material except as provided herein.
- The City Engineer may authorize the use of nonliving ground cover for landscaping a public right-of-way when it is determined that a location will not allow for adequate maintenance of sod or other living ground cover. This



## **CITY OF TEA ORDINANCES**

exception shall not include the use of loose rock or asphalt as landscaping material.

## CITY OF TEA ORDINANCES

### Chapter 16. UTILITY FRANCHISES

#### SECT. 16.01 COMMUNITY ANTENNA TELEVISION SYSTEM

#### **SEE ALSO ORDINANCE 160**

##### **(a) Definitions.**

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

- (i) "City" is the City of Tea, South Dakota.**
- (ii) "Council" is the City Council of Tea, South Dakota.**
- (iii) "Cable Television System" or Cable System" is a system utilizing coaxial cable and certain electronic and other components which deliver to subscribing members of the public various communications services.**
- (iv) "Cable Television Reception Service" means the simultaneous delivery by the Grantee to television receivers (or any other suitable type of audio-video communications receivers) of the signals over-the-air television broadcast stations licensed by the Federal Communications Commissions and authorized to be carried over said system and such additional closed-circuit channels at the option of Grantee for which no special charges are made.**
- (v) "FCC" shall mean Federal Communications Commission.**
- (vi) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind and any other legally recognized entity.**
- (vii) "Grantee" is F.M. Keller Communications in accordance with the provisions of this Franchise.**
- (viii) "Subscribers" are those persons contracting to receive cable television reception services furnished under this Franchise by Grantee.**

##### **(b) Grant of Authority.**

- (i) There is hereby granted by the City to the Grantee the non-exclusive right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in said town of a Cable**

## CITY OF TEA ORDINANCES

**Television System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs and various communications and other electronic services to the public.**

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

**(c) Compliance With Applicable Laws and Ordinances.**

The Grantee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City and to any such reasonable regulations as the City shall hereafter provide.

**(d) Territorial Area Involved.**

This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise.

**(e) Liability and Indemnification Insurance.**

- (i) The Grantee shall be liable for all damages and penalties which said City may be legally required to pay as a result of the granting of this Franchise, which damages are the proximate results of the negligence of the Grantee, its agents and employees.**

- (ii) The Grantee shall indemnify and hold harmless said City for all expenses and damages incurred by said City, including reasonable attorney's fees, and costs of court which expenses and damages are incurred as a proximate result of any claims arising in any way from the acts or omissions of Grantee, its agents or employees pursuant to this Ordinance.**

Grantee shall at all times while this Franchise is in effect maintain Workman's Compensation Insurance and Public Liability Insurance naming the City as an additional insured in the amounts as follows: Property Damage Liability Insurance to the extent of Fifty Thousand Dollars (\$50,000), as to any person and One Hundred Thousand Dollars (\$100,000) as to any one accident, and Personal Liability Insurance to the extent of One Hundred Thousand Dollars (\$100,000) as to any one person and Three Hundred Thousand Dollars (\$300,000) as to any one accident. The policies of insurance hereinabove mentioned are to be filed with the City before any work starts, and it shall be a further provision of all such insurance that the City is to be given at least ten (10) days written notice of any amendment or termination of such insurance before any such amendment or termination shall be effective. The City shall have the right to require Grantee to make reasonable increases in the amount and coverage provided by any insurance, and it is anticipated that this will be a matter for periodic review by the City Council.

**(f) Color T.V.**

## CITY OF TEA ORDINANCES

The facilities used by the Grantee shall be capable of distributing color T.V. signals, and when the signals the Grantee distributes are received in color they shall be distributed in color where technically feasible.

### **(g) Technical Standards.**

This Franchise is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission, specifically including Part 76 and by the laws of the State. Should there be, any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated into this Franchise, the City and Grantee agree that such incorporation shall be accomplished within one (1) year after the effective date of FCC's adoption of the modification or upon renewal of this Franchise, whichever occurs first.

In addition to the FCC requirements, the Grantee shall:

- (i) Transmit a video signal whether in black and white or in color, that is required by subscribers undistorted, free from ghost images, and accompanied by prior sound on standard production television sets in good repair.**
- (ii) Promptly locate and correct malfunctions attributable to Grantee's equipment and in no event permit a malfunction to remain uncorrected more than seventy two (72) hours after notice of the malfunction is given to Grantee, except in instances where repair equipment is unavailable, and in the latter instances, Grantee shall use all reasonable resources to obtain the needed equipment.**

### **(h) Operation and Maintenance of System.**

- (i) 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.**
- (ii) The Grantee shall maintain an office or serviceman locally which subscribers may telephone during regular business hours without incurring added messages or toll charges, so that complaints regarding cable television may be taken care of.**
- (iii) Notice will be given to subscribers of procedures for reporting and resolving complaints at the time of the initial subscription to the cable system.**

### **(i) Service to Schools and City.**

The Grantee shall provide service to public and parochial school locations and teaching stations within the City for educational purposes upon request by the City and at no cost to it or to the public or parochial school system, and Grantee shall further provide to the City three (3) outlets for cable television service at no cost for the installation or use thereof.

### **(j) Public Access Channel.**

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The company shall reserve one channel of its system for joint use by the Grantor, school or other public bodies as a public service, educational or informational channel. The Grantor, school or other public body shall furnish any special equipment and personnel necessary to feed public service, educational or informational programs into the company's system. The company reserves the right to use this channel at any time or during any period for which no program or use of such channel is scheduled by the Grantor, school or other public body.

**(k) Emergency Use of Facilities.**

In the case of an emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster period.

**(l) Other Business Activities.**

The Grantee hereunder shall not engage in selling, repairing or installing television receivers, radio receivers, or accessories for such receivers within said City during the term of this Franchise.

**(m) Individual Antennas.**

Nothing in this Title shall limit or deny service as presently provided by direct reception or limit the right of individuals to erect and maintain antennas for their own use.

**(n) Safety Requirements.**

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

- (i) The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code as promulgated by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, any City safety codes, and in such manner that they will not interfere with any installation of the City or of a public utility serving the City.**
- (ii) All structures and all lines, equipment, and connections in, over, under, and upon the street, sidewalks, alleys, and public areas or places of the City, wherever situated or located shall at all times be kept and maintained in a safe, suitable substantial condition, and in good order and repair.**
- (iii) Any damages caused by Grantee in connection with the installation or operation of any part of its cable television facilities shall be repaired by Grantee within a reasonable time after such damage is incurred.**
- (iv) The Grantee shall maintain a force of one or more agents or employees at all times and shall have sufficient employees to provide safe, adequate, and prompt**

## CITY OF TEA ORDINANCES

service for its facilities.

**(o) New Developments.**

It shall be the policy of the City liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently, or economically to serve its subscribers; provided, however, that this Section shall not be construed to require the City to make any amendment.

**(p) Limitations of Rights Granted.**

- (i) 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 adjoin any of the said streets, alleys, or other public ways and places, and said poles or towers shall be removed by Grantee, whenever, in the opinion of the City Council for the City, the same restricts or obstructs the operation or location of any future streets or public places in the City.**
- (ii) 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 said City affecting electrical installations, which may be presently in effect.**
- (iii) 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 a manner approved by the City Council, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.**
- (iv) If at any time during the period of this Franchise 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.**
- (v) Any poles or other fixtures placed in any public way by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way.**
- (vi) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The such temporary removal or raising of wires shall be paid by the person the same, and the Grantee shall have 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.**

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- (vii) **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.**
- (viii) **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 or establishments of street grade, installation of sewers, drains, waterpipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental or proprietary capacity, or other structure of public improvement, provided, however, that Grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.**
- (ix) **In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground, the Grantee shall place its wires, cables or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.**
- (x) **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 Title, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned 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.**
- (xi) **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.**
- (q) **Preferential or Discriminatory Practices Prohibited.**
- The Grantee shall not, as to rates, charges, services, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage, however, this Section shall not preclude the Grantee from establishing different rates for persons in different classifications, e.g., residential and commercial. it being understood that Grantee shall not be required to furnish service to any customer farther than four hundred (400) feet from a customer then wired and receiving Grantee's service, except in cases where not less than six (6) subscribers

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are within eight hundred (800) feet of a wired customer receiving Grantee's service and request service.



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**(r) Removal of Facilities Upon Request.**

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

**(s) Transfer of Franchise.**

The Grantee shall not transfer this Franchise other than by corporate reorganization without prior approval of the City Council, which approval shall not be unreasonably withheld.

**(t) Duration and Acceptance of Franchise.**

**(i) This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within sixty (60) days after the date of passage of this Ordinance the Grantee shall file with the City Finance Officer its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a Notary Public or other officer authorized by law to administer oaths. Any extension or renewal of the rights, privileges and authority herein granted, beyond the fifteen (15) year period provided for in this Ordinance, shall be re-negotiated with the City, upon the expiration of the present term hereof.**

**(ii) Should the Grantee fail to comply with 14.1(t)(1) above, it shall acquire no rights, privileges or authority under this Franchise whatever.**

**(iii) Grantee shall have the option to request renewal of this Franchise for an additional period not to exceed fifteen (15) years. Should Grantee desire to exercise this option, it shall so notify the City in writing, not less than three (3) months prior to expiration of this Franchise. Upon exercise of this option by Grantee, the City shall conduct a full, open, and public renewal proceeding upon prior notice and opportunity of all interested parties to be heard. The renewal proceeding shall be held for the purpose of considering Grantee's performance under this Franchise. Renewal shall not be unreasonably denied and shall be granted unless Grantee is found to be unqualified to continue operation of this cable television system. If this Franchise is renewed by the City, all of the terms and provisions contained herein shall be controlling during the renewal period, except to the extent that said terms and provisions are modified by the City or unless this Franchise is superseded by a new Franchise. Should the City, for any reason, be unable to complete the renewal proceeding prior to expiration of this Franchise, Grantee shall have the right to continue operation of this cable television system pursuant to the terms of this Franchise until such time as the renewal proceeding is concluded. Should the City deny renewal of this Franchise,**

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such denial shall be accompanied by a written statement setting forth the reasons for the denial. Grantee shall have the right to request review of any such denial by any Court of competent jurisdiction. Furthermore, in the event that the City denies renewal, Grantee shall be afforded a period of twelve (12) months following denial within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this twelve (12) month period, which shall run from the effective date of the final order or decision denying renewal, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the terms of this Franchise.

**(u) Erection, Removal and Common Use of Poles.**

- (i) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Council with regard to location, height, type or any other pertinent aspects. However, no location of any pole or wire-holding structure of the Grantee shall be vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.**
- (ii) Where poles or other wire-holding structures already exist in use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City 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.**
- (iii) Where the City or a public utility serving the City desires to make use of poles or other wireholding structures of the Grantee but agreement therefor with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration and upon such terms as the City determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operation.**

**(v) Rates.**

The following base rates and charges are hereby authorized for service under this Franchise:

**i) SCHEDULE**

*a. Initial connection, normal conditions:*

Overhead, one service outlet	\$25.00 ea.
Extra service outlets	\$10.00 ea.

*b. Disconnect and reconnect:*

Non-payment of monthly service charge	\$10.00
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Transferring to new location with existing service \$15.00

*c. Basic Service Rate:*

Residential, first outlet	\$10.00 Mo.
Each additional outlet	\$ 1.50 Mo.
Commercial, first outlet	\$10.00 Mo.
Each additional outlet	\$ 2.50 Mo.

Where there is more than four hundred (400) feet of distance from cable to connection of service to subscriber, Grantee will charge for installation on the basis of costs of material, labor, and customary overhead for the footage over four hundred (400) feet.

The Grantee shall have the right to waive the installation charge at any time for any business purpose.

The above listed rate schedule may be adjusted annually by the Grantee based on changes in one or more of the following:

1. U.S. Bureau of Labor Statistics Consumer Price Index;
2. New developments in the field of television or radio transmission;
3. Increase in the cost of transmission.

No increase in excess of five percent (5%) per annum may be made by Grantee without City approval. Increases in the rate schedule in excess of five percent (5%) per annum, may be made by the Grantee provided the City is notified in writing by service thereof on the City Finance Officer forty-five (45) days prior to the proposed change. If no action is taken by the City within the aforesaid forty-five (45) day period, the rate changes shall be effective on the 46<sup>th</sup> day after notice is served on the City Finance Officer. If the City objects to the proposed change, it may during the aforementioned forty-five (45) day period hold a public hearing affording due process to which the Grantee is an indispensable party. Following the hearing the City shall approve or disapprove the proposed rate changes within fifteen (15) days of the date of said hearing; and shall notify the Grantee within five (5) days thereafter of its action. Such notification shall be in writing and in the event the City has disapproved the proposed rate change, shall include the reasons for such disapproval.

***(w) Compliance with FCC Franchise Standards.***

Pursuant to applicable FCC standards, the following recitations and provisions are set forth:

- (i) Grantee's legal character, financial, technical and other qualifications and the adequacy and feasibility of its construction arrangements have been approved by the City Council after consideration in a full public proceeding affording due**

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process to all interested persons.

- (ii) **Grantee shall accomplish significant construction within one year after receiving FCC certification and shall thereafter equitably and reasonably extend energized truck cable to twenty percent (20%) of the Franchise area each year thereafter.**
  - (iii) **The initial Franchise period shall be fifteen (15) years in duration and renewal Franchise periods shall also be fifteen (15) years in duration, pursuant to Section 14.1(t).**
  - (iv) **All complaints regarding the quality of service, equipment and malfunctions, disputes concerning installation, or subscription rates or violations of this Franchise shall be directed to Grantee at Grantee's local office. In the event Grantee fails to satisfy a complaint, then the complaint shall be forwarded by the person making the same to the City Finance Officer. Upon receipt of the complaint the City shall immediately serve notice of such violation upon the Grantee with directions to correct such violation within forty-five (45) days or show cause why such violation should not be corrected at a public hearing held in conjunction with the next regularly scheduled meeting of the City Council.**
  - (v) **The Franchise fee pursuant to Section 14.1(y) shall be no more than three percent (3%) of Grantee's gross subscriber revenues per year from cable television operations in the City (including all forms of considerations, such as initial lump sum payments).**
- (x) **Unauthorized Cable Tapping.**

It shall be unlawful for any person or persons to obtain any cable television services from any cable television company, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of said cable television company unless the same is done with the knowledge of and with permission of the cable television company. Any person or persons found guilty of a violation of the provisions of this Section shall be deemed guilty of a Class 2 misdemeanor.

(y) **Payment to the City.**

During the term of this granted Franchise, beginning with the service to subscribers, Grantee shall pay to the City (1%) one percent on the first and second year. On the third and fourth year (2%) two percent will be paid. On the fifth year and every year thereafter the fee will be (3%) three percent of the total annual gross receipts.

Gross receipts shall include monthly basic cable service charges but shall not include monies received as installation charges and charges and fees for reconnection, inspections, and all State and Federal taxes relating thereto. This amount payable by Grantee to the City shall be the sole amount payable for all of its rights under this Franchise, including but not limited to, the use of the streets

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and other facilities of the City in the operation of the cable system and for the City supervision thereof.

Grantee shall file with the City within thirty (30) days after the expiration of the operating year during the term of the rights granted hereunder, a certified statement showing the gross receipts as defined herein. It shall be the duty of Grantee to pay the City within fifteen (15) days after the time for filing such statement, the amount due for the operating year covered by such statement.

The City reserves the right to require Grantee, at the sole expense of Grantee, to furnish a statement prepared by a Certified Public Accountant showing the gross receipts of Grantee for the purposes of this Section.

### **(z) Reservation of Rights by the City.**

The City hereby reserves the following rights in addition to those provisions contained herein and in existing Ordinances and such additional regulations as the City deems necessary in the exercise of its police power, provided, however, that no such additional Ordinances and regulations are reasonable and not in conflict with the provisions of this Franchise.

- (i) The City shall have the right to require by Ordinance the filing by the Grantee of a proper map showing the exact location of all underground cables and equipment of the Grantees together with a statement showing the exact nature of the same.**
- (ii) The City shall have the right to inspect the map, plans, and other like material of the Grantee upon reasonable notice to Grantee.**
- (iii) The City is hereby granted an easement to install and maintain free of charge upon the poles owned by Grantee any wire and pole fixture necessary for a police or civil defense alarm system, provided that such wire or fixture does not interfere with the cable system operation of the Grantee.**
- (iv) The City shall have the right to inspect and supervise all installation work performed by Grantee subject to the provisions of this Franchise for the purpose of ensuring compliance with the terms of this Franchise.**
- (v) At the termination of the term of this Franchise or any renewal period thereafter, the City may require the Grantee to remove at Grantee's expense, all portions of the cable system from all public ways within the City.**
- (vi) In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to revoke this Franchise and all rights and privileges of the Grantee hereunder for any of the following reasons:**
  - 1) Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the Ordinance granting this Franchisor has by act or omission violated any term or condition thereof; or

## CITY OF TEA ORDINANCES

- 2) Any provision of such Ordinance shall be finally adjudged by a court of law invalid or unenforceable and the City Council further finds that such provision constitutes at all times a consideration material to the continuance of the Franchise granted herein; or
- 3) The Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or
- 4) All or part of Grantee's facilities should be sold under an instrument to secure a debt and are not redeemed by Grantee within 60 days from said sale; or
- 5) Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City under this Franchise; or
- 6) City condemns all of the property of Grantee within the City by the lawful exercise of eminent domain; or
- 7) Attempts to dispose of any of the facilities or property of its cable system with the intention of preventing the City from exercising its right of purchase as herein provided; or
- 8) Perpetrates any fraud or deceit upon the City or subscribers therein; or
- 9) No revocation provided for above, except for reason of condemnation as provided in sub-section 14.1(z)(6)(F) thereof, shall be effective unless or until the City Council shall have adopted an Ordinance setting forth the cause and reasons for the revocation and the effective date thereof, which Ordinance shall not be adopted without thirty (30) days prior notice thereof to Grantee and an opportunity for Grantee to be heard on the proposed adoption of such proposed Ordinance. If the revocation as proposed in said Ordinance depends on a Finding of Fact, such Finding of Fact is made by the City Council after the hearing provided for, if requested by Grantee, shall be conclusive.

### **(aa) Pole Use Fee.**

The Grantee shall pay a pole use fee which is to be negotiated with the owner of the pole for each pole to which Grantee attaches its transmission cable or devices.

### **(bb) Program Presentations.**

All programs of broadcasting stations carried by Grantee shall be distributed or transmitted to the subscriber in their entirety without delay from the time originally broadcast, and without additional announcements, or other deletions, additions, or changes to the programs, except nothing shall prohibit such changes or delays as may be required by law.

All programs of all broadcasting stations carried by Grantee shall be transmitted or distributed by Grantee without material degradation of picture quality or sound and without significant variation between the quality of the picture or sound transmitted or distributed by Grantee to the subscriber between the programs of one broadcasting station and another, so far as the same may be within the control of Grantee.

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Whenever any broadcasting station carried by Grantee shall transmit or broadcast any television or part thereof in color, it shall be the duty of Grantee to distribute or transmit said program or said part in color to its subscribers.

### **(cc) Compliance with Law.**

Grantee shall, at all times during the terms of this Franchise, be subject to all lawful exercises of the police power of City and to such reasonable regulations as City shall prescribe for the general conduct of persons providing cable television service within the City.

### **(dd) Filing of Communications.**

Copies of all petitions, applications and communications submitted by Grantee to the Federal Communications, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter effecting cable television operations, so far as the same might also be submitted simultaneously to the City by filing the same with the City Finance officer.

### **(ee) Books and Records.**

The Grantee shall file with the City Finance Officer of the City true and accurate maps or plats of all existing and proposed installations on the streets of the City. At all reasonable times, Franchisee shall permit examination of any duly authorized representative of the City Council or the City Finance Officer Franchise situated within or without the City. Franchisee shall also permit any duly authorized representative of the City Council or the City Finance Officer to examine and transcribe any and all maps and other records kept or maintained by Franchisee or under its control concerning the operations, affairs, transactions or property of Franchisee. Financial records may only be reviewed by the City for the purpose of verifying proper payment of the Franchise fee, of determining the financial ability to provide new services, the setting of rates, and as needed upon termination of the Franchise.

### **(ff) Grantee Without Recourse.**

Grantee shall have no recourse whatsoever against the City for any loss, cost or expense or damage arising out of any of the provisions or requirements of this Franchise or because of the enforcement thereof by City, nor for the failure of City to have the authority to grant all or any part of this Franchise.

Grantee expressly acknowledges that on accepting this Franchise it did so relying on its own investigation and understanding of the power and authority of the City to grant this Franchise.

By acceptance of this Franchise Grantee acknowledges that it has not been induced to enter into this Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of City or by any other third person concerning any term or condition of this Franchise not expressed herein.

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Grantee further acknowledges by the acceptance of this Franchise that it has carefully read the terms and conditions hereof, and is willing to and does accept all of the risks of the meaning of such terms and conditions and agrees that in the event of any ambiguity therein or in the event of any dispute over the meaning thereof the same shall be construed strictly against Grantee and in favor of City.

### **(gg) Rights Reserved to Grantor.**

Without limitation on the rights which it might otherwise have, City does hereby expressly reserve the right, powers, and authority to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to City; to determine through its City Council any question of fact relating to the meaning, terms, obligations or other factors of this Franchise; and to grant additional Franchises within the City to other persons for the conduct of Cable Television System under any conditions whatsoever acceptable to City, notwithstanding the same might be alleged to be more favorable than the rights granted herein.

### **(hh) Initial System Installation.**

Operation of cable television service in the franchised area shall commence by January 1, 1983, and failure to comply with this provision shall be deemed grounds for revocation of this franchise, except that the City Council may, upon written application by Grantee, extend such time for completion upon a showing that forces and circumstances beyond the control of Grantee have precluded it from complying with this Section.

### **(ii) Acceptance of Franchise.**

Within thirty (30) days of the effective date of this Ordinance, Grantee shall accept and agree to abide with the terms and conditions of this Franchise by filing a written acceptance thereof with the City Finance Officer of the City. If such acceptance shall not be filed within the time aforesaid, then the Ordinance granting this Franchise shall be deemed void and of no further force and effect, and the offer of Franchise contained in said Ordinance shall stand revoked.

### **(jj) Notice to Parties.**

Whenever under the terms of this Franchise either party shall be required to or permitted to give notice to the other, such notice shall be in writing and is to be served on City, it shall be delivered either by first class United States mail or by handing such notice to the City Finance Officer at the City Hall, Tea, South Dakota 57064, and if to Grantee, then by delivering by first class United States mail or by handing such notice to such officer at such address as Grantee shall from time to time direct. The original name and address of the officer on behalf of Grantee shall be included in Grantee's acceptance of this Franchise.

### **(kk) General Provisions.**

- (i) Failure of City to Enforce Franchise: Grantee shall not be excused from**



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**complying with any of the terms or conditions of this Franchise by any failure of City on any one or more occasions to insist on or to seek compliance with any such terms or conditions.**

- (ii) Time of the Essence: Whenever this Franchise shall set forth any time for any action to be performed by or on behalf of Grantee, said time shall be deemed of the essence and any failure of Grantee to perform within the time allotted shall always be sufficient grounds for the City to revoke this Franchise.**
- (iii) Contest of Validity: Grantee agrees by the acceptance of this Franchise that it will not at any time set up against the City in any claim or proceeding any condition or term of this Franchise as unreasonable, arbitrary, or void, or that the City had no power or authority to make such term or conditions, but shall be required to accept the validity of the terms and conditions of this Franchise in their entirety.**

### **(ll) Separability.**

- (i) If any section, sub-section, sentence, clause, phrase or portion of this Title is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.**
- (ii) Should any provision of this Franchise be inconsistent or at variance with any rule, regulation, or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected thereby.**

### **(mm) Transfer of Franchise Ordinance.**

Pursuant to the Franchise Ordinance, consent and approval is hereby granted by the City for the transfer and assignment of the Franchise Ordinance by Douglas to DTI. The Mayor, Council President, or Presiding Officer of the City, or any person designed by the Mayor, Council President, or Presiding Officer are hereby authorized to execute the Consent to Assignment attached hereto as Annex 1.

### **(nn) Ordinance Affirmed and Term Extended.**

All terms and provision of the Franchise Ordinance shall continue in full force and effect except that the remaining term of the Franchise Ordinance shall be extended to expire on the fifteenth (15<sup>th</sup>) anniversary of the date of transfer by Douglas to DTI. As set forth in the Consent to Assignment, the City consents to the grant by DTI of a security interest in the Franchise Ordinance to its lenders to secure indebtedness or other obligations incurred by DTI with respect to the cable television system to be operated by DTI pursuant to the Franchise Ordinance.

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**(oo) Effective Date.**

The transfer of the Franchise Ordinance shall be effective upon the closing of the sale by Douglas to DTI of the cable television facilities serving the City of Tea. DTI shall notify the City of the transfer of the Franchise Ordinance within thirty (30) days of such closing, and provide therewith a copy of the Assignment and Assumption of Franchise by which the Franchise Ordinance was transferred and assigned by Douglas to DTI.

**(pp) Inconsistency.**

In the event any of the terms and provision of any other Ordinance or regulation of the City are inconsistent with the terms and provisions of this Ordinance, the terms and provisions of this Ordinance shall govern and control.

**SECT. 16.02 NONEXCLUSIVE FRANCHISE - STERN OIL**

**14.1.(a).**

The right is hereby granted to Stern Oil Company, Incorporated, its successors and assigns, a nonexclusive franchise for the limited purposed of erecting, construction, installing and laying, and thereafter using, operating, inspecting, repairing, maintaining, replacing and removing

natural gas distribution lines, and all other devices (which term does not include buildings, but does include block valves and other similar structures) used in connection with the operation of a natural gas system, over, under, across and through the streets, alleys or public places of the City of Tea, South Dakota together with the right of ingress and egress over the adjacent lands of its successors and assigns for the purpose of transmitting or distributing natural gas for a period of twenty (20) years from the 4<sup>th</sup> day of May, 1992, provided, however, that the right herein granted shall not be exclusive.

**(a)**

The Grantee shall at all times indemnify, protect and save harmless the City against and from all claims and demands and from any and all expenses, losses and liability arising out of the construction, installation, maintenance, presence of any pipes or other equipment, and of all the operations and repairs included in the Franchise as operated by the Grantee herein, except such as arises as a result of the negligence of the City, its agents, employees or officers.

**(b)**

Grantee is hereby authorized to make all the necessary excavations in the alleys, public places, sidewalks and streets within the corporate limits of the Grantor, but such excavation shall be completed with reasonable dispatch and with as little inconvenience or interference to rights of the public as may be reasonable. All mains, pipes and other natural gas apparatus and equipment laid or placed by the Grantee shall be so located in the alleys, public places and streets within the City

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as not to interfere or obstruct any drains, sewers, water pipes or other structures already installed or hereafter installed. The Grantee shall avoid interfering with the use of any alley, street, or other highway where the paving or surface of the street would be disturbed whenever practicable.

(c)

In the event any obstruction caused by the Grantee shall remain longer than is reasonably necessary or in the event of negligence by the Grantee to safeguard any dangerous places, then the Grantor may remove such obstruction or safeguard such dangerous places at the expense of the Grantee. In the event any driveway, pavement, sidewalk, paving or surface of any alley or street shall be disturbed, it shall be restored in as good a condition as before said work was commenced, and Grantee shall maintain the restoration in an approved condition for a period of one year thereafter.

(d)

The Grantee shall file a surety bond in the amount of One Hundred Thousand Dollars (\$100,000) with the City on or before its acceptance of this Franchise which is conditioned upon the faithful performance by the Grantee of all the conditions, covenants and terms contained in this Franchise, and Grantee shall at all times thereafter maintain the indemnity agreement in full force and effect for the entire term of this Franchise. In addition thereto, the Grantee shall defend and indemnify the City, and its City Council members agents, employees and officers against any and all liabilities for injury to or death of any person, or any damage to any property

caused by the Grantee, its agents, employees, officers or subcontractors in the construction, maintenance, operation or repairs of its distribution system or property, arising out of the exercise of any privilege or right under this Franchise, except such as arises as a result of the negligence of the City, its agents, employees or officers. Said surety bond is subject to approval by the City which approval or rejection by the City shall be within thirty (30) days after the surety bond is received by the City.

(e)

The Grantee shall at all times keep complete and full maps, plans and records reflecting the location of all natural gas lines and other facilities installed in the alleys, public places and streets within the corporate limits of the Grantor. In addition thereto, Grantee shall file a current map or set of such maps with the City Finance Officer upon the completion of the distribution system constructed by the Grantee, and annually update the map or set of maps.

(f)

Any facilities in the alley, public places or streets incidental to the Franchise that have been or at any future time are acquired, constructed or maintained in any manner by Grantee are thereupon to be deemed authorized and shall be subject to

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the provisions of this Franchise to include any and all expansions of the corporate limits of the Grantor which consequently requires an expansion of the Grantee's facilities.

**(g)**

City may cancel and terminate this Franchise by an Ordinance upon giving ninety (90) days written notice of its intent to do so unto the Grantee, or its assigns or successors, if the Grantee is in default in its performance under the conditions or terms herein or at any time after five (5) years from the date this Ordinance is published if construction within the City has not been commenced prior thereto by the Grantee. A written notice of default must specify the provisions of this Franchise under which the default is claimed by the Grantor.

**(h)**

This Ordinance shall not be effective unless said Company shall filed its unconditional acceptance of the Ordinance with the City Council of said City within forty-five (45) days after the publication of said Ordinance.

# CITY OF TEA ORDINANCES

## Chapter 17. GENERAL PROVISIONS

### *SECT. 17.01 PENALTIES AND REPEALING CLAUSE*

**(a) Penalty in General.**

Except in cases where a different or additional penalty is imposed by this ordinance or by some existing provision of law, every violation of any of the provisions of this ordinance shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) or by imprisonment for a period not exceeding thirty (30) days or by both such fine and imprisonment. (SDCL 9-19-3)

**(b) Conflicting Ordinances Repealed**

All ordinances and part of ordinances in conflict with the provisions of this ordinance, or relating to the subject matter of this ordinance and not re-enacted as part of this ordinance, are hereby repealed; provided however, that nothing herein shall be construed as repealing any special ordinances, appropriation ordinances; levying ordinances for the issuance of bonds, or other special ordinances of like character, nor shall this ordinance repeal or modify the provisions of any ordinance heretofore adopted by the City of Tea unless provisions of this ordinance in effect, either modify, repeal or amend such ordinances.

**(c) Unconstitutionality.**

Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason the remainder of this ordinance shall not be affected thereby.

# CITY OF TEA ORDINANCES

## Chapter 18. Flood Damage Prevention

### *SECT. 18.01 IN GENERAL*

*(a) Title.*

This Title will be known as the “Flood Damage Prevention Ordinance of Tea.”

*(b) Purpose.*

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

- (i) To protect human life and health;**
- (ii) To minimize expenditure of public money for costly flood-control projects;**
- (iii) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;**
- (iv) To minimize prolonged business interruptions;**
- (v) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges, located in areas of special flood hazard;**
- (vi) To restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities;**
- (vii) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;**
- (viii) To ensure that potential buyers are notified that property is in an area of special flood hazard;**
- (ix) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and**
- (x) To assure that eligibility is maintained for property owners in the city to purchase flood insurance.**

*(c) Methods of reducing flood losses.*

- (i) In order to accomplish its purposes, this Ordinance includes methods and provisions for:**
- (ii) Restricting or prohibiting uses which are dangerous to health, safety and**

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property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;

- (iii) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (iv) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters;
- (v) Controlling filling, grading, dredging and other development which may increase flood damage; and
- (vi) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

**(d) Definitions.**

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

- (i) *Appeal* means a request for review of the City Common Council's interpretation of any provision of this Ordinance or a request for a variance.
- (ii) *Area of shallow flooding* means a designated AO or AH zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.
- (iii) *Area of special flood hazard* means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.
- (iv) *Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year.
- (v) *Development* means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, grading, excavating or drilling operations located within the area of special flood hazard.
- (vi) *Existing manufactured home park or subdivision* means a manufactured home park for which the construction of facilities for servicing the lot on which the manufactured homes are 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 the effective date of the floodplain management regulations adopted by a community.
- (vii) *Expansion to an existing manufactured home park or subdivision* means the preparation of additional sites by the construction of facilities for servicing the lots

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on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

- (viii) ***Flood or flooding*** means a general and temporary condition of partial or complete inundation of normally dry land areas from:
- 1) The overflow of inland or tidal waters; and/or
  - 2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (ix) ***Flood insurance rate map (FIRM)*** means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
- (x) ***Flood insurance study*** means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary floodway map, and the water surface elevation of the base flood.
- (xi) ***Floodway*** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.
- (xii) **Historic structure means any structure that is:**
- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national register;
  - 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - 4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - a) By an approved state program as determined by the Secretary of the Interior; or
    - b) Directly by the Secretary of the Interior in states without approved programs.
- (xiii) **Lowest floor means the lowest floor, the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Ordinance.**



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- (xiv) **Manufactured home** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”
- (xv) **Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- (xvi) **New construction** means structures for which the “start of construction” commenced on or after the effective date of this Ordinance.
- (xvii) **New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction, of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.
- (xviii) **Recreational vehicle** means a vehicle which is:
- 1) Built on a single chassis;
  - 2) Four hundred square feet or less when measured at the largest horizontal projection;
- (xix) **Designed to be self-propelled or permanently towable by a light-duty truck, and**
- (xx) **Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.**
- (xxi) **Start of construction includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.**
- (xxii) **Structure** means a walled and roofed building or manufactured home that is principally above ground.
- (xxiii) *Substantial damage* means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage

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occurred.

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

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

(xxv) ***Variance*** means a grant of relief from the requirements of this Ordinance which would permit construction in a manner that would otherwise be prohibited by this Ordinance.

(e) ***Boundaries of districts.***

This Ordinance shall apply to all areas of special flood hazards within the City of Tea, South Dakota.

(f) ***Basis for establishing the areas of special flood hazard.***

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report covering the City of Tea and the area of Lincoln County located near the City of Tea. The latest Flood Insurance Study for Tea, Lincoln County and vicinity, South Dakota, and an accompanying flood insurance rate map (FIRM) is hereby incorporated by reference and declared to be a part of this Ordinance. The Finance Officer shall keep a copy of said study and map in the City Office open for public inspection.

(g) ***Compliance.***

No structure or land shall hereafter be used, constructed, located, extended, converted or altered without full compliance with the terms of this Ordinance and other applicable regulations.

(h) ***Abrogation and interpretation.***

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

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

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- (i) **Considered as minimum requirements;**
- (ii) **Liberal construed in favor of the governing body; and**
- (iii) **Deemed neither to limit nor repeal any other powers granted under state statutes.**

(i) ***Warning and disclaimer of liability.***

The degree of flood protection required by this Ordinance 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 manmade or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City of Tea, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

(j) ***Severability.***

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

(k) ***Permits required.***

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 18.1(f). Application for a development permit shall be made on forms furnished by the Zoning Board and may include, but not be limited to:

(i) **Plans 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:**

- 1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures; and
- 2) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(l) ***Powers and duties.***

The Zoning Board is hereby appointed to administer and implement this Ordinance by granting or denying development permit applications in accordance with its provisions.

Duties of the Zoning Board shall include, but not be limited to:

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### (i) **Permit review:**

- 1) Review all development permits to determine that the permit requirements of this Ordinance have been satisfied.
- 2) Review all development permits to determine that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required.
- 3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 18.3(k)(1) are met.
- 4) Notify adjacent communities and the Division of Emergency and Disaster Service, Department of Military and Veteran Affairs, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- 5) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the floodcarrying capacity is not diminished.

### (ii) **Information to be obtained and maintained:**

- 1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- 2) Maintain for public inspection all records pertaining to the provisions of this Ordinance.

### (iii) ***Use of other flood data:* When base flood elevation data have not been provided in accordance with 18.1(f), basis for establishing the areas of special flood hazard, the Zoning Board shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any federal, state or other source as criteria for requiring that new construction, substantial improvements or other development in Zone A are administered in accordance with 18.3 Minimum Standards.**

*Interpretations of FIRM boundaries:* Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards where there appears to be a conflict between a mapped boundary and actual field conditions.

## **SECT. 18.02 APPEALS**

### (a) ***Appeals board.***

The City Common Council shall hear and decide appeals and requests for variances from the terms of this Ordinance.

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**(b) *Factors to consider.***

In passing upon appeals and variances from the terms of this Ordinance, the council shall consider all technical evaluation, all relevant factors, standards specified in other sections of this Ordinance, and:

- (i) The danger that materials, including but not limited to hazardous materials, may be swept onto other lands or waterways to the injury of others;**
- (ii) The danger to life and property due to flooding or erosion damage;**
- (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;**
- (iv) The importance of the services provided by the proposed facility to the community;**
- (v) The necessity to the facility of a waterfront location, where applicable;**
- (vi) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;**
- (vii) The compatibility of the proposed use with the existing and anticipated development;**
- (viii) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;**
- (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;**
- (x) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwater and the effects of wave action, if applicable, expected at the site; and**
- (xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such a sewer, gas, electrical, water systems, streets and bridges.**

**(c) *Conditions for variances.***

- (i) Variances may be issued for the reconstruction, rehabilitation or restoration of historic structures without regard to the procedures set forth in the remainder of this Title.**
- (ii) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.**
- (iii) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.**
- (iv) Variances shall only be issued upon:**

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- 1) A showing of good and sufficient cause;
- 2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in 18.2 (b), or conflict with existing local laws or ordinances.

**(v) 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 below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation.**

**(d) *Variance procedure.***

All procedures and conditions for the Board of Adjustment shall be on file with the Finance Officer and open to public inspection.

### **SECT. 18.03 MINIMUM STANDARDS**

**(a) *Storage of materials, equipment or debris.***

Storage of materials and equipment that are flammable or explosive or injurious to human, animal or plant life is prohibited, unless elevated two feet above the base flood elevation. Other materials, equipment, or debris that are buoyant shall be anchored to prevent movement due to floodwaters or [removed if such material, equipment or debris] can realistically be removed in the time available after flood warnings and the owner can provide assurance that he has the ability and will in fact take such action.

**(b) *Construction materials and methods.***

**(i) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.**

**(ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.**

**(iii) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.**

**(c) *Anchoring.***

All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.

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### *(d) Utilities.*

- (i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.**
- (ii) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwater into the systems and discharge of effluent from the systems into floodwaters.**
- (iii) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**
- (iv) Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the systems and the risk associated with such flood damage or impaired systems.**

### *(e) Subdivisions.*

- (i) All subdivision proposals shall be consistent with the need to minimize flood damage.**
  - (ii) All subdivision proposals shall have public utilities and facilities such a sewer, gas, electrical and water systems located and constructed to minimize flood damage.**
  - (iii) Subdivision proposals intended for residential development shall provide all lots with a means of vehicular access that will remain passable during occurrence of a 100-year flood.**
  - (iv) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.**
  - (v) Base flood elevation data shall be provided for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).**
  - (vi) New or Expansion of Existing Manufactured Home Park or Subdivision.**
  - (vii) New or expansion to existing manufactured home parks or subdivisions and manufactured homes outside of a manufactured home park or subdivision that are placed or substantially improved.**
- (f) All manufactured homes shall be elevated on a permanent foundation such that the lowest floor of the home is two (2) feet above the base flood elevation.***
- (g) Manufactured homes shall be located on reinforced piers or foundations, anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. The foundation and method of anchoring shall be approved by the Zoning Board.***

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**(h) Existing manufactured home park or subdivision.**

Manufactured homes that have incurred substantial damage as a result of a flood shall comply with the provisions of Section 18.03(f).

**(i) Residential, nonresidential construction and recreational vehicles.**

- (i) New construction and substantial improvement of any residential, commercial, industrial or other nonresidential structure shall have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation.**
- (ii) Within any AO and AH zone on the FIRM, all new construction and substantial improvements of nonresidential and residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade, at least as high as the depth number specified in feet on the FIRM (at least two (2) feet if no depth number is specified).**
- (iii) Within the AO and AH zones, adequate drainage paths shall be made around structures on slopes to guide floodwaters around and away from proposed structures.**
- (iv) New construction and substantial improvement of any nonresidential structure shall include site work to provide all occupied buildings with a means of vehicular access that will remain passable during occurrence of a 100-year flood.**
- (v) Recreational vehicles placed on sites within the area of special flood hazard shall be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use, or comply with the provisions of Section 18.1(k) and Section 18.3(f).**

**(j) Openings in enclosures below lowest floor.**

For all new construction and substantial improvements, fully enclosed areas below the lowest floor (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (i) A minimum of two (2) openings, having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding, shall be provided;**
- (ii) The bottoms of all openings shall be no higher than one (1) foot above grade;**
- (iii) Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.**

**(k) Floodproofing.**

Floodproofing is not accepted as a method of protection in Tea.



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*(l) Floodways.*

Located within the areas of special flood hazard established in Section 18.1(f) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- (i) Encroachments, including fill, new construction, substantial improvements, and other development, are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.**
- (ii) If Section 18.3(k)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this article.**
- (iii) Buildings shall not be for human habitation.**
- (iv) Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.**
- (v) Storage of material, equipment or debris is prohibited.**